

Subsistence

# Alaska State Legislature



## House of Representatives House Judiciary Committee

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State Capitol  
Juneau, Alaska 99811  
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Original sponsor(s): REP. JACKO, Goll, Foster, MacLean

1 IN THE HOUSE BY THE RESOURCES COMMITTEE  
2 CS FOR HOUSE JOINT RESOLUTION NO. 74 (Resources)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 Proposing an amendment to the Constitu-  
6 tion of the State of Alaska relating to  
7 retention of state management of fish  
8 and wildlife and other wild renewable  
9 natural resources; and providing for an  
10 effective date for the amendment.

11 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

12 \* Section 1. Article VIII, Constitution of the State of Alaska, is  
13 amended by adding a new section to read:

14 SECTION 19. RETENTION OF NATURAL RESOURCES MANAGEMENT BY THE  
15 STATE. Nothing in this constitution prohibits the legislature from  
16 enacting laws relating to subsistence uses of fish and wildlife and  
17 other wild renewable natural resources that are consistent with valid  
18 federal laws <sup>(where necessary)</sup> ~~in order~~ to retain management authority over those  
19 resources by the State.)

20 \* Sec. 2. The amendment proposed by this resolution shall be placed  
21 before the voters of the state at the next general election in conformity  
22 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-  
23 tion laws of the state.

24 \* Sec. 3. The amendment proposed by this resolution is effective imme-  
25 diately upon certification of the election returns by the lieutenant gover-  
26 nor.

A PROPOSED AMENDMENT TO CSHJR 74 (RES)

CSHJR 74 (Res) speaks only of enacting laws which are consistent with federal laws. The Alaska Supreme Court has shown rather marked hostility to laws which establish a preference for some users of natural resources over others. This could lead the court to conclude that the proposed amendment only authorizes laws "which are consistent with, and which provide for the definition, preference and participation specified in, sections 803, 804, and 805" of ANILCA -- i.e., a preference for rural residents only on federal land. To authorize a statewide subsistence preference for rural residents, ~~CSHJR 74 (Res)~~ could be amended to include an intent to validate, ratify, and reinstate the provisions of the state's current subsistence laws (except for the definition of "rural area" which the ninth circuit in the Kenaitze case held was inconsistent with ANILCA). This also would make it unnecessary to reenact a subsistence law during the next legislative session, since ~~passage of the constitutional amendment and the intent language as a single ballot proposition would both amend the constitution and validate, ratify, and reinstate the provisions of the state's current subsistence laws~~ (except for the definition of rural area).

The following amendment to CSHJR 74 (Res) would accomplish the foregoing (deletions are in brackets; additions are underlined; the endnotes explain the changes).

OFFERED IN THE HOUSE

TO: CSHJR 74 (Res)

Page 1, lines 12 - 26

Delete all material and insert:

\* Section 1. Article VIII, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 19. RETENTION OF NATURAL RESOURCES MANAGEMENT BY THE STATE. Nothing in this constitution prohibits the legislature from enacting laws of general applicability<sup>1</sup> relating to subsistence uses of fish and wildlife and other wild renewable natural resources that are consistent with valid federal laws (in order to retain management authority

over those resources by the State.

\* Sec. 2. In addition to authorizing the legislature to enact laws consistent with federal laws which may exist at this time or as may be enacted by the United States Congress in the future, the intent of the amendment proposed by this resolution is to validate, ratify, and reinstate the provisions of current state subsistence laws (including the provisions of ch. 52, SLA 1986) which are consistent with valid federal laws. <sup>2</sup>

\* Sec. [2] 3. The amendment proposed by this resolution, and the intent of the amendment as set out in this resolution, shall be placed before the voters of the state as one ballot proposition <sup>3</sup> at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

\*Sec. [3] 4. This amendment proposed by this resolution is effective immediately upon certification of the election returns by the lieutenant governor.

#### ENDNOTES

1. This tracks the language of section 805(d) of ANILCA and bolsters the argument that, with the intent language added as section 2, the proposed amendment if enacted authorizes laws which are effective statewide, not just on federal lands.

2. This is the intent language necessary to validate, ratify, and reinstate the provisions of the state's current subsistence laws (except for the definition of "rural area").

3. This and the preceding addition incorporate the intent of the amendment into the ballot proposition to be put before the voters.



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240  
November 7, 1986

Honorable Bill Sheffield  
Governor of Alaska  
Juneau, Alaska 99811

Dear Governor Sheffield:

Thank you for your letter of September 2, 1986, by which you confirmed the enactment of a new State law that brings the State's subsistence use and management program back into full compliance with sections 803, 804 and 805 of the Alaska National Interest Land Conservation Act (ANILCA). On September 23, 1985, I had notified you formally that the Department of the Interior had found Alaska's program to be out of compliance with ANILCA's requirements, based upon our interpretation of the Alaska Supreme Court decision in Madison v. Alaska Department of Fish and Game. The Office of the Solicitor has reviewed the materials submitted with your September 2, 1986, letter, and concluded that the new legislation cures the problems arising from the Madison decision. A copy of the October 17, 1985, memorandum on this subject from Gale A. Norton, Associate Solicitor for Conservation and Wildlife, is enclosed. I am therefore pleased to inform you that we have determined that the State's subsistence program is once again in full compliance with sections 803, 804 and 805 of ANILCA. The State as a result will continue in its traditional role in the regulation and management of subsistence uses of fish and wildlife on the public lands in Alaska.

We commend the State, in particular the State legislature, for the successful resolution of the difficult and unforeseen problems created by the Madison decision. We were pleased to be of some assistance during the legislative process leading to the passage of the subsistence bill and look forward to a continuation of State-Federal cooperation in the subsistence field.

Sincerely,

A handwritten signature in black ink, appearing to read "William T. Horn".

Assistant Secretary for Fish and  
Wildlife and Parks

Enclosure



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
WASHINGTON, D.C. 20240

In Reply Refer To  
FWS.CW.0311

## Memorandum

To: William P. Horn, Assistant Secretary for Fish  
and Wildlife and Parks

From: Gale A. Horton  
Associate Solicitor  
Conservation and Wildlife

Subject: Consistency of New State of Alaska Subsistence  
Legislation with Requirements of Title VIII of the  
Alaska National Interest Lands Conservation Act

In a letter dated September 23, 1985, you notified Governor Sheffield of the State of Alaska that the State subsistence program was no longer in compliance with the requirements of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 801-816. In a letter to you dated September 2, 1986, Governor Sheffield stated that the State has enacted new subsistence legislation and now seeks the Department's concurrence that the problems identified in your September 23, 1985 letter have been resolved. We conclude, based upon our review of the materials submitted with the September 2, 1986 letter, that ~~the State's~~ ~~Alaska subsistence program~~ ~~now complies with the requirements of~~ ~~ANILCA.~~

### Background

In an opinion dated May 14, 1982, the Solicitor concluded that the State of Alaska had enacted and implemented a subsistence management and use program that met the requirements of Sections 803, 804 and 805 of ANILCA. A key issue considered in that opinion was whether the State's subsistence program limited the subsistence preference to rural residents, as required by Section 803 of ANILCA. Although the State subsistence statute did not expressly limit the preference to rural residents, the State had promulgated regulations that did. Moreover, the State Attorney General concluded that these regulations were promulgated within the authority of the State statute. The May 14, 1982 Solicitor's opinion accordingly concluded that the State subsistence preference was consistent with Section 803 of ANILCA.

In Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985), however, the Alaska Supreme Court invalidated a State Board of Fisheries regulation designed to determine eligibility for subsistence fishing in the Cook Inlet Region. The court ruled that the regulation was inconsistent with the State's subsistence statute, which the court interpreted as requiring the extension of the subsistence preference to both rural and urban subsistence users. This interpretation, which is contrary to that relied upon in the May 14, 1982 Solicitor's opinion, led to the conclusion that the State was no longer in full compliance with the requirements of Title VIII of ANILCA.

As the September 23, 1985 letter indicates, the state's non-compliance pertained to the residency eligibility criterion for the subsistence preference. If the State were to amend its subsistence statute to limit eligibility for the subsistence preference to rural Alaska residents, as does Section 803 of ANILCA, then the State would once again be in compliance with the requirements of Title VIII of ANILCA.

#### New State Subsistence Legislation

Enclosed with the September 2, 1986 letter from Governor Sheffield is a copy of a new State law, chapter 52, SLA 1986, that relates to the taking of fish and game for subsistence and personal use. Section 10 of the new law amends the definition of "subsistence uses" in the State subsistence statute, AS 16.05.940(23), to read, in pertinent part:

"subsistence uses" means the noncommercial, customary and traditional uses of wild, renewable resources by a resident domiciled in a rural area of the state ....

The counterpart portion of Section 803 of ANILCA states:

... "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources ....

If these two provisions are consistent, then the State's subsistence preference is consistent with that in ANILCA.

Section 11 of the new State law adds to the State subsistence statute a new paragraph AS 16.05.940(32) that defines "rural area" as follows:

"rural area" means a community or area of the State in which the noncommercial, customary, and traditional use of fish or game for personal or family consumption is a principal characteristic of the community or area.

We conclude that this definition is consistent with ANILCA. The legislative history of ANILCA establishes that Congress intended to provide continuing protections for subsistence opportunities in areas of Alaska in which subsistence uses have long played a significant role. The report of the Senate Committee on Energy and Natural Resources states:

However, the phrase "customary and traditional" is intended to place particular emphasis on the protection and continuation of the taking of fish, wildlife, and other renewable resources in areas of, and by persons (both Native and non-Native) resident in, areas of Alaska in which such uses have played a long established and important role in the economy and culture of the community and in which such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation.

S. Rep. No. 413, 96th Cong., 1st Sess. 269 (1979); see also H.R. Rep. No. 97, Part I, 96th Cong., 1st Sess. 279-280 (1979); S. Rep. No. 1300, 95th Cong., 2d Sess. 221 (1978) (emphasis added). We believe that the language underscored in the above quotation is reflected in the State's definition of "rural area" as a community or area one of whose principal characteristics is subsistence uses of fish and game.

The Senate Committee Report differentiated between cities whose residents are not eligible for the subsistence preference -- Ketchikan, Juneau, Anchorage and Fairbanks -- and areas of rural Alaska whose residents are eligible. S. Rep. No. 413, 96th Cong., 1st Sess. 233 (1979). Subsistence uses are not a principal characteristic of these cities and therefore their residents would not be eligible under the State's definition for the subsistence preference. Moreover, the Senate Committee Report indicates, id., that the rural nature of a community may change over time; the "rural area" definition, by laying on the significance of subsistence uses to each community, provides a means for assessing whether a community has evolved from rural to non-rural.

The community and area focus of the definition of "rural area" is also appropriate and is even compelled by ANILCA. ANILCA's legislative history demonstrates that subsistence uses are to be identified on a community or area basis and not on an individual basis. For instance, Representative Udall stated:

customary and traditional subsistence uses must be evaluated on a community or area basis, rather than an individual basis.

We therefore conclude that the amended definition of "subsistence-uses" in the State statute, as elaborated upon in the new definition of "rural area," limits eligibility for the subsistence preference to rural Alaska residents in a manner that is consistent with Section 803 of ANILCA.

#### Conclusion

We conclude that the new State of Alaska subsistence legislation, chapter 52, SLA 1986, corrects the subsistence eligibility problem created by the Madison decision by reinstating the rural residency limitation on subsistence preference eligibility. We recommend that you inform Governor Sheffield formally that the Department of the Interior considers the State once again to be in compliance with the requirements of Title VIII of ANILCA.

RESOLUTION OF THE ALASKA CONFERENCE OF MAYORS

RESOLUTION NO. 90-9

A RESOLUTION SUPPORTING THE ADOPTION OF AN AMENDMENT  
TO THE ALASKA CONSTITUTION TO BRING ALASKA LAW IN COMPLIANCE  
WITH FEDERAL LAW REGARDING SUBSISTENCE

WHEREAS, due to the McDowell decision, the State of Alaska must take immediate action to prevent federal intervention in fish and wildlife management on federal lands, and

WHEREAS, protection of subsistence is an achievable goal and the Alaska Conference of Mayors are confident that the citizens of Alaska are capable of understanding each other's needs and acting responsibly to meet those needs, and

WHEREAS, the citizens of Alaska demonstrated affirmatively in 1982 that they were capable of such understanding in a statewide vote retaining subsistence, and

WHEREAS, the Alaska Conference of Mayors recognize the special importance of subsistence activities in those geographic areas of the state removed from the centers of commerce, and that socioeconomic and cultural considerations are the basis for the special importance of subsistence to the people in these geographic areas;

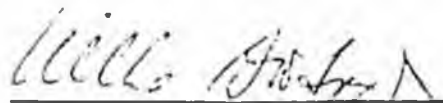
NOW, THEREFORE, BE IT RESOLVED, that the Alaska Conference of Mayors support amending Article VIII, Constitution of the State of Alaska, by adding a new section to read:

SECTION 19, USE OF FISH AND WILDLIFE RESOURCES FOR SUBSISTENCE. The legislature may grant a preference in the use of fish and wildlife resources for subsistence based upon geographic, socioeconomic, and cultural considerations;

BE IT FURTHER RESOLVED that the amendment proposed by this resolution be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state;

BE IT FURTHER RESOLVED that once such an amendment is adopted, the Alaska State Legislature provide, by statute, a preference in the use of local resources by local people in those geographic areas of Alaska where subsistence has special importance.

Adopted this 27th day of April 1990.

  
\_\_\_\_\_  
Mayor Willie Goodwin, President

ATTEST:

\_\_\_\_\_  
Mayor Ralph Gregory  
Secretary/Treasurer

BY REP. JACKO, Goll

1 IN THE HOUSE

2

HOUSE JOINT RESOLUTION NO. 74

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

Proposing an amendment to the Constitu-  
tion of the State of Alaska relating to  
a preference for subsistence use of fish  
and wildlife and state-owned renewable  
natural resources.

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10 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 \* Section 1. Article VIII, Constitution of the State of Alaska, is  
12 amended by adding a new section to read:

13 SECTION 19. SUBSISTENCE USE OF RENEWABLE NATURAL RESOURCES. The  
14 legislature may grant a preference for subsistence use of fish and  
15 wildlife and State-owned renewable natural resources. This constitu-  
16 tion does not restrict the power of the legislature to allocate access  
17 among residents to fish and wildlife and State-owned renewable natural  
18 resources for subsistence uses on the basis of local residency, cus-  
19 tomary or traditional use, or dependence on the resources for food and  
20 other purposes.

21 \* Sec. 2. The amendment proposed by this resolution shall be placed  
22 before the voters of the state at the next general election in conformity  
23 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-  
24 tion laws of the state.

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2

HOUSE JOINT RESOLUTION NO. 88

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

Proposing an amendment to the Consti-  
tution of the State of Alaska relating  
to subsistence uses of fish and wildlife  
by rural residents.

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

10 \* Section 1. Article VIII, Constitution of the State of Alaska, is  
11 amended by adding a new section to read:

12 SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE. Nothing in  
13 this constitution prohibits the legislature from limiting the taking  
14 of fish and wildlife for subsistence uses to rural residents, and from  
15 providing for the allocation of that taking among rural residents on  
16 the basis of local or community residence, availability of alternative  
17 resources, and customary and direct dependence on a fish or wildlife  
18 population as the mainstay of livelihood.

19 \* Sec. 2. The intent of the amendment proposed by this resolution is to  
20 validate, ratify, and reinstate any provisions of the new statutes and  
21 amendments enacted by ch. 52, SLA 1986, and of any regulations adopted  
22 under those statutes and amendments, which otherwise might have to be  
23 declared invalid under the Alaska Supreme Court's decision in McDowell v.  
24 State, 785 P.2d 1 (Alaska 1989), and to explicitly reverse the effect of  
25 the McDowell decision as to those provisions and regulations.

26 \* Sec. 3. The amendment proposed by this resolution, and the intent of  
27 the amendment as set out in this resolution, shall be placed before the  
28 voters of the state as one ballot proposition at the next general election  
29 in conformity with art. XIII, sec. 1, Constitution of the State of Alaska,

1 and the election laws of the state.

BY THE TRANSPORTATION COMMITTEE

1 IN THE HOUSE

2

HOUSE JOINT RESOLUTION NO. 90

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

Proposing an amendment to the Consti-

6

tution of the State of Alaska relating

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to subsistence uses of plants, fish, and

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wildlife by Alaska Native residents and

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rural residents.

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

11 \* Section 1. Article VIII, Constitution of the State of Alaska, is  
12 amended by adding a new section to read:

13 SECTION 19. SUBSISTENCE USES OF PLANTS, FISH, AND WILDLIFE.

14 Nothing in this constitution prohibits the legislature from limiting  
15 the taking of plants, fish, and wildlife for subsistence uses to  
16 Alaska Native residents and rural residents, and from providing for  
17 the allocation of that taking among Alaska Native residents and rural  
18 residents on the basis of local or community residence, availability  
19 of alternative resources, cultural, traditional, and customary uses of  
20 plants, fish, or wildlife, or dependence on plants or a fish or wild-  
21 life population as the mainstay of livelihood.

22 \* Sec. 2. The amendment proposed by this resolution shall be placed  
23 before the voters of the state at the next general election in conformity  
24 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-  
25 tion laws of the state.

# HOUSE COMMITTEE REPORT

(9)

Date Referred: January 31, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: April 21, 1990

The RESOURCES Committee considered:

HJR 74

HOUSE JOINT RES. NO. 74

CONST. AMDT: SUBSISTENCE PREFERENCE

Proposing an amendment to the Constitution of the State of Alaska relating to a preference for subsistence use of fish and wildlife and state-owned renewable natural resources.

**RECOMMENDATIONS:**

- be replaced with CS HJR 74  the same title
- have attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES PREVIOUS:  
(Date/Dept)

- fiscal impact \_\_\_\_\_  fiscal note(s) \_\_\_\_\_
- zero fiscal note \_\_\_\_\_  zero fiscal note(s) \_\_\_\_\_
- zero with analysis \_\_\_\_\_  zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

SIGNING:  
(Check approp. column)

Do Not Pass    No Rec    Amend

<u>Cliff Davidson</u> DAVIDSON				
<u>Richard J. Foster</u> FOSTER	<u>Cliff Davidson</u> MEYER		X	
<u>Jack J. Jacko</u> JACKO	<u>Bill Hudson</u> HUDSON		✓	
	<u>John Sharp</u> SHARP		✓	

Cliff Davidson  
Chairman's Signature

## FISCAL NOTE

**REQUEST:**

Revision Date: 4/21/90  
 Title: Constitutional Amendment:  
Subsistence Preference  
 Sponsor: Rep. Jacko  
 Requestor: \_\_\_\_\_

Agency Affected: Fish and Game  
 BRU: \_\_\_\_\_  
 Components: \_\_\_\_\_

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

**FUNDING:** (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

No FY 90 impact.

Prepared by: Molly McCammon Phone: 465-4100  
 Division: Commissioner's Office Date: 4/21/90  
 Approved by Commissioner: William H. Dalton Date: 4/23/90  
 Agency: Fish and Game

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

# STATE OF ALASKA



LYMAN F. HOFFMAN  
CO-CHAIRMAN  
HOUSE FINANCE COMMITTEE

P. O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3706

## HOUSE OF REPRESENTATIVES

### DISTRICT 28

AKJACHAK  
AKJAK  
ATMAUTLUK  
BETHEL  
CHEFORNAK  
FEK  
GOODNEWS BAY  
KASIGLUK  
KIPNUK  
KONGIGANAK  
KWETHLUK  
KWIGILLINGOK  
MEKORYUK  
NAPAKJAK  
NAPASKJAK  
NEWTOK  
NIGHTMUTE  
NUNAMTCHUK  
OSCARVILLE  
PLATINUM  
QUINHAGAK  
TOKSOOK BAY  
TUNTUTULIAK  
TUNUNAK

April 21, 1990

THANK YOU MR. CHAIRMAN AND  
COMMITTEE MEMBERS.

FOR THE RECORD MY NAME IS MIKE SMITH,  
LEGISLATIVE ASSISTANT TO CHAIRMAN  
HOFFMAN.

MR. HOFFMAN RESPECTFULLY OFFERS THIS  
AMENDMENT TO HJR 74, AND WITH THE  
CHAIRMAN'S PERMISSION, I WILL BRIEFLY  
OUTLINE THE PROPOSED AMENDMENT.

CHAIRMAN HOFFMAN'S PRIMARY  
INTENTION WITH THIS AMENDMENT IS FOR  
THE STATE OF ALASKA TO RETAIN  
MANAGEMENT AUTHORITY OVER ITS FISH  
AND GAME RESOURCES.

THIS AMENDMENT WOULD NOT COMPEL THE  
LEGISLATURE TO PASS ANY SPECIFIC LAW.  
HOWEVER, THIS AMENDMENT WOULD  
ALLOW THE LEGISLATURE TO CONSIDER  
FEDERAL LAWS AND THEIR VARIOUS  
MANDATES AND, IF THEY CHOOSE TO,  
ENACT STATE LAWS ACCORDINGLY.

AS THIS COMMITTEE IS WELL AWARE, THE SUPREME COURT'S "McDOWELL DECISION" IS WHY WE ARE HERE TODAY. THIS DECISION THREATENS OUR STATE WITH FEDERAL MANAGEMENT OF THE NATURAL RESOURCES OF ALASKA. HOWEVER, IMPORTANT TO THE DISCUSSIONS, THIS IS NOT A SUBSISTENCE PREFERENCE ISSUE, IT IS A STATEHOOD AND A STATE'S RIGHTS ISSUE.

THE SUPREME COURT DETERMINED THAT THE STATE CONSTITUTION PROHIBITS THE LEGISLATURE FROM ALLOCATING SUBSISTENCE RESOURCES BASED UPON RESIDENCY. WHETHER THE RESIDENCY WAS URBAN/RURAL WAS IRRELEVANT TO THEIR ANALYSIS. MR. HOFFMAN'S PROPOSED AMENDMENT MOVES AWAY FROM ANY CONSTITUTIONAL AMENDMENT THAT PROMOTES THE CONTROVERSIAL ISSUE OF THE URBAN/RURAL SPLIT.

A KEY PHRASE IN THE PROPOSED AMENDMENT IS "VALID FEDERAL LAWS". THIS LANGUAGE WOULD NOT STOP ANY OF THE AFFECTED GROUPS FROM SEEKING CHANGES IN 'ANILCA'.

THIS IS A IMPORTANT ASPECT OF THIS AMENDMENT BECAUSE THIS WOULD ALLOW THE LEGISLATURE TO CHANGE STATE STATUTES WHEN CHANGES TO 'ANILCA' OCCUR.

IF THE COURTS FIND 'ANILCA' INVALID, THEN AGAIN, WITH THIS PROPOSED AMENDMENT, THE ALASKA LEGISLATURE WOULD BE AUTHORIZED BY THE CONSTITUTION TO CHANGE THE LAWS ACCORDINGLY.

IN CONCLUSION, MR. CHAIRMAN, THIS AMENDMENT WOULD ALLOW ALASKA TO CHANGE ITS LAWS, REGARDLESS OF WHAT CONGRESS OR THE FEDERAL COURTS DO, IN ORDER TO RETAIN ALASKAN MANAGEMENT AUTHORITY OVER ALL WILD RENEWABLE NATURAL RESOURCES.

THANK YOU MR. CHAIRMAN,  
I AM AVAILABLE FOR QUESTIONS IF THE COMMITTEE SO DESIRES.

Testimony: House Resources 4/20/90

Good afternoon. My name is Bob Hinman. I am here today representing the Territorial Sportsmen, Inc. of Juneau. Territorial Sportsmen is the oldest and one of the largest sportsmen's organizations in Alaska, with more than 1200 members.

Territorial Sportsmen are strongly opposed to any move to change our state constitution as a way of settling the subsistence question. We are not opposed to some type of preference for those really in need of fish and game for subsistence. But we are opposed to re-instituting a program that for over a decade has kept Alaskans divided, pitted neighbor against neighbor, and cost the state and its citizens tremendous amount of money.

We were relieved when the Alaska Supreme Court re-affirmed that the constitution of the state requires that all citizens have equal access under the law to natural resources. But now we find legislation such as this that would try to take away those constitutional guarantees and re-institute the same programs.

As some of you know, I was for 22 years an employee of the Department of Fish and Game, Division of Game, the last 10 as Deputy Director of the Division. (It should be clearly stated here that I DO NOT reflect the official viewpoint of the Department of Fish and Game, probably to the relief of both the Department and myself). I worked closely with the regulatory process and with the Board of Game and saw the implementation of the Federal/State subsistence law. I saw how basically unfair it was, how potentially damaging to our fish and game resources, and

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how illogical it was. It could not, by law, be based on need, only on location of residence. Can anyone explain to me the fairness and logic of a resident of Sitka, even a highly paid government bureaucrat or a person just moved up to Sitka from Los Angeles, having a preference for hunting deer on Admiralty over ANY resident of the Juneau Borough, regardless of need or background? And this is the system we will get back if these moves to change the constitution succeed, because it is presently mandated by Title 3 of ANILCA.

The Territorial Sportsmen believe that the answer lies in changing Title 8 of ANILCA. We must have the flexibility there for the state to manage our fish and game, including provision for subsistence, as a sovereign state should have -- and all other states do have.

Many have said that we must do something NOW to avoid Federal management. I assure you that I am more adamantly opposed to Federal management than the average person -- but what do you think we have now? Or even more so, if the constitutional amendment or some similar scheme comes to be? As long as the state does not have the privilege of managing as it deems appropriate and must follow blindly the dictates of a federal agency, we have federal management in fact.

To change federal law (Title 3) we need a lot of help from outside the state. As long as it is a fight between us and the Secretary of Interior, with territorial state management in place, folks outside aren't going to get very excited. But once the Feds overtly take over management of 50% of more of the state, a

lot of people in other states are going to become very interested indeed and become active in seeing the situation change.

I've been asked, what state law or system is a good alternative to the old subsistence law, that would still provide for subsistence needs. If I had the final answer to that, I'd be the Einstein of the resource world. But it seems to me it would have to be logical (urban/rural is not logical, as I've mentioned), be based on the individual, not his community or place of residence, and reflect need. Before the subsistence law divided Alaskan against Alaskan, the Board of Game used to accommodate these legitimate needs in a variety of ways, including:

Controlled Use Areas, in which the means of access (generally aircraft) are controlled to benefit local users;

Season timing, setting seasons at a time when it was convenient for only local residents to hunt;

Permit issuance limited to issuance only in remote locations.

The system generally worked fine, in that it did not legally prevent any citizen from participating, but it definitely tipped the scales in favor of the local user. Perhaps some similar scheme could be reinstated to satisfy the genuine need for a subsistence preference for some users.

Thank you for the opportunity to testify.

# PREPARE



## Special Subsistence Edition

March, 1990

An Ecumenical Educational Legislative Information Network for Alaskans who care about Peace, Justice & Creation

### My Story

If a rite of puberty for boys growing up in South Texas existed 50 years ago, it most certainly included some form of hunting and/or fishing.

By the time I reached 12, my great ambition was to have my very own .22 rifle. There was nothing wrong with my father's old bolt action rifle, which he freely loaned me for squirrel or rabbit and squirrel hunts with my buddies - after repetitious training in the safe handling of firearms, of course. But just as most boys now yearn for "wheels" of their own, I wanted my very own semi-automatic that I could clean and oil and keep in my own closet!

I still have that first rimfire .22 which my Dad allowed me to choose from the vast stock at Corpus Christi Hardware. It was a reward for practicing hard and winning first in a State music contest when I was 14. Since that time I have enjoyed the thrills of hunting the brown bear of Chichagof Island (not with that little .22, of course), and hooking the king salmon favorite Channel as well as the haibout of Homer.

I share this bit of personal history with you to show you have a right to

know where I am coming from as I make this effort to shed light on what at first may appear to be simply hunting, fishing and gathering by Native Alaskans - Aleuts, Eskimos and Indians.

My education into the life and cultures of Alaska's indigenous

ness of the sacred was woven into the whole fabric of their lifestyle and culture.

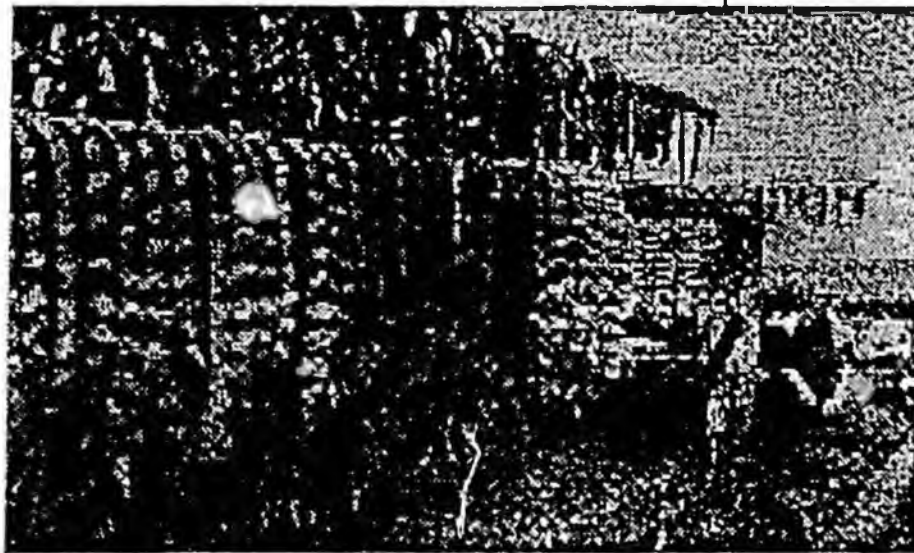
### Culture & Tradition

I have come to understand now that what we call "subsistence" is not the same as sport hunting and fishing. It is not simply "living off the land", either. In the words of Jonathan Solomon of Fort Yukon,

*When we talk about subsistence in the areas, we should be talking about Native culture and their land. I never heard the word subsistence until 1971*

*under the Native land claims act. Before that time, when I was brought up in the culture of my people, it's always been 'our culture' and 'our land'. You cannot break out subsistence or the meaning of subsistence or try to identify it, and you can't break it out of the culture. The culture and the life of my Native people are the subsistence way of life. It goes hand in hand with our own culture, our own language, and all our activities.*

Culture includes that which matters most to any people - values, religion, all that is sacred. And this may explain why Native Americans (including Alaskans) have never been able to



peoples began in Juneau in 1956. For 10 years I was pastor of the Juneau Methodist Church there. During that time I was fortunate to have a close working relationship with our Choir Director, Richard Newton. Richard is a wise and wonderful Tlinget leader then employed by the U. S. Forest Service; and a line musician who shaped our chancel choir into one of the best in Alaska.

From Richard I learned much about the culture of the rain forest people - including the sacred ritual of returning salmon bones to the river from which they had come. All of life for his people had been tuned to the cycles and recycling processes of nature. The aware-



reach a common understanding about the land with white Europeans and others who immigrated to this continent.

### The Land

Land is traditionally not simply "real estate" for Native peoples. It is essence of existence, identity and belonging.

For European immigrants, on the other hand,

*...land was merchantable. Law and usage had developed a complicated system of privileges and obligations, all deriving from the notion of a transferable fee title in land. Land that was not encompassed within some form of recorded title was outside of law itself . . . When these Europeans found that Indians had no proceedings for recording title, indeed had no titles, they readily assumed that there was no ownership.* <sup>2</sup>

This is not to suggest that the Europeans simply occupied and appropriated the land of Native Americans. The Puritans, for example, believed that the confiscation of property was wrong whether boundary markers existed or not. Roger Williams, among others, proposed that the land be purchased from the Native Americans at a reasonable price. This approach, as much as his theological ideas, contributed to his banishment from Plymouth.

Political reality – perhaps more than morality – induced European immigrants to secure land and resources by negotiation rather than by conquest. Hostile environment, Quaker and Puritan ethics, combined with principles of British and International Law (as well as military necessity) reinforced this pattern. During the American Revolution the colonists who cultivated alliances with East Coast tribes became obligated to them for support or – at least – neutrality. <sup>4</sup>

Such is the historical background for the more than 200 years of treaties between colonial, state and federal governments and Native Americans. As has been well documented, this history has been marred by broken treaties and legislated plunder.

### ANCSA

The relationship of the federal government to Alaska Natives both before and after the Alaska Native Claims Settlement Act of 1971 has been essentially the same as that of other Native Americans under American law. <sup>5</sup>

The highest hopes of Alaska Natives have included the preservation of their land claims, subsistence and self-government. ANCSA addressed only the land claims. However, the Conference Committee report made it clear that the subsistence needs of Alaska Natives were to be protected.

### Subsistence

*The Conference Committee after careful consideration believes that all Native interests in subsistence resource land can and will be protected by the Secretary (of the Interior) through the exercise of his existing withdrawal authority. The Secretary could, for example, withdraw appropriate lands and classify them in a manner which would protect Native subsistence needs and requirements by closing appropriate lands to entry by nonresidents, when subsistence resources for these lands are in short supply or otherwise threatened. The Conference Committee expects both the Secretary and the State (of Alaska) to take any action necessary to protect the subsistence needs of the Native. (Emphasis added.) <sup>6</sup>*

### ANILCA

Since neither the Secretary of the Interior nor the State of Alaska fulfilled these expectations, Congress added Title VIII to the Alaska National Interest Lands Conservation Act of 1980 (ANILCA).

ANILCA requires the state to manage fish and game resources according to federal subsistence requirements as the price to be paid for the right of managing fish and game on federal (public) lands. <sup>7</sup>



Failure to provide subsistence preference to those who depend customarily and directly on fish and wildlife the mainstay of livelihood, who are local residents, and have no alternative resources available, will mean the transfer of management of public lands to the federal government. <sup>8</sup>

## Conclusions

The conclusions drawn by David Case in his monumental study are worth quoting at length:

*To some extent, federal treaties and statutes have protected Alaska*



*Native subsistence interests for many years. Earlier enactments afforded minimal exemptions, often limited to specific species or wildlife taken by primitive hunting methods. In all likelihood more realistic forms of protection were unnecessary because there was little real conflict over the exercise of aboriginal hunting and fishing rights. However, Alaska statehood, the enactment of ANILCA and the relatively rapid development of the new state exacerbated these conflicts. The federal response has not been the abandonment of Native subsistence values, but the protection of those values in the form of exemptions from recent wildlife conservation treaties and statutes. Moreover, the state has been virtually compelled under ANILCA to adopt statewide subsistence protections, structured in significant part to protect*

### *Native subsistence interests.*

*Although the umbrella of federal protection now shelters both Natives and non-Natives, the fact does not entail a diminishment of Native values so much as an acknowledgement that in Alaska significant numbers of non-Natives now share those values by their participation in the subsistence economy. Nor do recent federal enactments necessarily preclude the possibility of some tribal control of subsistence hunting and fishing. In fact, recent amendments to the Lacey Act imply that, even in Alaska, tribal fish and game management may receive additional support through federal enforcement. Particularly when*

*issued a stay, postponing until July 1<sup>3</sup> the effects of the December 22 decision. This means that the State of Alaska has very little time to change either the State Constitution to accommodate the ANILCA protection of Alaska Native subsistence rights OR get Congress to change ANILCA to accommodate the Alaska Constitutional position, which has been supported by influential special interest groups of sports hunters and fishermen, commercial fishermen and hunters, environmental and animal rights groups.*

*In our view, the historic federal trust position of protecting traditional Native American subsistence culture and rights must prevail. The alternative would mean the extension of "the trail of broken treaties" to the remaining great land capable of keeping at least some of the promises of democracy made to the people who were here first.*

*It is important, of course, for Native Alaskans and other Alaskans who value the subsistence way of life to cooperate and - if possible - reach a consensus on the best way to ensure its preservation.*

*As Representative Eileen Panigeo MacLean of Barrow wrote recently,*

*It is up to us Alaska Natives to be aware of subsistence issues and to understand the arguments as we advocate for our hunting and fishing rights. If we do not, we will lose control over our destiny and our culture shall not survive.*

*We must continue to stand up and speak for our needs, so that we will not wake up one day to find that we are no longer able to gather the resources which sustain us. We must keep our authority of local control.*

*We must give support and encouragement to the various groups and commissions that advocate for our way of life and show our appreciation for their efforts and dedication. They are working to protect our resources and our right to the resources not just for themselves, but for us and for our future generations. <sup>10</sup>*

*Alaska IMPACT adds its voice to those who advocate for the Native Alaska subsistence way of life. As has*

### The Conflict

Last December 22, the Alaska Supreme Court ruled that Alaska's subsistence statute giving rural residents priority in hunting and fishing privileges discriminated against urban residents. The decision was based on the Alaska Constitution's "common-use" clause which provides that all residents have equal rights to use fish and wildlife.

On January 5, Alaska's Supreme Court Chief Justice Warren Matthews

been demonstrated time and again in the "South 48" and in Hawaii, it is easy for a dominant majority to ride roughshod over minority cultures and their rights and traditions.

Our hope is expressed in these wise words of our noted legal authority on the impact of American laws on Alaska Native peoples:

*Perhaps in Alaska, in the waning days of the twentieth century, we will at last find one place where the relationships between immigrant and aboriginal Americans can be structured so that each may enrich the other, and thereby ensure the diversity that is the hallmark of a free society. "*

### Is There A Solution?

On February 1, 1990, the Board of Directors of the Alaska Federation of Natives adopted a position statement on subsistence, including the following:

*We believe that if Alaskans are going to solve this problem:*

*a) an amendment to the Alaska Constitution to enable the legislature to enact and the administration to implement a rural subsistence priority which protects customary and traditional use of fish and game by Alaska Natives and other rural residents is the preferred solution; and*

*b) AFN is committed to working with the Governor and legislative leadership in considering other solutions which meet AFN'S policy goal.*

### Senator Stevens

In his address to the Joint Session of the 16th Alaska Legislature



on January 17, Senator Ted Stevens pointed out that a federal solution would risk serious losses to the state. "I would urge you not to think that the federal solution is the one that is easiest," he said, "because we will lose more than we gain."

### Governor Cowper

Governor Steve Cowper has stated that,

*Subsistence is a way of life for thousands of Alaskans, not a weekend hobby, and we've got to do everything possible to protect that way of life. I'll be working with the Alaska Federation of Natives, other Native groups and the legislature to shape a solution to this latest problem that the (Alaska) Supreme Court has dropped in our laps. <sup>12</sup>*

Several legislative measures have already been introduced in Juneau, including:

SCR 39 by Senator Jay Kerttula of Palmer which would establish a Commission to review the legal situation and identify possible options for a solution for the Senate

HB 415 by Representative Ramona Barnes of Anchorage, which would amend the Alaska subsistence law and base "subsistence user" criteria on 1) local residency and 2) direct dependency on subsistence resources and income below the national poverty level.

HJR 74 by Representative George Jacko would amend the Constitution by adding a section to give the legislature authority to grant a preference for subsistence use of fish and wildlife and State-owned renewable natural resources.

Very likely there will be many more measures by various pressure groups during this session. Alaska IMPACT will alert members to advocacy action possibilities as appropriate.

This edition of Prepare was written by the Executive Director of Alaska IMPACT. If you have information, questions or suggestions, please write or phone:

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### Notes:

- <sup>1</sup>Village Journey, Thomas R. Berger, Hill & Wang, 1983, p. 52
- <sup>2</sup>Indians and Other Americans, Fey & McHale, Harper, 1959, p. 28
- <sup>3</sup>Behind the Trail of Broken Treasures, Vine Deloria, Delta, 1974, p. 95
- <sup>4</sup>Alaska Natives & American Law, David S. Case, U of A Press, 1984, p. 47
- <sup>5</sup>Ibid., p. 47 ff.
- <sup>6</sup>Senate Report 92-381, 92nd Congress, 1st Session, December 14, 1971 at 37
- <sup>7</sup>Case, op. cit., p. 300
- <sup>8</sup>Ibid., p. 303
- <sup>9</sup>Ibid., pp. 313, 314
- <sup>10</sup>Tundra Times, January 29, 1990, p. 29
- <sup>11</sup>Case, op. cit., p. 477
- <sup>12</sup>AFN Newsletter, Special Issue, February 1990, p. 7

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- Alaska Federation of Natives, Journal Oryg, page 1
- Doug L. Peterson's Alaska Encyclopedia, Carolyn B. Morse 1979-1986, page 1
- Alaska Federation of Natives, 1980-1989, page 1
- Sheep Mountain Press, Natural World, page 1
- Village Journey, Hill & Wang, p. 52



3/18/90

## TCC supports Native subsistence priority

Interior Alaska's largest Native organization voted Thursday to throw its support behind an amendment to the state constitution that would give Alaska Natives priority hunting and fishing rights.

Tanana Chiefs Conference, a non-profit social services organization that serves 43 Interior villages, also voted against rejoining the Alaska Federation of Natives at its annual convention Thursday.

"Tanana Chiefs Conference . . . urges the state of Alaska, the general public and all Alaska Natives to support the proposed amendment to the Alaska State Constitution to provide for Native subsistence preference," the resolution said.

Native organizations in the state now are divided over whether to support Fort Yukon Rep. Kay Wallis' amendment

that would give all Alaska Natives and rural residents priority hunting and fishing rights. The Alaska Federation of Natives supports Gov. Steve Cowper's amendment that would give subsistence priority to rural residents only.

The Alaska Federation of Natives, a statewide Native organization, backs Cowper's amendment because it believes the Native-preference bill has no chance of passing in the Legislature, AFN Board of Directors chairman Ralph Eluska told TCC delegates earlier this week.

Tanana Chiefs Conference withdrew from AFN two years ago because it felt the organization wasn't adequately representing village needs and fighting to protect tribal lands.

VILLAGE PARTICIPATION CONFERENCE RESOLUTION # 90 - 16

TITLED: Resolution of information concerning subsistence as a way of life, not a way of law, and,

WHEREAS, Currently new people have tried to make difficult or impossible laws governing our customary and traditional use of these resources, and,

WHEREAS, Despite of all : : laws that have been forced upon us, we have continued to live in our customary and traditional ways; and,

WHEREAS, The people have shared these resources with members in their communities and other communities since time immemorial; and,

WHEREAS, The law administrators have attempted to administer and enforce laws in Alaska that have created genocidal social cultures and suppressed indigenous lifestyle, and,

Now therefore be it

RESOLVED: That the 1990 Village Participation Conference hereby informs the administrators of Alaska and Law enforcement officials that the Alaska Native People will continue to live their traditional and customary lifestyles in spite of any laws they create.

ADOPTED this 23rd day of February, 1990 at the Village Participation Conference in Juneau, Alaska.

*Chester S. Ballot*

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Chester Ballot, Chairman  
1990 Village Participation Conference

## SUBSISTENCE NOW, SUBSISTENCE FOREVER!

### "DEFENDING A WAY OF LIFE"

by Nels A. Anderson, Jr.

AS WE ARE GATHERED HERE TO ADDRESS THE ISSUE OF SUBSISTENCE, WE ARE GIVEN THE OPPORTUNITY TO DEFEND SUBSISTENCE WHICH IS OUR WAY OF LIFE. I CANNOT THINK OF A MORE IMPORTANT ISSUE THAN SUBSISTENCE. I CANNOT THINK OF A TIME WHEN IT IS SO CRITICAL FOR ALL OF US TO UNITE AND WORK TOGETHER TO DEFEND OUR WAY OF LIFE IN ALASKA.

IN ALASKA, "SUBSISTENCE" MEANS SUSTENANCE GAINED FROM THE FISH, GAME, MARINE MAMMALS, BIRDS AND BERRIES FROM THE LAND, WATERS AND AIR OF ALASKA. THE ALASKA FISH AND GAME NEWSLETTER OF NOVEMBER-DECEMBER 1989 STATES THAT SUBSISTENCE USES "VARY FROM 10 POUNDS PER PERSON TO A HIGH OF 1498 POUNDS PER PERSON PER YEAR. THE AVERAGE HARVEST IS 250 POUNDS. IN APPROXIMATELY HALF OF THE SAMPLED ALASKA COMMUNITIES, WILD FOOD HARVESTS ARE GREATER THAN THE AVERAGE 222 POUNDS PER PERSON OF STORE-BOUGHT MEAT, FISH AND POULTRY PURCHASED BY FAMILIES IN THE WESTERN UNITED STATES EACH YEAR."

ALONG WITH THE FOOD VALUE, SUBSISTENCE HAS A DEEPER, FAR-REACHING MEANING. IT IS THE RELATIONSHIP THAT OUR ANCESTORS HAD WITH THE LANDS AND WATERS OF ALASKA. IT IS THIS RELATIONSHIP THAT MAKES THOSE OF US WHO LIVE HERE FEEL WHOLE AND ONE WITH NATURE. SUBSISTENCE DEFINES WHO WE ARE AS NATIVES OF ALASKA. WITHOUT SUBSISTENCE WE ARE NOTHING. *not a culture.*

SUBSISTENCE FOOD HAS TRADITIONAL, HISTORICAL, AND CULTURAL VALUE. SUBSISTENCE FOOD HAS BEEN AND IS SHARED WITH THE FAMILY, THE AGED, THE WIDOWS, AND EVERYONE ELSE IN THE COMMUNITY. SUBSISTENCE FOOD HAS BEEN AND IS SHARED ACROSS THE STATE WITH FRIENDS AND RELATIVES FROM BARROW TO METLAYATLA. SUBSISTENCE FOOD HAS BEEN AND IS SHARED AMONG NATIVE AND WHITE ALIKE.

THE WORD, "SUBSISTENCE", WAS THE MEANING OF LIFE FOR OUR ANCESTORS. IT MEANS THE SAME THING FOR THOSE OF US TODAY.

OUR ANCESTORS, THE FIRST PEOPLE OF ALASKA, THE INDIANS, ESKIMOS, AND ALEUTS, LIVED OFF THE LAND FOR THEIR SURVIVAL. THEY USED THE RESOURCES THAT WERE AVAILABLE. THEY BUILT UP OUR CULTURES, TRADITIONS AND VALUES THAT ENCOMPASSED THE USE OF THE RESOURCES THAT NATURE HAD TO OFFER.

PAGE TWO OF SIX

AFTER THE FIRST CONTACT WITH THE WHITE CULTURE, IT WAS NECESSARY TO REDEFINE OUR VIEW OF HOW WE WOULD PROTECT WHAT WE HAD USED FOR FOOD AND CLOTHING AND SHELTER FOR CENTURIES AND CENTURIES.

IN THE 1970'S THERE WAS RAPID GROWTH IN OUR POPULATION. THERE WAS MORE AND MORE PRESSURE ON OUR FISH AND GAME BY SPORT HUNTERS AND SPORT FISHERMEN. MANY VILLAGE PEOPLE FELT THREATENED AND STARTED TO SPEAK UP ABOUT WANTON WASTE OF FISH AND GAME.

RURAL LEGISLATORS RESPONDED BY SPONSORING LAWS THAT MORE CLEARLY DEFINED WANTON WASTE AND WHAT PARTS OF ANIMALS COULD BE LEFT IN THE FIELD WITHOUT PENALTY. THERE WERE EFFORTS TO BRING FISH AND GAME MANAGEMENT CLOSER TO HOME BY FORMING LOCAL AND REGIONAL FISH AND GAME BOARDS WITH AUTHORITY TO MANAGE OUR RESOURCES.

EVEN WITH LAWS GUARDING AGAINST WASTE OF FISH AND GAME, WE, AS A PEOPLE, WERE MISSING THE POINT. WE WERE SPEAKING ALL AROUND THE PROBLEM BUT WE COULD NOT DEFINE WHAT WAS BOTHERING US. WE ALL KNEW THAT WE HAD TO PROTECT OUR ANCESTORAL RIGHTS TO SUBSISTENCE FISH AND GAME. THE BIG QUESTION WAS HOW COULD IT BE DONE?

CONCERN WAS ALSO EXPRESSED BY OUR VILLAGES THAT SOMETHING NEEDED TO BE DONE NOT ONLY TO PROTECT OUR FISH AND GAME BUT ASSURE ACCESS TO THEM AS WELL. ELDERS BEGAN TO THINK THAT A TIME WOULD COME WHEN OUR FISH AND GAME RESOURCES WOULD BECOME SCARCE. HOW WOULD WE FEED OUR CHILDREN AND OURSELVES IF THERE WERE NO MORE FISH AND GAME?

SOMETHING HAD TO BE DONE. IN 1977, THE STATE HOUSE OF REPRESENTATIVES FORMED A SPECIAL COMMITTEE ON SUBSISTENCE. THE COMMITTEE HAD EIGHT MEMBERS. THEY WERE REPRESENTATIVES BILLY AKERS, NELS ANDERSON (CHAIR), SAN COTTEN, STEVE COWPER (NOW GOVERNOR), PHILIP GUY, JOE HAYES, AL NAKAK AND LEO SCHAEFFER.

A SUBSISTENCE COMMITTEE OFFICE WAS OPENED IN DILLINGHAM. THE OFFICE WAS STAFFED BY DOROTHY LARSON AND FORMER REPRESENTATIVE ADELHEID HERMANN.

THE COMMITTEE'S TASK WAS TO TACKLE THE ISSUE OF SUBSISTENCE AND DRAFT LEGISLATION FOR CONSIDERATION BY THE LEGISLATURE. IN 1977 AND 1978 THE COMMITTEE HELD HEARINGS ACROSS THE STATE, IN URBAN AND RURAL ALASKA. IT WAS CLEAR THAT THERE WERE STRONG FEELINGS THAT A BILL TO PROTECT SUBSISTENCE WAS NEEDED.

PAGE THREE OF SIX

THERE WERE A FEW VOICES OF OPPOSITION DURING THE HEARINGS. ALTHOUGH THERE WERE SOME WHO THOUGHT THAT SUCH LEGISLATION WAS NOT NEEDED, IT WAS THE CONSENSUS OF THE SPECIAL COMMITTEE ON SUBSISTENCE THAT LEGISLATION HAD TO BE DRAFTED AND ACTED ON.

HOUSE BILL 960 PASSED THE HOUSE ON MAY 26, 1978, WITH 28 YEAS, 8 NAYS AND 4 EXCUSED.

HOUSE BILL 960 PASSED THE SENATE ON JUNE 16, 1978, WITH 17 YEAS AND 3 NAYS.

GOVERNOR HAMMOND SIGNED THE BILL AND WE HAD OUR SUBSISTENCE BILL IN THE LAW BOOKS OF ALASKA.

THIS IS A BRIEF LEGISLATIVE HISTORY OF HOW SUBSISTENCE BECAME A PART OF OUR FISH AND GAME MANAGEMENT SCHEME IN ALASKA.

WHERE DO WE GO FROM HERE?

WHEN WE ON THE SPECIAL COMMITTEE OF SUBSISTENCE DEBATED SUBSISTENCE, WE NEVER ONCE CONSIDERED THE ISSUE ON RACIAL OR ECONOMIC TERMS. WE NEVER THOUGHT THAT ONLY NATIVES COULD BE SUBSISTENCE USERS. WE NEVER THOUGHT THAT SUBSISTENCE SHOULD BE BASED ON NEED LIKE A WELFARE PROGRAM.

SUBSISTENCE USERS WERE TO BE CONSIDERED IN ALL FISH AND GAME MANAGEMENT DECISIONS. IF FISH AND GAME RESOURCES DECLINED TO SUCH A POINT THAT ACCESS HAD TO BE RESTRICTED, SUBSISTENCE USERS WOULD BE THE LAST TO BE AFFECTED. SPORT HUNTING, SPORT FISHING AND COMMERCIAL FISHING WOULD BE RESTRICTED BEFORE SUBSISTENCE USE WAS STOPPED.

RURAL DESIGNATIONS FOR CUSTOMARY AND TRADITIONAL USES OF FISH AND GAME HAVE CHANGED SINCE 1978 BUT WERE ADJUSTED BY THE FISH AND GAME BOARDS TO MAKE SURE THAT SUBSISTENCE WAS NOT THREATENED. WHEN CONGRESS PASSED THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT, GENERALLY KNOWN AS ANILCA, IT INCLUDED A SUBSISTENCE PRIORITY ON FEDERAL LANDS.

ANILCA, TITLE VIII, VERY CLEARLY STATED THAT ALASKA HAD TO PROTECT SUBSISTENCE AND GIVE A PRIORITY TO RURAL RESIDENTS OF ALASKA, INCLUDING NATIVES AND NON-NATIVES ON PUBLIC LANDS. OUR STATE HAS TO COMPLY WITH THIS LAW OR THE FEDERAL GOVERNMENT IS MANDATED TO COME IN AND MANAGE FISH AND GAME ON FEDERAL PUBLIC LANDS.

PAGE FOUR OF SIX

OVER THE YEARS, THE ISSUE OF SUBSISTENCE HAS BEEN DEBATED FURTHER IN THE LEGISLATURE, ALASKA AND FEDERAL COURTS AND THE U.S. CONGRESS.

IN 1982 THE SUBSISTENCE LAW WAS CHALLENGED BY AN INITIATIVE THAT WOULD HAVE REPEALED SUBSISTENCE. THAT YEAR WE ALL WORKED TOGETHER AND DEFEATED THE INITIATIVE BY A WIDE MARGIN. WE WERE UNITED THEN AND WE NEED TO UNITE ONCE AGAIN TO DEFEND SUBSISTENCE WHICH IS OUR WAY OF LIFE.

IN 1986 THE LEGISLATURE AMENDED THE 1976 SUBSISTENCE LAW WHICH LIMITED SUBSISTENCE USE TO FISHERMEN AND HUNTERS IN "RURAL AREAS". THIS HAD TO BE DONE TO BRING OUR LAW INTO COMPLIANCE WITH ANILCA.

YOU CAN SEE HOW IMPORTANT IT IS TO PROTECT TITLE VIII IN ANILCA. IT IS THE KEY TO MAKING SURE THAT SUBSISTENCE IS PROTECTED.

ON DECEMBER 22, 1989, THE ALASKA SUPREME COURT GAVE US A CHRISTMAS PRESENT AND SAID THAT OUR SUBSISTENCE LAW IS UNCONSTITUTIONAL. IT IS UNCLEAR WHAT THE DECISION REALLY MEANS BUT IT IS CLEAR THAT THE SUBSISTENCE LAW IS IN TROUBLE. WE HAVE TO FIGURE OUT HOW TO FIX THE PROBLEM.

WE HAVE TO CONSIDER LEGISLATION INTRODUCED BY REPRESENTATIVE RAMONA BARNES, REPRESENTATIVE GEORGE JACKO AND SENATOR JAY HERTTULA.

REPRESENTATIVE BARNES' LEGISLATION AMENDS CURRENT LAW TO ADDRESS WHO IS A SUBSISTENCE USER. HER ORIGINAL BILL WOULD IDENTIFY SUBSISTENCE USERS BASED ON LOCAL RESIDENCY AND ON ANNUAL INCOME, OR NEED. I BELIEVE THAT REPRESENTATIVE BARNES HAS INTRODUCED A SPONSOR SUBSTITUTE THAT WITHDRAWS NEED AS A CRITERIA FOR SUBSISTENCE USE.

SENATOR HERTTULA HAS A RESOLUTION IN THE SENATE THAT CREATES A COMMISSION TO REVIEW THE SUBSISTENCE QUESTION AND COME UP WITH OPTIONS FOR THE SENATE'S CONSIDERATION.

REPRESENTATIVE GEORGE JACKO INTRODUCED LEGISLATION THAT AMENDS THE CONSTITUTION THAT WOULD BRING THE STATE OF ALASKA INTO COMPLIANCE WITH THE FEDERAL LAW. IT WOULD ALLOW THE LEGISLATURE TO ENACT LAWS THAT WOULD COMPLY WITH TITLE VIII OF ANILCA.

PAGE FIVE OF SIX

WE ALL KNOW THAT WE NEED TO WORK TOGETHER TO PROTECT AND DEFEND SUBSISTENCE IN ALASKA. IT IS AN ALASKAN PROBLEM AND WE SHOULD NOT GO OUTSIDE OF OUR STATE LOOKING FOR A SOLUTION. OUR CURRENT SUBSISTENCE LAW WAS FOUND TO BE OUT OF COMPLIANCE WITH THE STATE'S CONSTITUTION. THAT DECISION WAS NOT UNANIMOUS BUT STANDS AS THE LAW OF THE LAND AT THIS TIME. SINCE WE HAVE NO SUBSISTENCE LAWS ON OUR BOOKS, WE ARE NOW OUT OF COMPLIANCE WITH FEDERAL LAW

WHAT ARE WE GOING TO DO? DO WHAT WE DID IN 1978 AND 1982.

FIRST, WE ALL HAVE TO WORK TOGETHER. ALL OF OUR PROFIT AND NON-PROFIT VILLAGE AND REGIONAL CORPORATIONS HAVE TO WORK TOGETHER AND SPEAK WITH ONE VOICE. WE HAVE TO SET ASIDE OUR DIFFERENCES AND WORK AS ONE TO PROTECT SUBSISTENCE.

SECOND, WE HAVE TO AGREE ON A PLAN OF ACTION THAT WILL GUARANTEE THAT SUBSISTENCE IS PROTECTED.

IT IS MY VIEW THAT WE SHOULD MAKE SURE OF THE FOLLOWING:

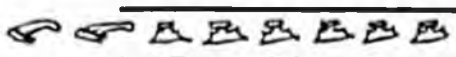
1. WE SHOULD NOT MAKE SUBSISTENCE A RACIAL ISSUE.
2. WE SHOULD NOT MAKE SUBSISTENCE A WELFARE PROGRAM.
3. WE SHOULD ALL AGREE ON ONE PLAN OF ACTION AND CARRY IT OUT UNITED AS ONE VOICE.
4. WE SHOULD NOT TRY TO AMEND ANILCA IN CONGRESS.
5. WE SHOULD MAKE SURE THAT EVERY ELIGIBLE VOTER IS REGISTERED SO THEY CAN VOTE IF THERE IS A CONSTITUTIONAL AMENDMENT TO PROTECT SUBSISTENCE ON THE BALLOT IN NOVEMBER.

FROM MY PERSPECTIVE AS A LEGISLATOR IN 1978 AND AFTER VERY CAREFUL CONSIDERATION, I THINK A CONSTITUTIONAL AMENDMENT IS NEEDED. THE AMENDMENT WOULD GRANT A RURAL PREFERENCE. IT WOULD ALLOW THE LEGISLATURE TO ALLOCATE FISH AND GAME ON THE BASIS OF LOCAL RESIDENCY AND CUSTOMARY AND TRADITIONAL USE OF FISH AND GAME FOR FOOD, CRAFTS, CLOTHING AND SHELTER. IF THIS IS DONE, ALASKA'S CONSTITUTION WOULD BE IN COMPLIANCE WITH FEDERAL LAW.

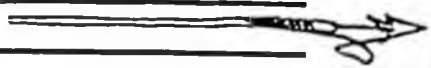


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SERVING THE  
VILLAGES OF

- BREVIG MISSION
- COUNCIL
- DIOMEDE
- ELIM
- GAMBELL
- GOLOVIN
- KOTUK
- NOME
- SAVOONGA
- SHAKTOOLIK
- SHISHMAREF
- SOLOMON
- STEBBINS
- ST MICHAEL
- TELLER
- UNALAKLEET
- WALES
- WHITE MOUNTAIN

March 22, 1990

Citizen Advisory Commission on Federal Areas  
 250 Cushman Street, Suite 4H  
 Fairbanks, AK 99701

Dear Commission Members:

I am pleased to know of your public hearing on Subsistence on March 31, 1990. Subsistence is indeed a controversial and much misunderstood issue. The more it is discussed the more understanding will come, hopefully.

In addition to the possible loss of lands, subsistence is the most critical issue facing Natives of Alaska. One of the issues misunderstood is that Natives want racial preference with regards to subsistence. This is not true. It is a political issue for Natives. Alaska Natives have a political relationship with the U.S. Government.

Most important of all is the cultural aspects of subsistence. Subsistence is much more than mere sustenance. Before the cultural interruption and devastation, Natives lived in a sacred manner respecting all living things. It was and is still believed that all life evolved from one Great Spirit Source so that all living things have a spiritual nature. Therefore, one must respect all living things. (There are variations on this theme from village to village and tribe to tribe.) Most of our ceremonies revolve around subsistence. Our songs and dances revolve around subsistence. Our lives and livelihood revolve around subsistence. It is difficult to segregate any part of Native lifestyle that does not include subsistence in some important way. In many christian teachings, it is said that we all are one with God. A subsistence lifestyle is the perfect analogy of that teaching. Subsistence is very much a part of our lives spiritually, physically and psychologically.

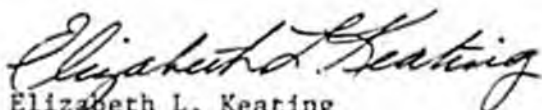
We are all aware of the fallout of the great changes to Alaska Native cultures. The social devastation of broken families, unemployment, substance abuse, school dropout rates, suicide of our young adults, etc. They have been widely chronicled in the AFN Report and the Anchorage Daily News "People in Peril" series. The U.S. Federal Government and the State of Alaska consider the problem serious enough to be exploring a Joint Task Force to address the problems.

Subsistence is the last vestige of important cultural connection for Natives. When the early Christians tried to destroy our outward spiritual practices, they disturbed our entire belief system. Our respect for all living things including our own life worth or value came into question. Many of us lost our self-esteem, became ashamed and uncomfortable about life in general. It was easy to consume the alcohol which was introduced to us. Many of us became self destructive. We lost our respect for all life including our own. If Native subsistence needs are disregarded, I don't want to venture to guess the outcome in terms of further social and political alienation. I hope that all the thoughtful Alaskans who worked so hard to pass the subsistence proposition last time will do so again.

I am enclosing resolutions and position statements of Rural Alaska Resource Association (RARA), Bristol Bay Native Association, SE Native Subsistence Committee and AFN. Kawerak, Inc. Board Subsistence Committee has not yet developed a position statement. One is expected by mid-April.

Sincerely,

KAWERAK INCORPORATED

  
Elizabeth L. Keating  
President

cc: Bush Causus Members/  
Representative Cotten, House Speaker  
Senate President, Tim Kelly  
AFN

# RURAL ALASKA RESOURCES ASSOCIATION

P.O. Box 200908  
Anchorage, Alaska 99520  
(907) 279-2511

## MEMBERS:

Admiral/Prudhoe  
Islands Association Inc

Bristol Bay Native  
Association

Central Council  
Tribes & Nations

Copper River Native  
Association

Kawerak Inc

Kodiak Area Native  
Association

Manilaq Association

The Arctic Pacific Rim

North Slope Borough

Unalakleet  
- Nulikuit

Tanana Chiefs  
Conference Inc

Tyonek  
Native Village of

## ASSOCIATE MEMBERS:

Koyukon  
Development Corporation

Bering Sea  
Fishermen's Association

## RURAL CAP STAFF

Bob Prasky

## RARA Position Statement in Regards to the McDowell Decision

It is the position of the Rural Alaska Resources Association that the State Supreme Court Decision in McDowell v. State of Alaska of December 22, 1989, seriously jeopardizes the subsistence rights of Alaska Natives. The McDowell decision places the State Subsistence law out of compliance with the Alaska National Interest Lands Conservation Act (ANILCA) which requires a subsistence preference for rural Alaskans.

It is RARA's position that the preferred solution to the McDowell decision is to recommend that the State's Constitution be amended to include specific language providing for a subsistence priority for Alaska Natives, in recognition of their culture. Such an amendment would insure that the customary and traditional rights of Alaska's Native people are protected. A priority amendment which includes a priority for Alaska Natives could also provide, through other language, equal subsistence preferences or priorities for non-Native rural Alaskans. It is RARA's position that a subsistence preference in the State Constitution be sought with a "Native Preference" as our first concern to insure current and future generations of Alaska Natives maintain their customary and traditional rights to subsist.

It is also our position, that we would oppose efforts to amend ANILCA as an initial approach to a solution, and also would oppose any solution incorporating a permit system.

BRISTOL BAY NATIVE ASSOCIATION  
P.O. Box 310  
Dillingham, Alaska 99576  
(907) 842-5257

*1/24/90  
TO DAVID  
258-2157*

PRESS RELEASE

February 28, 1990

Delegates to the Second Annual Bristol Bay Tribal Government Conference today strongly endorsed a subsistence priority for Alaska Natives to be implemented by "any possible means" by state, federal or tribal governments. The action was taken in anticipation of a statewide subsistence conference to be held in April by the Alaska Federation of Natives.

While endorsing a Native preference for subsistence, conferees did not exclude other methods of protecting subsistence rights. The delegates supported a proposed amendment to the state constitution which would allow a preference for subsistence uses on the basis of local residency, customary or traditional use, or dependence on the resources for food and other purposes. Legislation to place the amendment on the November ballot has been introduced by State Representatives George Jacko and Peter Goll.

The amendment would overturn the recent "McDowell" decision in which the Alaska Supreme Court found the state's subsistence priority law to be unconstitutional and placed state law in direct conflict with federal law.

The three-day tribal conference focused on protecting subsistence rights in the aftermath of the Supreme Court's ruling. Conference delegates gave clear direction to the Bristol Bay Native Association and other Native organizations to continue educational and informational efforts at the village level as they attempt to forge a position of statewide unity on subsistence.

Statement of Robert Willard, President  
Southeast Native Subsistence Commission  
Before the Egan Forum, Democratic Luncheon  
Baranof Hotel, Juneau, AK  
February 14, 1990

Thank you. My name is Robert Willard. My real name is *Kitch Nalx'*. I am from Angoon, but I reside in Juneau-where I now serve my people as the elected President of the Southeast Native Subsistence Commission.

In Tlingit, the word for what has become known as subsistence is *Haa koos tee yee* which means "our culture." Prior to any regulation, it was called *haa ut ayee*-"our food." Subsistence is the birth right of the Native people.

The Southeast Native Subsistence Commission is an affiliate of the tribal governing Central Council of the Tlingit & Haida Indian Tribes of Alaska which is federally-recognized. The Subsistence Commission is supported by and represents the view of the Grand Camp of the Alaska Native Brotherhood, the Grand Camp of the Alaska Native Sisterhood, Sealaska Corporation, and the Central Council of the Tlingit & Haida Indian Tribes of Alaska, and we believe in the best interests of the IRA governments of Southeast.

The Commission of 23 members, representing all southeast Alaska communities and our tribal members in Anchorage, as an instrumentality of the tribal government, must and will speak for the Tlingit and Haida Nations, which

number approximately 16,000 as relates to subsistence matters.

Establishing an entity that addresses only subsistence has long been a dream of many of the Native leadership. In December of 1989, Richard Stitt, Grand President of the Alaska Native Brotherhood issued his order and created what is now called the Southeast Native Subsistence Commission.

At its February 2-3, 1990 meeting the Commissioners decided to take the position that as a prerequisite to an amendment to the Alaska Constitution that a Native priority be incorporated into such an amendment.

I would like now to explain to you, to the Governor, to the Alaska State Legislature and mostly to the residents of Alaska as to why we require that an Alaska Native priority clause be incorporated into the Alaska Constitution.

Firstly, the Commissions' position of an Alaska Native priority is not to the exclusion of all others that reside in remote villages, or other settlements in rural Alaska.

Foremost though the Commissioners felt that anything less than a Native priority would effectively threaten the survival of the cultures of the Alaska Native people. For the sake of the cultures of the Tlingit and Haida Nations, and the future generations, we will now take our stand.

The Commission is emphatic in this deliberate and serious endeavor to advise the Alaska legislative, administrative, regulatory and judicial branches of state

government that in its collective processes, the net effect of their actions may carry with it the destruction of the Alaska Native cultures.

Before we approve any Constitutional amendment, the Commissioners want to know what an Alaska Statute and its promulgated rules and regulations will contain before we advise our constituents on how to vote should the Legislature pass a measure that will place a Constitutional amendment before the voters.

The Commissioners and the supporting Southeast Native regional organizations feel strongly that with only a "rural priority" it will take a different form. I speak of a form that it may take with only a rural priority, when the Legislature gets through with it. By the time the rule-making Alaska Board of Fisheries, and the Alaska Board of Game gets through with it, you won't even recognize it, because the rule-making agencies give no consideration to the effect a regulation may have upon the cultures.

In 1925, our people in Hoonah were told that in creating the Glacier Bay National Monument, "it will be good for you. We'll preserve the Native food for you!" Did they ever preserve it. Now the National Park Service will not even let the Tlingits of Hoonah into Glacier Bay. The Hoonah Tlingit people have evidence of use and occupancy for subsistence purposes into the Glacier Bay that date back thousands of years.

A further concern of the Commission is that without clear and convincing language, written into the Alaska Constitution, the Alaska Courts will, by common law, establish law that takes no consideration as to the effects upon the cultures of the nations of the Haida, the Inupiaq, the Yupik, the Athabaskan, the Aleut, the Eyak, the Tsimshian and the Tlingit.

The Commissioners are concerned that without direction from the Governor, that the regulatory agencies will continue to disregard the cultural implications—irrespective of what the Governor might publicly say.

If the regulatory agencies were guided by clear and definitive Constitutional language that any action they take may have a detrimental effect upon the cultures of the Alaska Native, then we may have arrived at a solution to part of our concern. That is what we mean by a law taking a different form when it goes through its process. A rural preference or priority is too ambiguous and leaves too much to the interpretation of the Alaska Courts.

The Southeast Native Subsistence Commission, as an affiliate of the regional governing Central Council of the Tlingit & Haida Indian Tribes of Alaska will advocate a Native priority on grounds of the effect it will have to save the Native cultures. It follows therefore that the tribal members will look to this Commission as to whether a State Constitutional amendment is acceptable.

The Commissioners believe that the State of Alaska must now recognize the cultures and the cultural traits of the Alaska Native people. That before you pass any law, promulgate any regulation, issue any policy, that you measure its impact upon the cultures of the Alaska Native people.

We realize that an Alaska Native priority policy goes beyond the provision found in the Alaska National Interest Land Conservation Act. We realize that the implication of an Alaska Native priority may mean that the State of Alaska might give formal recognition to the tribal governments in Alaska. It is likely timely that the State of Alaska give formal recognition to the federally-recognized tribal governments, but that is a separate state policy consideration.

In the subsistence issues though, the Southeast Native Subsistence Commission would like to see subsistence institutionalized as the official State policy in recognition of the cultures of the Alaska Native people. The State of Florida is known as a State that gives special recognition to its elderly people—because it is the State's public policy to do so. If the State of Alaska would establish subsistence as is the official State policy is the reason that we ask for an Alaska Native priority to be incorporated into the Alaska Constitution. Subsistence is the last remaining evidence of the cultures of Alaska's Native people, and I hope this represents the feelings of the Commissioners of the Southeast Native Subsistence Commission, and the

concurring Southeast Native regional organizations as to our rationale in a Native priority being incorporated into any State Constitutional amendment. Anything less would mean that we would be party to the destruction of the cultures of the Alaska Native people and we will not do that.

# ALASKA FEDERATION OF NATIVES, INC.



411 W. 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-3611

## POSITION STATEMENT ON SUBSISTENCE

As they have for generations, Alaska Natives continue to depend upon hunting and fishing and gathering to obtain food to feed their families.

Hunting, fishing and other subsistence activities remain the linchpin of traditional Alaska Native culture and Alaska Native spiritual values.

For almost a century the United States Congress has consistently recognized the necessity to protect Alaska Native subsistence activities, the most recent expression of this important national policy being Title VIII of the ANILCA of 1980, which establishes hunting and fishing for subsistence uses by Alaska Natives and other residents of rural villages as the priority use of Alaska fish stocks and game populations.

For more than a decade, successive Alaska legislatures and administrations have enacted and administered legislation intended to implement Congress's subsistence policy.

In December 1989, in McDowell v State the Alaska Supreme Court held that the legislature's attempt to implement Congress's subsistence policy violated Article VIII of the Alaska Constitution.

The McDowell v State decision threatens the State's ability to continue to regulate the taking of fish and game on all lands and within all waters in Alaska.

Any solution to this situation must be consistent with the Congressional policy that Alaska Natives and other rural subsistence hunting and fishing activities are the priority use of Alaska's fish stocks and game populations.

We believe that if Alaskans are going to solve this problem:

- (a) an amendment to the Alaska Constitution to enable the legislature to enact and the administration to implement a rural subsistence priority which protects customary and traditional use of fish and game by Alaska Natives and other rural residents is the preferred solution; and
- (b) AFN is committed to working with the Governor and Legislative leadership in considering other solutions which meet AFN's policy goals.

Approved and adopted by the Board of Directors, February 1, 1990.

# AVCP

Association of Village Council Presidents  
P.O. Box 219 • Bethel, Alaska 99559 • Phone 545-3521

March 5, 1990

Julie E. Kitka, President  
Alaska Federation of Natives, Inc.  
411 West 4th Avenue, Suite 301  
Anchorage, Alaska 99501

Dear Julie,

The purpose of this letter is to urge AFN to temporarily restrain from expressing support for the Governor's proposed constitutional amendment which merely reinstates the past "rural" subsistence system. AVCP believes that support for such an amendment would be premature before other options, including some form of Native preference, are fully explored. It is also AVCP's position that AFN should not take such a position until it has attempted to reach a consensus on this issue with other Native groups active in this area.

AVCP believes that it is important to view the current subsistence situation as a possibility to strengthen Native subsistence rights. We should not be too quick to settle for the old system. As we all know, the "rural" subsistence law, and the State's implementation of that law, was far from ideal. The State's definition of "rural" ignored the vital role subsistence plays in Native culture, and instead focused on subsistence as an economic and needs based system. The State's definition of "rural" was thrown out by the Ninth Circuit Court of Appeals, but it remains on the State's books, and quite possibly remains in State plans. Additionally, the Federal District Court may define the term "rural" in the Kenaitze case, and may do so in a way that would restrict subsistence rights in regional centers like Barrow, Nome, Kotzebue, Dillingham and Bethel, and in many Southeast and Southcentral communities.

"Rural" subsistence rights will not protect Native subsistence rights far into the future even if the State and the courts allow a broad definition of that term. In the foreseeable future, more Native communities will grow, develop and change. Inevitably, some communities will lose their "rural" status, and the Alaska Natives in those communities will lose their subsistence rights and an essential part of their culture. It is a cruel irony that once Natives achieve the goal of economic development that so many encourage, they risk losing subsistence rights and culture. Accepting a "rural" priority may protect most Alaska Natives in the short term, but it will not provide the kind of protection many desire for the long term.

The definition of "rural" is not the only problem with going back to the status quo. The State Boards of Fish and Game, who

are responsible for assuring that the subsistence priority is carried out, have time and again sided with sport and commercial interests over subsistence. Some have suggested that a separate Board be created to deal with subsistence issues. Additionally, the system of Advisory Committees and Regional Councils, created to guarantee that subsistence users have real, substantive input into subsistence regulation, is largely ineffective. The Committees and Councils in some areas are dominated by interests hostile to subsistence. In other areas the Committees and Councils are underfunded or understaffed.

Does the current situation present opportunities to remedy the problems with the Boards and the Advisory Committees and Regional Councils? Are there realistic options available which guarantee subsistence rights for Alaska Natives rather than settling for protection of only those who fall within some unknown definition of "rural"? These questions need to be asked and answered with a full understanding of what the risks and possibilities are. These questions need to be answered before Native organizations lend their support to a "rural" constitutional amendment.

Furthermore, AVCP strongly urges AFN to withhold support for a "rural" constitutional amendment until attempting to form a consensus with other Native organizations active in this area. Alaska Natives must work together if a State statute, constitutional amendment, or ANILCA amendment is to be accomplished. The Southeast Native Subsistence Commission, Rural Alaska Resource Association, Village Participation Conference, and BBNA have all expressed support for some form of Native preference. Tanana Chiefs, the Alaska Native Coalition, AVCP and others have yet to express their position. There must be a meeting of the leadership of these various Native groups for discussion and consensus building. Such a meeting should be held at the earliest possible opportunity. Only after such a meeting will AFN know the strength of Native support for a "rural" constitutional amendment versus other realistic options.

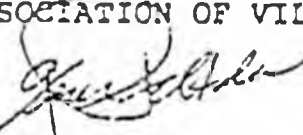
Finally, AVCP unequivocally believes that Alaska Natives should not choose an opening position in the subsistence debate that represents the least that they will settle for. It may be that some form of "rural" solution will prove to be acceptable and possible as the debate progresses. However, if Alaska Natives start off supporting a return to the status quo, they may foreclose the possibility of getting anything better. The place to begin the debate is with a position that strengthens and improves Native subsistence rights. At the very least, AFN should refrain from supporting a "rural" amendment until it is clear that such an amendment is the best possible solution.

AVCP plans to attend AFN's March 7th meeting in Anchorage, and will be available to answer any questions the AFN Board may have in regards to this letter. AVCP looks forward to continued

cooperation and communication with AFN on this most important of issues.

Sincerely,

ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS



Gene Peltola  
President

cc: Willie Kasayulie, Chairman of the Board, AVCP  
Mitch Demientieff, President, Tanana Chiefs Conference  
Robert Willard, President, Southeast Native Subsistence Comm  
Mathew Iya, Chairman, RARA

# ALASKA FEDERATION OF NATIVES, INC.

411 W. 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-2611



AFN TESTIMONY TO STATE HOUSE RESOURCES COMMITTEE BY JULIE KITKA  
(APRIL 20, 1990)

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, LADIES AND  
GENTLEMEN:

I APPRECIATE THE OPPORTUNITY TO TESTIFY TODAY ON THE ISSUE  
OF SUBSISTENCE. I DO SO REPRESENTING THE BOARD OF DIRECTORS  
OF THE ALASKA FEDERATION OF NATIVES AND ITS CONSTITUENT  
ORGANIZATIONS AND COMMUNITIES. WHAT I WILL PRESENT TODAY IS  
THE CONSENSUS POSITION OF THE STATEWIDE ALASKA NATIVE  
COMMUNITY ON THE SUBJECT OF SUBSISTENCE AND AN EXPLANATION  
OF SEVERAL SPECIFIC LEGAL QUESTIONS WHICH ARISE UNDER IT.

THE FIRST THING I MUST TRY TO MAKE CLEAR IS THAT SUBSISTENCE  
IS MORE THAN A POLITICAL ISSUE. FOR NATIVE PEOPLE,  
SUBSISTENCE IS THE FOUNDATION OF CULTURE - A SET OF TRADITIONAL  
PRACTICES WHICH ARTICULATE OUR RELATIONSHIP TO THE LAND - A  
HERITAGE RECEIVED FROM OUR ANCESTORS WHICH WE MUST PASS ON TO OUR  
DESCENDENTS.

AS ALASKA NATIVES, WE FIND OURSELVES AT A CRITICAL JUNCTURE IN OUR CONTEMPORARY POLITICAL HISTORY. A PROFOUND CHALLENGE CONFRONTS US: HOW TO PROTECT OUR SUBSISTENCE LIFESTYLES AND PRACTICES FROM THE DAMAGE WROUGHT BY THE RECENT ALASKA SUPREME COURT DECISION IN MCDOWELL V. STATE. IN THE EFFORT TO PROTECT THE CULTURES AND ECONOMIES OF OUR VILLAGES, WE, LIKE ALL ALASKANS, FIND OURSELVES CAUGHT BETWEEN ANILCA, WHICH GUARANTEES A RURAL PRIORITY FOR SUBSISTENCE HUNTING AND FISHING, AND THE ALASKA CONSTITUTION, WHICH WILL NOT PRESENTLY ALLOW SUCH A PREFERENCE.

AS YOU KNOW, MR. CHAIRMAN, A WIDE VARIETY OF OPINION ABOUT WHAT SHOULD BE DONE TO SOLVE THIS DILEMMA HAS ARISEN WITHIN THE NATIVE COMMUNITY DURING THE PAST FOUR MONTHS. SOME NATIVE PEOPLE HAVE FAVORED AMENDING BOTH THE STATE CONSTITUTION AND ANILCA TO PROVIDE FOR A "NATIVE" SUBSISTENCE PRIORITY, FOR A "NATIVE-PLUS-RURAL" PRIORITY OR FOR OTHER ALTERNATIVES. OTHER NATIVE PEOPLE HAVE ADVOCATED AMENDING THE STATE CONSTITUTION, EITHER TO RE-ESTABLISH THE RURAL PRIORITY OR TO PERMIT THE LEGISLATURE TO KEEP FISH AND GAME MANAGEMENT IN STATE HANDS BY COMPLYING WITH FEDERAL LAW. THERE ARE POTENTIALLY MANY VARIATIONS ON THESE MAJOR THEMES. BUT ONE THING IS CERTAIN: NO ISSUE IN RECENT MEMORY HAS SO EFFECTIVELY GALVANIZED THE PARTICIPATION OF NATIVE PEOPLE IN THE POLITICAL PROCESS AS HAS THE FALL-OUT FROM MCDOWELL.

AS YOU ALSO KNOW, MR. CHAIRMAN, AFN SPONSORED A STATEWIDE NATIVE SUMMIT CONFERENCE ON SUBSISTENCE IN ANCHORAGE LAST WEEK. OUT OF THAT GATHERING, A BROAD POLICY CONSENSUS EMERGED. IT CONTAINED MANY DETAILED SUB-ISSUES, INCLUDING THE CALL FOR A THOROUGH EVALUATION OF STATE SUBSISTENCE MANAGEMENT, A CONTINGENCY POSITION REGARDING FEDERAL MANAGEMENT AND SEVERAL LONG-RANGE GOALS. BUT WITH REGARD TO THE LEGISLATION NOW PENDING BEFORE THIS COMMITTEE, THE CONFERENCE RESOLUTION WAS BRIEF AND TO THE POINT. IT DIRECTED ALL NATIVE ORGANIZATIONS TO "ACT TO GAIN APPROVAL OF AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF ALASKA THAT ALLOWS THE STATE TO EXERCISE MANAGEMENT JURISDICTION OVER ALL FISH, WILDLIFE, PLANT AND OTHER RENEWABLE NATURAL RESOURCES WITHIN ITS BOUNDARIES AND PROVIDES THAT THE STATE SHALL EXERCISE MANAGEMENT OF SUBSISTENCE RESOURCES THEREIN IN ACCORDANCE WITH APPLICABLE FEDERAL LAW."

THAT IS THE HEART OF IT. THE STATEWIDE NATIVE COMMUNITY IS NOW UNANIMOUSLY ON RECORD IN FAVOR OF A CONSTITUTIONAL AMENDMENT TO KEEP FISH AND GAME MANAGEMENT IN THE HANDS OF THE STATE GOVERNMENT, IN COMPLIANCE WITH FEDERAL LAW. WE DO NOT - AND I EMPHASIZE NOT - WISH TO SEE A FEDERAL TAKEOVER AFTER JULY 1. SUCH A SCENARIO COULD ONLY BE THE RESULT OF A TRAGIC POLITICAL FAILURE IN ALASKA. WHAT NATIVES WANT IS FOR THE LEGISLATURE AND THE PEOPLE TO FIX THE ISSUE HERE, TO COMPLY WITH FEDERAL LAW AND TO KEEP FISH AND GAME MANAGEMENT AT HOME, IN ALASKAN HANDS.

IN ORDER TO ACCOMPLISH THIS, A CONSTITUTIONAL AMENDMENT MUST BE ADOPTED BY AT LEAST 2/3 OF BOTH HOUSES BEFORE ADJOURNMENT AND BY A MAJORITY OF THE VOTERS ON NOVEMBER 6. THERE ARE SEVERAL BILLS CURRENTLY BEFORE THIS COMMITTEE WHICH EFFECTIVELY PERFORM THAT FUNCTION. AFTER CAREFUL LEGAL REVIEW, WE RECOMMEND THAT THE LANGUAGE SUGGESTED BY REPRESENTATIVE LYMAN HOFFMAN BECOME THE VEHICLE FOR SUCH A CONSTITUTIONAL AMENDMENT. WE FURTHER RECOMMEND THAT IT BE INSERTED AS AN AMENDMENT TO ANY OF THE CURRENTLY PENDING BILLS WHICH THE COMMITTEE DEEMS APPROPRIATE.

WE URGE THE HOFFMAN LANGUAGE BECAUSE OF ITS EMPHASIS ON ALLOWING THE LEGISLATURE TO ENACT LAWS, CONSISTENT WITH VALID FEDERAL LAWS, WHICH WILL KEEP FISH AND GAME MANAGEMENT IN STATE HANDS. IF THAT IS THE FUNDAMENTAL PURPOSE OF ALL THIS, THEN THAT IS WHAT THE VOTERS SHOULD READ IN THE TEXT OF THE AMENDMENT WE ARE ASKING THEM TO APPROVE.

I ALSO WANT TO POINT OUT THAT THE HOFFMAN LANGUAGE IS "PERMISSIVE" TO THE LEGISLATURE. IT DOES NOT BIND STATE GOVERNMENT TO ANY SPECIFIC SUBSISTENCE POLICY - SUCH AS A STATED PRIORITY FOR ANY GROUP. ALL IT PROVIDES IS THE CONSTITUTIONAL AUTHORITY FOR THE LEGISLATURE TO COMPLY WITH FEDERAL LAW, A POWER IT DOES NOT PRESENTLY ENJOY. AFTER RECEIVING SUCH AUTHORITY FROM THE VOTERS, THE LEGISLATURE HAS EVERY RIGHT NOT TO EXERCISE IT, IF IT SO CHOOSES. THAT IS POLITICS. ALL THE AMENDMENT ITSELF WOULD DO IS TO CLEAR

AWAY THE CONSTITUTIONAL OBJECTION FOUND BY THE SUPREME COURT IN MCDOWELL AND TO GIVE THE LEGISLATURE A POLITICAL OPTION IT CANNOT NOW CHOOSE, EVEN TO SAVE ITS OWN CONTROL OF FISH AND GAME.

SEVERAL BRIEF TECHNICAL ISSUES ON THE HOFFMAN LANGUAGE NEED TO BE CLARIFIED: FIRST, WE HAVE RECENTLY HEARD THE CRITICISM THAT, SINCE THE HOFFMAN LANGUAGE IS PURPOSELY GENERAL IN SCOPE, AND SINCE THE THREE SECTIONS OF ARTICLE VIII OF THE STATE CONSTITUTION WHICH THE SUPREME COURT USED IN MCDOWELL TO INVALIDATE THE RURAL PRIORITY ARE SPECIFIC IN SCOPE, A FUTURE COURT MIGHT INTERPRET THE HOFFMAN LANGUAGE AS NOT SPECIFICALLY SUPERSEDING ANY OR ALL OF THOSE SECTIONS. THIS ARGUMENT IS SPECIOUS. THE HOFFMAN LANGUAGE CAREFULLY BEGINS WITH THE WORDS "NOTHING IN THIS CONSTITUTION." THAT MEANS WHAT IT SAYS. ALL ARTICLES AND SECTIONS WHICH THE SUPREME COURT FOUND VIOLATED IN MCDOWELL ARE IN THIS CONSTITUTION, AND WE FEEL CERTAIN THAT ANY FUTURE COURT WOULD FIND LIKEWISE.

A SECOND CRITICISM OF THE HOFFMAN LANGUAGE COULD BE THAT IT SHOULD SAY "ANILCA," RATHER THAN "FEDERAL LAW." WE DISAGREE. THE USE OF THE TERM "FEDERAL LAW" PROVIDES THE LEGISLATURE WITH THE BROADEST POSSIBLE AUTHORITY TO ACT. IT ASSURES THE ABILITY OF FUTURE LEGISLATURES, IF THEY SO WISH, TO ENACT LAWS IN COMPLIANCE WITH FUTURE FEDERAL FISH AND GAME STATUTES WHICH MIGHT OTHERWISE THREATEN A FEDERAL

MANAGEMENT TAKEOVER. AGAIN, THIS DOES NOT REQUIRE THE LEGISLATURE TO DO SO. IT GIVES IT THE FREEDOM TO ACT. IF THE LEGISLATURE WISHES TO NARROW THE SCOPE OF ITS PRESENT LEGISLATION TO ADDRESS ONLY ANILCA, THIS LANGUAGE WOULD ALLOW IT TO DO SO WITHOUT PUTTING UNNECESSARY LIMITATIONS ON THE AUTHORITY OF FUTURE LEGISLATURES TO ADDRESS - PRO OR CON - FUTURE FEDERAL ENACTMENTS.

ANOTHER CONCERN WHICH MIGHT BE RAISED IS THAT THE HOFFMAN LANGUAGE PROVIDES A "BLANK CHECK" TO THE FEDERAL GOVERNMENT TO IMPOSE FUTURE FEDERAL POLICY JUDGMENTS ON STATE FISH AND GAME MANAGEMENT. THE OBVIOUS RESPONSE IS THAT THE FEDERAL GOVERNMENT ALREADY HAS SUCH AUTHORITY, AS IT CLEARLY EXERCISED IN TITLE VIII OF ANILCA. WHAT THE HOFFMAN AMENDMENT WOULD DO IS TO ALLOW THE STATE TO ENACT LAWS WHICH KEEP FISH AND GAME MANAGEMENT IN STATE HANDS. NOTHING IN THE HOFFMAN LANGUAGE EITHER EXPANDS OR DIMINISHES THE LEGAL AUTHORITY OF THE UNITED STATES GOVERNMENT - NOR COULD IT.

I CANNOT OVERSTATE, MR. CHAIRMAN, THE IMPORTANCE OF ACTING EXPEDITIOUSLY. ADJOURNMENT OF THIS SESSION IS SCHEDULED IN LESS THAN THREE WEEKS. SEVEN DAYS AGO THE UNITED STATES FISH AND WILDLIFE SERVICE PUBLISHED IN THE FEDERAL REGISTER ITS FORMAL NOTICE OF "INTENTION TO PROPOSE INTERIM RULES IMPLEMENTING TITLE VIII OF THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT." WHY? AS INTERIOR SECRETARY LUJAN STATED AT OUR CONFERENCE LAST WEEK, THE UNITED STATES DOES

NOT WISH TO COME INTO ALASKA AND TAKE OVER FISH AND GAME MANAGEMENT ON FEDERAL LANDS. BUT IT WILL DO SO IF THERE IS NO SOLUTION AT THE STATE LEVEL BY JULY 1. THE INTERIOR DEPARTMENT IS NOW GEARING UP TO DO JUST THAT, AND FEDERAL LAW REQUIRES IT TO GO THROUGH A PUBLIC CONSULTATION PROCESS ON INTERIM AND PERMANENT RULE - MAKING. THE DEADLINE FOR RECEIPT OF RECOMMENDATIONS AND COMMENTS AT INTERIOR IS MAY 14.

IN ADDITION, THE DEPARTMENT OF THE INTERIOR IN ALASKA HAS BEEN AT WORK FOR ALMOST TWO MONTHS, THROUGH A SPECIAL DEPARTMENTAL TASK FORCE, DRAWING UP A PLAN FOR A FEDERAL MANAGEMENT TAKEOVER. BECAUSE THE NATIVE COMMUNITY IS NOT A PARTY TO THAT PROCESS, I CAN NOT TELL YOU WHAT THE PLAN WILL LOOK LIKE. BUT I AM CONVINCED THAT THE DEPARTMENT IS MOVING QUICKLY TO CARRY OUT ITS NON-DISCRETIONARY RESPONSIBILITY UNDER FEDERAL LAW.

ONE ADDITIONAL ISSUE, MR. CHAIRMAN, NEEDS TO BE AIRED. AS WE HEAD TOWARDS ADJOURNMENT, THE GREAT QUESTION IN EVERYONE'S MIND IS WHETHER BOTH HOUSES OF THIS LEGISLATURE WILL ADOPT SOME FORM OF CONSTITUTIONAL LANGUAGE TO KEEP FISH AND GAME IN ALASKAN HANDS, OR WHETHER THE BODY WILL TURN ITS BACK ON THE ISSUE AND GO HOME WITHOUT TAKING ACTION. A THIRD ALTERNATIVE, OF COURSE, IS THAT THE LEGISLATURE MIGHT BE PERSUADED TO ADOPT SOME FORM OF STATUTORY LANGUAGE WHICH, WHILE PERHAPS SATISFYING THE STATE CONSTITUTION, WOULD STILL

BE OUT OF COMPLIANCE WITH FEDERAL LAW. I URGE THE COMMITTEE TO SEE THAT EITHER OF THE LAST TWO OPTIONS REPRESENTS A FAILURE OF POLITICAL WILL AND WILL PRECIPITATE A LONG-TERM CRISIS OF FISE AND GAME MANAGEMENT IN ALASKA WHICH WE SHALL ALL COME TO REGRET.

THERE MAY BE, ON THE PART OF SOME LEGISLATORS, A CAREFULLY UNSPOKEN ASSUMPTION THAT WHAT REALLY NEEDS TO BE DONE - NO MATTER HOW LONG THE EFFORT AND HOW PAINFUL THE COST - IS TO FORCE THE CONGRESSIONAL OPENING OF ANILCA IN ORDER TO GET RID OF THE RURAL SUBSISTENCE PRIORITY. MY RESPONSE TO THAT SILENT AGENDA IS TWO-FOLD: FIRST, THAT IT SHOULD NOT BE SILENT; AND, SECOND, THAT IT WON'T WORK.

ON THE QUESTION OF SILENCE, LET ME SAY THAT ANY AGENDA WHICH ASSUMES THAT THE FINAL BLOW TO SUBSISTENCE CAN ONLY BE DELIVERED BY PURPOSEFULLY RAISING THE LEVEL OF REGULATORY CONFUSION, POLITICAL ANGER AND INDIVIDUAL PAIN IN THIS STATE TO A POINT WHERE THE MAJORITY WILL BE FORCED TO TURN ON THE MINORITY IS IRRESPONSIBLE. IF THIS SHOULD TURN OUT TO BE THE COURSE WHICH THE STATE OF ALASKA HONESTLY WISHES TO PURSUE, IT HAS EVERY RIGHT TO DO SO. BUT IT SHOULD SAY SO. IT SHOULD STEP OFF ON THAT PATH CONSCIOUSLY, KNOWING THE CONSEQUENCES AND SAYING THE TRUTH. NO ONE, IN GOOD FAITH, MAY KNOWINGLY ENGINEER A POLITICAL AND SOCIAL CRISIS AND LATER DESCRIBE IT AS HAVING BEEN UNAVOIDABLE OR UNINTENDED.

ON THE ISSUE OF POLITICAL FEASIBILITY, LET ME BE EQUALLY FRANK. I THINK IT IS HIGHLY UNLIKELY THAT THE UNITED STATES CONGRESS WILL OPEN ANILCA. BUT IF IT DOES, I CAN PROMISE YOU THAT ITS RECONSIDERATION OF THIS ENORMOUS FEDERAL STATUTE WILL NOT BE LIMITED TO SUBSISTENCE. ONCE YOU OPEN ANY PART OF IT, ALL OF ITS PROVISIONS BECOME FAIR GAME. SOME PEOPLE IN ALASKA OBVIOUSLY DO NOT BELIEVE THAT, BUT THE POLITICAL REALITY IS THAT THERE ARE DOZENS OF OUTSIDE INTERESTS (AND THEIR ADVOCATES IN THE CONGRESS) WHO WILL MAYBE IT COME TRUE.

AT BEST, ANY AMENDING OF ANILCA WILL BE A THREE TO FIVE-YEAR PROCESS, DURING WHICH TIME THE FEDERAL GOVERNMENT WILL BE IN ALASKA ANYWAY, MANAGING MOST OF OUR FISH AND GAME. EVEN IF THE CONGRESSIONAL PROCESS STARTS WITH SUBSISTENCE, DOZENS OF OVERSIGHT BEARINGS, FLOOR SPEECHES, BILLS AND AMENDMENTS WILL EVENTUALLY REACH OUT AND TOUCH EVERY FEDERAL LAND USE QUESTION IN ALASKA. SENATOR STEVENS AND OTHER MEMBERS OF OUR CONGRESSIONAL DELEGATION HAVE DESCRIBED THAT SCENARIO IN STARK LANGUAGE. HOW MUCH DOES ALASKA REALLY WANT TO PAY TO THE REST OF THE COUNTRY IN ORDER TO GET RID OF THE SUBSISTENCE PRIORITY? HOW LONG WILL IT TAKE? AND WHAT WILL THE PERMANENT CONSEQUENCES BE FOR THE POLITICAL, ECONOMIC AND SOCIAL ENVIRONMENT OF OUR STATE?

I HAVE CONCLUDED THAT THE REAL OUTCOME OF AMENDING ANILCA WILL BE SO COSTLY TO THE STATE GOVERNMENT, TO THE STATEWIDE

BUSINESS COMMUNITY AND TO THE GENERAL PUBLIC THAT-ONCE THEY SEE IT-THEY WILL INSIST THAT THIS PANDORA'S BOX REMAIN CLOSED. FISH AND GAME IS GOING TO HAVE TO BE DEALT WITH WHERE. I URGE ALL MEMBERS OF THE LEGISLATURE TO RECOGNIZE THAT THE UNSPOKEN AGENDA OF TARGETING ANILCA, INSTEAD OF AMENDING THE STATE CONSTITUTION, IS A PROCESS BY WHICH POLITICAL MISPERCEPTION PRODUCES BAD LAW.

IN CLOSING MR. CHAIRMAN, I WISH TO GO BACK TO A NATIVE PERSPECTIVE ON ALL OF THIS. DURING LAST WEEK'S STATEWIDE SUBSISTENCE CONFERENCE, ONE OF THE NATIVE ELDERS WHO SPOKE TO US WAS EDWARD HOPSON, AN INUPIAT ESKIMO LEADER FROM THE ARCTIC SLOPE REGION. I WANT TO QUOTE SEVERAL LINES FROM WHAT HE TOLD US, IN THE HOPE THAT HIS GOD-GIVEN ELOQUENCE MIGHT SUCCEED WHERE MY WORDS FAIL.

MR. HOPSON SAID:

"WE ALL HAVE A RESPONSIBILITY TO MANAGE THE RESOURCES AND THE ANIMALS GOD HAS PUT ON THIS EARTH. WE MIGHT ASK OURSELVES WHO ARE WE MANAGING IT FOR. IS THIS AN ISSUE OF WHO GETS TO TAKE THE LAST SEAL OR THE LAST CARIBOU? IS THIS AN ISSUE OF RETURNING TO A LIFESTYLE WHICH HUNTS WITH BOWS AND ARROWS OR LIVES WITHOUT MODERN CONVENIENCES? OR IS IT, MORE APPROPRIATELY, AN ISSUE OF KEEPING OUR CULTURE ALIVE AND DYNAMIC, NOT A MUSEUM RELIC? A CULTURE IS TO BE LIVED AND EXPERIENCED, NOT STUDIED AND OBSERVED.

"... HUNGER KNOWS NO LAW. WHEN OUR PEOPLE ARE HUNGRY THEY WILL HUNT AND FISH. WHEN THE DUCKS FLY, WE WILL HARVEST DUCKS. WHEN THE CARIBOU COME, WE WILL TAKE THEM. TO DO LESS WILL MEAN THE DEATH OF OUR PEOPLE. IT WILL MEAN THE DEATH OF BOTH SPIRIT AND BODY. TO ALLOW THE BODY ALONE TO LIVE ON WITH STORE-BOUGHT OR WESTERN MAN'S FOOD WILL SURELY SEE THE DEATH OF THE SPIRIT AND OF THE CULTURE OF THE PEOPLE. THE BODY WILL SOON FOLLOW. FOR OUR OLD PEOPLE IT WILL COME SOONER, AND PERHAPS FOR THEM IT WILL BE A MORE HUMANE DEATH. FOR THE YOUNGER PEOPLE IT WILL MEAN A SLOWER DEATH OF THE BODY, AND IT WILL COME FROM ALCOHOL, DRUGS AND CANCER THAT COMES FROM THESE FOODS AND FROM THE LOSS OF SPIRIT.

"...NO LAW CAN CREATE A CULTURE. WE MUST DO THAT OURSELVES AND WE MUST WORK CONSTANTLY TO PROTECT IT."

MR. CHAIRMAN, FOR ALASKA NATIVES SUBSISTENCE REPRESENTS EVERYTHING. WHAT IS BEING CONSIDERED IN THIS LEGISLATURE IS OUR ECONOMIC SURVIVAL, OUR CULTURAL IDENTITY AND OUR PHYSICAL AND PSYCHOLOGICAL HEALTH.

FROM THAT PERSPECTIVE, WE STRONGLY URGE THE LEGISLATURE TO ACT EXPEDITIOUSLY, TO ADOPT A CONSTITUTIONAL AMENDMENT IN COMPLIANCE WITH FEDERAL LAW AND TO MOVE FORWARD IN THE EFFORT TO RETAIN FISH AND GAME IN THE HANDS OF THOSE WHO KNOW BEST HOW TO MANAGE THEM - THE ALASKANS. THANK YOU.

BY REP. JACKO, Goll

1 IN THE HOUSE

2

HOUSE JOINT RESOLUTION NO. 74

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

Proposing an amendment to the Constitu-  
tion of the State of Alaska relating to  
a preference for subsistence use of fish  
and wildlife and state-owned renewable  
natural resources.

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8

9

10 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 \* Section 1. Article VIII, Constitution of the State of Alaska, is  
12 amended by adding a new section to read:

13 SECTION 19. SUBSISTENCE USE OF RENEWABLE NATURAL RESOURCES. The  
14 legislature may grant a preference for subsistence use of fish and  
15 wildlife and State-owned renewable natural resources. This constitu-  
16 tion does not restrict the power of the legislature to allocate access  
17 among residents to fish and wildlife and State-owned renewable natural  
18 resources for subsistence uses on the basis of local residency, cus-  
19 tomary or traditional use, or dependence on the resources for food and  
20 other purposes.

21 \* Sec. 2. The amendment proposed by this resolution shall be placed  
22 before the voters of the state at the next general election in conformity  
23 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-  
24 tion laws of the state.

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH STATE CAPITOL  
SUNEAU ALASKA 998  
907 465 1800

MEMORANDUM

February 1, 1990

SUBJECT: Sectional summary of House Joint Resolu-  
tion 74; Proposing an amendment to the  
Constitution of the State of Alaska relating  
to a preference for subsistence use of fish  
and wildlife and state-owned renewable  
natural resources

TO: Representative George Jacko

FROM: George Utermohle *GU*  
Legislative Counsel

This memorandum is a sectional summary of HJR 74, requested by Alexis Miller of your staff.

A summary or analysis of a resolution is not an authoritative interpretation of the resolution. The resolution itself is the best statement of its contents.

Section 1 of the resolution amends the Natural Resources Article, Article VIII, of the Constitution of the State of Alaska by adding a new section entitled: Subsistence Use of Renewable Natural Resources.

The first sentence of the amendment authorizes the legislature to provide that subsistence use of fish and wildlife and state-owned renewable natural resources is preferred over other uses.

The second sentence of the amendment provides that the power of the legislature to allocate access to renewable natural resources for subsistence uses on the basis of certain criteria is not constrained by other provisions of the Alaska Constitution. The legislature is specifically authorized to allocate access to renewable natural resources for subsistence uses on the basis of local residency, customary or traditional use of the resources, or dependence on the resources for food and other purposes. The legislature may allocate access to renewable natural resources for subsistence use on the basis of criteria other than those listed.

Representative George Jacko  
Page 2  
February 1, 1990

but an allocation system utilizing other criteria must be consistent with other provisions of the Alaska Constitution.

In regard to renewable natural resources, other than fish and wildlife, the amendment applies only to those resources owned by the state. Unlike fish and wildlife which the state manages wherever they are found in the state (unless preempted by the federal government), the state may not mandate a preference for subsistence use of other renewable natural resources owned by the federal government or by private persons.

Section 2 of the resolution provides that this amendment shall be placed on the ballot at the next general election for acceptance or rejection by the voters of the state.

GU:pl  
WKP1/076

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2

HOUSE JOINT RESOLUTION NO. 88

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

Proposing an amendment to the Consti-

6

tution of the State of Alaska relating

7

to subsistence uses of fish and wildlife

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by rural residents.

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

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\* Section 1. Article VIII, Constitution of the State of Alaska, is

11

amended by adding a new section to read:

12

SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE. Nothing in

13

this constitution prohibits the legislature from limiting the taking

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of fish and wildlife for subsistence uses to rural residents, and from

15

providing for the allocation of that taking among rural residents on

16

the basis of local or community residence, availability of alternative

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resources, and customary and direct dependence on a fish or wildlife

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population as the mainstay of livelihood.

19

\* Sec. 2. The intent of the amendment proposed by this resolution is to

20

validate, ratify, and reinstate any provisions of the new statutes and

21

amendments enacted by ch. 52, SLA 1986, and of any regulations adopted

22

under those statutes and amendments, which otherwise might have to be

23

declared invalid under the Alaska Supreme Court's decision in McDowell v.

24

State, 785 P.2d 1 (Alaska 1989), and to explicitly reverse the effect of

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the McDowell decision as to those provisions and regulations.

26

\* Sec. 3. The amendment proposed by this resolution, and the intent of

27

the amendment as set out in this resolution, shall be placed before the

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voters of the state as one ballot proposition at the next general election

29

in conformity with art. XIII, sec. 1, Constitution of the State of Alaska.

FISCAL NOTE

REQUEST:

Revision Date: 3/2/90  
Title: Constitutional Amendment:  
Subsistence  
Sponsor: Rules Committee  
Requestor: Governor

Agency Affected: Dept. of Fish and Game  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No FY 90 impact.

Prepared by: Molly McCannan  
Division: Commissioner's/Office/  
Approved by Commissioner: *Shirley D. Wiley*  
Agency: \_\_\_\_\_

Phone: 465-4100  
Date: 3/1/90  
Date: 2 29 91

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JENEAU

7-9-90 38

March 2, 1990

The Honorable Sam Cotten  
Speaker of the House  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a joint resolution proposing an amendment to the Alaska Constitution to give rural residents a priority for subsistence uses of fish and wildlife.

In Title VIII of the Alaska National Interest Lands Conservation Act ("ANILCA"), P.L. 96-487, 94 Stat. 2371, 2422 (1980), the United States Congress established a priority for subsistence uses of fish and wildlife by rural residents on federal land, and provided that the priority would be implemented by the secretaries of interior and agriculture unless the state enacted legislation affording the same priority. In ch. 52, SLA 1986, the legislature gave rural residents a priority for subsistence uses of fish and wildlife. The legislature enacted ch. 52, in part, to prevent a federal takeover of fish and wildlife management on federal land, an action with which I wholeheartedly agree.

In McDowell v. State, 785 P.2d 1 (1989), however, the Alaska Supreme Court held that a subsistence priority for rural residents violates the Alaska Constitution. This raises the distinct possibility that the state will lose management of fish and wildlife on federal land and, conceivably, state-wide. Such a result is simply unacceptable. It also means that the state might find it difficult, if not impossible, to ensure that rural residents most reliant on fish and wildlife have the necessary opportunities to take those resources when needed.

Section one of the joint resolution would add a new section to art. VIII of the Alaska Constitution to ensure that the constitution does not prohibit (1) a subsistence priority for rural residents, and (2) the allocation of fish and wildlife for subsistence uses on the basis of local or community residence, availability of alternative resources,

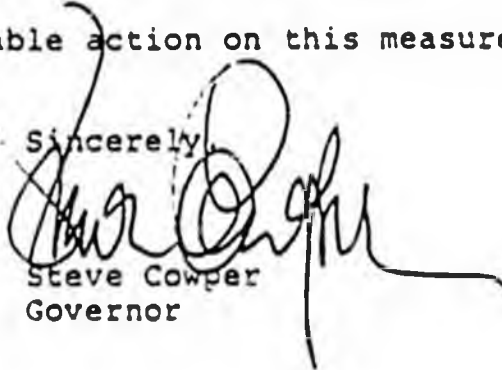
and customary and direct dependence on a fish or game population as a mainstay of livelihood. This would give the legislature clear constitutional authority to enact laws that are consistent with the subsistence provisions of ANILCA.

Section 2 of the joint resolution would validate, ratify, and reinstate those provisions enacted by ch. 52, SLA 1986, held invalid by the Alaska Supreme Court in the McDowell decision. While the court declared that those provisions were inconsistent with the constitution as it read at the time of the decision, they have not been repealed by the legislature nor declared void in a final court judgment. (In any event, while there is a presumption that a constitutional amendment is not retrospective, case law from this and other jurisdictions makes clear that an amendment will have retroactive effect if such an intent is clearly expressed, as here. See Mathews v. Quinton, 362 P.2d, 932, 938 -- 939 [Alaska 1961].) By reinstating and ratifying the provisions of the 1986 law, the state would be back in the same position it was in before the McDowell decision, but with the certainty that the provisions of the 1986 law are constitutional.

Section 3 of the joint resolution is, essentially, the standard language directing the lieutenant governor to place the proposed constitutional amendment, including the statement of intended effect, before the voters in a single ballot proposition at the next general election.

I urge your prompt and favorable action on this measure.

Sincerely,

  
Steve Cowper  
Governor

# NEWS RELEASE

STATE OF ALASKA

OFFICE OF THE GOVERNOR  
P.O. BOX A  
JUNEAU, ALASKA 99811

STEVE COWPER,  
GOVERNOR



FOR INFORMATION CONTACT

DAVID RAMSEUR  
PRESS SECRETARY

TERRENCE O'MALLEY  
DEPUTY PRESS SECRETARY

(907) 465-3500

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FOR IMMEDIATE RELEASE  
March 2, 1990  
No. 90-40

## COWPER INTRODUCES SUBSISTENCE CONSTITUTIONAL AMENDMENT

JUNEAU--Gov. Steve Cowper today is introducing a joint resolution in both houses of the state legislature that would give rural Alaska residents a priority for subsistence uses of fish and wildlife.

The resolution would amend the state constitution to authorize a subsistence priority for rural residents. In determining subsistence eligibility, the amendment would allow the state to consider where a person lives, what the availability of alternative resources is, and whether subsistence is the customary and primary livelihood of people in the area.

"We've considered a whole gamut of options, from completely restructuring our fish and game management system to challenging federal subsistence law in court," Cowper said. "We've concluded that a constitutional amendment is the only practical way we can guarantee that Alaskans who depend on a subsistence way of life won't be deprived of access to fish and game."

The resolution must pass by a two-thirds majority vote in both the House and Senate before appearing on November's general election ballot for voter approval.

In 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA) mandating a priority for subsistence uses of fish and wildlife on federal lands by rural residents. ANILCA also set out that the federal government would take over management of fish and game resources on federal lands in Alaska if the state did not pass similar legislation giving rural residents subsistence priority.

•MORE•

In 1986, Alaska's legislature passed subsistence legislation giving rural residents preference when resources are scarce, thus preventing a federal takeover of fish and wildlife management on federal lands in Alaska.

Last December, in *McDowell v. State*, the Alaska Supreme Court declared that law unconstitutional, thereby jeopardizing the state's authority to manage fish and wildlife on federal lands and perhaps throughout the state. That ruling also would make it difficult, if not impossible, for the state to ensure that Alaskans who depend on fish and wildlife the most have the necessary opportunity to take those resources.

"Although we've asked the Supreme Court to reconsider its ruling on subsistence, it's unlikely the court will reverse itself," Cowper said. "The current subsistence situation is unacceptable. Alaska has to be able to manage its own fish and wildlife resources. Otherwise, the federal government would be making decisions about the allocation of our resources and how people here should live their lives. Alaskans know what's best for Alaskans and I believe we need to stand together to protect our citizens' rights through a constitutional amendment."

The joint resolution introduced today would add a new section to Article VIII of the state constitution ensuring that the constitution does not prohibit:

- a subsistence priority for rural residents; and
- the allocation of fish and wildlife for subsistence uses on the basis of local or community residence, availability of alternative resources, and customary and direct dependence on a fish or game population as a mainstay of livelihood.

In addition, the resolution would reinstate the provisions of the 1986 subsistence law ruled unconstitutional by the state Supreme Court in December. That would put subsistence back in the same position it was before the Supreme Court decision in the *McDowell* case. The resolution also directs the lieutenant governor to place the proposed constitutional amendment before voters in November's general election.

Last month, the Alaska Federation of Natives adopted a policy position supporting a similar constitutional amendment giving subsistence preference to rural residents.

A CONSTITUTIONAL AMENDMENT ESTABLISHING  
A SUBSISTENCE PRIORITY FOR RURAL ALASKANS

Position paper prepared by  
Alaska Department of Fish and Game  
and  
Alaska Department of Law

Merch 7, 1990

I. The problem

On December 22, 1989 the Alaska Supreme Court issued a decision in McDowell v. State that the rural preference in the state subsistence law was unconstitutional. This ruling makes it constitutionally impossible for Alaska to enact a law consistent with Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). That section makes federal officials responsible for providing a preference for subsistence uses of fish and wildlife by rural residents on federal public lands unless, in laws of general applicability, the state provides for such uses.

Without a solution to the problem created by the McDowell decision, management of fish and wildlife will be conducted both by the federal and the state governments. This will undoubtedly lead to conflicts over the allowable uses of fish and wildlife and take many of the decisions out of the hands of Alaskans and give them to the federal government. The state was granted a stay by the Supreme Court until July 1 with respect to existing regulations only.

II. Objectives to be achieved in any solution

We believe that any solution must meet the following objectives:

The state must retain its traditional role as manager of the fish and wildlife resources in Alaska in order to ensure the continued health and viability of those resources, as well as to make sure management of the resources is responsive to the needs of Alaskans.

There should be a priority for subsistence uses of fish and wildlife by those Alaskans who most rely on such uses, the majority of whom live in rural areas of the state.

The greatest certainty and predictability must be given to all fish and wildlife users, requiring that potential management conflicts between state and federal management agencies be minimized.

### III. Review Process

In the two months since the ruling, the administration has received comments from a wide range of interested and affected Alaskans, reviewed a number of recommended solutions, and met with a variety of user groups including Alaska Native organizations, commercial fishing organizations, and sportsmen and outdoor groups. Since allocation of Alaska's fish and wildlife resources touches nearly everyone in the state, the administration has kept an open mind in reviewing all proposed solutions. For that reason, a great deal of time has been spent in reviewing the legal parameters of the court ruling and all such proposals.

### IV. Options suggested

\* Ask the Alaska Supreme Court to reconsider its decision in McDowell.

The state requested a rehearing of the supreme court's decision, arguing that the court overlooked or misconceived several legal principles and material facts. That request for rehearing has been denied.

\* Amend the Alaska Constitution to authorize a subsistence priority for rural residents.

Since this is the preferred option chosen by Governor Cowper, it will be discussed in more detail in sections V and VI of this paper.

\* Amend ANILCA to eliminate the federal subsistence priority for rural residents.

The administration rejected this approach primarily because it does not have the support of either the Alaska Congressional delegation or the Alaska Native community, both of which would be essential for any amendment to pass Congress. ANILCA was crafted as a compromise which balanced a number of competing interests. Amending it would require an agreement among the state, the Alaska Native community, and the Alaska Congressional delegation at the very minimum. In addition, in the 1978 subsistence statute, throughout the ANILCA legislative process, in the 1982 statewide ballot referendum, and in the 1986 subsistence statute the state has continually supported a subsistence priority FOR rural residents.

\* Amend ANILCA to preempt state law as necessary to grant rural residents a subsistence priority statewide.

Under this scenario, we would ask Congress to apply the supremacy clause and require the state to give rural residents a subsistence priority statewide, despite the constitutional problems addressed by the Alaska Supreme Court in McDowell. Because of state sovereignty principles, this was not considered to be an option that the state should willingly support. Without state support, it is probably not politically attainable.

\* Amend state law to provide a subsistence priority to state residents most dependent on fish and wildlife, as determined through some kind of individualized permitting system, and then amend ANILCA to conform to the state law.

This option was initially suggested by Governor Cowper early in the debate on how to resolve the dilemma posed by the supreme court's ruling. State officials went to great lengths to attempt to develop a system that would be consistent with the state constitution. The tentative proposal was for a three-member Subsistence Commission with powers and authorities similar to the Commercial Fisheries Entry Commission to determine who was a "subsistence user," using a set of criteria for making those determinations. This option was eventually rejected because 1) it would be extremely burdensome and intrusive on those Alaskans it was intended to protect; 2) it would create a large, cumbersome bureaucracy with a cost of many millions of dollars a year; 3) it was estimated that at least 100,000 individual determinations would need to be made, all of them subject to appeals and litigation; 4) it would require a minimum of three to four years to establish such a system and make the initial determinations; and 5) there was a serious question whether such a system would be consistent with the Alaska Constitution as interpreted in McDowell.

In addition, this approach would still result in state law being inconsistent with the subsistence preference provisions of ANILCA, in the absence of an amendment to ANILCA, already determined to be unattainable. This create an unacceptable risk of a federal takeover of fish and wildlife management.

\* Interpret section 804 of ANILCA as preempting state law on federal lands (as those may ultimately be defined by the courts), with implementation carried out by state officials.

State and federal attorneys agree that Congress intended the ANILCA subsistence priority for rural residents to apply on federal lands and to preempt conflicting state laws. A legal argument can be made that, under the supremacy clause of the United States Constitution, state officials can implement the ANILCA subsistence priority by rural residents on federal lands directly under ANILCA. On the other hand, it can be argued that state officials are bound by the state constitution and cannot implement a conflicting federal law.

Another uncertainty is the geographic scope of the ANILCA preference. "Public lands" are defined as "land situated in Alaska which, after the date of enactment of this Act, are Federal lands, except [valid state and Native corporation selections]." "Federal land" is defined as "lands the title to which is in the United States after the date of enactment of this Act." "Land" is defined as "lands, waters, and interests therein."

The possible geographic scope of the ANILCA preference under these definitions ranges from "narrow" (wildlife only when they are physically present on federal land, and fish only when in non-navigable waters on federal land) to "broad" (wildlife throughout their migratory range, even when not on federal land, and fish wherever they are in any waters of the state, including the territorial sea).

This option is not the preferred option for reasons in addition to the uncertainty over the geographical scope of ANILCA. Since the state would be acting under federal, as opposed to state authority, there would undoubtedly be litigation challenging the ability of the state to proceed directly under ANILCA. The more direct avenue is to amend the state constitution to allow state agencies to act directly under state law. However, the preemption option may provide a fallback position if the constitutional amendment fails.

\* Seek cooperative agreements with the Secretaries of Interior and Agriculture under which the ANILCA priority would be implemented by them, perhaps only through closure authority to avoid dual management of the resource.

It is clear that a failure by the state to give rural residents a subsistence priority, something which McDowell now says is impossible under the state constitution, would result in a federal takeover of fish and game management for subsistence uses on federal public lands. The Secretary of the Interior has made it clear he wishes to see the state resolve this issue in order to bring us into compliance with the provisions of ANILCA. One former Interior Department official believes that the Secretaries' authorities to implement a subsistence priority for rural residents on federal lands is limited under ANILCA to their authority to close the lands to the taking of fish and wildlife until the priority is satisfied. However, current Department of the Interior officials have also made it clear that they believe their authority to be much more expansive than mere closure authority.

This is an option that, of necessity, is being discussed with federal officials both for the time period between July 1 and the effective date of a constitutional amendment, and in the event an amendment does not pass the Legislature or the voters. Because it

easily could result in a federal takeover of fish and wildlife management however, it is not the preferred option.

\* Use current management tools -- seasons, bag limits, same-day (or even two-day) airborne prohibitions, etc. -- creatively to benefit those most dependent on fish and wildlife.

Some people point to the fact that prior to the state's 1978 statute giving subsistence uses a priority, the Boards of Fisheries and Game had the authority to provide for subsistence uses using the traditional regulatory tools of methods and means. They argue that in order to make the state approach consistent with ANILCA, these traditional regulatory tools could be employed to explicitly favor rural residents. Any direct attempt by the boards to implement such a priority through regulations would be subject to the same constitutional challenge as the rural preference struck down in McDowell. In addition, ANILCA only stays the federal responsibility for providing the subsistence priority by rural residents on federal lands if the state has, in laws of general applicability, the same definition of and priority for subsistence as the federal law. Simply using traditional management tools would not satisfy that requirement of ANILCA, again running the risk of a federal takeover.

\* Challenge the ANILCA subsistence priority for rural residents and/or Congress' power to require such a priority on constitutional grounds.

The administration does not support this option primarily because we support the rural subsistence preference contained in ANILCA and believe an attempt to challenge that priority is not warranted. Such a challenge would probably be based on the grounds that the ANILCA priority violates 1) equal protection, applicable to federal statutes under the due process clause of the Fifth Amendment to the United States Constitution, and 2) the statehood compact. With respect to the first argument, the federal constitution has a much more deferential equal protection test than the Alaska Constitution, and the state is not considered to have very strong legal arguments. With respect to the second argument, a unanimous United States Supreme Court ruled in 1976 that the federal government has the constitutional authority to regulate fish and wildlife on federal lands.

\* Amend the Alaska Constitution to authorize a subsistence priority for Alaska Natives.

Although many of the rural residents who most rely on fish and wildlife for their economic and cultural well-being are Alaska Natives, there are also many non-Native rural residents who depend on the same fish and wildlife. The administration does not support

a Native only preference. Further, such a priority would not be consistent with ANILCA.

\* Amend ANILCA to authorize a subsistence preference for Alaska Natives.

The same position as above applies to this option.

V. The administration's preferred approach

In McDowell, the Alaska Supreme Court struck down the state's subsistence priority for rural residents because it violated article VIII of the Alaska Constitution. It did not rely on any provisions of the federal constitution in striking down the subsistence priority for rural residents. Accordingly, the Alaska Constitution can be amended to make constitutional the subsistence priority by rural residents struck down in McDowell.

Amending the state constitution is the cleanest way to allow the state to again be consistent with ANILCA and provide a subsistence priority by rural residents. Such an amendment would ensure that the state would retain management of fish and wildlife on federal land, a goal which played a major role in the statehood movement. In addition, it would permit the state to ensure that rural residents most reliant on fish and wildlife have the necessary opportunities to take those resources when needed. The state has attempted to do so for more than 10 years now, only to be stymied by one court decision after another. By authorizing a subsistence priority for rural residents in the Alaska Constitution, the state would have clear authority to finally implement what has been state policy for more than a decade.

VI. Further Discussion and Considerations

A. The amendment and its effect

The governor has proposed a constitutional amendment which would authorize the limitation of subsistence uses of fish and wildlife to rural residents. Such uses already can be the subject of a priority under the current article VIII, section 4, which authorizes "preferences among beneficial uses." The proposed section 19 would be added to article VIII, and would read:

Nothing in this constitution prohibits the Legislature from limiting the taking of fish and wildlife for subsistence uses to rural residents, and from providing for the allocation of that taking among rural residents on the basis of local or community residents, availability of alternative resources, and customary and direct dependence on

a fish or game population as the mainstay of livelihood.

The wording of the proposed resolution makes clear that:

The intent of the amendment proposed by this resolution is to validate, ratify, and reinstate any provisions of [the 1986 state subsistence law] and of any regulations adopted [thereunder], which otherwise might have to be declared invalid under the Alaska Supreme Court's decision in McDowell v. State, 785 P.2d 1 (Alaska 1989), and to explicitly reverse the effect of the McDowell decision as to those provisions and regulations.

If this resolution passes the Legislature and in the November general election, the state would be authorized to have legislation consistent with ANILCA and the legislation which was enacted in 1986 would be validated retroactively, rather than requiring reenactment. The principle of retroactive validation is accepted in caselaw from other jurisdictions, and has been noted by the Alaska Supreme Court in Matthews v. Quinton, 362 P.2d 932, 938 (Alaska 1961).

B. What happens between July 1 and the general election?

If this resolution passes the Legislature, the state could ask the Alaska Supreme Court for an extension of the stay in McDowell until after the November general election results were certified. The justification for the request would be that, if the amendment does pass in the general election, the disruptions and start-up costs for a contingency plan which would only be effective from July 1 through the general election would not be in the best interests of the state.

The court may not be receptive to such a request, since in a February 26, 1990, order denying a request that the current stay be vacated, the court stated:

The stay entered on January 5, 1990, will expire on the close of business July 1, 1990. Extensions to the stay will not be granted.

The court may have been indicating that the state must face up to the consequences of the McDowell decision. The comment, however, was made in a context in which no party had asked for an extension of the stay. It is possible that if a constitutional amendment did pass the Legislature, the court might consider an extension. At the same time, we cannot rely on an extension of the stay. Thus, a contingency plan will have to be developed which would apply from July 1 until after the November election, in the

event the stay were not continued. The state is currently participating in the federal contingency planning process.

C. The amendment's relationship to the Kenaitze problem.

The proposed amendment only attempts to resolve the problem created by the supreme court's decision in McDowell, which conclusively precludes the state from having a law that is consistent with the definition of and priority for subsistence uses in ANILCA. This imminently threatens the unified management so necessary for the welfare of the fish and wildlife in Alaska and for those who use those resources. The proposed amendment does not attempt to address other subsistence issues, such as the inconsistency of the state's definition of "rural" and Congress's use of that term in ANILCA, as identified by the ninth circuit court of appeals in Kenaitze Indian Tribe v. State, 860 F.2d 312 (9th Cir. 1988).

In that case, the court held that the state's current definition of "rural area" found in AS 16.05.940(25) is not consistent with the use of the term "rural" in ANILCA. The state had defined "rural area" as:

a community or area of the state in which the noncommercial, customary, and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy of the community or area.

The ninth circuit concluded that focusing on the economy of the community or area was not consistent with Congress's intent. It based its view on what it considered the "common sense" meaning of "rural" as being connected to population levels and densities. If the proposed constitutional amendment passes, it would not resolve the "rural" issue; unless the proposed constitutional amendment passes, however, the state cannot even attempt to achieve consistency between its definition of "rural" and the federal one.

Even if the McDowell decision had not been issued, it would still be premature to consider changing state law to define "rural" in a way which would be consistent with ANILCA. Although the ninth circuit said the state definition was not consistent, it did not say what the term "rural" in ANILCA meant, and gave the state no clear guidance as to how the state definition should be amended to make it consistent with ANILCA. The meaning of "rural" in the federal law is currently the subject of federal district court proceedings in the Kenaitze case. Until that litigation provides more guidance as to what would be consistent with ANILCA, it would be inappropriate to try to amend state law to match the federal law. At this point, of course, the state does not even

have the authority to define subsistence in terms of rural residents, quite apart from refining the "rural" definition.

If this constitutional amendment passes, the state will in the meanwhile have gathered more information about the scope of the term "rural" in ANILCA through the federal district court case. A reasoned decision can then be made whether the best course is to repeal the state definition, replace the state definition with another definition, or attempt to amend ANILCA to reflect the state definition in the federal law.

#### D. Severability

If the constitutional amendment validating the 1986 subsistence law does not pass, the ANILCA standards will apply to federal land in the state. However, what the rules would be for state and private lands depends on the question of severability.

Under McDowell, the limitation of the subsistence priority to only rural residents in the 1986 state law is invalid on state and private lands. However, the court did not decide whether the remainder of the 1986 law, including the priority of subsistence uses over other uses, is also invalid.

The basic question is whether the Legislature would have intended the subsistence mandate and priority to remain in effect if the class of subsistence users included all Alaskans. In that event, hunting by nonresidents and sport and commercial fishing would have to be eliminated before subsistence uses (open to all Alaskans) on any fish stock or game population could be cut back. (The subsistence uses would be subject to reasonable regulation, however, without requiring other uses be eliminated.)

If the Legislature would have intended that the rest of the law fall if the rural limitation were invalid, then the boards would not be required to authorize subsistence fishing and hunting (open to all Alaskans), and would not be required to give it a priority. The boards could in their discretion, however, authorize subsistence and give it a priority, in any given situation.

This question will probably be presented to the superior court when the case returns there from the supreme court.

THE  
CONSTITUTION  
OF THE  
STATE OF  
ALASKA



LEGISLATIVE INFORMATION OFFICE  
3111 C STREET, SUITE 150  
ANCHORAGE, ALASKA 99503

Stephen McAlpine  
Lieutenant Governor

## Article VIII

### Natural Resources

#### **Section 1 - Statement of Policy.**

It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

#### **Section 2 - General Authority.**

The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

#### **Section 3 - Common Use.**

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

#### **Section 4 - Sustained Yield.**

Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

#### **Section 5 - Facilities and Improvements.**

The legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.

#### **Section 6 - State Public Domain.**

Lands and interests therein, including submerged and tidal lands, possessed or acquired by the State, and not used or intended exclusively for governmental purposes, constitute the state public domain. The legislature shall provide for the selection of lands granted to the State by the United States, and for the administration of the state public domain.

#### **Section 7 - Special Purpose Sites.**

The legislature may provide for the acquisition of sites, tracts, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people.

#### **Section 8 - Leases.**

The legislature may provide for the leasing of, and the issuance of permits for exploration of, any part of the public domain or interest therein, subject to reasonable concurrent uses. Leases and permits shall provide, among other conditions, for payment by the party at fault for damage or injury arising from noncompliance with terms governing concurrent use, and for forfeiture in the event of breach of conditions.

### **Section 9 - Sales and Grants.**

Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources. Reservation of access shall not unnecessarily impair the owners' use, prevent the control of trespass, or preclude compensation for damages.

### **Section 10 - Public Notice.**

No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

### **Section 11 - Mineral Rights.**

Discovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State which, upon the date of ratification of this constitution by the people of Alaska, were subject to location under the federal mining laws. Prior discovery, location, and filing, as prescribed by law, shall establish a prior right to these minerals and also a prior right to permits, leases, and transferable licenses for their extraction. Continuation of these rights shall depend upon the performance of annual labor, or the payment of fees, rents, or royalties, or upon other requirements as may be prescribed by law. Surface uses of land by a mineral claimant shall be limited to those necessary for the extraction or basic processing of the mineral deposits, or for both. Discovery and appropriation shall initiate a right, subject to further requirements of law, to patent of mineral lands if authorized by the State and not prohibited by Congress. The provisions of this section shall apply to all other minerals reserved to the State which by law are declared subject to appropriation.

### **Section 12 - Mineral Leases and Permits.**

The legislature shall provide for the issuance, types and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulfur, pumice, and other minerals as may be prescribed by law. Leases and permits giving the exclusive right of exploration for these minerals for specific periods and areas, subject to reasonable concurrent exploration as to different classes of minerals, may be authorized by law. Like leases and permits giving the exclusive right of prospecting by geophysical, geochemical, and similar methods for all minerals may also be authorized by law.

### **Section 13 - Water Rights.**

All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation.

Priority of appropriation shall give prior right. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

#### **Section 14 - Access to Navigable Waters.**

Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

#### **Section 15 - No Exclusive Right of Fishery.**

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State. [Amendment approved August 22, 1972 - Effective October 14, 1972.]

#### **Section 16 - Protection of Rights.**

No person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law.

#### **Section 17 - Uniform Application.**

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.

#### **Section 18 - Private Ways of Necessity.**

Proceedings in eminent domain may be undertaken for private ways of necessity to permit essential access for extraction or utilization of resources. Just compensation shall be made for property taken or for resultant damages to other property rights.

THE FOLLOWING DOCUMENT HAS  
NOT BEEN FILMED BUT IS  
AVAILABLE IN THE ORIGINAL  
FILE

Public Law 96-487  
96th Congress

An Act

To provide for the designation and conservation of certain public lands in the State of Alaska, including the designation of units of the National Park, National Wildlife Refuge, National Forest, National Wild and Scenic Rivers, and National Wilderness Preservation Systems, and for other purposes.

Dec. 2, 1960  
[H. R. 39]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Alaska National Interest Lands Conservation Act".

Alaska National  
Interest Lands  
Conservation  
Act.  
16 USC 3101  
note.

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# House of Representatives

While in Session:  
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Chair  
Special Committee on Foreign Trade  
Vice Chair  
Resources Committee  
Member  
Health, Education &  
Social Services Committee

**Rep. George Jacko, Jr.**

## M E M O R A N D U M

TO: All Legislators  
FROM: Representative *George* Jacko, Jr.  
DATE: April 3, 1990  
SUBJECT: HJR 74 (Constitutional Amendment for Subsistence)

As most of you know, earlier this session I introduced a resolution that proposes to amend the State Constitution to allow for a subsistence preference. As many of you are also aware it has been pegged by the media and other legislators as a very "divisive" issue.

I've disagreed with that statement from the start, which is why I am happy to pass along to each of you a copy of the poll that the Dittman Research Corporation of Anchorage conducted during March. In a random telephone survey, 547 Alaskans were contacted and 51 percent of the respondents supported the constitutional amendment.

Also attached is a copy of the Associated Press story that reporter Brian Akre wrote about the poll. Please note the last three paragraphs of the article, which list the percentages in favor of a constitutional amendment, by geographic region and by political party.

In January, Mark Hellenenthal and Associates conducted a similar poll and contacted 606 people statewide. The numbers were even more conclusive, 68.6 percent of those contacted support a rural priority. The poll asked the following question: "Until December, Alaska law defined subsistence use as providing a priority for rural Alaskans over urban Alaskans. Do you favor or oppose providing a priority for rural Alaskans in the taking of fish and game for subsistence use?"

I would appreciate your letting me know if you need further information on subsistence and if I can count on your vote.

Thanks for your support.

GOVERNOR COMPTON HAS PROPOSED AN AMENDMENT TO ALASKA'S CONSTITUTION WHICH  
 WOULD ALLOW PREFERENCE TO RURAL RESIDENTS IN THE TAKING OF FISH AND GAME.  
 DO YOU SUPPORT OR OPPOSE SUCH AN AMENDMENT?

DEMOGRAPHICS	UNSURE	SUPPORT	OPPOSE
TOTAL.....	15%	51%	34%
LOCATION			
RURAL.....	12%	69%	20%
CENTRAL.....	6%	47%	46%
SOUTH CENTRAL.....	21%	47%	33%
ANCHORAGE.....	14%	47%	38%
SOUTHEAST.....	22%	55%	23%
AGE			
18-24 YRS OF AGE	22%	47%	31%
25-40.....	14%	56%	30%
41-55.....	12%	48%	41%
56+ YEARS OF AGE	22%	41%	36%
SEX			
MALE.....	13%	47%	39%
FEMALE.....	17%	54%	29%
INCOME			
NO RESPONSE.....	33%	48%	18%
TO 20,000 INCOME	17%	51%	32%
\$20-40,000.....	19%	46%	34%
\$40-60,000.....	10%	55%	35%
\$60,000+.....	10%	51%	39%
DO YOU WORK FOR			
FEDERAL GOVT....	9%	59%	32%
STATE GOVT.....	8%	60%	32%
LOCAL GOVT.....	13%	57%	30%
PRIVATE SECTOR..	16%	50%	34%
NOT IN WORKFORCE	18%	42%	40%
VOTER REGISTRATION			
DEMOCRAT.....	14%	58%	28%
REPUBLICAN.....	13%	45%	43%
NON-PARTISAN....	15%	49%	35%
NOT REGISTERED..	21%	34%	24%
TIME IN ALASKA			
UNDER 1 YR IN COMM	0%	42%	58%
1-4 YEARS.....	10%	62%	27%
5-9 YEARS.....	13%	55%	32%
10-14 YEARS.....	15%	52%	34%
15+ YEARS.....	17%	47%	36%

## Poll finds support for amendment

JUNEAU (AP)—A majority of Alaskans support Gov. Steve Cowper's proposed constitutional amendment to retain the state's rural preference for subsistence fishing and hunting, according to a recent statewide poll.

The poll conducted by Dittman Research Corp. of Anchorage showed 51 percent of the respondents supported the amendment, 34 percent were opposed and 15 percent were undecided.

The results do not indicate that the issue has sharply divided Alaskans, as some lawmakers predict it will, pollster Dave Dittman said Friday.

"I just don't see it as being that divisive," he said. "There's just not that strong an opposition to it, but there's not that strong support either at 51 percent. I think it's something folks would rather not worry about."

The random telephone survey of 547 Alaskans was conducted March 13-18. It has a error margin of plus or minus 4.5 percent.

The subsistence question was one of 26 questions on a monthly survey that Dittman conducts for a variety of clients. No client sponsored the

(See POLL, Page A-7)

## POLL: 51 percent favor rural preference

(Continued from Page A-1)  
subsistence question, Dittman said.

The Legislature is considering several subsistence measures in response to a recent Alaska Supreme Court ruling. The court ruled the state subsistence law was unconstitutional because it provided a preference to rural residents.

Federal law, however, requires a rural preference. Cowper has proposed changing the state Constitution to allow that preference. If two-thirds of the House and Senate agrees, the measure will be referred to voters in November.

Should the Legislature fail to come up with a solution, the federal government may assume management of fish and game on its lands within Alaska as early as summer, officials say.

Cowper reacted cautiously to the poll results.

"This trend looks good, but it's very early and the public hasn't really heard the arguments on both sides," he said. "The amendment just keeps the status quo, and my guess is that most people are satisfied to keep things as they are."

Rep. George Jaco, D-Pedro Bay, introduced a measure similar to Cowper's. He said he also was pleased with the poll.

"I'm actually thrilled," he said. "The numbers look good. The next

thing to do is to get the resolution out of the House."

Sen. John Binkley, who supports Cowper's proposal, said he was not surprised by the results. "I think it's encouraging. It shows the majority of Alaskans support the system of subsistence that we have."

Rep. Ramona Barnes, an Anchorage Republican who opposes solving the problem with a constitutional amendment, said it's too early in the debate for a poll to have much meaning.

"There's not been a great deal of discussion statewide," she said. "Only now are the sports groups getting involved."

Two factors may have affected the poll's results.

Respondents were asked if they would support or oppose Cowper's amendment "which would allow preference to rural residents in the taking of fish and game." The question did not specifically mention "subsistence" and did not provide any further information.

"I don't think people understood the question," Barnes said. "When it's explicit, they're very opposed to amending the Constitution."

The poll also was not limited to registered voters or those most likely to vote. But Dittman said generally about 95 percent of those who respond to such telephone surveys in Alaska are registered.

According to the poll, support for the amendment is strongest among rural residents—69 percent in favor compared with 20 percent opposed. It was weakest in the Fairbanks-Interior region—47 percent in favor compared with 46 percent opposed.

Anchorage was 47 percent in favor and 38 percent opposed, Southcentral had 47 percent in favor and 33 percent opposed, and Southeast residents favored the measure 55 percent to 23 percent.

Support among Democrats was stronger than among Republicans. Democrats favored the amendment 58 percent to 28 percent, while Republicans were split 45 percent in favor and 43 percent opposed. Non-partisans favored the measure 49 percent to 35 percent.

TESTIMONY OF  
JULIE. E. KITKA, PRESIDENT  
ALASKA FEDERATION OF NATIVES  
BEFORE THE HOUSE RESOURCES COMMITTEE

April 3, 1990

Mr. Chairman, members of the committee, my name is Julie Kitka and I am the president of the Alaska Federation of Natives. On behalf of the AFN Board of Directors, we very much appreciate this opportunity to testify in support of the proposed amendment to the Alaska Constitution.

As you know, last December the Alaska Supreme Court ruled by a vote of four to one in McDowell v. State that the Alaska Constitution prohibits the Legislature from enacting legislation providing rural Alaska residents a subsistence hunting and fishing priority over other residents. While AFN believes that McDowell was decided incorrectly, the Alaska Supreme Court is the final arbiter of the intent of the Alaska Constitutional Convention delegates embodied in the Alaska Constitution. Consequently, until the text is amended, the McDowell decision's interpretation of the Alaska Constitution stands.

In considering whether to amend the Alaska Constitution to grant the Legislature the authority the Alaska Supreme Court has said the Legislature lacks, it is important to recognize the Supreme Court's limited role in developing public policy.

In McDowell, the Alaska Supreme Court did not decide that providing residents of rural areas a subsistence hunting and fishing priority is a bad policy. Rather, the Court held that, in the opinion of a majority of the

Justices, it is a policy the Legislature presently has no authority to implement.

This distinction is important because, if the Legislature and the Alaska electorate believe that a subsistence priority is good public policy, there is substantial precedent for amending the state's constitution to provide the Legislature authority to enact one. The 1972 constitutional amendment authorizing the Legislature to limit entry to Alaska's fisheries is the most well-known example.

In 1986, the Legislature (through enactment of ch. 52 SLA 1986) determined that establishing a rural subsistence priority is the public policy that best advances the interests of all Alaskans. While the AFN Board supports the Legislature's determination, it is important to emphasize that a rural resident subsistence priority is AFN's second policy choice.

In 1977, AFN testified before Congress that, in addition to a rural resident priority, an Alaska Native priority is the fairest and most workable way to address the subsistence issue. See Inclusion of Alaska Lands in National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems: Hearings on H.R. 39, et al., before the Subcomm. on General Oversight and Alaska Lands of the House Comm. on Interior and Insular Affairs, 95th Cong., 1st Sess., Part XII at 461-97 (1977) [hereinafter "House Interior Hearings"].

An Alaska Native subsistence priority is supported by more than half a century of precedent. Between enactment of the first Alaska Game Act in 1902 and the transfer of authority to regulate hunting and fishing to the new State of Alaska in 1960, Congress afforded Natives a subsistence priority. See 48 U.S.C. 198 (Indians and Eskimos authorized to hunt for food during closed season) and 48 U.S.C. 199 (Indians and Eskimos exempted from licensing requirements to which other resident hunters were subject).

And contrary to much erroneous popular wisdom, Congress did not abandon its commitment to protect Native subsistence hunting and fishing when it enacted the Alaska Native Claims Settlement Act in 1971. At the time ANCSA was enacted, Congress was aware that the Board of Fish and Game was not protecting the legitimate interests of Native subsistence hunters and fishermen. Consequently, although section 4(b) of ANCSA extinguished Native "aboriginal hunting or fishing rights that may exist," Congress did not abandon its longstanding concern that subsistence hunting and fishing by Alaska Natives be protected.

As you know, both the U.S. Senate and House of Representatives passed an ANCSA bill, after which a Senate House Conference Committee blended the text of the two bills into the version of ANCSA enacted into law. Significantly, the declaration of policy in the Senate bill stated that one of the purposes of ANCSA was to protect "Native subsistence hunting, fishing, trapping and gathering rights." See

S. 35, sec. 2(a)(7), 92nd Cong., 1st Sess., (1971) reprinted at 117 Cong. Rec. 38,920 (1971). To implement that policy, sec. 21 of the Senate bill directed the Secretary of the Interior to designate public lands surrounding "native villages and groups" as "subsistence use units." In appropriate instances, the section then required the Secretary to close a unit to harvest "other than by residents of the unit for subsistence purposes."

At the request of the State of Alaska, the conferees deleted both the statement of policy and sec. 21 of the Senate bill from the version of ANCSA enacted into law. In their place, the conferees included the following language in the ANCSA Conference Report:

The Senate amendment to the House bill provided for the protection of the Native peoples' interest in and use of subsistence resources on public lands. The Conference Committee, after careful consideration, believes that all Native interests in subsistence resource lands can and will be protected by the Secretary through exercise of his existing withdrawal authority. The Secretary could, for example, withdraw appropriate lands and classify them in a manner which would protect Native subsistence needs and requirements by closing appropriate lands to entry by non-residents when the subsistence resources of these lands are in short supply or otherwise threatened. The Conference Committee expects both the Secretary and the State to

take any action necessary to protect the subsistence needs of the Natives. (Emphasis added.)

See Conf. Rep. No. 746, 92nd Cong., 1st Sess. at 37 (1971).

When it enacted the Alaska National Interest Lands Conservation Act in 1980, Congress decided to establish a rural resident priority rather than an Alaska Native and rural resident priority. It did so for one reason: to enable the State of Alaska, acting through the Board of Game and Board of Fisheries, to continue to regulate the taking of fish and game on all lands and within all waters within the State.

Representing the State at the beginning of Congress' consideration of ANILCA in 1977, Governor Hammond told Congress that:

fish and wildlife have little regard for bureaucratic boundaries and, so far as I am concerned, this is argument enough in itself against segmenting the management of a single species or population according to land ownership or user groups. Split management of a single living resource may make some marginal sense in the context of political science; but it makes absolutely no sense whatsoever in the context of biological science.

House Interior Hearings, Part XII at 417 (statement of Jay Hammond).

As soon as Congress agreed with Governor Hammond's argument, the State shifted its ground and urged Congress

not to require it to implement a Native priority. For example, after asserting that the State "should continue to be the primary statewide resident fish and wildlife manager," Ronald Somerville, an Alaska Department of Fish and Game employee speaking on the State's behalf, told Congress: "As the Alaska Native Claims Settlement Act specifically extinguishes all aboriginal hunting and fishing rights, there should be no ethnic rights reestablished specifically or in pseudo form." Alaska Lands: Hearings on H.R. 1652, et al., before the Subcomm. on Fisheries and Wildlife Conservation and the Environment of the House Comm. on Merchant Marine and Fisheries, 95th Cong., 1st Sess., Part 1 at 208 (1971) (statement of Ronald Somerville).

Congress adopted Mr. Somerville's suggested approach because it agreed with Governor Hammond's characterization of the subsistence problem, i.e. that the Board of Fisheries and Board of Game had failed to protect Native and non-Native residents of rural areas from unfair competition from urban hunters and fishermen for access to the increasingly limited harvestable surplus of fish stocks and game populations.

In explaining the situation to Congress, Governor Hammond first acknowledged "the perception that State regulation has either favored urban hunters too much, or not favored rural hunters enough when the difficult allocation decisions were made." He then conceded:

State policy under this administration has explicitly stated that subsistence will have will have priority when there is a conflict and a thorough review of recent fish and wildlife regulations will show scores of cases where the local, rural user has been favored in regulation. Nevertheless, the perception persists, in some justification. (Emphasis added.)

House Interior Hearings, Part XII at 419.

AFN reluctantly agreed to support Congress' decision to adopt the State's suggested approach and establish a subsistence priority for rural residents, rather than Alaska Natives plus rural residents. While AFN continues to support that approach, it continues to do so reluctantly.

AFN supports the rural resident subsistence priority because, if properly implemented in good faith, a rural resident priority can remedy the problem Governor Hammond identified.

At its core, the subsistence problem is simple: too many Alaskans annually attempt to harvest too few fish and too few game animals. That being the case, the Alaska Legislature has two options. It can allow any Alaska resident who wishes to do so to hunt and fish, "first-come, first-served," until the harvestable surplus of a population or stock is taken at which time the hunting or fishing season is closed. Or it can allocate hunting and fishing opportunities among Alaska residents in a manner that beset

advances what the Legislature determines is the highest public interest.

Between 1960 and 1975 the Legislature delegated the Board of Fish and Game, and after 1976 the Board of Fisheries and Board of Game, near total discretion to allocate hunting and fishing opportunities in whatever manner the Boards thought appropriate. During those years, the Boards usually adopted "first-come, first-served" based regulations.

The "first-come, first-served" system severely disadvantaged residents of Native villages who depended on hunting and fishing to obtain a significant portion of their annual food requirements. Village residents were simply being overwhelmed by the increasingly large number of urban hunters and fishermen.

In 1978, two years prior to Congress' enactment of ANILCA, the Legislature enacted a comprehensive subsistence statute, ch. 151 SLA 1978, that established a subsistence priority. The Board of Fisheries and Board of Game subsequently determined jointly that the 1978 statute embodied a legislative intent to limit the Alaska subsistence priority to residents of rural areas.

When the Alaska Supreme Court decided in Madison v. Alaska Department of Fish and Game that the Legislature did not intend the 1978 statute to limit the subsistence priority to rural residents, in 1986 the Legislature enacted a statute that, on its face, limited the subsistence

priority to residents of "rural areas." Ch. 52 SLA 1986. It did so because, after a full and comprehensive debate during which all interested parties were afforded an opportunity to present their views, the Legislature concluded that a rural subsistence priority was the best solution to a difficult policy issue of the utmost public consequence.

The Alaska Supreme Court's decision in McDowell v. State in no way lessens that important legislative judgment.

For that reason, Mr. Chairman, AFN supports enactment of a constitutional amendment to authorize the State to again implement the policy it has implemented since 1978.

However, we do so with an important caveat.

In lieu of an Alaska Native subsistence priority, the Committee should consider amending the proposed constitutional amendment to, in addition to authorizing the Legislature to establish a rural resident priority, authorize the Legislature to establish a subsistence priority for hunters and fishermen who are members of identifiable groups who have a culture and tradition of subsistence use of fish and game in Alaska. Suggested technical language is attached to my testimony.

In conclusion, Mr. Chairman, on behalf of the AFN Board of Directors I again would like to express our appreciation for the opportunity to present AFN's views as to why the proposed constitutional amendment should be enacted and placed on the November 1990 election ballot. During the

weeks ahead, AFN and its member organizations look forward to continuing to work closely with you, other members of the Committee and the Legislature, the Governor and his staff and all other interested parties in this most important issue.

AMENDMENT TO HOUSE JOINT RESOLUTION NO. 88 (GOVERNOR'S BILL)

Line 14: Between "residents" and "," insert the following phrase:

"and members of identifiable groups who have a culture and tradition of subsistence use of fish and game in Alaska."

Line 15: Between "residents" and "on" insert the following phrase:

"and members of such groups"

## SUBSISTENCE TIME TABLE

- 1959 Alaska becomes a state and for the first time assumes management authority of her fish and game resources. The new constitution abolishes fish traps and specifies that fish and game shall be managed on a sustained yield basis for the common good.
- 1968 The discovery of oil at Prudhoe Bay and subsequent need for a pipeline to the ice free port of Valdez forces the resolution of aboriginal land claims.
- 1971 Alaska Native Claims Settlement Act brings wealth and technology to the bush. This Act extinguishes aboriginal claims to fish and game.
- 1972 Due to circumstance unrelated to Alaska, Congress passes The Marine Mammals Protection Act, seizing management authority of ten species of marine mammals from states and establishing federal Native subsistence policy. Alaska is forced to abandon her extensive conservation programs and the federal government refuses to fund any replacement programs.

- 1974 Construction of the Trans-Alaska Pipeline brings wealth and population growth to urban centers. Increased access to transportation technology fuels tension between urban and rural Alaskans competing for fish and game.
- 1978 Seeing the need to protect subsistence users and fearing federal intervention, Alaska's legislature establishes two tiered subsistence criteria when stocks are low: 1) Subsistence gains priority over other uses 2) when stocks are too low for all subsistence uses, priority is based on A. customary and direct dependence on the stock as a mainstay of livelihood, B. local residency, C. availability of alternate resources.
- 1980 Alaska National Interest Lands Conservation Act designates over one hundred million acres of land as federal preserves and sets "rural" as a requirement for subsistence use on all federal land. The Alaska Board of Fish and Game adopts rural priority regulations to comply with federal standards and maintain control on federal lands.
- 1982 Voters reject initiative to repeal rural priority. At this time urban residents were still eligible for subsistence as first tier users.

1985 The Alaska Supreme Court decides two cases, one declaring rural priority regulations inconsistent with the 1978 statute and the other forcing the state to establish subsistence regulations even when stocks are plentiful. A federal court rules that urban is any community with a population larger than 2,500 people, and declares everything else rural for subsistence purposes.

1986 To comply with the Court decision the Alaska Legislature re-writes laws governing subsistence establishing rural priority for first and second tier users.

1989 The Alaska Supreme Court rules rural priority unconstitutional. The court ruling states "One purpose of the 1986 act (like the 1978 act) is to ensure that those Alaskans who need to engage in subsistence hunting and fishing in order to provide for their basic necessities are able to do so." It also states that "many people living in urban areas have legitimate claims as subsistence users, while many people living in rural areas have no legitimate claims."

This ruling upholds the right of the State to regulate subsistence but declares that the urban rural distinction is too crude a test to determine the actual needs of the people of Alaska.

Alaska House Of Representatives

Resource Committee

Subsistence Hearings

March 10, 1990

Dear Representatives

My name is Rick Bierman. I live in Juneau and I am a subsistence user of fish and game. My family and I own land on Shelter Island and we depend on local deer populations as a major source of food. If subsistence regulations are activated locally, people from Haines and Skagway will have priority use of deer populations on Shelter and Scudias Islands, and the local Admiralty area---even if these people are not subsistence users and have never hunted in the Juneau area before.

In 1989, The Alaska Supreme Court ruled rural priority unconstitutional. The court ruling states "One purpose of the 1986 act (like the 1973 act) is to ensure that those Alaskans who need to engage in subsistence hunting and fishing in order to provide for their basic necessities are able to do so." It also states that "many people living in urban areas have legitimate claims as subsistence users, while many people living in rural areas have no legitimate claims." This ruling upholds the right of the State to regulate subsistence but declares that the urban rural distinction is to "crude" a test to determine the actual needs of the people of Alaska.

Like any simple approach to a complicated problem, rural priority sounds much better than it works. To make matters worse, the original legislation has been altered by so many governing bodies, that it, all too often, achieves the opposite effect that it was intended to. A constitutional amendment will etch this injustice in stone.

Protecting the rights of people who depend on wild resources to maintain their existence, is a proper function of government. However, protection must be applied to the people who have legitimate claims, not handed out or withheld solely on the basis of where one chooses to reside. Although, as Governor Cowper pointed out, a more equitable solution will be costly; democracy was not designed to be efficient, it was designed to protect individual rights, and justice has never come cheaply.

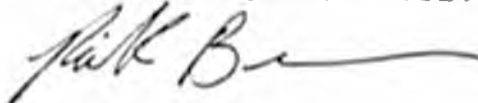
It is my opinion that the State's original 1972 statute stressing local priority came closest to the ideal of protecting the individual rights of Alaskans who depend on wild resources. It is the federal government with the enactment of ANILCA, that imposed rural priority over local priority---and it is the federal law not the constitution of Alaska that needs to change; anything short of this, will be a cop-out!

Sincerely,

Alex Bierman and family

P.O. Box 120166

Nuke Bay, Alaska 99821



SUBSISTENCE SITES: March 21, Wednesday 6:30-9:30p.m.

6:30 - 7:25 p.m. Southeast;  
Angoon-Gabriel George-788-3553 .

Craig-Fred Hamilton-755-2394- listen only

Edna Bay  
Elfin Cove  
Gustavus

Haines-Marilyn Wilson-766-2211

Hoonah-Wanda Culp -945-3557

Hydaburg-Adrian LeCornu-285-3761/285-3939

Kake-Marvin Kadake-785-3804

Kasaan

Klukwan-Joe Hotch-767-5556/789-5505/766-2210

Klawock-James Martinez-Klawock IRA President -755-2263

Metlakatla- Mayor is in town in person. Does he wish to comment?

Pelican-Jim Phillips

Port Protection

Tenakee-Ray Paddock

Saxman-Matilda Kushnik -225-2058

Skagway- Minnie Stevens-983-2885

Wrangell-John Feller-874-3261

Yakutat-Hank Porter-784-3250

\*10 minute break\*

7:35-8:30 Southcentral:

Akhiok-Mitch Simeonoff or David Eluska-836-2229/836-2210

Chenega Bay-Daryl or Mr. Charles Selanoff/573-5132

Chickaloon

Chignik-Ron Bowers/749-2280

Glacier View

Karluk-Mary Reft/241-2214

Larsen Bay-

Old Harbor-Ron Berntsen or Sven Haakanson/286-2204  
286-2233/286-2287

Ouzinkie-Joe Llanos or Zack Chichenoff/680-2226/2209/2264

Perryville-Boris Kosbruk/853-2211

Port Lions-Bobby Anderson or Pete Squartsoff/454-2332/454-2207

Talkeetna

Tatitlek

Trapper Creek

Talkeetna

Skwentna

Sutton

Willow

\*10 minute break\*

8:40-9:30 Southwest:

Aleknagik-842-5953

Clarks Point-236-1221

Egegik-233-2231

Ekwok-464-3311

Levelock-287-3030

Manokotak-289-1027

Naknek (Bristol Bay Borough)-246-4224

New Halen-571-1226

New Stuyahok-693-3111

Nondalton-294-2210

Manokotak-289-1027

Pilot Point-797-2205 (Janice Ball)

St. Paul - 546-2331

Togiak-493-5820

Unalaska-581-1251

end

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MEMORANDUM

TO: Senator Bettye Fahrenkamp

FROM: William P. Horn *WPH* VIA TELECOPY

DATE: March 19, 1990

SUBJ: Comments on Drafts of New Article VIII, Section 19

Each of the drafts of a new Article VIII, Section 19 of the Alaska Constitution appears to be an effort to satisfy the requirements of Sections 803 and 804 of the Alaska National Interest Lands Conservation Act (ANILCA), P.L. 96-487 16 U.S.C. §§ 3113, 3114. The first draft looks inadequate; the second and third drafts appear to set the stage for compliance with ANILCA. In addition, there are significant differences among the three iterations as discussed below.

DRAFT ONE

This would authorize the establishment of a preference system for subsistence uses in rural areas of Alaska. However, it is unlikely to enable the Legislature to satisfy ANILCA's requirements. The draft is deficient on at least three points.

First, it introduces the term "non-commercial uses" as part of the subsistence definition. Section 803 expressly provides for barter and sale of handicraft articles made from non-edible byproducts of subsistence resources and blanket restriction regarding commercial use may not comport with ANILCA.

Second, the "personal use" limitation is more strict than § 803. The Federal definition includes reference to "sharing" of subsistence resources. This draft may rule out such sharing. A factual hypothetical is as follows: Mr. A in a bush village

Senator Bettye Fahrenkamp  
March 19, 1990  
Page 2

routinely brings in moose that are provided to others in the village. He personally uses one animal. A definition that rules out sharing would likely mean that the taking of the moose to be given to others would not qualify for the preference. This is inconsistent with § 803.

Third, the new section does not provide for a "second tier" allocation per § 804. ANILCA provides a generalized preference to "rural residents" -- this is the so-called "first tier." When resources are inadequate to provide for the first tier class of individuals, § 804 authorizes an allocation within this group. A subset of the first tier class gets an added priority based on (1) customary and direct dependence, (2) local residency, and (3) availability of alternative resources. Draft One does not provide for such a second tier allocation.

However, this may not be a fatal flaw as the Alaska Supreme Court has indicated that allocation based on these kind of criteria appears constitutional. To ensure satisfaction of ANILCA, subsequent implementing legislation or regulations should include a second tier arrangement per § 804.

#### DRAFT TWO

This version of a new Section 19 addresses in significant fashion the "non-commercial" and "personal use" issues raised above. It also expressly authorizes the creation of a second tier allocation system. The draft appears to empower the Legislature to pass a bill that can comply with ANILCA. Stylistically, it follows the form of Article VIII, Section 15 that set up the limited entry fishing program. That section uses the "does not restrict/does not prohibit" form rather than an affirmative authorization.

Obviously, the constitutional amendment by itself will not satisfy ANILCA. An appropriate State statute will have to be enacted to accompany or follow the amendment.

#### DRAFT THREE

This tracks ANILCA more closely than the other two versions. It would also enable the Legislature to act to comply with the Federal statute. It appears, however, that the second paragraph is an attempt to merge the first and second tier classes into one group. That is not authorized by ANILCA § 804. Indeed, the effort to limit the size of the first tier class has been slapped down by Ninth Circuit U.S. Court of Appeals in the Kenaitze case. Once the State manages to get by the newer McDowell hurdle, the Kenaitze matter still must be resolved.

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Senator Bettye Fahrenkamp  
March 19, 1990  
Page 3

CONCLUSION

Drafts Two and Three appear to do the job of taking steps to satisfy ANILCA. I would suggest using the first paragraph of Draft Three and an altered version of the second paragraph of Draft Two:

SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE AND RENEWABLE NATURAL RESOURCES. Subsistence uses of fish and wildlife and renewable natural resources are the customary and traditional, non-wasteful, non-commercial uses of these resources, taken by a resident in the area where the resident resides for personal or family consumption, for barter or sharing for personal or family consumption, or for customary trade.

The legislature may grant a preference for subsistence uses of fish and wildlife and renewable resources in rural areas of the State and may allocate subsistence resources among users.

WPH:jap  
WPH221M.ASR

Attachment

Proposed New §19 of Art VIII

DRAFT ONE SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE AND RENEWABLE NATURAL RESOURCES. Subsistence uses of fish and wildlife and renewable natural resources are the non-wasteful non-commercial uses of locally available resources owned by the state taken and used by residents for personal use.

The legislature may grant a preference for subsistence uses of fish and wildlife and renewable resources in rural areas of the state.

DRAFT TWO SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE AND RENEWABLE NATURAL RESOURCES. Subsistence uses of fish and wildlife and renewable natural resources owned by the state are the customary and traditional, non-wasteful, non-commercial uses of those resources available in the area where a resident resides, taken and used by a resident for personal or family consumption or for customary trade.

Nothing in this Constitution prohibits the legislature from granting a preference for subsistence uses of fish and wildlife and renewable resources in rural areas of the state or from allocating subsistence resources among users.

DRAFT THREE SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE AND RENEWABLE NATURAL RESOURCES. Subsistence uses of fish and wildlife and renewable natural resources are the customary and traditional, non-wasteful, non-commercial uses of these resources, taken by a resident in the area where the resident resides for personal or family consumption, for barter or sharing for personal or family consumption, or for customary trade.

The legislature may accord a priority in rural areas for the taking of fish and wildlife and renewable natural resources for subsistence uses, and may provide for the allocation of that taking based upon local or community residence, or customary and direct dependence on the resource.

# RURAL ALASKA RESOURCES ASSOCIATION

P.O. Box 200908  
Anchorage, Alaska 99520  
(907) 279-2511

## MEMBERS:

Aleutian/Pribilof  
Islands Association, Inc.

Bristol Bay Native  
Association

Central Council,  
Tlingit & Haida

Copper River Native  
Association

Kawerak, Inc.

Kodiak Area Native  
Association

Maniilaq Association

The North Pacific Rim

North Slope Borough

Nunam  
Kittlutsisti

Tanana Chiefs  
Conference, Inc.

Tyonek,  
Native Village of

## ASSOCIATE MEMBERS:

Koyukon  
Development Corporation

Bering Sea  
Fishermen's Association

## RURAL CAP STAFF:

Bob Polasky

## RARA POSITION STATEMENT IN REGARDS TO THE MCDOWELL DECISION

It is the position of the Rural Alaska Resources Association that the State Supreme Court Decision in McDowell v. State of Alaska of December 22, 1989, seriously jeopardizes the subsistence rights of Alaska Natives. The McDowell decision places the State Subsistence law out of compliance with the Alaska National Interest Lands Conservation Act (ANILCA) which requires a subsistence preference for rural Alaskans.

It is RARA's position that the preferred solution to the McDowell decision is to recommend that the State's Constitution be amended to include specific language providing for a subsistence priority for Alaska Natives in recognition of their culture. Such an amendment would insure that the customary and traditional rights of Alaska's Native people are protected. A priority amendment which includes a priority for Alaska Natives could also provide, through other language, equal subsistence preferences or priorities for non-Native rural Alaskans. It is RARA's position that a subsistence preference in the State Constitution be sought with a "Native Preference" as our first concern to insure current and future generations of Alaska Natives maintain their customary and traditional rights to subsist.

It is also our position, that we would oppose efforts to amend ANILCA as an initial approach to a solution, and also would oppose any solution incorporating a permit system.

*[Handwritten signature and date]*  
10/10/89



DRAFT DRAFT DRAFT DRAFT  
ALASKA SPORTFISHING ASSOCIATION

We support fair allocation of Alaska's Fish and Wildlife resources to all user groups: sport, subsistence and commercial. We do not oppose subsistence harvests. We support generous subsistence harvests by Alaskan residents. We do object to the statutory priority given subsistence harvesters, both in state legislation and Title VIII of ANILCA. These statutes have diluted the authority of the Boards of Fisheries and Game to the extent that they can no longer make reasonable allocative decisions on a case by case basis. These statutes have caused extensive litigation and have resulted in unfair allocations of fish and game resources in numerous areas of the state. Recent court decisions will result in additional unfair allocations in the immediate future.

Alaska has been singled out, alone among the 50 states, in having its authority to manage resident fish and game threatened with federal take over if we do not follow the mandate of Title VIII of ANILCA. We believe that the State of Alaska, through the Boards of Fisheries and Game, should be free to allocate fish and wildlife resources throughout Alaska and the state should manage those harvests. The threat of federal take over should be removed by amending the ANILCA legislation.

The Boards of Fisheries and Game should have the flexibility and authority to meet the particular needs of each user group based on data from resource scientists and input from the user public by judicious adjustment of seasons, bag limits and methods and means.

Our position is that:

- 1) Subsistence is a valid use of Alaska's fish and wildlife resources.
- 2) There should be no statutory harvest priority accorded to any one user group on public lands.
- 3) There should be no change in the state constitution which allows the establishment of a harvest priority.
- 4) The State of Alaska should manage all resident fish and wildlife on all lands in Alaska through the Boards of Fisheries and Game without federal threats or interference.
- 5) Title VIII of ANILCA be amended to remove the threat of federal take over of fish and game management on all Alaska public lands.



# ALASKA OUTDOOR COUNCIL, INC.

RECEIVED

March 1, 1990

Rep. Cliff Davidson  
Pouch V  
Juneau, Alaska 99811

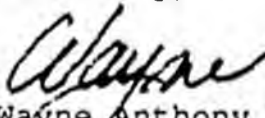
Dear Cliff:

Attached hereto is a MEMORANDUM ON FISH AND WILDLIFE MANAGEMENT which constitutes the formal and official position of the ALASKA OUTDOOR COUNCIL, INC. on the Subsistence issue. This position paper was extensively reviewed by the AOC Board of Directors, in consultation with recognized fish and wildlife managers, before the AOC Board passed it. We believe it is the best solution to the problems facing the State of Alaska regarding the Subsistence issue.

The AOC is an organization representing approximately 55 separate state outdoors clubs and associations throughout Alaska with some 11,000 members, and therefore this paper reflects the views of a large segment of the outdoor community.

Recently, the Governor indicated that he would support a Constitutional Amendment to Alaska's Constitution to authorize a rural preference for the taking of fish and wildlife in Alaska. We believe such an action would be very divisive to the people of the State and oppose such a procedure. In this day and age when the very concept of hunting is under attack from certain groups, we believe all hunters and fisherman, and other out-of-doors people need to stand together, and not be divided over who should, or should not, receive preferential rights to take fish and wildlife resources in this State. We urge you to consider the enclosed position paper, and get involved in supporting the procedures it outlines. We would be happy to discuss it further with you at your convenience.

For the AOC Board of Directors,  
I am,  
Sincerely,

  
Wayne Anthony Ross  
Attorney at Law

# ALASKA OUTDOOR COUNCIL, INC.



March 1, 1990

Rep. Richard Schultz  
Pouch V  
Juneau, Alaska 99811

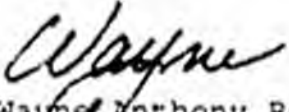
Dear Dick:

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The AOC is an organization representing approximately 55 separate state outdoors clubs and associations throughout Alaska with some 11,000 members, and therefore this paper reflects the views of a large segment of the outdoor community.

Recently, the Governor indicated that he would support a Constitutional Amendment to Alaska's Constitution to authorize a rural preference for the taking of fish and wildlife in Alaska. We believe such an action would be very divisive to the people of the State and oppose such a procedure. In this day and age when the very concept of hunting is under attack from certain groups, we believe all hunters and fisherman, and other out-of-doors people need to stand together, and not be divided over who should, or should not, receive preferential rights to take fish and wildlife resources in this State. We urge you to consider the enclosed position paper, and get involved in supporting the procedures it outlines. We would be happy to discuss it further with you at your convenience.

For the AOC Board of Directors,  
I am,  
Sincerely,

  
Wayne Anthony Ross  
Attorney at Law

# RURAL ALASKA RESOURCES ASSOCIATION

P.O. Box 200908  
Anchorage, Alaska 99520  
(907) 279-2511

## MEMBERS:

Aleutian/Pribilof  
Islands Association, Inc.

Bristol Bay Native  
Association

Central Council,  
Tlingit & Haida

Copper River Native  
Association

Kawerak, Inc.

Kodiak Area Native  
Association

Manilaq Association

The North Pacific Rim

North Slope Borough

Nunam  
Kittlutsiti

Tanana Chiefs  
Conference, Inc.

Tyonek,  
Native Village of

February 20, 1990

RECEIVED FEB 21 1990

DEAR BUSH CAUCUS MEMBERS:

Please find the enclosed position statement by the Rural Alaska Resources Association. We believe that the immediate solution is to amend the State of Alaska's Constitution. We further believe that the subsistence priority is very critical to the well-being of the Native people.

At this point of time we do not want to amend ANILCA nor do we want to see any permit system for the subsistence users.

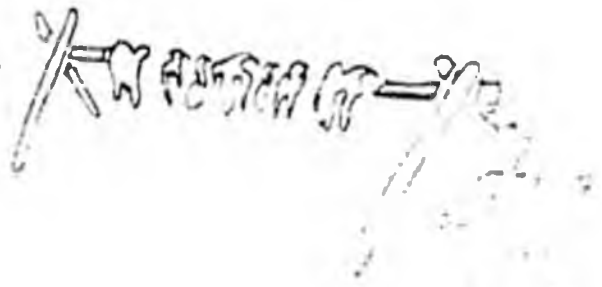
Sincerely,

RURAL ALASKA RESOURCES ASSOCIATION

  
Matthew Iya, Chairman

Enclosure

MI:ct



## ASSOCIATE MEMBERS:

Koyukon  
Development Corporation

Bering Sea  
Fishermen's Association

## RURAL CAP STAFF:

Bob Polasty



# ALASKA FEDERATION OF NATIVES, INC.

411 W. 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-3611



February 6, 1990

Distinguished Members of the  
Alaska State Legislature  
Juneau, Alaska

Dear State Legislator:

I am pleased to convey to you the enclosed document which represents the Alaska Federation of Natives' official Position Statement on Subsistence.

The Federation's position statement is the result of lengthy analysis and evaluation by the Native community of options available in response to the December, 1989 Alaska Supreme Court decision in McDowell v State of Alaska.

The AFN Board of Directors, representing statewide Native corporations, non-profit associations and villages approved and adopted the position statement at its February 1, 1990 meeting.

AFN's preferred solution to the current legal situation is a constitutional amendment. AFN is committed to working with Governor Cowper and the leadership of the Alaska Legislature to see if there is both acceptable language and support to go forward with this approach. AFN is convinced that if a constitutional proposal is advanced by the Governor and the Legislature and eventually can be voted upon by Alaskans it will pass with overwhelming support.

Please feel free to contact me if you need clarification on our position statement. AFN looks forward to working with you as your deliberations continue. Thank you.

Sincerely,

Julie Kitka  
President

# ALASKA FEDERATION OF NATIVES, INC.



411 W. 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-3611

## POSITION STATEMENT ON SUBSISTENCE

As they have for generations, Alaska Natives continue to depend upon hunting and fishing and gathering to obtain food to feed their families.

Hunting, fishing and other subsistence activities remain the linchpin of traditional Alaska Native culture and Alaska Native spiritual values.

For almost a century the United States Congress has consistently recognized the necessity to protect Alaska Native subsistence activities, the most recent expression of this important national policy being Title VIII of the ANILCA of 1980, which establishes hunting and fishing for subsistence uses by Alaska Natives and other residents of rural villages as the priority use of Alaska fish stocks and game populations.

For more than a decade, successive Alaska legislatures and administrations have enacted and administered legislation intended to implement Congress's subsistence policy.

In December 1989, in McDowell v State the Alaska Supreme Court held that the legislature's attempt to implement Congress's subsistence policy violated Article VIII of the Alaska Constitution.

The McDowell v State decision threatens the State's ability to continue to regulate the taking of fish and game on all lands and within all waters in Alaska.

Any solution to this situation must be consistent with the Congressional policy that Alaska Natives and other rural subsistence hunting and fishing activities are the priority use of Alaska's fish stocks and game populations.

We believe that if Alaskans are going to solve this problem:

- (a) an amendment to the Alaska Constitution to enable the legislature to enact and the administration to implement a rural subsistence priority which protects customary and traditional use of fish and game by Alaska Natives and other rural residents is the preferred solution; and
- (b) AFN is committed to working with the Governor and Legislative leadership in considering other solutions which meet AFN's policy goals.

Approved and adopted by the Board of Directors, February 1, 1990.

RECEIVED MAR 12 1990

# NATIONAL RIFLE ASSOCIATION OF AMERICA

*Publishers of* THE AMERICAN RIFLEMAN  
AND  
THE AMERICAN HUNTER



1600 Rhode Island Avenue, N.W. • Washington, D.C. 20036 • (202) 828-6000

8 March 1990

Rep. Cliff Davidson  
Pouch V  
Juneau, Alaska 99811

Dear Cliff:

I have enclosed a copy of an article that I have written for Sunday's Anchorage Times. I hope you will read it and consider it when you discuss the Subsistence issue with your colleagues.

Also, on 29 April 1986, the Board of Directors of the National Rifle Association of America unanimously adopted a resolution that included the following language:

"...The National Rifle Association of America supports equal hunting rights for all citizens of the United States without regard to race, creed or place of residence..."

I urge you to support this position.

Thank you for your attention to this matter.

I am,  
Sincerely,

A handwritten signature in cursive script, appearing to read "Wayne".

WAYNE ANTHONY ROSS  
Second Vice President, NRA

## UNITED FISHERMEN OF ALASKA

### TESTIMONY ON SUBSISTENCE

March 10, 1990

My name is Cheryl Sutton and I will be speaking on behalf of the United Fishermen of Alaska as their Subsistence Committee Chair.

Commercial fishermen, and many other Alaskans, stand to suffer great injury if the subsistence issue is not settled in a manner conducive to sound fish and game management practices and non-disruptive allocative priorities. UFA does not support the concept of attempting to settle this issue by means of a constitutional amendment.

UFA has produced an issue paper on subsistence. I would like to briefly state our position and make other comments.

UFA supports a subsistence-based use of fish and game populations in Alaska, but believes that such uses must be bound at historical levels.

The following areas need to be addressed and answers to the questions sought out by the legislature.

- \* The federal government's jurisdiction over fish and game populations both on federal lands and state lands and waters needs to be clearly defined. For example, does the state or the federal government have jurisdiction over anadromous fish harvested in state waters but spawning within federal areas?
- \* The consequences or benefits of a "federal" takeover for subsistence management need to be delineated for the public. The public should not be forced to stand in fear of a concept they do not understand.
- \* The legislature must consider that "rural" will still not be defined in the adoption of the proposed constitutional amendments. There will be no federal definition for rural.
- \* How will the state handle the Ninth Circuit's ruling relative to the Kenaitzes and its subsequent classification of the Kenai area as rural?
- \* More clear policy guidance must be provided for the Boards of Fisheries and Game and other regulatory agencies creating subsistence regulations.

• The state must consider the economic and social implications of further reducing the cash economies of coastal Alaska communities through making them more subsistence dependent. The very people these constitutional amendments are designed to help may be harmed more than helped.

• The *commercial* sale of subsistence harvests is increasing. The potential for major growth of subsistence harvests being sold under "customary trade and barter" is very likely. This problem must be closely examined and appropriate safeguards taken to prevent its occurrence.

• The definition of subsistence "use" and subsistence "user" needs to be clarified for the public as it relates to the implementation of Title VIII, Section 804 of ANILCA which affords priority.

• An enforceable and mutually protective definition for priority as it relates to competing fishery uses must be developed.

UFA does not believe that a constitutional amendment is the solution to this problem. We believe the solution is many faceted; however, until answers are provided to the questions we have brought forward, an equitable solution will not be found. We have offered our assistance to work with the administration and legislature, as well as other affected groups. We continue to offer that assistance. The solution to the subsistence issue will not be found unless all parties work together to formulate the best plan possible. This plan should include changes on both the state and federal levels if we are to see a long-term solution.

Thank you for the opportunity to testify. I would be glad to FAX a copy of this testimony and the UFA issue paper if the committee would so desire.



**Goldbelt**

Goldbelt Place, Suite 300/801 W. 10th Juneau, Alaska 99801 (907) 463-4846

RECEIVED ..... 12 1990

March 9, 1990

The Honorable Cliff Davidson  
House of Representatives  
Pouch V  
Juneau, Alaska 99811

Dear Representative Davidson:

Goldbelt, Incorporated ("Goldbelt") is one of the four urban corporations created by the passage of the Alaska Native Claims Settlement Act of 1971, as amended ("ANSCA").

Goldbelt strongly endorses House Joint Resolution No. 90, which will provide for Alaska Native residents and rural residents the right for subsistence use of plants, fish, and wildlife. We are greatly heartened by Representatives Kay Wallis of Fort Yukon and Richard Foster of Nome stepping forward in support of this Alaska Native subsistence priority.

Goldbelt and its more than 2,700 Alaska Native shareholders, who principally reside in Juneau, have been severely harmed by having been denied subsistence rights since 1978 when the "State's" subsistence law took effect. Subsistence for Alaska Natives is an integral part of their cultural well being. An Alaska Native priority, if approved by the voters, will restore to urban Natives their rights to subsistence as prior to 1978. I cannot overemphasize how important this is to the future of our children.

I respectfully ask your active support in favor of House Joint Resolution No. 90. Thank you.

Sincerely yours,

GOLDBELT, INCORPORATED

Joseph G. Wilson  
President & Chief Executive Officer

Bush Caucus on Subsistence  
March 9, 1990  
Page 2

cc: Shee Atika, Inc., Sitka  
Douglas IRA  
Juneau ANB/ANS  
Glacier Valley/ANS  
Andy Ebona, T&H Community Council  
Paul Young, Ketchikan Indian Corporation



# ALASKA OUTDOOR COUNCIL, INC.

March 1, 1990

*M*

Rep. Curt Menard  
Pouch V  
Juneau, Alaska 99811

Dear Curt:

Attached hereto is a MEMORANDUM ON FISH AND WILDLIFE MANAGEMENT which constitutes the formal and official position of the ALASKA OUTDOOR COUNCIL, INC. on the Subsistence issue. This position paper was extensively reviewed by the AOC Board of Directors, in consultation with recognized fish and wildlife managers, before the AOC Board passed it. We believe it is the best solution to the problems facing the State of Alaska regarding the Subsistence issue.

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For the AOC Board of Directors,  
I am,  
Sincerely,

*Wayne*  
Wayne Anthony Ross  
Attorney at Law



# ALASKA OUTDOOR COUNCIL, INC.

## MEMORANDUM ON FISH AND WILDLIFE MANAGEMENT

The State Constitution requires that all fish and wildlife resources be managed for "common use."  
*Alaska Constitution, Art. VIII, §§ 3, 15 and 17.*

The Alaska Supreme Court ruled in *McDowell v. State*, that this is an important constitutional right of all Alaskans and requires that all Alaskans have equal access to Alaska's fish and wildlife resources. The State of Alaska cannot discriminate on the basis of residency in allocating access to this important resource.

The State Constitution requires that all fish and wildlife resources be managed on the principle known as "sustained yield."  
*Alaska Constitution, Art VIII, § 4.*

The Alaska Constitution requires Alaskans to manage fish and wildlife resources to insure that Alaskans can harvest these resources each year. The term "sustained yield" is a recognized biological principle. Proper fish and wildlife management should focus on resources, not on politics or sociology.

The State of Alaska must be allowed to manage its fish and wildlife resources. The Federal Government should not be allowed to manage fish and wildlife on Federal lands in Alaska.

A comprehensive fish and wildlife management system administered by Alaskans using biological principles is absolutely essential for the well-being of fish and wildlife resources in this state. Established management techniques can ensure that there are more fish and wildlife resources for all Alaskans.<sup>1</sup>

---

<sup>1</sup> For example, *The Anchorage Times*, Wednesday, February 7, 1990, contained an article entitled "Proper Resource and Game Management Will Alleviate Moose Problem." The article was written by Jim Page, a forester with the Alaska Department of Natural Resources, Division of Forestry. Mr. Page stated that "[i]n 1983 Swedish hunters harvested 232,000 moose compared to an Alaskan hunter harvest of 10,000 . . . Sweden attributes their great moose harvest, in part, to intensive forest management".

At the present time, Alaska is not fully committed to such intensive management programs. Alaska can satisfy the Alaska Constitution, and its citizens' desire for Alaska's fish and wildlife resources, by committing itself to intensive management programs.

Title VIII of ANILCA mandates Federal management of fish and wildlife resources on Federal lands in Alaska if Alaska's subsistence law does not conform with the provisions of ANILCA. ANILCA mandates subsistence uses be granted on the basis of residency only.<sup>2</sup> This directly conflicts with the provisions of Alaska's Constitution, Art. VIII, §§ 3, 15, & 17. The Alaska Supreme Court has held that a preference based on residency violates these provisions.

No other state in the Union operates under the immediate legislative threat of a Federal take-over of its fish and wildlife management. Indeed, local management of fish and wildlife was one of the cornerstones of the statehood movement.

There are three things the State of Alaska should do to resolve the problem of threatened Federal takeover.

First, the Legislature should repeal the laws providing for rural subsistence<sup>3</sup> preferences and allow the Boards of Fish and Game to manage Alaska's fish and wildlife resources in conformity with Alaska's Constitution, using scientifically recognized Fish and Wildlife management techniques, including intensive management and resource harvesting governed by seasons and bag limits, methods and means. The Legislature should pass legislation or resolutions necessary to implement such management.

Second, the State should notify its Congressional delegation of its management program, and ask the Congressional delegation to seek changes in ANILCA recognizing this State's right to manage its fish and wildlife resources under such a program.<sup>4</sup>

---

<sup>2</sup> ANILCA does not permit access to be regulated on need or reliance.

<sup>3</sup> Subsistence is a misnomer; it is not a method for putting food on the table and has nothing to do with need. It is a chosen lifestyle. It is not the government's role to ~~preserve~~ any particular lifestyle. Instead the government should allow for individual choice and do nothing to discourage those lifestyle choices.

<sup>4</sup> While there have been warnings concerning the amendment of ANILCA, it should be remembered that ANILCA has been amended nine (9) times since its enactment with no major problems.

Third, the State should initiate litigation in the Federal Courts to prohibit the Federal Government from interfering with State management of fish and wildlife resources on Federal lands in Alaska.

None of these remedies are mutually exclusive. That is, the State can do one, the other, or all, at this time.

Those people who utilize Alaska's fish and wildlife resources for personal consumptive use must be reassured that the State will ensure that they will continue to have access to these resources within Constitutional limitations.

Because in some areas of the State, personal consumptive uses of fish and wildlife may be more prevalent, some people believe that the State is unwilling or unable to recognize this lifestyle. They believe that only the Federal government will allow this and lifestyle to continue.<sup>5</sup>

Alaskan State Officials must demonstrate that Alaskans, working together, can solve our own problems, without Federal intervention.

The Governor should immediately call the state's Boards of Fish and Game into session to set seasons and bag limits, methods and means, for the upcoming fishing and hunting seasons. Once Alaskans see that they will have a reasonable opportunity to harvest fish and wildlife resources next season, some of their anxiety should be diminished. Again, however, the decisions of the boards must be based on sound management principles, and not based on politics or socioeconomics.

The Boards of Fish and Game should continue to set fishing and hunting seasons based on sound wildlife and fish management principles and the biological principle of sustained yield.

Seasons and bag limits, methods and means should be utilized to ensure proper fish and wildlife management, sustained yield, and

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<sup>5</sup> Again, it is not government's role to *preserve* any particular lifestyle. It also bears mentioning that the Alaska Native Claims Settlement Act (ANCSA) provided for transfer of 44,000,000 acres of land, and \$960,000,000 to the Native peoples of Alaska and in exchange, ANCSA abrogated all native hunting and fishing rights. Thus, the claim arising from some Native groups that subsistence rights are somehow an aboriginal right of the Native people of Alaska, should not be given serious consideration.

access to the fish and wildlife resources to all types of uses, i.e., commercial, non-consumptive uses, and consumptive uses. Personal consumptive use should remain on an equal footing with the other uses.

During periods when fish and/or wildlife stocks are low in a particular area, the Boards can regulate fish and wildlife harvest using the traditional methods of seasons and bag limits, methods and means, in conformity with the Alaska Constitution, to ensure that local residents still have a fair opportunity to harvest fish and wildlife resources in areas close to their residence.<sup>6</sup> In addition, the State should designate an area as an "Intensive Management Area" to restore fish and wildlife populations to sufficient numbers in order that liberal seasons and bag limits can be resumed as soon as possible.

Active and intensive management will allow all Alaskans to live the lifestyle they would like, relative to fish and wildlife resources.

ANILCA must be changed to clearly allow the State to solve its own problems.

Alaska should be allowed to handle its own problems without unnecessary Federal interference. The above outlined plan would be one method of doing so.

The Congressional delegation should be asked to obtain passage of the necessary changes in ANILCA.

The Governor can and should enlist the support of other governors for Alaska's position on these changes. Members of the legislature can and should enlist the aid of other legislatures in supporting Alaska's position also.

The argument is simple. If the Federal government assumes management of fish and wildlife resources in Alaska, the same thing could happen in other states having any Federal inholdings. The cost of Federal management of Alaska's resources would be borne by the taxpayers of the other states. Finally, under a Federal take-over, Alaskan fish and wildlife resources would not be managed for

---

<sup>6</sup> It should be remembered that Native people have been awarded 44,000,000 acres of land which is held in fee simple. Like any landowners Native people can and do refuse to allow others to hunt on, and fish on, their land during seasons established by the Department. This alone can serve as a way to limit competition for fish and game stocks, although it is recognized that at present, enforcement of trespass laws are difficult.

all Americans, but, under the terms of ANILCA, these resources would be managed only for the rural subsistence users living in Alaska. How many non-Alaskans would be willing to pay for that program?

ANILCA has been amended nine times since 1980. Our Congressional delegation should not have trouble doing it one more time, if the State's plan is a reasonable one.

The State of Alaska should be prepared to litigate the question of Federal Management, if it is unsuccessful in a modification of ANILCA.

The State should immediately initiate litigation in the event that the Congressional delegation is unable, or unwilling to obtain the necessary changes in ANILCA. The Alaska Constitution, including the "common use" and equal treatment provisions, was approved by Congress at the time of statehood. The threat of Federal take-over management, through the ANILCA legislation, flies in the face of the implied approval of Alaska's right to manage its own fish and wildlife resources granted through the Statehood process.



## ALASKA OUTDOOR COUNCIL, INC.

ALASKA OUTDOOR COUNCIL, INC.  
P.O. BOX 34097  
JUNEAU, ALASKA 99803

P.O. Box 34097  
Juneau, Ak. 99803

Jan. 26, 1990

The Honorable Steve Cowper  
Governor, State of Alaska  
Box A  
Juneau, Ak. 99811

Dear Governor Cowper:

We feel the time has come where we must express some deep concerns over the direction the course of events has taken since the State's prejudicial law allowing some citizens access to common property resources, while barring others, was struck down in the McDowell case. The lack of leadership by our delegation in Washington is especially disheartening, while your statements at the Egan Forum Friday, January 19, at least offer some hope for those of us who have struggled all these long years to correct what we knew to be a grievously discriminatory situation.

There are a couple of factors though which have finally caused us to voice concern hoping some corrective action may be taken. To date those most closely involved with this issue within state government ranks have consistently held forth the solution to our current dilemma must be one which includes the blessing of only one segment of Alaska's population. We feel this is an unfortunate line of thinking and sincerely hope such is not the case.

Secondly, we feel this is not a Democratic nor a Republican issue; however, we do feel it is an issue which deserves a Democratic solution. In short we feel it would be entirely antithetical to Democratic principles if we were to permanently affix a discriminatory bias favoring one portion of Alaska's populace over another. If we are ever going to heal the scars which have been induced by this and other divisive issues, we must begin by finding solutions which treat citizens fairly and equally.


We are certainly not opposed to Alaskans being accorded the opportunity to follow a lifestyle which necessitates living off of wild resources; however, any regulatory or statutory provision which recognizes such a lifestyle as a preference among beneficial uses must be crafted in such a way so as to provide the same priority access for any citizen who chooses to so live, regardless of where they reside. Further, we must

strive to avert escalating any further divisiveness, racial or otherwise, by insuring all groups will be treated equally.

Before closing, we would like to offer a couple of what we feel to be constructive suggestions. One, we should move to avoid any chaos which will lead to problems with federal management by immediately convening the Boards of Fish and Game to promulgate reasonable regulations. It is our understanding Secretary of Interior Lujan feels any gesture on our part to begin the long process of resolving this issue will assist him in holding off on pre-empting state management. The second item which we feel must be accomplished would be the amendment of ANILCA either legislatively or through a suit filed by the State.

Thank you for taking the time to contemplate these salient points. As our Governor, we look to you for leadership in resolving this issue and hope all groups with a vested interest will be brought into the process. We further look to you in upholding the public trust which should be central to any longstanding and meaningful solution to this ongoing controversy.

Sincerely Yours,



Ed Grasser, Director  
Legislative Affairs

cc: Tim Kelly, Pres., Alaska State Senate  
Sam Cotten, Speaker, Alaska House of Rep.  
Sen. Bettye Fahrenkamp, Chair Senate Resources  
Rep. Curt Menard, Co-chair House Resources  
Rep. Cliff Davidson, Co-chair House Resources ✓  
Don Collingsworth, Commissioner ADF&G



# ALASKA OUTDOOR COUNCIL, INC.

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The argument is simple. If the Federal government assumes management of fish and wildlife resources in Alaska, the same thing could happen in other states having any Federal inholdings. The cost of Federal management of Alaska's resources would be borne by the taxpayers of the other states. Finally, under a Federal take-over, Alaskan fish and wildlife resources would not be managed for

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It should be remembered that Native people have been awarded 44,000,000 acres of land which is held in fee simple. Like any landowners Native people can and do refuse to allow others to hunt on, and fish on, their land during seasons established by the Department. This alone can serve as a way to limit competition for fish and game stocks, although it is recognized that at present, enforcement of trespass laws are difficult.

all Americans, but, under the terms of ANILCA, these resources would be managed only for the rural subsistence users living in Alaska. How many non-Alaskans would be willing to pay for that program?

ANILCA has been amended nine times since 1980. Our Congressional delegation should not have trouble doing it one more time, if the State's plan is a reasonable one.

The State of Alaska should be prepared to litigate the question of Federal Management, if it is unsuccessful in a modification of ANILCA.

The State should immediately initiate litigation in the event that the Congressional delegation is unable, or unwilling to obtain the necessary changes in ANILCA. The Alaska Constitution, including the "common use" and equal treatment provisions, was approved by Congress at the time of statehood. The threat of Federal take-over management, through the ANILCA legislation, flies in the face of the implied approval of Alaska's right to manage its own fish and wildlife resources granted through the Statehood process.



## Alaska Professional Sportsmen's Association

Representing Alaska's Big Game Guides, Outfitters, Air Taxis, Sport Fishing Guides,  
Lodges, Support Industries and Alaskan Sportsmen

March 1990

P.O. Box 190842 • Anchorage, Alaska 99518

### Regular Meetings

The Board of Directors/Executive Committee meet regularly on the first and third Tuesday of each month at 6:30 pm at the Days Inn, Conference Room 201. If you are in town you are most welcome to attend.

The APSA Spring general membership meeting will be April 6, Friday 9 a.m. - 1:00 p.m. at the Clarion Hotel.

The Great Alaska Sportsman Show begins that afternoon.

### SPECIAL SUBSISTENCE ISSUE

As a result of federal court and State Supreme Court decisions the subsistence issue is now back before the Legislature and possibly Congress. As a service to our members. We have reprinted a number of opinions on the issue from various perspectives. We have also addressed some of the facts and fictions of what federal law says.

APSA will be following this issue closely. If you have an opinion you would like to share write APSA.

## Subsistence Under Federal Law

### WHAT IS IT? WHAT ISN'T IT?

With the passage of ANILCA IN 1980 the Congress placed into law a new and controversial concept - A Subsistence preference for 'rural' Alaskans. What does Title VIII of ANILCA really say - and what does it not say?

The subsistence preference is a civil right granted by Congress to individuals who reside in 'rural' communities or areas of Alaska.

This civil right may be gained or lost depending on the 'status' of the community or area as 'rural'. It is not a right granted in perpetuity.

Subsistence preference is not a property right, the user does not have any right of ownership over subsistence resources until taken.

This civil right is not granted to a race or culture but to people in 'rural' communities or areas. Native and non-Native have been granted preference.

Can this preference be granted on the basis of 'need'? Not for the first tier of subsistence allocations but if a specific wildlife or fish or other resource is under stress (sustained yield can not be assured under present allocations) then the subsistence user most directly dependent on the resource has a higher priority.

How did Congress define 'rural'? It didn't. That's one of the major problems. Under other federal laws 'rural' is defined as a community of 2,500 or less. Given previous federal court decisions and the recent State Supreme Court decision the population trigger used by the U.S. Census Bureau is about all that is left.

What did Congress say about the State of Alaska's role in Subsistence?

Congress found the State competent to manage all fish and game and other resources (including subsistence resources) within the borders of the state regardless of land ownership. Yes, that includes federal (public) lands. However, in some Wildlife Refuges and units of the National Park System different philosophies of management are required by ANILCA then are often practiced by the State. Enhancement programs are often not allowed on many federal lands due to specific language in ANILCA that require the resources to be managed in "their natural state".

But how does the State manage fish and game on federal lands now? Under a Master Memorandum of Agreement which was signed by Governor Hammond and the Secretary of Interior in 1981.

(continued on page 3)

## MESSAGE FROM THE PRESIDENT

The Task Force has completed its work and is no longer in existence, however, it has left us with fifteen crisp, new pages of legislation to consider. The recommendations of the task force are calling for a new guide area permitting system. The members of the task force in general felt that this was the best system to manage the big game resources of the state on state, private and federal lands and the best system to manage the guide/outfitter industry. The bill numbers are SB 422 and HB 448, you can obtain copies of the legislation from Senator Faiks office or the House and Senate Resource Committees.

This is very intricate and complicated legislation. It calls for establishing hundreds of guide areas throughout the state, with a system of individual guide qualifications consisting partially of an operational plan to be submitted by each guide/outfitter

(continued on page 2)

## President's Message (continued from page 1)

for each area of interest to the guide/outfitter. These operational plans must then be reviewed by the Commercial Services Board along with seven or eight other criteria to determine the most qualified guide/outfitter applicant for the area in question. A wildlife conservation fee of \$25 for each big game animal and \$5 for each deer shall be paid by all Commercial Use Permit holder's to the State of Alaska. This includes animals harvested by residents and nonresidents alike, the justification is that the hunter uses a commercial service provider who is receiving income from the commercial use of the resource therefore the State must receive a benefit.

At least two good things may come from this legislation; the three GMU restriction on guide/outfitters has been lifted because this will not be necessary if the new area system is implemented, and the task force has recommended the State seek a new memorandum of agreement with the Federal land managers re-asserting state's rights to manage fish and game on federal lands.

Be sure to get a copy of the proposed legislation, study it and comment to your legislators and to the APSA.

Remember that your board of directors is meeting the first and third Tuesdays of every month in Anchorage at the Days Inn. This meeting is open to all members and their guests, your attendance is encouraged and needed.

I made an error in the last newsletter; any interim outfitter is eligible to take the guide/outfitter exam this March. You need only to be present for the exam and to pay the exam fee, there is no sign-up deadline for interim outfitters. Contact Kurt West with Occupational Licensing in Juneau for more information and a study packet. Contact me for information on study groups for the guide/outfitter exam.

Nick Pierskalla

## NEW GUIDE/OUTFITTER/TRANSPORTER LEGISLATION INTRODUCED

By request of the Governor the House and Senate Resources Committees introduced legislation developed by the Task Force on Guiding and Big Game. Senate Bill 422 and its companion House Bill 448 were introduced, as a courtesy to the Governor, at the end of January.

Although APSA has reviewed drafts of this legislation, President Nick, who served on the Governor's Task Force, had not seen the final legislation by press time. The APSA Legislative Committee will be reviewing these bills closely and will bring recommendations to the APSA General Membership meeting April 6th just before the Great Alaska Sportsman's Show in Anchorage. Plan to attend as the position APSA takes on this important legislation will make a difference in how you do business in the future.

Copies of each bill are available at your local Legislative Information Office. If you can not visit an LIO call APSA and we will send you a copy of the legislation.

## ALEX TARNAI WINS LAWSUIT

Alex Tarnai, a Hungarian-born trapper and guide and the only full-time resident of the Nowitna National Wildlife Refuge, a 2 million acre area of rivers, forest, canyons and foothills midway between Fairbanks and the Bering Sea won his lawsuit against the US Fish and Wildlife Service.

In 1985, Tarnai and a friend (a FWS employee), planned to enjoy each others company for a week while Tarnai trapped. The FWS gave him a ticket for using a subsistence cabin for recreational purposes. The "recreation" was the visit of his friend. The FWS employee was threatened, by the Refuge Manager, with a citation if she visited Tarnai. She was also told she might loose her job with the FWS.

The Constitution of the United States guarantees each American the right of free association, at least that is what a number of judges told APSA when this case was brought to their attention. And the judge who ruled in favor of Tarnai agreed.

But this would not have happened if Tarnai had not sued. It also would not have happened if Tarnai had accepted, what we are told was, a \$50,000 settlement offer by the FWS. Tarnai said no - and now we have a federal judges opinion that gives guidance to federal agencies on the limitations they can put on our rights within federal areas.

Thanks Tarnai and thanks Leslie - at least we know there are two Alaskans willing to fight their tor rights.

## APSA JOINS INTERNATIONAL SHOOTING & HUNTING ALLIANCE

G. Ray Arnett, President of the International Shooting & Hunting Alliance has agreed to represent APSA in Washington, DC. Arnett is a former Assistant Secretary of Interior for Fish, Wildlife and Parks, former Alaskan (brought in the discovery well in Kenai), and former National President of the NRA.

Arnett also agreed to allow ISHA General Counsel, Stephen Boynton to be a Co-counsel or legal advisor to APSA. Arnett also joined APSA as a supporting member.

As you will recall, President Nick met with Arnett and Boynton while in Washington DC. Nick has stated that the decision by Arnett is welcome news given the problems Alaskan sportsmen face in Congress. The ISHA has been very involved in establishing the new Sportsmen's Caucus in Congress.

## Subsistence (continued from page 1)

What is the role of the Federal Agencies then?

To monitor and cooperate on species management and to manage the habitat within the conservation System Unit. In units of the National Park Service habitat management is approached with a different philosophy than most other agencies "Put a fence around it, allow only those the NPS believes appropriated through the gate, under sever stipulations, and 'watch' don't manage the resource." Never, if ever, manage the resource, but always manage the people. Regardless what befalls the resource, by man or nature, just watch - don't help.

But what if the Feds come in and take over subsistence management?

No federal agency has any basis, under ANILCA, to manage any subsistence resources outside of federal (public) lands. The only exceptions are species under the Marine Mammal Protection Act, Endangered Species Act or International Treaties and in most cases this is done in cooperation with the State.

Then what does federal 'take over' really mean? Good question.

The only example we have to help Alaskans understand what Federal take over of subsistence resources on federal lands mean is the DRAFT Federal Subsistence Resource Management Program developed by a multi-agency federal task force in 1986.

Basically federal 'take over' under that program, which has never been released to the people of Alaska for review and comment, would establish a Federal Subsistence Resource Management Board (see chart). This board would review the recommendations of the State Boards of Fish and Game as well as the National Park Subsistence Advisory Commissions and make a formal determination that recommendations were or were not consistent with Title VIII of ANILCA and publish federal resource allocation regulations each year.

Do the Fed's really want to take over? No, but there are some agencies like the NPS that see this as an opportunity to extend their regulatory controls over users.

The Fed's can not afford, financially or politically to "take over". Such an act would pit village against village, rural community against "area" residents and federal managers against state managers for those species that migrate in and out of federal jurisdiction.

Why hasn't the Federal Plan been released? Because of politics and only politics.

The Federal Plan was written to be published in the Federal Register whether the State was or was not in compliance with Title VIII of ANILCA. This was done in anticipation of possible future changes in State law by the Legislature or the Courts. The Federal Subsistence Resource Management Plan MUST be immediately released for public review and comment - and not held in SECRET. It must not be published under federal emergency regulatory authority which does not allow Alaskans a reasonable opportunity to review and comment on the plan before it goes into effect.

Is the Federal government helping Alaska solve the legal and management problems created by ANILCA and the State Supreme Court decision? No. The Fed's have gone into hiding. They do not have a solution that would allow the State to pass a law that would be in compliance with ANILCA Title VIII and in conformance with Article VIII of our State Constitution.

What can I do to help?

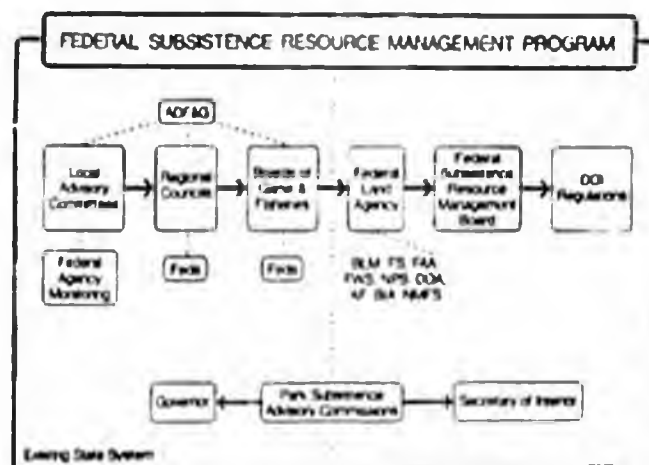
Every Alaskan, Native or non-Native, urban dweller or rural citizen, sportsperson or couch potato must DEMAND that the Federal agencies come out of the closet and sit down with State officials and cooperate. The problem was created by Congress, in a poorly worded, patchwork law that does not define "rural" - it was not created by the State of Alaska.

DEMAND that the federal plan be published before it goes into effect. If it were published then Alaskans could know and understand what the possible Federal take over means and does not mean. Alaskans deserve the right, under the Federal Administrative Procedures Act to see and discuss this plan before it goes into effect, even if it never does.

Support your legislature as it wrestles with its responsibilities. Alaska must craft what ever law Alaska believes is in the best interest of Alaskans - not Congress.

But Alaskans must not wait for leadership, because it will not come from Juneau or Washington, D.C. If we are a State, as any other State, if we are a people that cares about our destiny then each Alaskan must take pen in hand and write the Secretary of the Interior and DEMAND fairness under the law. Demand the federal agencies come to the table. Demand the federal DRAFT plan be released NOW. It only takes a moment but if each of you take action today it can cause a tidal wave.

*(Prior to leaving the US FWS, Ric Davidge served as the Chairman of the Federal multi-agency task force that wrote the federal plan. Since 1986 he has tried to have it released so that Alaskans can review and make comments before it goes into effect.)*



## 1990 Membership Drive Underway

The response from members of APSA to the "re-up" package has been very good. We anticipate the new Code of Ethics to be printed by March and every member will have a framable copy to go with your Membership Certificate. In the future you will receive "year" stamps which can be placed on the bottom of your certificate when you re-up.

If you have not sent in your membership dues for 1990 we need them before March. We are trying to get all re-ups started at the beginning of each year.

Our Corporate Sponsorship Program is also underway and we will bring you an update in March. If you know of a business willing to support APSA let us know. The first 12 Corporate Sponsors (\$1,000) will receive banner recognition in the newsletter.

## Worth & Whitney Appointed To State Big Game Commercial Services Board

Governor Cowper has appointed Glen Alsworth, Mayor of the Lake and Peninsula Borough and owner/operator of Lake Clark Air, Inc. and a member of APSA since 1987 to the new Big Game Commercial Services Board along with Clark Whitney a Commercial Drift fisherman and also an APSA member since '87.

"We are delighted with the appointments of Glen and Clark to the Board", said President Nick. "Both gentlemen will bring an important perspective to State regulation of our industry," Nick continued.

The first meeting of the new Board was February 5 in Anchorage. If you want to contact Glen or Clark give the office a call.

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## APSA Co-Council Program Growing Fast

One of the programs that makes this organization different from other groups is our litigation program. In addition to the Legal Defense Fund and in order to be effective in litigation, APSA has requested a few outstanding attorneys to join APSA as Co-Councils.

In addition to providing ongoing legal advice to APSA, members with legal problems are referred to an APSA Co-Council as each has specific expertise in important areas of law germane to APSA and its goals and objectives.

As of press time the following attorneys have agreed to work with APSA as Co-Councils. Stephen S. Boynton, General Counsel for the International Shooting & Hunting Alliance in Washington, DC.

Jeff Parker, former Counsel to the Sierra Club, sportfishing guide and a member of the law firm of Adler, Jameson & Claraval in Anchorage. Jeff is recognized as one of Alaska's leading environmental attorneys.

Wayne Anthony Ross, Alaska's leading sportsman's attorney, a National Vice President of the National Rifle Association, recipient of many national awards for his advocacy of sportsman's issues in Alaska and across the nation.

Three other attorneys have been requested to join this impressive group and we anticipate their formal agreement this month.

If you have legal problems or just need some advice call the office and we can put you in touch with the right attorney.

## Alaska Outdoor Council Requests Nominations

Nominations for twelve conservation awards have been requested by the Outdoor Council. APSA is an active member of the Council and has been requested to forward any nominations our members believe appropriate. The awards offered are:

Fish and Wildlife Officer of the Year  
Waterfowl Conservationist of the Year  
Game Conservationist of the Year  
Fish Conservationist of the Year  
Water and Soils Conservationist of the Year  
Education Conservationist of the Year  
Conservationist Industry of the Year  
Forester Conservationist of the Year  
Conservationist Legislator of the Year  
AOC Organization of the Year  
Sportsman Conservationist of the Year  
Most Outstanding Member

If you have any recommendations please write APSA and provide the name, organization and explain why you have recommended this individual.

## APSA Members Appointed to Bristol Bay Salmon Enhancement Association Board

President Nick Pierskalla and member Jim Broady have been appointed to the Board of Directors of the Bristol Bay Salmon Enhancement Association. Broady serves as the alternate for Nick on the Board.

This is an important development, in that APSA is the only sportsman's group on the Board. If you are interested in what the Association is doing or have specific concerns regarding salmon enhancement in Bristol Bay give Nick or Jim a call.

## Alaska Supreme Court decisions send message to native population

By John Shively

In what can only be termed a double-barreled blast from a culturally biased shotgun, the Alaska Supreme Court has sent a message to Alaska natives, which will reverberate for years. During the week before Christmas, in two separate but legally related cases, the Alaska Supreme Court has told Alaska natives there is no room under the state constitution to assist them either in preserving their own culture or in helping them participate in Western culture.

In a case involving the state's local hire law, the supreme Court found it unconstitutional to attempt to help people in economically disadvantaged areas obtain jobs on state-funded projects. Although this case has implications for non-natives, there is no question that the most economically disadvantaged areas in the state are those areas primarily inhabited by Alaska's native people.

In the second case, the Supreme Court threw out the state's subsistence use of fish and game. The state's subsistence law, because the law favored rural residents over urban residents in subsistence use of fish and game. The state's subsistence law was an effort to resolve a very difficult and long-standing issue relating to the protection of hunting and fishing rights which are the basis of the native culture.

There are several issues common to these cases. Both involved a split decision of the court. The local hire law saw a 3-2 division in the court, and the subsistence law a 4-1 division.

In both cases the Supreme Court was concerned with the concept of equal allocation and access. In the local hire law, the case was decided under the equal protection clause of the constitution. The subsistence decision was based on the concepts of equal access and common use found in the natural resources article of the constitution.

The Supreme Court in both cases seems to recognize that inequality is rampant in our society. The only question the court decides is who is going to be more unequal than whom.

In these cases the Supreme Court, in its very finite wisdom, decided that the primarily non-native urban society should have the upper hand over the primarily native rural society. In the local hire case, the job preference was available only if the state Department of Labor determined an area to be economically depressed. In such areas, the preference applied to

only 50 percent of the jobs for which there were qualified local residents.

Thus, there were plenty of opportunities for urban workers to participate in rural projects. However, the Supreme Court refused, even in this limited manner, to assist people in rural Alaska in participating in Alaska's economy. Absent this kind of assistance, most of the jobs will go to urban residents who have direct access to union halls and to the headquarters of those construction companies which perform the work on most state-funded projects.

The decision on the state subsistence law is on the other end of the cultural scale. Rural Alaskans, particularly native people, depend on fish and game resources for a great deal of their livelihood.

In order to protect this life-style, the federal government passed a law requiring the state to adopt subsistence legislation that gave preference—not exclusive use—in hunting and fishing to rural Alaskans. Sport hunting and fishing would still take place while this preference was exercised. The court has now dismembered this subsistence law.

It should be of some concern to citizens, who believe judicial decisions should be free of personal bias, that three of the four justices who decided to overturn the subsistence law have recently held sport hunting and/or sport fishing licenses. At the very least, this gives the appearance of a conflict of interest, as their decision gives themselves and other urban sportsmen a potentially bigger piece of the Alaska's fish and game pie. Remember, this is the same Supreme Court which oversees a criminal justice system which incarcerates natives at a rate which is over twice their percentage of the population.

It is also worthy of note that major portions of the subsistence decision are based on the court's belief that the intent of a piece of federal legislation was directly incorporated into the Alaska's constitution. Native leaders might note with some irony that the title of that act was, appropriately, the White Act, and that its major purpose was to eliminate fishing rights for certain natives.

In both the local hire and subsistence cases, Chief Justice Warren Matthews, Justice Edmond Burke and Justice Daniel Moore found for urban non-natives.

Also in both cases, Justice Jay Rabinowitz found on the side of rural Alaskans. The fact that Justice Rabinowitz

is generally considered to be the most judicially distinguished justice of the five members of the Supreme Court should cause some people to think twice about what the Supreme Court has done.

Justice Allen Compton dissented from the opinion in the local hire case but joined with the majority in the subsistence case.

The key point here is to look at the message the Supreme Court has delivered to Alaska natives. The message would seem to be that, "We refuse to use the state constitution to preserve your subsistence culture or help you get jobs in the Western culture."

It is a devastating and tremendously significant message to those natives who for years have been told that, if they just work within the system, the system will recognize the importance of them as a distinct and important part of our Alaskan society.

The message is a sobering one. It would seem to give a great deal of credence to those leaders of the native community who promote a sovereign relationship with the federal government as the only logical method for solving the many difficult social, legal and economic problems facing Alaskan natives. Indeed, the United States Supreme Court has an almost 200 year tradition of protecting the rights of indigenous people.

The message delivered by the Supreme Court is every bit as explicit and blatant as those messages delivered by white judges during the declining days of racial segregation in the South, and the message delivered by George Armstrong Custer and his compatriots as they herded American Indians across the Western frontier. The court seems to be saying: "There are more of us white guys than you natives, and the more of us there are, the less we will leave for you."

Even though these Supreme Court decisions will be challenging to Alaska natives, these people have survived hardship for thousands of years. They were here long before institutions such as the Alaska Supreme Court were envisioned by mankind and will be here long after the justices of the Supreme Court have cashed out their state retirement and fled to some exotic southern climate.

Even though the Supreme Court found a unique way to say, "Merry Christmas" to Alaska natives, I believe the new challenges presented to the native leader-

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## Alaska Supreme Court

(continued from page 5)

ship will be met, just as other challenges have been met in the past. Alaska natives are survivors, and they will ultimately prevail. However, I am ashamed and saddened that the Alaska Supreme Court will not allow the state to participate in the resolution of these problems.

*John Shively is a vice president of NANA Regional Corporation. He is a former chairman of the state Board of Game and was chief of staff to Gov. Bill Sheffield.*

*Reprinted courtesy of Anchorage Times, January 3, 1990.*

## Personal Property Taxes & Local Rural Residency

Do you park your plane at Lake Hood during the winter? Do you own a home in Anchorage, but your residency record is at your lodge or business - but must pay personal property taxes to the Municipality of Anchorage? Have you been determined a "local rural resident" by the National Park Service which allows you to qualify under Title VIII of ANILCA as a "rural resident"?

Important questions which may decide your legal residency status. Some members have recently been notified by federal and state law enforcement officers that because of these confusing issues they will no longer be allowed to harvest fire wood or other "subsistence resources" in a Federal Park or Preserve. Even though they meet State of Alaska residency requirements under the law there is confusion.

Think hard about where you want to list your principle domicile - or establish your residence. Do you live any place more than six months and a day? It could make a big difference in how you are treated by the Fed's and the State.

Remember that conspiracy between government officials to deny you of your civil rights is a violation of the Federal Civil Rights Act. Think about it.

## Communicating Effectively with Washington, DC

It is important we let our representatives know how we feel about actions they take or do not take in our behalf. The best way

to let them know is write them a letter. It doesn't need to be long. It doesn't need to be typed. It does need to be a personal letter that conveys your thoughts in your words.

Think K I S S (keep it simple, stupid)

**BE BRIEF** What do you want them to do and why?

**BE ACCURATE** Tell them your side and substantiate it.

**BE POSITIVE** Concentrate on the good parts. • Don't knock the other side. • Offer Suggestions. • Suggest alternatives.

**BE SPECIFIC** Address the letter to your legislator. • Indicate which bill you are talking about. • Ask for the vote and a response.

**BE PERSISTENT** Be aware legislators maintain informal running counts pro and con on controversial legislation.

Addresses:

The Honorable Knute Knudson, Jr., Deputy Assistant Secretary, FWP, US Department of the Interior, Wash., DC. 20240.

Senator Ted Stevens (or) Frank Murkowski, U.S. Senate, Washington D.C. 20510.

Representative Don Young, U.S. House of Representatives, Washington D.C. 20515.

Senator (or) Representative Ak, State Senate (or) House, Pouch V Capitol Bldg, Juneau, AK 99811.

## Subsistence issue needs final solution

by Clem Tillion

The Chief Justice of the state Supreme Court's recent action—delaying the effective date of the courts decision striking down Alaska's subsistence laws that grant special preference to rural residents for the taking of fish and game resources in the areas in which they live—leaves me a little baffled.

It looks like the court wanted its decision to be available to the state legislature for its consideration and the Chief Justice probably only later realized that if the state was to close all subsistence to save the resource from an influx of urban hunters, it would have substantial negative impact on those depending on it this winter.

It's one of those cases where if they delayed their actions until the season was over the legislature would also be over.

Now what the Chief Justice's action, however admirable, has done, is tell the state its law is unconstitutional but we grant our permission to enforce an un-

constitutional law until July 1.

Well, thanks for the hand, Chief, but it sure puts the troopers in a tough position when you tell a cop to go out and arrest someone under a law already declared unconstitutional.

I know my years spent in writing law are far different than ruling on it, but in the four years I was chairman of the judiciary committee if one of the staff lawyers had told me "it's unconstitutional, Mr. Chairman, but I think we can still get convictions under it," I'd have eyed him like a black bull looking at a red calf and sent for a second opinion.

Unlike some in Anchorage, I happen to agree with the basic premise of our subsistence law, as did a majority of Alaskans as shown by the referendum that attempted to repeal the law via a statewide vote a few years back.

There are still Alaskans living on a non-cash or marginal cash life style and we should take into consideration that those who harvest resources to eat should have a preference so long as it is their only practical alternative.

With the exception of those seven native villages that refused to accept the land claims act, such as Gambell and Savoonga, the rest of our native people gave up their aboriginal rights in exchange for land and oil money. As such, it is not unreasonable for them to live under the same laws and regulations as any other citizen of the state living in like manner. Therein lies our dilemma.

Alaska is in the proverbial Catch-22 position: We are prohibited from writing racist law, not only by our state constitution but by the federal Civil Rights Act, an act that was opposed by the Council of North American Indians at the time of its passage as they foresaw the very problems facing Alaska today.

So what do we do?

The feds gave us the right to manage our fish and game resources as part of our statehood grant but Congress then passed other laws taking back much of which they had given us.

The one staring us in the face now states that if the state does not pass legislation granting rural residence priority over the fish and game resources on federal lands abutting the area they live, the management of those resources of the federal lands shall revert to the federal government.

If the federal law had even a need basis on their land use, however much

(continued on page 7)

## Subsistence issue

(continued from page 6)

some of us dislike the word need, we could write a legal law saying that citizen can hunt.

I hope our legislature can at least find a temporary solution, such as the prohibition against transporting subsistence hunters and fishermen by air, and a prohibition against the transporting by air or automobile, but this alone will not solve our problem for the federal law requires that we grant a rural preference

*Halibut Cove charter boat skipper Clem Tillion is a former president of the Alaska Senate.*

*Reprinted from the Anchorage Times 1/14/90*

## Subsistence ruling levels the playing field

By Wayne Ross

On WEDNESDAY, JAN. 3, The Anchorage Times printed an article by JOHN SHIVELY, vice-president of NANA REGIONAL CORPORATION. It has to be one of the most amazing articles I have read in the last 20 years. If you haven't seen it, and if you are interested in the subsistence issue, I'd suggest that you pick up a copy of Wednesday's Times.

Mr. Shively obviously was angry when he wrote the article. Mom always said that if you wrote something when you were

angry, you shouldn't mail it. Instead, wait until you had calmed down and then re-read what you had written. Then, chances were, if you had good sense, you'd tear it up and start over again. Clearly, Mr. Shively didn't have the benefit of this good advice. He must have sent in his column while he was still angry. He should have kept it and re-read it the next day. It must be embarrassing to him to see his angry words published.

Mr. Shively attempts to take the Alaska Supreme Court to task for its decision overturning the state's subsistence law. He accuses the court of being "culturally biased," possessing "finite wisdom," and of refusing "to preserve (native) subsistence culture." He accuses the court of being racist like "white judges during the declining days of racial segregation in the South" and of being like "George Armstrong Custer... as (he) herded American Indians across the Western Frontier."

You have to give Mr. Shively credit for one thing. He writes a very colorful article. Inaccurate. But colorful.

After reading the Supreme Court's decision, and later, Mr. Shively's article, I can only conclude that Mr. Shively never actually read the court's opinion. After all, Mr. Shively is an intelligent man, former chairman of the state Board of Game, and chief of staff for Gov. Sheffield. If Mr. Shively had read the actual opinion, he could not have come to the conclusions he did.

Mr. Shively claims the subsistence decision discriminates against natives. It does not. Instead, it restores equality to all Alaskans, native and non-native alike.

The state's subsistence law gave a priority to rural residents. This law made urban residents second-class citizens with less rights to fish and game resources than rural residents.

Many native people live in urban areas. Many non-native people live in rural areas. The state's subsistence law granted subsistence rights to non-native rural residents, while denying subsistence rights to urban natives. Indeed, one of the plaintiffs in the case that ultimately overturned this discriminatory law was a native who, simply because of where he chose to live, had been denied his subsistence rights.

Mr. Shively attempts to demonstrate bias on the part of several of the justices because they recently held "sport hunting and/or sport fishing licenses." He claims that because the justices held those licenses "this gives the appearance of a conflict of interest as their decision gives themselves and other urban sportsmen a potentially bigger piece of Alaska's fish and game pie." This argument makes as much sense as saying because a judge has a driver's license, he should not participate in deciding a drunk driving case. Nonsense, Mr. Shively.

The court's decision is fair and clear. Since Alaska's Constitution reserves all fish and game resources "for the common use," it is a violation of that constitution to discriminate in awarding those resources based upon where a person chooses to live.

Mr. Shively correctly points out that Alaskan natives have survived for

(continued on page 8)

Anyone Interested in submitting articles for the newsletter, please send copy to Ric Davidge



## JOIN ALASKA'S FASTEST GROWING PROFESSIONAL SPORTSMANS ASSOCIATION

### Membership Application

- Professional \$100.00
- Supporting \$25.00
- Charter \$1000.00
- Business Sponsor \$1000.00
- Legal Defense Fund \$1000.00

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Phone \_\_\_\_\_  
Business Represented \_\_\_\_\_  
Signature \_\_\_\_\_  
Date \_\_\_\_\_

## Subsistence ruling

(continued from page 7)

thousands of years, and that new challenges to the native leadership will be met. He claims, however, that he is "ashamed and saddened that the Alaska Supreme Court will not allow the state to participate in the resolution of these problems." Cheer up, Mr. Shively. The Supreme court said no such thing. The Supreme Court only held that in solving the subsistence problem, the state could not discriminate.

But what is the problem?

Remember this. Natives and non-natives alike have enjoyed subsistence hunting in Alaska for hundreds of years. Discrimination, however, reared its ugly head for the first time in 1978 when the Alaska Legislature enacted a subsistence law and later, when Congress enacted subsistence provisions in ANILCA. We can have subsistence hunting without discrimination. But we must not allow people like Mr. Shively to make it a racist issue.

It's an Alaskan issue, Mr. Shively. And we are all Alaskans. And as Alaskans, we can solve this problem. But, says the Alaska Supreme Court, in doing so, we must be fair to everyone.

Everyone. Mr. Shively. Are you listening?

*Wayne Anthony Ross is an attorney in private practice in Anchorage and second vice president of the National Rifle Association.*

*Reprinted from the Anchorage Times 1/7/90*

## THE BEST DEAL IN TOWN What do you get for your membership?

Member services are being expanded to include:

**Monthly Newsletter** - The newsletter not only tells you what has happened but what may happen in the coming months impacting your business.

**New patch, decals and membership cards** now available.

**Professional Support** - Our staff and professional committees represent decades of experience in recreation industries and in government. We are all here to help you operate your business with the least amount of conflict.

**Representation in Juneau and Washington D.C.** - Never sleep while Congress or the Alaska Legislature is in session - we don't. You receive professional and influential representation of your concerns in our state and national capitols. We review legislation that would impact your business and work hard to ensure that if new laws pass, they will help - not hurt.

**Legal Defense Fund** - A goal of the APSA is the establishment of a Legal Defense Fund (\$100,000 CD) to back up our efforts to protect your rights as sportsmen. With 100 members pledging \$1000 we are establishing this important tool. Remember money is muscle.

**General Liability Insurance/Bonding** - We are working with national organizations to obtain a group general liability policy for our members. We are also working on a self bonding program that should help meet your bonding requirements for operation on federal or state lands.

**Affiliate/Association Memberships** - As a member you will have affiliate status with major national groups also fighting for your rights. You will receive newsletters and other information on what is happening in Congress or other states that may effect you.

**Political Clout** - There is strength in numbers. This organization finds itself in the right place, at the right time, and with the right issues to advance the interests of sportsmen and women in Alaska.

**Saving on Legal Fees** - We are gathering a group of legal professionals to assist to our members. Additionally our staff is familiar with federal and state laws and assists members prepare a case with your lawyer.

**Law Enforcement Hot Line** - We coordinate law enforcement concerns and meet with top Federal and State law enforcement officials regularly. Your membership is an investment in your business. Many members have already found they spend more time developing their business and less time fighting with government by joining APSA. Compare the value, we are confident you will join.

Together we can make a difference.



Alaska Professional Sportsmen's Association  
P.O. Box 190842  
Anchorage, Alaska 99518



Davidson, Cliff  
P. O. Box V  
Juneau, AK 99811



# Alaska State Legislature

Please enter into the record my testimony to the House Resource  
committee name  
committee on RB-113/ HJR 88-74-90, dated March 10, 1990  
bill/subject

I am very reluctant to see any subsistence issue resolved by constitutional amendment.

- ① because my interests reflect (apparently) a minority viewpoint - the "common" use of natural resources without <sup>my</sup> being excluded - because I am white / and have a western european cultural heritage - and because I live in a moderately developed community (Kenai pen.)
- ② I do not like the appearance of "basic" human rights being mandated or influenced by "Majority Rule" -

For those reasons I am opposed to HJR<sup>#</sup> 88-74-90 OF these proposed resolutions / proposed constitutional amendments - I find find HJR -74 most tolerable.

Both HJR-88 and HJR 90 suggest "urban exclusion."

Of the bills under consideration, I find HB-415 most acceptable. "And then" only "IF" the following changes are made - next page

Signed: Walter Brown  
Testifier  
self  
Representing (Optional)  
P.O. Box 3502, Kenai AK 99611  
Address  
262-1908  
Phone No.

HB-415

page 2 - section 3 - new subsection (9)Delete Items

- (1) motorized vehicles, including motorized boats, aircraft, snow machines, trucks, and automobiles.
- (4) gill nets, seines, or long lines
- (5) traps or snares that the Board of Fisheries or Board of Game determines to be inhumane.  
(#5 - "inhumane" could be abused)

page 2 - section 4 - (29)

add/retain/put back in

[Gill Net, Seine] [Long Line]

I am deeply distressed by any appearance of an arbitrary determination of an "access" to natural resources based on where I live - how much money I earn or don't earn - the color of my skin - etc.

What ever happened to the "melting pot theory"  
Now instead of being able to utilize any or all of the various social/cultural heritages -

I am now compelled to align myself with some "Special Action" group or entity.

I fully realized that natural resources need to be "managed". It appears that more and more of those resources are managed for "special" groups - rather than for biological/habitat concerns.

I sure don't envy your job -

Walter Brown

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: POLLY WHEELER  
TITLE:  
ADDRESS: P.O. BOX 82291  
CITY: FAIRBANKS  
PHONE: N/R-

ZIP: 99708

BILL NO: HJR 74  
SUBJECT: CONST. AMDT: SUBSISTENCE PREFERENCE  
MESSAGE: I SUPPORT A CONSTITUTIONAL AMENDMENT TO PROVIDE A PREFERENCE FOR  
SUBSISTENCE USE OF ALASKA'S FISH AND WILDLIFE BASED ON LOCAL AND RURAL RESIDENCY  
THIS PREFERENCE HELPS PROVIDE THE OPPORTUNITY FOR ALASKA'S PEOPLE TO LIVE OFF  
THE LAND AND PRESERVE OR PARTICIPATE IN A RURAL LIFE STYLE. WE URBAN RESIDENTS  
HAVE ADEQUATE OPPORTUNITY TO HUNT AND FISH. EOM

POMID: 07105429  
DATE: 02/15/90  
TIME: 10:54:29  
LIONAME: FAIRBANKS LIO

COPIES: REPRESENTATIVES

JACKO  
BOYER  
DAVIS, M.  
KOPONEN  
SHARP  
MILLER  
MACLEAN  
KUBINA  
FOSTER  
GOLL  
GRUSSENDORF  
MENARD  
NAVARRE  
HUDSON  
FURNACE



*Ric Davidge*

*Alaska Public Policy Consultant*

(907) 536-1912 FAX (907) 562-1824

March 13, 1990

Alaska State Legislature  
PO Box 7  
Juneau, Alaska 99811

Legislator.

As most of you know I was the Chairman of the Federal Subsistence Resource Management Program Task Force in 1986 that wrote the federal plan. Since that time I have consistently followed the federal and state subsistence issues and remained a student of legislation and court decisions.

Attached, for your use and review, is a DRAFT Subsistence Bill that could pull you out of this mess. This legislation recognizes the uniqueness of federal lands in Alaska, the problems of Title VIII and the responsibilities and complexities of concurrent legislative jurisdiction in the management of fish and wildlife resources on federal lands.

This legislation also provides a definition of rural, consistent with existing federal law and programs and allows that definition to be modified by the US Census Bureau consistent with their normal delineation processes nationally.

This legislation will only apply to federal lands and not to state or private lands in Alaska as a Constitutional amendment would.

This legislation will not change anything significantly. The federal agencies are in the process of wrestling with the Kinitzi federal court decision as it applies to the definition of rural and the Secretary of Interior is considering an amendment to ANILCA to resolve that problem.

The passage of this legislation is consistent with Title VIII and its legislative history as it is constructed from Title VIII.

This legislation avoids a Constitutional amendment and the political problems I know most of you wish to avoid.

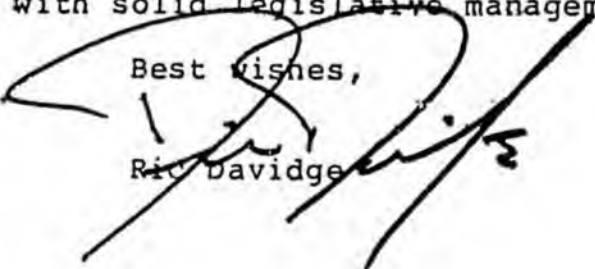
Can the State Legislature pass a law that only affects how it (the State) functions within its responsibility under concurrent legislative jurisdiction over federal lands? I believe it can in

light of the fact that federal lands within a state must be managed consistent with federal law and that when there is a conflict between federal and state law it is the federal law that prevails unless that federal law is determined unconstitutional by the US Supreme Court.

I suggest you present this as a Committee alternative. Hold a teleconference and find out what level of support or opposition you have. The most important new positions taken at the teleconference last Saturday are the number of sportsmen's groups supporting federal management rather than a Constitutional amendment.

I hope this is constructive. I know it will generate some opposition based on growing expectations of some Native leaders, but I believe it can prevail with solid legislative management.

Best wishes,

  
Ric Davidge

## PROPOSED SUBSISTENCE LAW

### FINDINGS

The Legislature finds and declares that -

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

(2) the situation on Federal lands in Alaska is unique in that; federal law mandates a subsistence preference on federal lands consistent with the provisions of The Alaska National Interest Land Claims Settlement Act (ANILCA), and fish and wildlife resources on federal lands are managed cooperatively by federal and state agencies under concurrent legislative jurisdiction.

(3) fish and wildlife habitat on federal lands is under direct federal management while fish and wildlife resources are under concurrent jurisdiction.

(4) with the passage of ANILCA the Congress of the United States found that the State of Alaska was competent to manage these resources and because of the State's management experience and management resources the State was determined as the appropriate lead agency for the management of fish and wildlife resources on federal lands.

(5) all management of fish and wildlife resources on federal lands must be consistent with federal law. In the event of federal/state law conflicts it is federal law that prevails.

(6) ANILCA does not define "rural" or "urban" resulting in significant difficulty in implementing a coordinated and cooperative management program

### POLICY

It is hereby declared to be the policy of the Legislature that;

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

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

population for nonwasteful subsistence uses shall be given preference on the federal lands over other consumptive uses; and

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

#### PREFERENCE FOR SUBSISTENCE USES

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

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

#### DEFINITIONS

As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; and for customary trade.

For the purposes of this Act, the term -

- (1) "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and
- (2) "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses -
  - (A) for other fish or game or their parts; or
  - (B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.
- (3) "rural" means any community whose population is customarily or traditionally dependent on the harvesting of fish and wildlife resources on federal lands with a population not greater than 2500 or as delineated by the US Census Bureau.

#### COOPERATIVE AGREEMENTS

The Governor may enter into cooperative agreements or otherwise cooperate with Federal agencies and other land owners including private land owners to effectuate the purposes of this Act.

10. 786-7853

MARCUS JENSEN'S TESTIMONY BEFORE HOUSE RESOURCE COMMITTEE,  
STATEWIDE HEARING ON H.B. 74, 88 and bill on urban subsistence

MR. CHAIRMAN: MY NAME IS MARCUS JENSEN AND I HAVE LIVED IN ALASKA OVER 60 YEARS. MY GRANDFATHER WAS IN NOME IN 1898, and HIS SON THOMAS SPENT MOST OF HIS LIFE IN NOME. THOMAS JENSEN SERVED IN THE TERRITORIAL LEGISLATURE IN 1925, SERVED ON THE FIRST ALASKA GAME COMMISSION, I HAVE RAISED MY FAMILY HERE IN ALASKA AND AM ONLY SAYING THIS TO SHOW THAT OUR ROOTS ARE PRETTY SOLID IN ALASKA. I AM INTERESTED IN WHAT HAPPENS TO OUR STATE AND THE DIRECTION IT TAKES.

I STARTED SERVING IN THE ALASKA TERRITORIAL LEGISLATURE IN 1949. I SERVED IN BOTH THE HOUSE AND SENATE, AND THE LAST TERM WAS IN 1962. I served on MANY COMMITTEES THAT HAD NATIVE MEMBERSHIP. WE SAT AS ONE PEOPLE, WE WORKED TOGETHER IN HARMONY AND SOLVED OUR PROBLEMS. THE WORD "SUBSISTENCE" WAS NEVER MENTIONED. EVERYONE WENT ABOUT THEIR BUSINESS AND TOOK CARE OF THEIR PERSONAL NEEDS IN THEIR OWN WAY.

FISH IS ONE OF THE BIGGEST FOOD SUPPLIES FOR ALL ALASKANS. OUR BIG RIVERS USUALLY CARRY THREE OR FOUR DIFFERENT <sup>SPECIES</sup> FROM SPRING THROUGH FALL. CERTAINLY DURING THAT TIME A PERSON COULD SET ASIDE A FEW FISH FOR HOME USE. FROM MY INFORMATION: MOST VILLAGES SMOKE OR FREEZE THEIR FISH FOR THEIR HOME SUPPLY. I THINK IF EACH VILLAGE HAD SIZEABLE CANNING EQUIPMENT IT WOULD ENLARGE THE DIFFERENT POSSIBILITIES OF USING THE FOOD.

ALASKA IS MADE UP OF MANY TYPES OF HABITAT. PERSONALLY I HAVE HUNTED WITH A PACKTRAIN ABOVE THE ARCTIC CIRCLE, SPENT OVER TWENTY YEARS HUNTING AND GUIDING IN THE ALASKA RANGE. EACH YEAR I HAVE HUNTED AND GUIDED IN SOUTHEASTERN ALASKA.

I WOULD LIKE TO GIVE THE COMMITTEE SOME OF MY OBSERVATIONS AS TO WHY THESE BILLS ARE NOT NEEDED. LET'S TAKE KODIAK ISLAND/ ANYONE FAMILIAR WITH THAT AREA KNOWS THAT THEY HAVE ABUNDANCE OF FISH AND DEER. THE SOUTHEAST PANHANDLE ACTUALLY IS ONE COMMUNITY BECAUSE THE AREA AND PEOPLE ARE ALL

JENSEN PAGE 2

LIVING IN THE SAME ECONOMY - FISHING, LUMBERING, TOURISM, AND PLENTY OF THE FOOD RESOURCES FOR EVERYONE.

THE ARCTIC CARIBOU HERD HAS CERTAINLY TAKEN CARE OF THAT AREA, AND WILL CONTINUE TO DO SO, BECAUSE WEATHER AND DISTANCE <sup>ALLOWS</sup> ~~HAS~~ VERY LITTLE URBAN PRESSURE.

THE NOME COASTLINE, WHERE WE ARE TALKING ABOUT MARINE MAMMALS, HAS NO COMPETITION.

TODAY ALL THE VILLAGES ON THE BIG RIVERS WHOSE PEOPLE ARE FISHERMEN HAVE LARGE INCOMES BECAUSE OF THE HIGH PRICE OF THE FISH TODAY. A GREAT NUMBER OF THEM MAKE \$100,000 OR MORE A YEAR, AND ARE ENJOYING A MUCH HIGHER MIXED DIET THAN THEY COULD ~~Y~~ YEARS BEFORE.

ONE THING THAT IS HARD FOR ME TO COMPREHEND IS WHY NATIVE LEADERSHIP IS PRESSING FOR A SUBSISTENCE BILL WHEN THEY HAVE FORTY FOUR MILLION ACRES OF PRIVATE LAND TO HUNT ON. I LOOK BACK ON HOW MANY ANIMALS WE USED TO TAKE OUT OF ONE SMALL VALLEY ~~AND~~ ~~AND~~ THEN THINK OF THE FORTY FOUR MILLION ACRES!

I WOULD ASK THIS COMMITTEE TO NOT PASS OUT ANY OF THESE BILLS. THEY ARE NOT NEEDED AND WILL ONLY CAUSE FRICTION AMONG OUR PEOPLE.

IT MIGHT BE OF INTEREST TO THE COMMITTEE THAT ALASKA IS THE ONLY STATE IN THE UNION WHERE THE FEDERAL GOVERNMENT HAS PASSED A LAW THAT EFFECTIVELY SAYS "YOUR CONSTITUTION IS WRONG, AND WE ARE GOING TO TELL YOU HOW TO RUN YOUR STATE!" THIS SEEMS SO WRONG THAT TO SATISFY MYSELF I DID A LITTLE RESEARCH, AND HERE IS WHAT I HAVE FOUND:

THE FEDERAL GOVERNMENT WAS ASKED TO COME IN AND CREATE LEGISLATION DEALING WITH THE ALLOCATION OF SUBSISTENCE. GOVERNOR HAMMOND, IN 1978 TESTIFIED BEFORE A FEDERAL HOUSE SUBCOMMITTEE, AND I QUOTE: "THE ALLOCATION OF RESOURCES TO BE CONSUMED AMONG THOSE WHO WOULD COMPETE FOR THE RIGHT TO CONSUME THEM IS A DIFFICULT PROBLEM AT BEST. I WOULD HOPE THAT THIS CONGRESS ESTABLISHES THE PRIORITY OF SUBSISTENCE USES WHERE THERE IS A CONFLICT. I

JENSEN PAGE 3

"I BELIEVE THAT THIS IS A LEGITIMATE SUBJECT FOR LEGISLATION, AND HOPE THAT THIS PRINCIPLE, WHICH HAS BEEN STATE POLICY FOR SOME TIME, MIGHT BE ENACTED INTO FEDERAL LAW." unquote

IT IS OBVIOUS THAT THIS FEDERAL LEGISLATION, TITLE 3 SUBSISTENCE, WAS DEVELOPED WITH THE HELP OF GOVERNOR HAMMOND'S STAFF AND THE NATIVE LEADERSHIP. WHEN THE LEGISLATION FIRST APPEARED IN PUBLIC IT WAS A REAL BOMBSHELL!

I AM FOR THE RURAL AREAS OBTAINING AS MUCH FOOD SUPPLY AS POSSIBLE FROM THE LAND. IT CAN BE DONE EFFECTIVELY BY METHOD AND MEANS, SEASON AND BAG LIMIT.

MARCH 10, 1990

March 14, 1990

Dear Concerned Elected Official:

Please evaluate the enclosed letter. It is the result of an honest effort to find a common ground for the people of Alaska. It is being distributed to six papers around the state, including the *Tundra Drums* and *Tundra Times*.

I must be honest to admit that because of my strong feelings on this matter, the original drafts were composed with considerable anger. It was anger at some elected officials, not our perceived 'opponents'. Nevertheless, I hope that the letter is received in the constructive manner in which it is intended.

If you wish to contact me, please don't hesitate to call- 745-4358.

Respectfully,

**Bob**

Robert H. Parkerson  
HC 02, Box 7630-A1  
Palmer, Alaska 99645

## **An Open Letter to Alaska's Elected Officials:**

On Saturday March 10, I listened to renewed conflict over access to Alaska's wildlife resources! The occasion was a teleconference held by the House Resources Committee. Again, Alaskans are arguing over rural priority for subsistence use of these resources. The contestants debated the issue of an amendment to the Alaska Constitution to achieve this priority.

Three major factors distract us from the real issue:

(1) The Alaska National Interest Lands Conservation Act (ANILCA) creates the threat that the federal government will manage Alaskan resources on federal lands if the state doesn't provide for preferential access to fish and game for "rural" citizens. This threat should offend and anger every Alaskan. Federal management is undesirable, but management jurisdiction can be settled after Alaskans fairly resolve the resource conflict.

(2) Another factor is the ease with which the conflict can be twisted to appear to be racial. The issue is not racial... though heated arguments quickly become ugly and racial.

(3) Partisan politics clouds the issue. It isn't partisan, though some partisans would make it so. Republican Senator Ted Stevens says the federal threat is our legislature's problem, and refuses to try amend ANILCA to keep Federal authorities from dictating state policy. That Act has been amended nine times. The issue is not partisan, but Democrat Governor Steve Cowper says the Democrats will solve the problem... then promotes a constitutional amendment which divides the people of Alaska. He furthermore will not challenge ANILCA in court. If I recall correctly, as a new governor he pledged to pull Alaskans together to solve problems.

Each side of this issue has valid concerns. Each has experienced threats from other Alaskans who are viewed as opponents in this conflict... However, there was one common thread underlying the comments of all participants in the teleconference. **The fish and game resources of Alaska are important to all Alaskans; Inupiat, Aleuts, Indians, Crucasians, Blacks, Orientals, urban and rural dwellers... all Alaskans. We all value the resources and need them for the survival of our Alaskan way of life. Subsistence use of fish and game is an Alaskan tradition. Subsistence must continue!**

We should draw together to solve Alaskan's subsistence needs. Instead of fighting over shares of the 'resource pie', we must secure more 'resource pies'.... more moose, more salmon, more timber, more caribou, more browse... more resources to satisfy the needs of all Alaskans. Professionals, managers can dramatically increase all

renewable resources. fish, game, timber. They are trained in these skills. They didn't train to become bureaucrats. They trained to become professionals: fish biologists, game biologists, foresters, research scientists. State government made them into bureaucrats. Let others be the bureaucrats, who deal with politicians, public relations and administration. Bureaucracy interferes with the work of our trained managers!

One brief example illustrates the seriousness of bureaucratic interference. Consider a dedicated former "moose biologist" who recently retired from the Alaska Department of Fish & Game. When discussing this problem, he stated many times, "Not once was I instructed to produce more moose!". What was he doing during his years of service to the Alaskans? He tried to manage moose, but also, he was forced to avoid offending one politician or another, defend his decisions to a noisy self proclaimed moose expert, or argue with a reluctant state forestry or habitat official about producing moose browse. This situation is common to all natural resource managers in the state. Ask a practicing forest manager what needs to be done to enhance Alaska forest production. He'll tell you. Ask him why it's not being done and you will hear of this same interference. You'll hear why there are limited resources. The resource conflict, as serious as it is, is a symptom of the real problem... a breakdown in professional resource management.

Only you, elected officials, have the authority to solve this serious problem. Change the way our renewable resources are managed. Support our professional managers. Free them from being bureaucratic political pawns. Painful reorganization of agencies will be necessary. Special interest will lose control. Those who are nourished by conflict will suffer, but the resources and Alaskans will benefit. This is your challenge! This is your opportunity!

What can be done? Remove political manipulation from management of Alaska's renewable resources. Oregon's and Missouri's system might provide some methods. Ask for help from the people and organizations who testified at the teleconference. You will find responses from talented Alaskans who have genuine interests in providing the needed resources for Alaskans. Don't polarize Alaskans! Your special interest should be all the people of Alaska.

Robert H. Parkerson, Ph. D.  
Former Director, Alaska Plant Materials Center  
Palmer, Alaska

RIC DAVIDGE  
3501 ADMIRALTY BAY  
ANCHORAGE, ALASKA 99515  
349-7329H 563-1912W

March 13, 1990

Chairpersons  
House and Senate Resources Committees  
Alaska State Legislature  
PO Box V  
Juneau, Alaska 99811

Senator Fahrenkamp & Representative Menard,

Attached for your use and review is a DRAFT Subsistence Bill that could pull you out of the mess. This legislation recognizes the uniqueness of federal lands, the problems of Title VIII and the responsibilities and complexities of concurrent legislative jurisdiction in the management of fish and wildlife resources on federal lands.

This legislation also provides a definition of rural, consistent with existing federal law and programs and allows that definition to be modified by the US Census Bureau consistent with their normal delineation processes nationally.

This legislation will only apply to federal lands and not to state or private lands in Alaska.

This legislation will not change anything significantly. The federal agencies are in the process of wrestling with the Kinitzi federal court decision as it applies to the definition of rural and the Secretary of Interior is considering an amendment to ANILCA to resolve that problem.

The passage of this legislation is consistent with Title VIII and its legislative history as it is constructed from Title VIII.

This legislation avoids a Constitutional amendment and the political problems I know most of you wish to avoid.

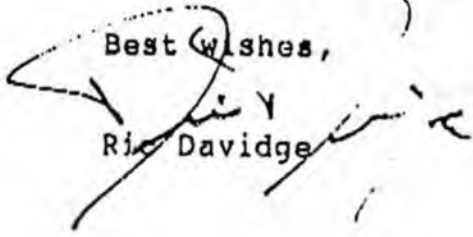
Can the State Legislature pass a law that only affects how it (the State) functions within its responsibility under concurrent legislative jurisdiction over federal lands? I believe it can in light of the fact that federal lands within a state must be managed consistent with federal law and that when there is a conflict between federal and state law it is the federal law that prevails unless that federal law is determined unconstitutional by the US Supreme Court.

I suggest you present this as a Committee alternative. Hold a teleconference and find out what level of support or opposition

you have. The most important new positions taken at the teleconference last Saturday are the number of sportsmen's groups supporting federal management rather than a Constitutional amendment.

I hope this is constructive. I know it will generate some opposition based on growing expectations of some Native leaders, but I believe it can prevail with solid legislative management.

Best wishes,

  
Ric Davidge

## PROPOSED SUBSISTENCE LAW

## FINDINGS

The Legislature finds and declares that -

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

(2) the situation on Federal lands in Alaska is unique in that; federal law mandates a subsistence preference on federal lands consistent with the provisions of The Alaska National Interest Land Claims Settlement Act (ANILCA), and fish and wildlife resources on federal lands are managed cooperatively by federal and state agencies under concurrent legislative jurisdiction.

(3) fish and wildlife habitat on federal lands is under direct federal management while fish and wildlife resources are under concurrent jurisdiction.

(4) with the passage of ANILCA the Congress of the United States found that the State of Alaska was competent to manage these resources and because of the State's management experience and management resources the State was determined as the appropriate lead agency for the management of fish and wildlife resources on federal lands.

(5) all management of fish and wildlife resources on federal lands must be consistent with federal law. In the event of federal/state law conflicts it is federal law that prevails.

(6) ANILCA does not define "rural" or "urban" resulting in significant difficulty in implementing a coordinated and cooperative management program

## POLICY

It is hereby declared to be the policy of the Legislature that;

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

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

population for nonwasteful subsistence uses shall be given preference on the federal lands over other consumptive uses; and

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

#### PREFERENCE FOR SUBSISTENCE USES

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

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

#### DEFINITIONS

As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; and for customary trade.

For the purposes of this Act, the term -

(1) "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses -

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

(3) "rural" means any community whose population is customarily or traditionally dependent on the harvesting of fish and wildlife resources on federal lands with a population not greater than 2500 or as delineated by the US Census Bureau.

(4) "urban" means any community whose population is customarily or traditionally dependent on the harvesting of fish and wildlife resources on federal lands with a combined population greater than 2500 or as delineated by the US Census Bureau.

**COOPERATIVE AGREEMENTS**

The Governor may enter into cooperative agreements or otherwise cooperate with Federal agencies and other land owners including private land owners to effectuate the purposes of this Act.



# Alaska State Legislature

Please enter into the record my testimony to the Resources - House  
 committee name  
 committee on HJR 74  
HJR 88, dated 3/10/90  
HJR bill/subject

(Attached)

- (A) "Prevalence of Diabetes Mellitus in Alaskan Eskimos, Inuits, and Aleuts" (DIABETES CARE 11:673-700, 1988)
- (B) "DIABETES MELLITUS IN ALASKA NATIVES"  
 Arctic Investigations Laboratory, CENTERS for Disease Control (Program Notes No. #6 3/87)

Signed: NEEL J. Murphy MD  
 Testifier

(SEARHC) South East Alaska Regional Health Corp.  
 Representing (Optional)

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 Address

747 5485  
 Phone No.

# Prevalence of Diabetes Mellitus in Alaskan Eskimos, Indians, and Aleuts

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 Dorothy Gohdes, MD  
 Neil J. Murphy, MD

The prevalence of diabetes mellitus in Alaska Natives has been thought to be low, but no survey of this condition in all natives has been conducted. Medical records from 1979 to 1985 were reviewed to determine the prevalence of diagnosed diabetes mellitus in Alaska Natives. Computerized outpatient and inpatient medical record data and clinician reports were used to identify cases. As of December 1985, 610 living Alaska Natives fulfilled diagnostic criteria for diabetes. Type II diabetes mellitus was found in 364 subjects, type I diabetes was found in 13 subjects, and unspecified type of diabetes was found in 31 subjects. The overall age-adjusted prevalence of diabetes mellitus, 15.7/1000, was lower than the overall United States rate of 24.7/1000. However, age-adjusted prevalence varied considerably by ethnic group; the prevalence was 27.2/1000 among Aleuts, 22.0/1000 among Alaskan Indians, and 8.8/1000 among Alaskan Eskimos. Rates within the Eskimo subgroups varied by a factor of four. Compared with previous reports, the prevalence of diabetes mellitus in Alaskan Eskimos appears to have increased. Diabetes mellitus is no longer a rare condition among Alaska Natives. *Diabetes Care* 11:683-700, 1988

**S**tudies of Alaska Natives and other arctic indigenous populations have indicated a low prevalence of diabetes mellitus compared with the 1980 United States prevalence of 24.7/1000 for all races (1). A 1957 survey of 16,000 Alaskan Eskimos revealed 3-6 cases, depending on diagnostic criteria, for a crude prevalence of 0.2-0.4/1000 (2). Reports over the subsequent 15 yr revealed an increasing, but still low, prevalence of glucose intolerance in Alaskan Eskimos (3,4). Reviews of historic information indicate low prevalence rates in several Eskimo groups (5-9). In

the 1960s a study of Alaskan Athabaskan Indians reinterpreted with 1985 World Health Organization (WHO) diagnostic criteria, identified 3 cases among 306 subjects >20 yr old (9.8/1000) screened by oral glucose tolerance test (OGTT; 10). The low prevalence of diabetes in arctic populations is in contrast to that among American Indians, who have experienced a dramatic increase in diabetes prevalence during the twentieth century to rates as high as 341/1000 in the Pima Indians of Arizona (6,11-13).

In recent years, several clinicians in Alaska have noted an apparent increase in the number of Alaska Natives with diabetes. Because of these observations, a project was initiated in 1985 to develop a diabetes registry to improve patient care and to define the magnitude of the problem of diabetes among Alaska Natives. We describe the prevalence of diabetes among Alaska Natives as of 31 December 1985 and compare it with previous data.

## PATIENTS AND METHODS

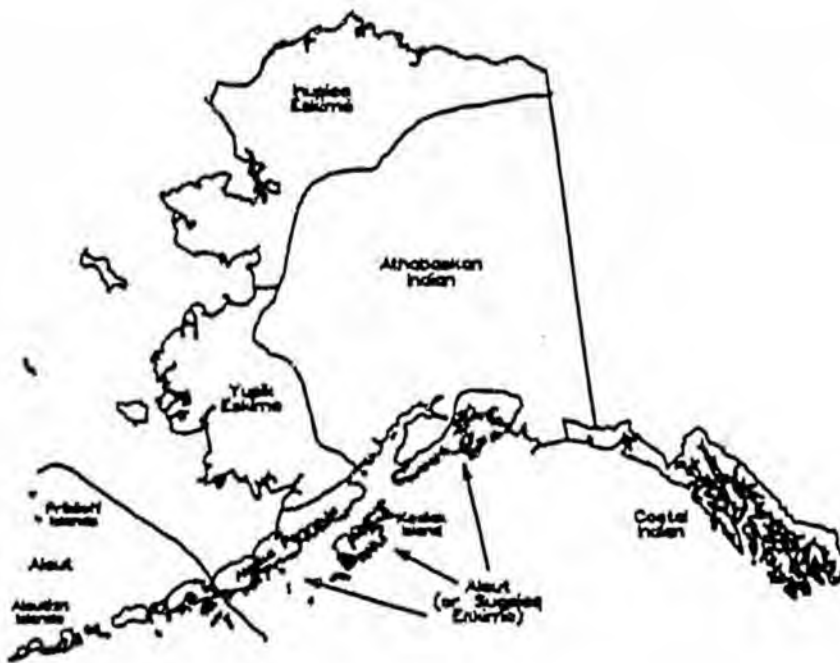
The Alaska Native population consists of three major ethnic groups, Eskimos, Indians, and Aleuts (14). These major groups may be further subdivided into linguistic groups that have traditionally occupied certain geo-

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The opinions expressed in this article are those of the authors and do not necessarily reflect the views of the CDC.

**DIABETES MELLITUS IN ALASKA NATIVES**



**FIG. 1. Geographic distribution of native groups within Alaska.**

graphic areas of the state (15) (Fig. 1). The Eskimos can be divided into two major groups, the Inupiaq (northern) and the Yupik (southwestern) (16). Alaskan Indians include the Athabaskan tribes of the interior and the tribes of the Pacific Northwest coast (14). The Aleuts include the residents of the Aleutian and Pribilof Islands and from the tip of the Alaska Peninsula. The inhabitants of the remainder of the Alaska Peninsula, the Kodiak area, and coastal regions of southcentral Alaska identify themselves as Aleut although linguistic and anthropologic studies classify them as Sugpiaq Eskimos (15-17). In the current medical records system and in this report, the

term Aleut includes these groups. Comprehensive health care is available to all Alaska Natives directly through the Indian Health Service (IHS) or by contract with regional native health corporations. The state is divided into nine IHS service units (Fig. 2), each of which consists of a constellation of village clinics staffed by health aides and/or midlevel practitioners and a small referral hospital or clinic staffed by physicians. The 170-bed Alaska Native Medical Center in Anchorage serves as a tertiary referral center. In six of the nine service units the IHS offers the only full-service health care available; in all service units, IHS care is free of charge, including



**FIG. 2. Indian Health Service health delivery service units in Alaska.**

prescription medications. It is estimated that >90% of the Alaska Native population uses the IHS system in some way for health care.

Patients with diabetes were ascertained from a computerized health-care data base, the Patient Care Information System (PCIS), which was established by the IHS in Alaska in 1979. At the time it was established, all diagnoses on master problem lists from all charts at IHS facilities were entered into the data base. Since its inception, all inpatient and outpatient visits at IHS facilities in Alaska and outpatient visits at all but two native corporation facilities have been recorded in PCIS. Information recorded includes demographic data, narrative and International Classification of Diseases (ICD)-9-coded diagnoses for each in- or outpatient visit (including pharmacy visits), an active and inactive problem list, a location and provider code for each visit, and in some cases, laboratory values and medications prescribed. This system was used to obtain the names of all patients seen with diabetes and its ensuing complications by a physician, physician's assistant, or nurse practitioner between early 1979 and 31 December 1985. Names of patients for whom diabetes had been noted on the problem list before 1979 were also obtained. The ICD-9 codes used in the search were the following: 250-250.9, 357.2, 362.0-362.02, 366.41, 648.0, 648.8, 775.0, and 790.2, (see APPENDIX). The computerized health summary and/or the patients' charts were then reviewed either by one of the authors or by a physician or nurse at the patient's home facility to verify the diagnosis. As an additional verification check, the local physicians at each facility were asked to supply names of any diabetic patients meeting the criteria who had not been identified by the PCIS system. The two native corporation facilities that did not submit data to PCIS were the Nome Service Unit (population 5787) and Kodiak Island (population 2171; within the Anchorage Service Unit). For Nome, cases were ascertained from files of ICD-9-coded diagnoses maintained locally for each in- and outpatient visit. For Kodiak, cases were ascertained from a diabetes registry maintained locally. In all cases, records were reviewed for diagnostic criteria.

The diagnosis of diabetes was accepted if the records contained information meeting the 1985 WHO criteria for diabetes (18). In addition, patients were accepted as diabetic if records showed a history of oral hypoglycemic agent or insulin prescription. These criteria were used only for those whose available records did not include pretreatment laboratory values and whose glucose values while on medication were either not available or below the diabetic range.

Cases of diabetes were classified as type II if specified as *adult onset, non-insulin dependent*, or type II in the diagnosis or if management had included diet alone or oral hypoglycemic agents. The diagnosis of type I diabetes was accepted only when all of the following were true: type I or juvenile onset noted by the primary physician, continuous management with insulin, and a history of either ketoacidosis or a labile glycemic response

to insulin consistent with type I diabetes. The term *insulin-dependent diabetes* was not accepted as equivalent to type I because in many cases this term referred to a type II diabetic patient on insulin. The designation *diabetes, type unspecified* was used for cases in which a clear-cut distinction was not possible based on the information available to the authors. Diabetes secondary to other conditions was included in this group.

Two other groups of patients were identified. An impaired glucose tolerance group included patients with at least one fasting plasma glucose level of 115-139 mg/dl or at least one random or 2-h glucose level of 140-199 mg/dl. Patients with a past diagnosis of gestational diabetes were included in this group. A "possible diabetes" group consisted of patients with a history of one fasting plasma glucose level of  $\geq 140$  mg/dl or one random or 2-h plasma glucose level of  $\geq 200$  mg/dl.

Ethnicity and blood quantum (i.e., self-declared proportion of native ancestry) were taken from the PCIS data base or, if not present in this data base, from local hospital or clinic records. Patients were classified as Eskimo, Alaskan Indian, or Aleut. For rate calculations, IHS estimates of the 1985 population for all Alaska Natives, for each ethnic group, and for each service unit were used. Estimates of the total population and each service unit population were based on the 1980 United States census corrected for births and deaths in subsequent years. The proportion of the total represented by each age, sex, and ethnic group (Eskimo, Indian, Aleut) was assumed to be constant from 1980 to 1985. Age- and sex-specific population data for each ethnic group were based on the 1980 distribution, applied to the 1985 estimated ethnic populations.

The Alaska rates were age-adjusted to the 1980 United States rates for all races by the direct method (19). Comparisons between age-adjusted rates were made with the method of Chiang as described by Lilienfeld and Lilienfeld (20). Comparison of crude rates was done with  $\chi^2$  techniques to enable an overall test to be performed. For multiple pairwise comparisons of rates, an adjusted Bonferroni *P* value was used (21).

## RESULTS

We identified 1585 patient records containing the ICD-9 codes listed in the PCIS system (APPENDIX). Service unit physicians identified an additional 22 patients, 14 of whom were from the two clinics that did not report outpatient visits to PCIS. Of the 1607 records reviewed, 610 Alaska Natives residing in Alaska at the end of 1985 met the criteria for diabetes mellitus. An additional 72 patients had evidence of impaired glucose tolerance, and 34 patients had possible diabetes. The status of 35 patients was unknown, because of either incomplete records (8 patients) or incomplete residence information (27 patients) (Table 1). Most Alaska Native patients with an unspecified type of diabetes were probably type II

## DIABETES MELLITUS IN ALASKA NATIVES

**TABLE 1**  
Summary of diabetes classification of Alaska Natives based on medical record review, December 1985

Total records reviewed	1607
Eliminated from study*	856
Diabetes, total	610
Type I	15
Type II	564
Type unspecified	31
Evidence of impaired glucose tolerance	72
Possible diabetes	34
Incomplete records	8
Possible non-Alaskan residence	27

\*Due to non-Native race (431), no evidence for glucose tolerance abnormality (246), death (156), or duplication of records (23).

diabetic individuals based on age distribution. The exceptions were 2 pancreatectomized patients and 2 patients with a rare congenital syndrome of thiamine-dependent anemia with deafness and diabetes (22). Eight hundred fifty-six patients were eliminated from the study, 431 because of non-Native race, 246 because no evidence of glucose tolerance abnormality was found, 156 because of death before 31 December 1985, and 23 because of duplication of records. The 246 with no evidence of glucose intolerance included those with "rule out diabetes," "family history of diabetes," "wants check for diabetes," and other statements in the record that had been coded to diabetes.

The age-adjusted prevalence of diabetes among Alaska natives as of 31 December 1985 was 15.7/1000. There was a threefold variation within the population, with Eskimos showing an age-adjusted prevalence of 8.8, Indians 22.0, and Aleuts 27.2/1000. The age-adjusted Eskimo rate differed significantly from both the Indian ( $Z = 8.97$ ,  $P < .001$ ) and the Aleut ( $Z = 7.38$ ,  $P < .001$ ) rates, and the two latter were not significantly different ( $Z = 1.87$ ,  $P < .061$ ). Rates in all groups generally increased with age (Table 2). Age-specific rates after age 25 yr for Indians and Aleuts were similar to

United States rates, whereas those for Eskimos were lower (Fig. 3). After age 35 yr, age-specific rates among Eskimos were continually significantly lower than those of Aleuts, and after age 45 yr the age-specific rates for Eskimos were lower than those of Indians.

Further subdivision by service unit shows a fivefold variation in age-adjusted prevalence. A combined comparison of crude rates shows significant overall variation ( $\chi^2 = 150.3$ ,  $df = 8$ ,  $P < .001$ ), and pairwise comparisons of age-adjusted rates also showed multiple significant differences. The Yukon-Kuskokwim Delta Service Unit, whose population is ~94% Yupik Eskimo and 6% Athabaskan Indian, had the lowest prevalence at 5.8/1000, whereas the Annette Island Coastal Indian population had the highest rate at 31.1/1000 (Table 3). Most of the Aleut population is within the Anchorage Service Unit. Because the group of people noted as Aleut in the medical records contains both Aleuts and Sugpiaq Eskimos, we calculated age-adjusted prevalence rates per 1000 for subdivisions of the Aleut population. The age-adjusted rate for the Aleut residents of the Aleutian and Pribilof Islands (linguistically defined as Aleut) was 32.1 (43 cases, 2228 population). The population of St. Paul Island, one of the Pribilof Islands, had an exceptionally high rate of 69.2 (25 cases, 557 population) whereas the other Aleutian Aleuts had a rate of 20.0 ( $\chi^2 = 24.0$ ,  $df = 1$ ,  $P < .001$ ). The rate for Aleuts residing away from the Aleutian region (predominately Sugpiaq Eskimos) was 24.4 (96 cases, 7086 population). This represents the highest rate among the Eskimo linguistic groups.

The female-to-male prevalence rate ratio among all diabetic patients was 1.6:1. The female predominance was apparent in each major ethnic group and in each age group over 25 yr, with two exceptions: Eskimos aged 25-34 yr (10 cases, male rate equal to female rate) and Aleuts aged 35-44 yr (19 cases, male rate greater than female rate). Of people with type I diabetes, there were 7 male and 8 female patients.

Table 4 shows numbers of patients by native blood quantum and type of diabetes for the 449 patients for

**TABLE 2**  
Estimated 1985 Alaska Native populations, total diabetes cases, and age-specific prevalence rates per 1000

Age group (yr)	All native			Eskimo			Indian			Aleut		
	Population	Cases	Rate	Population	Cases	Rate	Population	Cases	Rate	Population	Cases	Rate
0-14	24,961	5	0.2	13,843	1	0.1	8231	1	0.1	2887	3	1.0
15-24	17,551	6	0.3	9512	2	0.2	5777	4	0.7	2262	0	0.0
25-34	11,526	24	2.1	5872	10	1.7	4175	7	1.7	1478	7	4.7
35-44	7300	60	8.2	3601	18	5.0	2719	23	8.5	980	19	19.4
45-54	5564	123	22.1	2853	31	10.9	1905	66	34.6	806	26	32.3
55-64	3579	170	47.5	1863	53	28.4	1203	81	67.3	513	36	70.2
≥65	3317	222	66.9	1765	64	36.3	1165	110	94.4	387	48	124.0
Totals												
Crude	73,798	610	8.3	39,308	179	4.6	25,176	292	11.6	9314	139	14.9
Age adjusted*			15.7			8.8			22.0			27.2

\*Adjusted to 1980 United States all races population.

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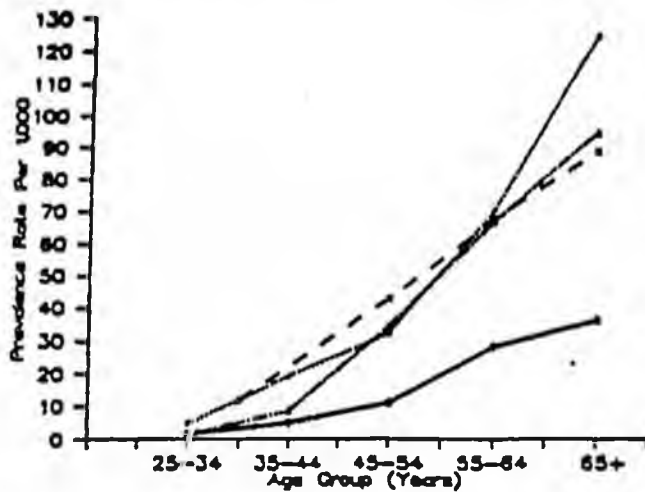


FIG. 2. Age-specific prevalence rates (per 1000) of diabetes for Alaska Natives, including Aleuts (dotted line), Eskimos (solid line), and Eskimos (solid line), for 1985 and for all races in United States (dashed line) for 1980.

whom both blood quantum and type of diabetes were specified. Of type I patients, only 1 (8%) was full-blooded. Of type II patients, 267 (61%) were full-blooded.

**DISCUSSION**

This study constitutes the first systematic attempt to determine the prevalence of diabetes among all Alaska Natives. There are several possible limitations in the data. A tendency toward underreporting in hospital- and clinic-based studies of diabetes has been described (23-26). However, our methods of case ascertainment ensured that any diabetes-related clinic visit to a physician or midlevel practitioner and any hospitalization for diabetes in the IHS system in Alaska during a 7-yr period would have been

noted. Although Alaska Native patients seeking care entirely from village health aides, the private sector, or out-of-state would have been missed, it is unlikely that this number would be large because the IHS offers the only comprehensive health care in six of nine regions and all care, including pharmacy service, is free of charge to Alaska Natives. The only regions not reporting outpatient visits to PCIS coded all outpatient visits locally and reported their diabetes cases to us. Overreporting could have occurred if local chart reviewers were not stringent in their application of the WHO criteria or if the patients accepted on the basis of insulin or oral agent management were not actually diabetic by WHO criteria. These are not likely to be large sources of error because both written and verbal instructions on diagnostic criteria were given.

Possible sources of error in the prevalence rates include inaccuracies in the 1985 estimated populations and errors in assignment of ethnicity within the medical records system. The United States census includes Canadian Indians, Canadian Eskimos, and American Indians with Alaskan Indians and Alaskan Eskimos in population data. Because patients from these groups were not included in our case definition, there may be a small underestimation of the prevalence in Indians and Eskimos, in that the denominators, but not the numerators, include immigrant individuals. Our prevalence rates are minimal estimates, because we ascertained only clinically diagnosed cases. A review of screening surveys in several populations demonstrated that for every known diabetes patient there was at least one undiagnosed case (27). Whether the same degree of underascertainment exists in this study is unknown.

It is difficult to compare prevalence rates of diabetes in different populations because of differing diagnostic criteria, case ascertainment methods, and age-standardization methods. Table 5 shows reported prevalence rates in several North American populations during the past two decades (1,11,24,28-31). Age-adjusted rates in Alaskan Indians and Aleuts are now roughly comparable to the rate for all races in the United States and slightly

TABLE 3  
Prevalence rates of diabetes in Alaska Natives by Indian Health Service Unit, December 1985

Service unit	Predominant ethnic group	Number of cases	1985 population	Crude rate per 1000	Age-adjusted rate per 1000*
Annette Island	Coastal Indian	21	1107	19.0	31.1
Mt. Edgecumbe	Coastal Indian	154	10,052	15.3	27.2
Anchorage	Mixed	193	19,998	9.7	20.7
Interior†	Athabaskan Indian	78	8522	9.2	16.7
Kotzebue	Inupiaq Eskimo	47	5221	9.0	16.6
Barrow	Inupiaq Eskimo	23	3021	7.6	14.0
Bristol Bay‡	Yupik Eskimo	23	4184	5.5	10.4
Norton Sound	Inupiaq Eskimo	23	5787	4.0	6.7
Yukon-Kuskokwim§	Yupik Eskimo	48	15,906	3.0	5.8

\*Age adjusted to 1980 United States all races population.  
 †Includes some Inupiaq Eskimos.  
 ‡Includes some Aleuts.  
 §Includes some Athabaskan Indians.

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**TABLE 4**  
Native blood quantum by type of diabetes

Quantum	Eskimo		Indian		Aleut		Total	
	n	Percent	n	Percent	n	Percent	n	Percent
<b>Type I</b>								
<1/2	2	33	2	67	2	50	6	46
1/2-7/8	3	50	1	33	2	50	6	46
Full	1	17	0	0	0	0	1	8
Total	6	100	3	100	4	100	13	100
<b>Type II</b>								
<1/2	5	3	21	12	19	17	45	10
1/2-7/8	24	17	51	28	49	44	124	28
Full	116	80	108	60	43	39	267	61
Total	145	100	180	100	111	100	436	99*

Data are presented for 449 Alaska Natives with specified quantum and specified type of diabetes; 161 patients had unspecified type and/or unknown blood quantum.

\*Does not add to 100% due to rounding.

exceed some North American Caucasian rates. Alaskan Eskimo rates are still lower than other rates reported for the United States. All Alaska Native rates are substantially lower than other American Indian rates.

Any interpretation of the differences in the prevalence of diabetes within the Alaska Native population must remain speculative. However, the dramatic increase in the prevalence of diabetes in many other populations after adoption of Western or urban life-styles has been well documented (6,27,32-37). With this phenomenon in mind, one possible interpretation of our data is that the groups with higher prevalence rates were the first to be influenced by Caucasian groups.

The history of Caucasian contact with each Alaska Native group has been well documented (38). The medically relevant consequences of this contact have also been chronicled (R. Fortuine, unpublished observa-

tions). The Aleuts, Sugpiaq Eskimos, and coastal Indians were heavily influenced by Russians in the late 1700s; the Inupiaq Eskimos and Athabaskan Indians experienced large-scale cultural influence in the mid to late 1800s; and the Yupik Eskimos, despite early Russian explorations, did not undergo major cultural changes until the late 1800s and early 1900s.

Of particular interest is the variation in prevalence within the Aleut and Eskimo groups. These two populations are believed to be related, as determined by linguistic and anthropologic studies (17). Both the Aleut and Sugpiaq groups are believed to have a higher percentage of Caucasian genetic heritage than other Alaska Native groups. Our data indicate that the Aleut residents of the Aleutian and Pribilof Islands have a somewhat higher prevalence of diabetes than does the Sugpiaq group. The prevalence in the latter group, which is considered by anthropologists to be an Eskimo population, is higher than those in the Yupik and Inupiaq Eskimo regions. Hence, it appears that Eskimos cannot be regarded as a homogeneous group in terms of diabetes risk and that the closely related Aleut-Eskimo group spans the range of age-adjusted prevalence rates among Alaska Natives.

The past prevalence of diabetes among Alaska Natives is not well documented; however, some historic data exist for Eskimos as previously noted. Despite major methodologic differences, it appears that the 1985 Eskimo crude rate of 4.6/1000 compared to the 1957 crude rate of 0.2-0.4/1000 indicates a true increase in the prevalence of diabetes among Eskimos. The survey published in 1957 included screening by OGTT as well as a survey of all facilities treating Alaskan Eskimos (2). The early study showed a total of 3-6 Eskimos with diabetes, depending on interpretation of the data. All were >35 yr old, yielding a rate of 0.8-1.6/1000 in that age group. The 1985 data shows a rate of 16.5/1000 in the group ≥35 yr old. The mean and median ages of the

**TABLE 5**  
Diabetes prevalence per 1000 in several populations

	Crude rates	Age-adjusted rates	Crude rates (≥35 yr)	Refs.
All Alaska Natives 1985	8.3	15.7*	14.6†	29.1
Alaskan Eskimos 1985	4.6	8.8*	8.2†	16.5
Alaskan Indians 1985	11.6	22.0*	20.5†	40.0
Alaskan Aleuts 1985	14.9	27.2*	25.1†	48.0
United States, all races 1979-1981		24.7		1
Minnesota, Caucasians, 1979-1982		16.0†		24
Minnesota, Caucasians, 1945-1970		16.1†		28
Canada, Caucasians, 1977	15.3			29
Pima Indians 1977		341.0‡		11
San Carlos Apache 1976			249	30
White River Apache 1970			108	30
Navajo 1970			127	30
Zuni 1976	43.0			31

\*Age adjusted to United States 1980 all races population.

†Age adjusted to United States 1970 Caucasian population.

‡Age adjusted to 1970 United States population.

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Alaska Native population  $\geq 35$  yr old have changed only slightly since 1960 (1960 mean and median 50.1 and 47.3, respectively; 1980 mean and median 51.7 and 49.2, respectively). Hence, it does not appear that changes in age structure account for the apparent increase in prevalence. Few studies of diabetes prevalence among Alaska Natives other than Eskimos exist. The screening study of 306 Athabaskan Indians  $>20$  yr old published in 1969 and reinterpreted by current WHO criteria reveals a prevalence as high as 9.8/1000 (10). This prevalence could be compared with our estimated rate of clinically recognized diabetes of 14.2/1000 in Athabaskan Indians  $>20$  yr old (62 cases, 4371 population). A 1972 screening study on St. Paul Island (Aleuts) revealed a 9.8% prevalence among those residents  $>10$  yr old compared to our rate of 5.6% in the same age group (25 cases, 447 population) (39). Note that the past studies involved screening by OGTT whereas our rates reflect only those with clinically recognized diabetes in populations in which screening for elevated glucose is not routine. Hence, past studies should have had greater sensitivity.

Among diabetic subjects with specified native blood quantum and diabetes type, most type II diabetic subjects were full-blooded, whereas only one type I patient was full-blooded. However, a relationship between the risk of diabetes and blood quantum cannot be determined from this study, because blood-quantum distribution in the nondiabetic population is unknown, and furthermore, blood quantum is usually self-stated. However, studies of American Indians with various blood quanta have found increased prevalence of type II diabetes in full-blooded individuals (40-42).

In conclusion, our study shows that diabetes is not a rare disease among Alaska Natives. Although still less common in Eskimos than in the rest of the United States population, diabetes appears to have increased in prevalence in the last few decades. The prevalence of this disease varies widely among the ethnic groups in Alaska, and even among Eskimo subgroups there are differences. The presence of diabetes in populations in which it was previously thought to be extremely rare is of concern. Continued study over the next several years should further clarify the prevalence and provide incidence rates. In view of the emergence of diabetes as a major problem among American Indians, the documented rates in Alaska Natives justify efforts at prevention through public education about risk factors (diet, obesity, sedentary lifestyle). Early detection through increased screening and coordinated efforts at rendering the best possible care to known diabetic individuals should help prevent complications.

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#### APPENDIX

ICD-9 codes used in computerized records search for diabetic patients

250	Diabetes mellitus
	250.0 without mention of complication
	250.1 with ketoacidosis
	250.2 with hyperosmolar coma
	250.3 with other coma
	250.4 with renal manifestations
	250.5 with ophthalmic manifestations
	250.6 with neurologic manifestations
	250.7 with peripheral circulatory disorders
	250.8 with other specified manifestations
	250.9 with unspecified complication
357.2	Polyneuropathy in diabetes
362.0	Diabetic retinopathy
362.01	Background diabetic retinopathy
362.02	Proliferative diabetic retinopathy
366.41	Diabetic cataract
648.0	Diabetes mellitus, classifiable to 250
648.8	Abnormal glucose tolerance, classifiable to 790.2
775.0	Maternal diabetes affecting fetus or newborn
790.2	Abnormal glucose tolerance test

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## DIABETES MELLITUS IN ALASKA NATIVES

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## ARCTIC INVESTIGATIONS LABORATORY



Centers for Disease Control

## PROGRAM NOTES

NO. 6

March 1987

## DIABETES MELLITUS IN ALASKA NATIVES

Historically, diabetes was rarely diagnosed in Alaskan Natives. A 1957 survey revealed not more than 6 diabetic patients among 16,000 Alaskan Eskimos, or a prevalence of 0.4 per 1,000. A 1969 screening program, involving 306 Athabaskan Indians over 20 years old demonstrated four cases of diabetes - a prevalence of 13 per 1,000. The results of these early surveys were in agreement with the clinical impression of early IHS physicians.

The emergence of Type II diabetes in populations undergoing rapid cultural transition is a well documented phenomenon. Many American Indian tribes have experienced a phenomenal increase in the prevalence of diabetes since World War II. In Pima Indians rates changed from 0.5 per 1,000 in 1940 to 341 per 1,000 (in those over 5 years of age) in 1977. Many other tribes have experienced a rapid, although less dramatic, emergence of diabetes in recent decades. Complications, especially retinopathy, renal failure, and amputations now occur at high rates among these tribes. In the 1980s, many Alaskan health care providers perceived an increase in the number of Native diabetic patients. In view of this impression and the history of the evolution of diabetes in American Indians, the Arctic Investigations Laboratory, CDC and the AANHS, IHS launched a project to establish a diabetes registry and to determine the prevalence of diabetes in Alaska Natives as of December 1985.

The IHS computerized medical record system (PCIS) was used to retrieve the names of all patients seen for each of the diabetes-related diagnostic codes since 1979, as well as those who had had diabetes noted on their problem lists prior to

1979. The records of each patient were reviewed to verify ethnicity and diagnosis. The World Health Organization criteria for diabetes were used; these criteria require at least 2 plasma glucose values in the diabetic range, which consists of fasting values  $\geq 140$ , or 2 hour postprandial values  $\geq 200$ . Any plasma glucose value  $\geq 200$  in the presence of classic symptoms also verifies the diagnosis. A total of 1,585 records were retrieved and reviewed. In addition, local physicians noted 22 diabetic patients not identified by the PCIS system. A total of 610 Alaska Natives, living in Alaska as of December, 1985, met the diagnostic criteria for diabetes, and an additional 106 Alaska Natives were found to have had at least one elevated blood glucose value. Only 14 of the patients have type I diabetes.

There appears to be wide variation in the prevalence of diabetes by region and by ethnic group among Alaska Natives. The crude and age-adjusted rates are shown in Table 1. The crude rates vary from 4.6 per 1,000 in Eskimos to 14.9 per 1,000 in Aleuts. The rates for Alaskan Indians and Aleuts, when adjusted for the age structure of the population, are now similar to the US rates, while that for Eskimos is below the US rate. The crude rates in each Service Unit are displayed in Figure 1. Prevalence rates vary from 19.0 per 1,000 in the Coastal Indian population of Annette Island to 3.0 in the predominantly Yupik Eskimo population of the Bethel Service Unit. The Aleut population of St. Paul Island, within the Anchorage Service Unit, has a particularly high prevalence (45.0 per 1,000), confirming the impression of health care providers that this is a high-risk group.

Complications of diabetes are occurring.

10 of 11

## DIABETES MELLITUS IN ALASKA NATIVES

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42. Stein JH, West KM, Robey JM, Tirador DF, McI GW: The high prevalence of abnormal glucose tolerance in the Cherokee Indians of North Carolina. *Arch Med* 116:842-45, 1965

While a systematic review of all records for complications has not been done, the following complications were noted in health summaries December, 1985: amputations, 4; retinopathy, 57, including 3 blind patients; renal failure, 9, with 1 on dialysis; myocardial infarction, 5; and stroke, 12.

In view of the apparent increase in diabetes, screening for gestational diabetes was initiated in some regions in 1986. Preliminary results indicate varying rates by region, but reported rates equal or exceed the US gestational diabetes rate of 2%-3% of all pregnancies.

In conclusion, Type II diabetes is no longer a rare disease among Alaskan Natives. The prevalence among Eskimos appears to have increased 10 to 20 fold from 1957 to 1985. The emergence of this disease in populations appears to be related to dietary changes, more sedentary lifestyle, and weight gain. In view of the history of diabetes in other American Natives, a major effort at prevention through education on nutrition, exercise, and avoidance of obesity, appears

warranted. Currently, the Alaska Native Health Service and Regional Health Corporations are engaging in numerous activities to optimize patient care, initiate screening programs for diabetes, and develop educational materials. In addition, the State of Alaska Epidemiology Office, through state funding and a grant from CDC, has initiated a program aimed at early detection and treatment of diabetic retinopathy and prevention of lower extremity amputations among all Alaskan diabetics. It is hoped that by prevention programs and early intervention, the occurrence of diabetes and its complications can be reduced.

For more information, regarding this report contact:

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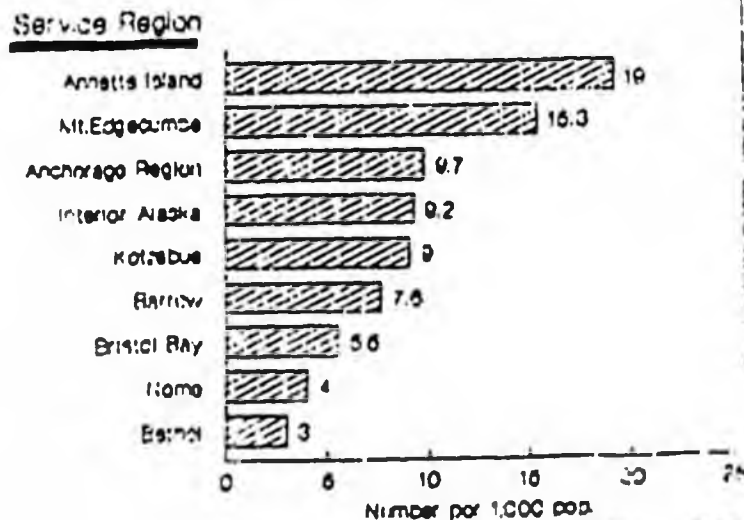
or  
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Table 1. Crude and Age-Adjusted Prevalence Rates per 1,000 of Diabetes in Alaska Natives and U.S. Populations

	Crude Rate	Age-adjusted to 1980 U.S. population - all races
All Alaska Natives	8.3	15.7
Alaska Eskimo	4.6	8.8
Alaska Indian	11.6	22.0
Alaska Aleut	14.9	27.2
U.S., All races		24.7
Minnesota whites, 3 studies		16.0 to 17.3*

\* age adjusted to 1970 U.S. white population.

Figure 1. Diabetes Crude Prevalence Rates Among Alaska Natives by Service Region: December, 1985



REMINDER: Meeting on Pneumococcal Disease in Alaska, Friday, May 8, 1987 beginning at 8:00 A.M. at the Sheraton Anchorage Hotel. Contact Dr. Michael Davidson, (907) 271-4011 for additional information.

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FROM THE ARENA  
Column for Anchorage Times  
for Sunday, 11, March 1990

Fifty years after the start of World War II, we still look back on that long, hot summer of 1939, when war clouds were gathering on the horizon, and wonder why the world leaders couldn't see it coming, and why they didn't take steps to avoid that costly conflict.

Today, war clouds of a different nature are gathering on Alaska's horizon. The threatened conflict won't be one involving bullets and bombs. Instead, it will involve words and ballots. But, this war, too, will be costly. It will not cause the deaths of millions of people. It will, however, cause the death of the unity and pride we Alaskans have with and in each other.

Recently, the Alaska Supreme Court ruled in the case of McDowell v. State, that the provision in Alaska's Constitution requiring that all fish and wildlife resources be managed for "common use" is an important constitutional right for all Alaskans. The plaintiffs in the McDowell case had sought the Court's assistance in obtaining the same Subsistence rights as other Alaskans to participate in the taking of wild game and fish. Before the McDowell decision, those people who lived in parts of the State which had been designated "rural", had a preference to take fish and wildlife for Subsistence over other Alaskan citizens who lived in parts of the State designated "urban". Since the McDowell decision, all Alaskans now have equal Subsistence rights.

The only fly in the ointment, however, comes as a result of Federal law. The Alaska National Interest Lands Conservation Act [ANILCA] requires that Subsistence rights be granted only to "rural" Alaskan residents. This directly conflicts with Alaska's Constitution. Title VIII of ANILCA mandates Federal management of fish and wildlife resources on Federal lands in Alaska if Alaska's Subsistence law does not conform with the provisions of ANILCA. Since our Supreme Court has said that a "rural" preference is unconstitutional under Alaskan law, it is clear that our Subsistence law does not conform with ANILCA.

"Urban" residents have fought for years to overturn the discriminatory Alaskan law denying them the same rights as "rural" Alaskans. Now that "urban" Alaskans have now achieved equality with their "rural" cousins, the next step on the road to equal rights should be to overturn the Federal law on Subsistence. After

all, any thinking person has to realize that the rural preference mandated by ANILCA is also discriminatory, just like Alaska's Subsistence law was, prior to McDowell.

So...What does Alaska's Governor propose to do about the Federal law which makes "urban" Alaskans second class citizens, compared to "rural" Alaskans?

Does he request our Congressional delegation to amend the Federal law to allow Alaskans to manage the fish and wildlife of this State without Federal interference? No.

Does he direct the Attorney General to file a lawsuit, seeking to overturn the discriminatory Federal law? No.

Instead, Governor Cowper proposes amending Alaska's Constitution so that, once again, "rural" Alaskan residents will have priority Subsistence rights over "urban" Alaskans.

What Governor Cowper proposes, for a solution, is that we hold a war. "Let's see who wins", he is saying. "We'll let the 'urbans' fight the 'rurals' at the ballot box next November...winner take all".

Unfortunately, in such a divisive war pitting Alaskan against Alaskan, there will be no winner. Instead, we will all be losers. And what happens if the Constitutional Amendment fails to obtain voter approval? We will be another year behind in settling the Subsistence problem, and more divided than we are now.

Already, battle lines are being drawn. Reinforcements are being summoned. A group from Wisconsin that opposes Indian treaty rights intends to become involved if a state constitutional amendment goes to the voters in November. On the other side, the AFN, turning its back on all Natives who live in "urban" areas, has indicated it supports a Constitutional Amendment giving a "rural" priority in Subsistence. Other Lower 48 hunting, fishing, and outdoors organizations are looking towards getting involved in the coming battle in Alaska.

It still is not too late, however, to stop this war before it starts. Alaskans need not battle one another in a ballot box version of the Civil War. Reasoned minds can still prevail.

What is necessary, of course, to prevent this divisive war this Fall, is for the Alaska Legislature to reject the Governor's call for legislation calling for a Constitutional Amendment. Instead, the Legislature should take the necessary steps to amend

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in Congress, or challenge in court, Title VIII of ANILCA.

We need not embark upon a course that will pit Alaskan against Alaskan.

Instead, we should agree to work together, as neighbors and friends, to solve the problems caused by the present Federal law. If we don't start to do so soon, future generations will ask why our leaders didn't take steps to avoid a costly and divisive war over Subsistence.

RECEIVED MAR 12 1990  
February 20, 1990

David Jurco  
HC-89 Box 8101  
Talkeetna, Alaska 99676  
733-1049

Re: Subsistence Issue

To: Cliff Davidson

Per our telecom this date, please find enclosed an interesting, apparently original solution to our subsistence problem.

The State of Alaska is the second youngest state in the Union. As such, our laws, regulations, etc., etc., are constantly challenged as being not in conformance with our constitution, and, in many cases, either altered, amended, and/or invalidated by our state and federal courts. One issue which has received virtually perpetual attention in the last decade, and one which I have followed with great interest, is that of subsistence rights to the harvest of our states' fish and game resources. As this is the only state that enjoys an official recognition of those rights, we are forced to set precedents, whether we like it or not.

Without exception, all court decisions to date attest to the states' ineptitude in regulating our fish and game resources consistent with our constitution and laws. All imaginative solutions to the problem have been deemed unfeasible, unconstitutional, and/or illegal. Whosever idea it was to label the Kenai Peninsula as non-rural had to have been born, raised, and residing in the bush. He/she should experience life in New York, Los Angeles, Chicago, or even Seattle prior to making an official distinction between urban and rural. Likewise, whosever idea it was to exclude any Alaska resident from harvest of our fish and game resources failed to read our brief 14,000 word Constitution, which is "one of the best, if not the best, state constitutions ever written".

All this infighting and legal wrangling has effectively eliminated

all but three possible solutions to this apparently insurmountable problem; the light at the end of the tunnel is growing brighter. Solution #1 requires amendment of the Alaska National Interest Lands Conservation Act (ANILCA) so as to conform with state law. As Senator Stevens has stated that he will not introduce legislation aimed at this goal, this solution does not appear feasible. More likely than not, it's impossible. In being the only one of its' kind, that peice of federal legislation enjoyed an abnormally large amount of debate and consideration, from a large number of interest groups, prior to becoming law. It is highly unlikely that it would be amended by any less, if at all.

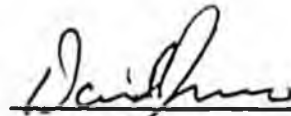
Solution #2 is one that few Alaskans would condone, but has been threatened if our state officials fail to act in an appropriate manner. Just about anyone who is in touch with any form of news media recalls the fiasco on the Kenai River this past summer. That situation was created by Federal Judge Russell Hollands' order, albeit inadvertently, requiring the state to allow the Kenaitzes' a subsistence fishery for the 1989 summer season. Although that probably won't happen again this summer, Judge Holland has threatened to turn all fish and game resource management on federally owned lands over to the U.S. Fish and Wildlife Service if the state fails to permanantly correct the problem. As he has all the power needed to fulfill this promise, it should not be taken lightly. As a large percentage of the land in Alaska is owned by the federal goverment, this would effectively divest the state of managing its' own resources, and should not be considered as even the remotest of possibilities by our state officials.

Solution #3 is the only acceptable solution to the problem. Whether our politicians like it or not is immaterial, although it may mean a radical alteration of their priorities. This solution requires amendment of state law so as to conform with the legal definition of rural, as required by the Kenaitze decision, AND alimination of the states unequal granting of rights and opportunities, as required by the McDowell decision. Federal law (ANILCA) requires granting of a priority right to subsistence harvesters of our fish and game resources, and our state constitution is dedicated to the principle that all res-

idents are equally entitled to this right. Therefore, if all residents of our state were granted the right to harvest as much fish and game as they needed for subsistence purposes, no conflict would exist between the state and federal requirements. However, there would be created a conflict between the various user groups, and it is this inevitable conflict that so distresses our politicians; as well it should. As this concept of resource management has never before been implemented, the ramifications cannot be fully understood, or even contemplated, at this time. Although this would not give rural residents any priority, it would establish subsistence use as a priority over all other uses. This would certainly appease the Kenaitzes', McDowells', Natives, and any other subsistence users.

Although this solution may not be perfect, somebody's bound to bitch about it, it is the only one in sight. Until a better one can be found, or created by Judge Holland, it should be implemented as expeditiously as possible.

Sincerely,



David Jurco

cc: Steve Cowper  
Sam Cotten  
Tim Kelly  
Bettye Fahrenkamp  
Lennie Boston-Gorsuch  
Michael Crary  
Richard Fuster  
Kay Wallis  
George Jacko  
Dick Eliason  
John Binkley  
Cliff Davidson

Editor  
Juneau Empire  
Juneau, Alaska

Dear Editor:

Your March 1990 editorial in support of a Constitutional Amendment to permanently segregate Alaska's citizens into urban and rural factions deserves a response.

The issue, how to legally discriminate against the majority of Alaska's residents in the allocation of fish and game, has received considerable attention from the news media, current and past state administrations, legislatures, legislators, Native organizations, organized recreational groups and individuals. It promises to become the dominate theme of the 1990 elections for Governor, State Senators, Representatives and, hopefully, for the U.S. Senator and Representative.

Alaska has struggled without success to find a legal means to discriminate against the majority while the Native element of the minority has largely been successful in gaining exclusive or preferential access to fish and game resources. Prior to the Native Claims Settlement Act of 1971, in which Alaska Natives (persons of  $\frac{1}{2}$  or more Native blood) received 44,000,000 acres of land and \$960,000,000 from the federal and state governments in exchange for abolition of all Native aboriginal claims to fish and game, among other items, allocation of fish and game was accomplished through seasons and bag limits, methods and means of take and time and area zones. While not a perfect system, conflicts among users were minimal, the resources were thriving and no one starved though the mental state of cultural well-being could not be measured then as it cannot now.

The Native quest for supremacy over fish and game started immediately after accepting the ANCSA settlement. Perhaps it never stopped. As mentioned earlier they have been extremely successful largely because of consistently supportive state administrations from 1974 onward and a congressional delegation that has yet to see a Native bill they could not embrace. The Native communities, especially the smaller and more remote ones clearly had and have social problems. Alcoholism, drugs, suicide, inadequate education, excessively high birth rates, fetal alcohol syndrome, village locations that preclude economic success and Native corporations created by ANCSA that do not seem to have vision beyond the ends of their well polished desks and Gucci loafers. The leaders cannot see the villages' problems except in terms of what the state and federal governments should do for their less fortunate relatives. The state has responded by pouring billions of dollars into rural areas only to find that these well intended efforts may have worsened the problems.

The reconquest of aboriginal hunting and fishing "rights" received a big impetus in 1972 when Congress enacted the Marine Mammal Protection Act (MMPA). This act usurped all state authority for the management of marine mammals while according all Natives unlimited access to the resource without restriction, except for those of international treaties. The next milestone came from the Hammond administration which clearly was allied to the Native vote. He pushed for federal intervention on federal lands and also pushed for enactment of a

rural subsistence law. He succeeded in 1978 with the passage of Alaska's first comprehensive discriminatory subsistence law. In 1980 the Hammond administration along with the Alaska Congressional Delegation succeeded in including a mandatory rural preference in the allocation of fish and game on federal lands in the Alaska National Interest Lands Act (ANILCA). Since then ANILCA has become the focal point of the fish and game allocation problem. It requires the state to accord a preference to rural Alaska. If the state does not comply the federal government will take over management of subsistence on federal lands. This threat has been used successfully time and time again to coerce the Alaska legislature into passing legislation that illegally discriminates against the majority of citizens. It has also been used successfully in other venues such as the 1982 referendum to repeal the state's "subsistence" statute which was defeated. The threat of federal intervention did not, however, deter the Alaska Supreme Court in 1989 from finding unconstitutional the state subsistence statute. Once again the Governor, this newspaper, the AFN and Native spokesmen all are calling for discriminatory and probably unconstitutional amendments to our constitution in order to keep out the Feds.

How bad are the Feds: bad, but not all bad! They have been an ever increasing presence since statehood. Statehood is an effective milestone by which the refederalization of Alaska can be charted.

Statehood, ANCSA and ANILCA pretty much completed the task of butchering the 363,000,000 acres of land we know as Alaska. Prior to statehood some national forests, military bases, national parks and monuments had been created. Designating land areas as state, Native (private fee simple) and federal special categories inevitably set into motion conflicting goals and objectives for the use and development of the assigned land masses.

The federal government has allocated nearly 130,000,000 acres for national parks, park preserves, monuments and refuges. These are designations on which the federal government has traditionally, probably with adequate legal bases, exerted considerable if not complete control over the allocation of fish and game resources. Another 110 million acres went to the Bureau of Land Management, Forest Service and military. These areas generally are managed by the states in which they are located.

In addition the federal government has primary control over all marine mammals, all migratory birds, high seas fishery management with direct and sometimes beneficial implications to salmon, pollack, crab, etc. and control of all species subjected to international treaties and certain other federal acts, i.e., Rare and Endangered species. At present the state manages indigenous (non-migrating) game on state lands, private (largely Native lands), BLM and Forest Service lands. Often with few federal/state conflicts. The state attempts to co-manage park preserves and refuges but conflicts with their federal counterparts are frequent, i.e., wolf management on park preserves and refuges, moose and furbearer management on the Kenai National Moose Range, etc. No state or federal management occurs in national parks, at least none worthy of the term.

3

The federal management scorecard in some instances is dismal. Marine mammals are essentially unmanaged. Natives slaughter and waste walrus by the thousands with only the ivory and oosik (Os penis) removed (Feds finally made a significant case last year). They take polar bear indiscriminately with a preponderance of the take being young and females. Sea lion populations have crashed in portions of Alaska for unknown reasons. Harbor seals and sea otters whose numbers are unregulated and unutilized in many areas are creating serious impacts on local fisheries, especially on stocks of crabs, abalones and salmon.

The jury is still out on federal management of bottom fish stocks but my guess is that pollock and halibut have been adversely impacted.

But perhaps their greatest failure has been waterfowl management. The Alaska Outdoor Council successfully sued the federal government over the illegal mismanagement of cackling Canada and Emperor geese. But upon loss the federal government immediately continued their prior management practices. These include a closed season for everyone except the Natives of the Yukon-Kuskokwim Delta who caused the problem in the first place. These people take the birds in the spring (breeding pairs), summer (egg and flightless young and moulting adults), fall prior to migration. All of this harvest is illegal yet the federal government has entered into agreements allowing for the continued slaughter in the face of a lost lawsuit and in violation of migratory bird treaties!

The federal record in Alaska at least on marine mammals and migratory birds has been one of arrogance and lawlessness. Many people don't realize that no one, not even the courts, can force the federal government to enforce conservation laws.

Obviously, I am not enthusiastic about federal management of fish or game but it is a fact that they already play a major role in the management of the fish and game resource in Alaska.

While the Governor claims to have introduced a proposal to amend the Constitution because he opposes federal intervention in the management of fish and wildlife in fact his administration is actively working at this very moment to expand federal control of game in a racially biased manner.

The state administration is supporting a U.S./Canada treaty to manage the Porcupine caribou herd, our second largest, at this time. The treaty will give the federal government and Natives control of the herd.

The state is also supporting amendments to the U.S./Canada Migratory Bird Treaty to legalize previously illegal spring and summer destruction of waterfowl by Natives.

Ironically, the beneficiaries, Natives, are the major cause of the present depleted status of several species and they are making inroads into other species. For example last spring they killed 40 tons of whistling swans--5,000-8,000 birds. A species no one can legally hunt in Alaska.

One wonders if the Governor remembers that he took an oath to uphold the laws of Alaska for all citizens. Why hasn't the state enforced

its regulations against illegal take of waterfowl in selected portions of the state? A touch of racism by the Governor?

In the few days that have elapsed since your editorial appeared the picture has become quite clear. The Natives have finally revealed their plan for a racial solution to the problem---All Natives should be accorded first priority of use of fish and game---because of cultural needs. This utterly racist viewpoint was most recently put forth by the representatives of 23 communities in Southeast Alaska and placed in concrete when Rep. Wallis of Ft. Yukon put forth a proposed Constitutional Amendment to accomplish apartheid in Alaska. Their recent actions are consistent with the expressed desires of various Native groups during the 1970's, the 1980 debate on ANILCA, the 1982 referendum on subsistence and throughout the McDowell vs. State lawsuit, to mention a few of their activities.

My proposed resolution to the "subsistence" issue follows:

1. Abolish the term "subsistence" from the fish and game regulations as it is no longer pertinent.
2. Manage the fish and game resource so as to perpetuate it using seasons and bag limits, methods and means and time and area zoning. These basic tools provide sufficient flexibility to adequately provide for the complex needs and desires of Alaska's citizenry regardless of their geographic location or ethnic heritage.
3. The legislature should by resolution, and other political means, if necessary, urge the Governor to immediately challenge, in federal court, the offending portions of ANILCA. There is every likelihood that the congressionally mandated urban vs. rural classification of U.S. citizens violates the federal constitution.
4. Concurrent to 3 above, petition our Congressional Delegation to seek immediate amendment to ANILCA by removing the offending language. ANILCA has been amended on the average of once a year since enactment. I realize Senator Stevens opposes such an amendment but he also is responsible to the state.
5. The legislature should reject all resolutions aimed at amending the Constitution to institutionalize classes of citizens for the purpose of allocating fish and game resources.

I recommend that each legislator reread Article I, Sec. I of the Alaska Constitution and the Supreme Court decision, McDowell vs. State Supreme Court, file No. S-2732. Justice Moore comments on page 32---"This is an equal protection case, and an easy one at that." The equal protection section referred to states in part "all persons are...entitled to equal rights, opportunities, and protection under the law..."

While the case under discussion was decided short of invoking the equal protection clause subsequent decisions will necessarily involve Article I, Section I.

Is the legislature seriously contemplating amendments that would establish statewide preferences on a racial or urban vs. rural basis

when such action will only exacerbate the present situation? How will they craft an amendment that will not fly in the face of Article I and/or Article VIII of the State Constitution?

Is it the intent of the legislature to once again exhibit their most famous posture--supine--and leave it to the public to clean up the sorry messes (laws) foisted upon them as we have had to do so many times?

6. If the federal government moves to manage for subsistence uses on federal land sue at the first and every additional opportunity. A determined effort in the courts will hasten resolution of the issue.

7. Lastly, let us not hear a single legislator state "I'm voting for the resolution to amend the Constitution in order to let the voters decide." If any legislator can't do better than that--resign and go home now!

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789-3764

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MARCH 10, 1990  
SUBSISTENCE

This is a statement from the Tongass Tribe member, Donald P. Hoff, Jr. In order to speak on the important issue of subsistence you must understand our history of my Tribe. The history that I will speak of, was research by my Eagle/Bear brother Richard Jackson.

Tongass Tribe is one of the 13 geographical divisions of the Tlingit Nation.

Ketchikan is the first town on the panhandle of Southeastern Alaska. It was first settled by the Tongass Tribe, traditionally known as the Taantakwan (the sea lion people). In the middle 1800's it was a prosperous village that flourished near the mouth of a creek. This creek was famous for its runs of hump-back salmon.

The creek and its immediate area were given to the Drifting Ashore House Group, a sub-division of the Gaanax a'di Clan of the Tongass Tribe, by a Sanya man (Cape Fox people) in honor of the wife who had been from the Tongass Gaanax a'di Clan.

As migration of early pioneers to Alaska occurred, settlers increasingly attracted to the richness of the land, encroached on Tongass Land with total disregard to the Tongass Tribe. Natives were looked upon as less than human having little or no intellect.

Time went by and commercial businesses displaced the natives as land became more increasingly valuable to the town. Ultimately a central business district developed. This district completely surrounded the Tongass Tribe Village.

The Tongass Tribe has diminished in size due to the loss of a historical land base. With the loss of land the continuity of the social economy was forever interrupted.

The natives called the village "Kichxan". Many translations have been recorded by the Tribe's is "under the wings of a eagle". This name came because of a big rock in the creek that sprayed like wings when the creek roared with rain water. The name was changed to Ketchikan by the whites after they incorporated and seized most of the land.

According to TLINGIT GENEALOGY, NOTES AND INFORMATION  
(SHORTRIDGE, LOUIS 1915-1926) clan houses (HIT) of the Taanta-kwaan in Ketchikan on May 8, 1916 include:

Haven  
Gaanaxa a'di Clan

(Haven) Yei'l Hit  
(Moose) Kaas Hit  
(Over the Isthmus) X'agoon Hit

(Golden Eagle) Gidjook Hit  
(Ground Squirrel or Marmot)  
S'aax Hit

Eagle  
Teikweidei' Clan

(Ravine) Shaan'ax Hit  
(Bear) Xutz Hit  
(Man who married the Brown  
Bear) Kaats' Hit  
(Around the Eagle) Wandaa Hit

Today because of assimilation and disconnection to cultural heritage due to the lack of a land base the Tongass Tribe's Matrilineal Moietie have only one known house group apiece. The Gaanax a'di have only the Yie'l Hit and the Teikweidei have only the Kaata Hit house. Today the Tongass Tribe is only a breath away from extinction if there is not any attempts to restore some semblance of the social economy that once existed.

As of now the Tongass Tribe number approximately 300. They live for the most part in urban locations with a large concentration in the Ketchikan area.

Now here we are fighting for subsistence rights of my people and native people in Alaska. We are talking about "Inherent Rights" the right to subsist as we did for 10,000 years and before.

I am part of the Tlingit Nation and proud of my Cultural Heritage. What right does the State of Alaska or the Federal Government or any one person have to decide whether I can subsist for traditional foods. Anyone is to blame, it has been the exploitation by rapists, capitalists opportunists. The laws are created for further exploitation of all our natural resources.

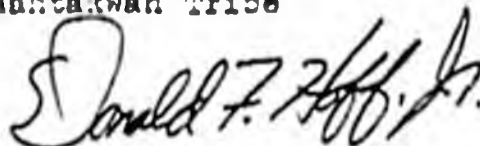
Prime examples, fish and wildlife game, abalone, sea-cucumber, herring roe, seaweed, shellfish and the list goes on and on. State of Alaska has over regulated.

An article written by Ketchikan Daily News, Friday, March 9, 1990 on Subsistence: Native Preference Proposed. Rep. Kay Wallis, D-Fort Yukon, said that falls short of protecting the native culture. Rep. Wallis introduced a measure that would amend the State Constitution to limit subsistence rights to natives and rural residents. A vote against this amendment is discrimination against the Native People in Alaska. Another form of this discrimination is the States stand that they don't recognize Indian Tribes in Alaska. I don't know what else to call it.

To be real frank, Alaska Federation of Natives that supports the rural definition amendment do not have the right to speak or represent me nor our Tribe because we live in a urban setting. We can't understand their logic. Ketchikan is a Village and our sea has been an unlimited resource for food and economic exchange for thousands of uninterrupted years until now. You take away our subsistence, you will certainly kill my people. You have rocked the "Gum-boot Boat"

The imposition of State regulatory Subsistence Laws on a people who heretofore have never been denied or denied anyone the inherent right to provide for their families. In a few basic words, that is called human rights. Human Rights so not exist if someone or body is a racist. To me the answer is simple, let people subsist. Respectfully submitted for the record.

Aan Kadax Tsoen (my Indian name)  
Gaanax a'di Clan  
Yei'l Hit  
Taantakwan Tribe



RIC DAVIDGE  
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SUBSISTENCE - FACT AND FICTION

Why should the State of Alaska amend its constitution, altering fundamental principles of the founding fathers of our state that all fish, wildlife and waters are held for the common use of Alaskans - that there will be no exclusive right of fishery - that the laws of the land will be uniformly applied - that its citizens will have equal rights and that there is a Constitutional right to due process?

Why should the State of Alaska amend its constitution to comply with a federal law, which most Alaskans objected to when passed by Congress, that applies only to federal lands - federal lands that have, as a matter of law, been under federal management since the acquisition of Alaska from Russia?.

Why should the State of Alaska amend its constitution and change the management of STATE lands to comply with a federal law that only applies to Federal lands?

As most of you know I served with the Department of Interior from 1980 to 1986 in a number of capacities. I was an Alaskan before I went to Washington, DC and, unlike some, I returned to Alaska.

While serving as the Assistant to the Director of the US Fish and Wildlife Service one of my responsibilities in 1986 was to Chair a Federal multi-agency task force charged with DRAFTING the Federal Subsistence Resource Management Program. Last month at the request of the Senate I testified before the Senate Resources Committee on that program and have attempted since my departure from the Federal Government (in 1986) to have this regulatory program released to the Alaska public for review and comment. Not because I believe it is the answer to the question of subsistence resource management but because I believe Alaskans have the right, under federal law, to review, comment and have those comments considered BEFORE that program or any other such program is put into place.

Why has our Congressional Delegation not insisted that the federal plan be released? Why have the so called "friends of Alaska" that serve in the Department of Interior not insisted that this program be released? Why have the Alaska Federation of Natives and the Native Village or Regional Corporations not insisted that this program be released? Why has the State

Legislature and our Governor not demanded that this program be released?

FACT - Title VIII of ANILCA only applies to federal lands.

FACT - Congress found that the State of Alaska was competent to manage the fish and game resources on federal lands - however such management is subject to Federal law, management cooperation and ultimate approval. Federal agencies manage the habitat.

FACT - If the State Fish and Game Boards made an allocation decision of fish and game resources on Federal lands that federal agencies did not agree with - it would not be approved. The Federal agencies hold the authority under federal law to approve or deny allocation decisions within federal boundaries.

FACT - Title VIII of ANILCA does not apply to State lands but an amendment of our State Constitution would.

FACT - Title VIII of ANILCA discriminates on the basis of residency.

FACT - A number of Constitutional lawyers including government Solicitors believe that Title VIII is unconstitutional. Why hasn't the State of Alaska challenged its application?

FACT - The Master Memorandum of Agreement on the Management of Fish and Game in Alaska signed by Secretary of Interior Watt and Governor Hammond is ignored by federal agencies. It is an informal regulation that did not comply with federal or state administrative procedural laws. It is in all respects invalid.

FACT - Under federal law the subsistence preference is granted to rural communities who subsist on federal lands (not state or private lands) and this subsistence preference may be lost or regained based on the delineation of a community as "rural".

FACT - Title VIII of ANILCA and its legislative history provides no definition of "rural".

FACT - The only Federal definition of Rural to be found is the one used by the US Census Bureau. A community of 2,500 or less is classified as rural. Any community with a population above 2,500 is classified as urban.

FACT - The Subsistence preference granted by Title VIII is not a property right. The legislative history makes this very clear.

FACT - The Subsistence preference granted by Title VIII is not granted in perpetuity

FACT - The Subsistence preference granted by Title VIII is not granted to Native people but to persons who reside in rural communities.

FACT - The requirement under Title VIII of ANILCA and the Constitutional amendments being considered grant a preference. In order to implement that preference one must ensure that the allocation can be reasonably received by those granted the allocation. How can the State of Alaska or the Federal government ensure a subsistence PREFERENCE allocation of salmon (better than 90% of all the subsistence resources taken) to a small native village at the boarder of Alaska on the Yukon River when the commercial fishing industry will intercept those same runs of salmon in the open ocean?

FACT - A law suit challenging the allocation decisions of the State and/or the Federal agencies - that they do not adequately protect the subsistence preference of rural communities could radically impact Alaska's commercial fishing industry.

FACT - The Department of the Interior is not paying the State of Alaska the funds necessary for the State to manage subsistence resources on federal lands. Since passage of ANILCA in 1980 the federal government has only paid the state about \$1 Million a year. The State expends more than \$5 Million a year on the program.

FACT - The State Supreme Court decision does not apply to Federal lands. Title VIII of ANILCA is still in effect and subsistence preferences will be met on federal lands.

FACT - The assertion by some in Washington and in Juneau that it is impossible to manage Alaska's fish and game resources unless it is done by the State is inconsistent with the history of fish and game management in all other states. Alaska is one fifth the size of the contiguous states. That means that a grouping of states equals the land mass of Alaska. Each of these states manage their fish and game resources quite well and many states have federal areas within their boundaries which are under EXCLUSIVE FEDERAL JURISDICTION meaning the state has no legislative or regulatory authority within the federal boundary.

This management is accomplished through cooperative management agreements between states and federal agencies.

FACT - The trend in the lower 48 is that Federal Courts are reversing previous decisions granting special privileges to Indians off of "Indian lands".

FACT - ANCSA provided federal and state compensation to Alaska Natives for aboriginal rights to land and their resources for the purpose of settling such claims. This compensation took the form of cash and lands which were extended, received and accepted.

FACT - The problem Alaska is facing was created by, what our Supreme Court referred to as a "crude" attempt to solve a complex

allocation question, . . . was created by Congress - NOT BY THE STATE OF ALASKA.

FACT - Federal management of subsistence resources on federal lands is subject to federal law. The preference must be granted. The allocation must be based on sound wildlife management principles. Federal management of subsistence resources is subject to public review and comment.

FACT - The Fish and Wildlife Service must prepare an Environmental Impact Statement before it can implement a Subsistence Resource Management Program. This EIS is also subject to public review and comment.

FACT - Significant portions of federal lands are not open to subsistence hunting or fishing. The people in Glacier Bay National Park have just come to realize that.

I submit to you, as an Alaskan with some knowledge of federal agencies and subsistence law, that federal management of subsistence resources on federal lands will not significantly alter the allocation of fish and game resources as such allocations are already constrained by federal law.

I submit that the management of fish and game resources in the State will not significantly change, as federal and state agencies will enter into cooperative agreements regarding such resources to ensure proper management consistent with state and federal law.

I submit that the federal agencies will be more directly responsible for paying the costs of such management. A cost now unfairly placed on the state budget.

And I submit to you that such an action will isolate those in Washington DC and in Juneau that have personal agendas that are facilitated by conflict - be it racial or political.

Why should the State of Alaska amend its Constitution, one built on the lessons learned from the mistakes of other States, to comply with a federal law that many believe unconstitutional and that only applies to federal lands within which the state has little jurisdiction anyway?

I must conclude that the best solution is to let the federal agencies manage subsistence resources on federal lands, do not amend our State Constitution, and have the State join with private efforts - well underway - to challenge the constitutionality of Title VIII of ANILCA.

P. O. Box 1410  
Petersburg, Alaska 99833

March 6, 1990

Dear Representative Menard,

We are on the brink of losing the two most dominant issues over which the struggle for statehood was fought; the domination of our lives by the federal government, and the exclusive and privileged use of our fish and game resources.

The fraud the federal government has imposed upon us under terms of the Alaska National Interest Lands Conservation Act (ANILCA) must not go unchallenged. The "Subsistence" problem and its implications have created the single most divisive issue between Alaskans since statehood. We simply cannot afford any further institutionalization of racial government privilege.

In negotiations for construction of the trans-Alaska pipeline the federal government, the state, the native community and the environmental interests agreed to terms of the Alaska Native Claims Settlement Act (ANCSA). This federal legislation provided that for the payment of nearly one billion dollars and the private ownership of forty million acres that "any aboriginal rights, if they ever existed, are hereby extinguished" All parties understood and accepted these terms.

The subsistence section of ANILCA is the attempt to regain those exclusive and privileged rights which were extinguished under ANCSA. The U.S. Circuit court, in 1980, ruled that "All claims by Alaska Natives against the United States, the State and other persons based on claims of aboriginal right, or based on statute or treaty relating to Native possession, were extinguished".

ANILCA further compounded its problems by including all persons residing in rural Alaska and by defining subsistence in terms which are far beyond that which is commonly used. A "means of support or livelihood". It then threatens to usurp management of our fish and game resources if we fail to comply with all of their demands!

The U. S. Congress deviated from the usual pattern of Indian settlement in drafting the provisions of ANCSA. In addition to the granting of financial aid and title to land, Congress established thirteen Regional Corporations and Village Corporations in a planned effort to bring the Alaskan Indians into the mainstream of modern life both financially and culturally as rapidly and painlessly as possible. For some of the Corporations, that road has been filled with obstacles, but

some of them are prospering. Figures recently released by the U. S. Census Bureau show that the Tlingits of S. E. Alaska now have the highest annual family income of all American natives, and also exceed that of all American families by several hundred dollars a year. By promoting subsistence in a "Customary and Traditional manner", ANILCA contravenes this expressed intent of ANSCA.

ANILCA and our state constitution are not compatible. We must not abandon those principles we fought so hard and long for at the time of statehood by amending our constitution.

We can extricate ourselves from this untenable situation only by being positive in our goals and assertive and aggressive in pursuing them. We cannot please everyone, we must chart a course which is fair and equitable to all and protects the resource from abuse.

We must demand that our Congressional delegation immediately take steps which will lead to changes in the subsistence sections of ANILCA, at the same time our Legislature must amend the state subsistence statute based upon individual characteristics of need.

In its recent decision in which they declared the rural portion of the state subsistence statute to be unconstitutional, the Supreme Court took great pains to point the direction for us to follow when they said....

"a law providing for individual determination eligibility to engage in subsistence taking of fish and game could be sufficiently tailored to the states interest to be constitutional"

In summary:

It is my belief, based upon the history and provisions of our Constitution, ANCSA and ANILCA that:

Any alteration of Article VIII, Sections 3, 15 or 17 of our State Constitution will place Alaskas number two industry, commercial fishing, in jeopardy and could be detrimental to our game resources as well.

All aboriginal titles, including aboriginal hunting or fishing rights, were extinguished. The basis for hunting and fishing rights for Alaska Natives is presently by treaty or statute only.

As the supreme court observed, " There are a substantial number of Alaskan residents residing in areas designated as urban who have legitimate claims as subsistence users. Likewise, there are substantial numbers of Alaskans living in areas designated as rural who have no legitimate claim" They must all be treated equally.

The Federal Government erred in not recognizing that the Alaskan Natives forfeited any aboriginal rights they may have had under terms of ANCSA. This should be challenged in the highest court of the land, and our congressional delegation must begin immediately working toward a revisions of that flawed federal statute.

A law providing for subsistence based upon individual determination of need would be fair, equitable and could be molded to be in compliance with our constitution.

This has become such an emotional issue that many, either believe, or would like us to believe, that if they are not granted "subsistence rights" they are being denied a share of the resource. Fortunately, at the present time, the status of our fish and game resources, in general, are such that our liberal seasons and bag limits provide for the physical, spiritual and cultural needs of the preponderance of present day Alaskans. For those who need or want additional, Personal Use regulations are more than adequate.

Please do your utmost to correct this extremely serious problem in favor of all Alaskans and the fish and game resources of our beautiful and bountiful state.

Sincerely yours,

  
Loren Croxton

Constitutional Rights - Preservation

Concerning the trapping and relocation of  
 First World War veterans, it is not clear to the  
 willful, law, and all necessary  
 to the people, that even only that  
 Socialism, Communism, Terrorism, and  
 other totalitarianism. A Constitutional Republic  
 Article 4, Section 4, guarantees the republican  
 rights of the people as expressed in the Declaration  
 of Independence, and secured by the  
 of patriots. Rights are based on such, for  
 make, peace, and moral, all are with  
 inviolable rights. No privileged nobility.  
 no immunity from good, regardless of age, sex,  
 nationality or location, which brings to the  
 purpose of government. A Constitutional Republic  
 was created to secure our inalienable  
 rights. The Declaration of Independence  
 states this and the Revolutionary War fought  
 to demand them. Individual Liberty, and  
 to the willful, law, and moral, all are with  
 purpose of the people. No longer, the  
 poor, the King, and the King's laws, who  
 a new issue. As the people are the masters,  
 must educate themselves with the maintenance  
 documents and the Federalist Papers, necessary

1

by our U.S. Supreme Court as authority on the Consti-  
tution. Individual Rights to land, animals, fish  
and other resources have been usurped. Sustainable  
renewable resources based on ~~substant~~ sus-  
tainable yield is only common sense. Beetle  
infested timber on the Kenai Peninsula show  
fallacy of preservation. A waste and a fire  
hazard. Much of this timber is rotten. Nothing  
lives forever. Conservation utilizes, preserves  
wastes. To utilize any resource, directly or  
indirectly to support oneself is a basic Right.

Seymour Mills

262-9289

Sterling, Alaska

**UNITED FISHERMEN OF ALASKA**

**TESTIMONY ON SUBSISTENCE**

**March 10, 1990**

My name is Cheryl Sutton and I will be speaking on behalf of the United Fishermen of Alaska as their Subsistence Committee Chair.

Commercial fishermen, and many other Alaskans, stand to suffer great injury if the subsistence issue is not settled in a manner conducive to sound fish and game management practices and non-disruptive allocative priorities. UFA does not support the concept of attempting to settle this issue by means of a constitutional amendment.

UFA has produced an issue paper on subsistence. I would like to briefly state our position and make other comments.

UFA supports a subsistence-based use of fish and game populations in Alaska, but believes that such uses must be bound at historical levels.

The following areas need to be addressed and answers to the questions sought out by the legislature.

- The federal government's jurisdiction over fish and game populations both on federal lands and state lands and waters needs to be clearly defined. For example, does the state or the federal government have jurisdiction over anadromous fish harvested in state waters but spawning within federal areas?
- The consequences or benefits of a "federal" takeover for subsistence management need to be delineated for the public. The public should not be forced to stand in fear of a concept they do not understand.
- The legislature must consider that "rural" will still not be defined in the adoption of the proposed constitutional amendments. There will be no federal definition for rural.
- How will the state handle the Ninth Circuit's ruling relative to the Kenaitzes and its subsequent classification of the Kenai area as rural?
- More clear policy guidance must be provided for the Boards of Fisheries and Game and other regulatory agencies creating subsistence regulations.

NR 10 '90 15-00 LEG. AFFAIRS - SOLDOTNA

• The state must consider the economic and social implications of further reducing the cash economies of coastal Alaska communities through making them more subsistence dependent. The very people these constitutional amendments are designed to help may be harmed more than helped.

• The *commercial* sale of subsistence harvests is increasing. The potential for major growth of subsistence harvests being sold under "customary trade and barter" is very likely. This problem must be closely examined and appropriate safeguards taken to prevent its occurrence.

• The definition of subsistence "use" and subsistence "user" needs to be clarified for the public as it relates to the implementation of Title VIII, Section 804 of ANILCA which affords priority.

• An enforceable and mutually protective definition for priority as it relates to competing fishery uses must be developed.

UFA does not believe that a constitutional amendment is the solution to this problem. We believe the solution is many faceted; however, until answers are provided to the questions we have brought forward, an equitable solution will not be found. We have offered our assistance to work with the administration and legislature, as well as other affected groups. We continue to offer that assistance. The solution to the subsistence issue will not be found unless all parties work together to formulate the best plan possible. This plan should include changes on both the state and federal levels if we are to see a long-term solution.

Thank you for the opportunity to testify. I would be glad to FAX a copy of this testimony and the UFA issue paper if the committee would so desire.

Alaska House Of Representatives

Resource Committee

Subsistence Hearings

March 10, 1990

Dear Representatives

My name is Rick Bierman, I live in Juneau and I am a subsistence user of fish and game. My family and I own land on Shelter Island and we depend on local deer populations as a major source of food. If subsistence regulations are activated locally, people from Haines and Skagway will have priority use of deer populations on Shelter and Douglas Islands, and the local Admiralty area---even if these people are not subsistence users and have never hunted in the Juneau area before.

In 1989, The Alaska Supreme Court ruled rural priority unconstitutional. The court ruling states "One purpose of the 1986 act (like the 1978 act) is to ensure that those Alaskans who need to engage in subsistence hunting and fishing in order to provide for their basic necessities are able to do so." It also states that "many people living in urban areas have legitimate claims as subsistence users, while many people living in rural areas have no legitimate claims." This ruling upholds the right of the State to regulate subsistence but declares that the urban rural distinction is to "crude" a test to determine the actual needs of the people of Alaska.

Like any simple approach to a complicated problem, rural priority sounds much better than it works. To make matters worse, the original legislation has been altered by so many governing bodies, that it, all too often, achieves the opposite effect that it was intended to. A constitutional amendment will etch this injustice in stone.

Protecting the rights of people who depend on wild resources to maintain their existence, is a proper function of government. However, protection must be applied to the people who have legitimate claims, not handed out or withheld solely on the basis of where one chooses to reside. Although, as Governor Cowper pointed out, a more equitable solution will be costly; democracy was not designed to be efficient, it was designed to protect individual rights, and justice has never come cheaply.

It is my opinion that the State's original 1978 statute stressing local priority came closest to the ideal of protecting the individual rights of Alaskans who depend on wild resources. It is the federal government with the enactment of ANILCA, that imposed rural priority over local priority---and it is the federal law not the constitution of Alaska that needs to change; anything short of this, will be a cop-out!

Sincerely

Rick Bierman and family;

P.O. Box 120166

Auke Bay, Alaska 99821

## SUBSISTENCE TIME TABLE

- 1959 Alaska becomes a state and for the first time assumes management authority of her fish and game resources. The new constitution abolishes fish traps and specifies that fish and game shall be managed on a sustained yield basis for the common good.
- 1968 The discovery of oil at Prudhoe Bay and subsequent need for a pipeline to the ice free port of Valdez forces the resolution of aboriginal land claims.
- 1971 Alaska Native Claims Settlement Act brings wealth and technology to the bush. This Act extinguishes aboriginal claims to fish and game.
- 1972 Due to circumstance unrelated to Alaska, Congress passes The Marine Mammals Protection Act, seizing management authority of ten species of marine mammals from states and establishing federal Native subsistence policy. Alaska is forced to abandon her extensive conservation programs and the federal government refuses to fund any replacement programs.

Fr. Rick Bierman

- 1974 Construction of the Trans-Alaska Pipeline brings wealth and population growth to urban centers. Increased access to transportation technology fuels tension between urban and rural Alaskans competing for fish and game.
- 1978 Seeing the need to protect subsistence users and fearing federal intervention, Alaska's legislature establishes two tiered subsistence criteria when stocks are low: 1) Subsistence gains priority over other uses 2) when stocks are too low for all subsistence uses, priority is based on A. customary and direct dependence on the stock as a mainstay of livelihood, B. local residency, C. availability of alternate resources.
- 1980 Alaska National Interest Lands Conservation Act designates over one hundred million acres of land as federal preserves and sets "rural" as a requirement for subsistence use on all federal land. The Alaska boards of fish and game adopt rural priority regulations to comply with federal standards and maintain control on federal lands.
- 1982 Voters reject initiative to repeal rural priority. At this time urban residents were still eligible for subsistence as first tier users.

1985        The Alaska Supreme Court decides two cases, one declaring rural priority regulations inconsistent with the 1978 statute and the other forcing the state to establish subsistence regulations even when stocks are plentiful. A federal court rules that urban is any community with a population larger than 2,500 people, and declares everything else rural for subsistence purposes.

1986        To comply with the Court decision the Alaska Legislature re-writes laws governing subsistence establishing rural priority for first and second tier users.

1989        The Alaska Supreme Court rules rural priority unconstitutional. The court ruling states "One purpose of the 1986 act (like the 1978 act) is to ensure that those Alaskans who need to engage in subsistence hunting and fishing in order to provide for their basic necessities are able to do so." It also states that "many people living in urban areas have legitimate claims as subsistence users, while many people living in rural areas have no legitimate claims."

This ruling upholds the right of the State to regulate subsistence but declares that the urban rural distinction is to crude a test to determine the actual needs of the people of Alaska.

To The Subcommittee on Subsistence Hunting

#1. Webster Dictionary; 2a Means of subsisting. b: the minimum (as of food and shelter) necessary to support life. Our game laws takes care of this in (that nothing in these laws will prevent a person from taking game for life or property). Therefore the subsistence question is mute. However.

I harvested my first Caribou, (for meat) in 1966. I am a senior citizen on a social security pension. I live in a Rural area within five miles of Palmer, and I have a P.O. Box.

I know a person that lives at Glennallen, he gross,es over \$100,000 per year, yet he is eligible for subsistence hunting, I am not.

He drives to Eureka, 68 miles away to hunt Caribou.  
I would drive to Sheep Mt., 63 miles away to hunt Caribou.

HE CAN -----I CAN'T, WHY???

I feel that I am as much in need and as deserving as 75% of those that are allowed to do so, Be they Native, Lower 48 transplants, or Intercontinental Aliens.

It is my heart felt belief that the seniors that helped to build this Great State should be considered for subsistence rights also.

The three score and ten that I am allotted will be up in eight years, and if my strength holds out I will be able to hunt for that many Caribou, and they will be used, Meat Hide and Antlers.

If Subsistence hunting is to be for Native only I believe that it should be legislated under sever penalty that the only way to take game is by Dead fall, Home made Bow&Arrow, and/or spears hand held or thrown by hand. Transportation to be by Dog Team/ foot or un mechanical boat.

Thank You

*Bob Bickel*  
Bob Bickel  
PO Box 129  
Palmer, Ak. 99645



# Alaska State Legislature

Please enter into the record my testimony to the HOUSE RESOURCES  
committee name

committee on SUBSISTENCE, dated MAR 1, 1990  
bill/subject

I STRONGLY OPPOSE THE GOVERNOR'S DECISION TO ASK FOR A CONSTITUTIONAL AMENDMENT TO PROVIDE A SUBSISTENCE PRIORITY FOR RURAL RESIDENTS.

THE FRAMERS OF THE CONSTITUTION PUT A LOT OF THOUGHT AND EFFORT INTO THE ORIGINAL LANGUAGE, STRESSING GOOD MANAGEMENT, PERPETUATING RESOURCES, AND PROVIDING EQUAL OPPORTUNITY FOR USE. THEIR WORK HAS BEEN FRAMED BY CONSTITUTIONAL SCHOLARS, AND RATIFIED BY CONGRESS & THE PEOPLE OF THE STATE. NOW IT IS THREATENED BY SPECIAL INTEREST POLITICS. THE GOVERNOR WON'T BE AROUND TO TAKE THE POLITICAL HEAT, BUT YOU FOLKS WILL.

THE MOTIVATION FOR THE 1978 STATE SUBSISTENCE LAW WAS MISREPRESENTED BY BEHNKE. IT RESTED ON 2 ARGUMENTS - BOTH SPECIOUS: (1) IT WILL SAVE ALASKA NATIVES' CULTURES; (2) IT WOULD FORESTALL A FEDERAL LAW IN

Signed: SUBSISTENCE. NO LAW CAN SAVE A CULTURE, ONLY THE PARTICIPANTS IN IT CAN. THE STATE LAND WAS USED BY JON MITCHELL, NORM COHEN, ET AL TO GET A FEDERAL LAW.

RICHARD H. BISHOP - SELF  
Representing (Optional)

1333 BUS'S BRIND, FAIRBANKS AK 99709  
Address

907-455-6151  
Phone No.



# Alaska State Legislature

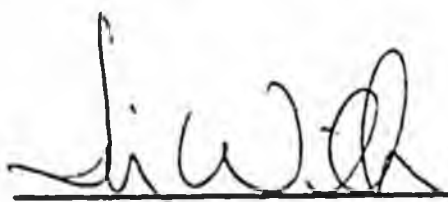
Please enter into the record my testimony to the House Resources  
committee name

committee on Subsistence , dated March 10, 1990  
bill/subject

I oppose allowing subsistence use of Alaska's resources to only Native People. I believe that writing a law that allows or denies anything along racial lines is unfair, will promote racial discord, and will ultimately be struck down by the courts.

Subsistence is confusing. The only way I believe that the problem of subsistence can be solved is to eliminate subsistence. This may mean that Alaska will have to slug it out with the federal government to find out who will manage Alaska's resources.

The stated needs of Alaska's native population for fish and wildlife for food can and should be satisfied during posted seasons. Seasons and bag limits are liberal enough now to provide for all the needs of any family.

Signed:  (Jim Wilkins)  
Testifier

Representing myself  
Representing (Optional)

PO Box 871641 Wasilla, Alaska 99687  
Address

376-2324  
Phone No.

*Testimony of Noel Woods  
The MATANUSKA Valley SPORTSMEN support The Alaska Outdoor Council  
ON THIS ISSUE.*

THERE ARE OTHER OPTION'S THAN A CONSTITUTIONAL ADMENDMENT TO ALLOW RURAL PREFERENCE.

(a) CHANGE FISH AND GAME HARVEST REGULATION'S TO ACCOMODATE RURAL RESIDENT HARVEST. (1) THIS HAS BEEN DONE EVER SINCE STATEHOOD BY DIVIDING THE STATE INTO MANAGEMENT UNITS AND SETTING SEASON'S AND LIMITS THAT MAY BE VERY DIFFERENT FOR EACH UNIT. IT HAS BEEN CUSTOMARY THAT THE MORE REMOTE AND LESS POPULATED UNITS HAVE THE MOST LIBERAL HARVEST AND LONGEST SEASONS.

(2) BY PROPER MANAGEMENT OF HABITAT AND PREDATORS WITH CONCERN FOR MAXIMIM BENEFIT OF PEOPLE (ARTICLE 8, SECTION 2, ALASKA STATE CONSTITUTION) WE HAVE BEEN SHOWN BY SWEDEN AND OTHER COUNTRY'S THAT HARVEST FOR USE BY PEOPLE AS FOOD (SUBSISTENCE) CAN BE INCREASED DRAMATICLY BY MANAGEMENT OF FORESTS AND OTHER HABITAT. THIS ONLY REQUIRES THAT KNOWLEDGE AND CO-OPERATION BE SUBSTITUTED FOR STUPIDITY AND ARROGANCE - - AN APPARANTLY DIFFICULT TRANSITION.

(b) THE FEDERAL GOVERNMENT IS INSISTING ON SUBSISTENCE PRIORITY OR THEY WILL TAKE OVER OUR FISH AND GAME ON FEDERAL LANDS. THIS MAY INTEREST OTHER WESTERN STATES WITH LARGE AREAS OF FEDERAL OWNERSHIP. PERHAPS THE FEDS CAN COME UP WITH A MANAGEMENT PLAN THAT COMES WITHIN THE FEDERAL LAWS AGAINST ARBITRARY CLASSIFICATION OR DISCRIMINATION. SINCE THEY MUST HAVE SOME IDEA OF WHAT THESE REGULATIONS WOULD BE - PERHAPS A CONSULTATION WOULD BE IN ORDER.

I FAIL TO SEE HOW ONE CAN RECONCILE THIS PROPOSED ADMENDMENT WITH THE DECLARATION OF RIGHTS OF THE CONSTITUTION OF THE STATE OF ALASKA ARTICLE I, SECTION I, I QUOTE " THAT ALL PERSONS ARE EQUAL AND ENTITLED TO EQUAL REGHTS , OPPORTUNITIES , AND PROTECTION UNDER THE LAW. "

AND THE UNITED STATES CONSTITUTION IS QUITE CLEAR ON THIS WITH ITS FOURTEENTH ADMENDMENT WHICH READS IN PART " NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH - - SHALL DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS. "

THE ORIGINAL INTENT HAS EXPANDED BY PRACTICE INTO A GENERAL GUARANTEE AGAINST ARBITRARY CLASSIFICATION AND OTHER FORMS OF DISCRIMINATION. ALSO IT IS HELD AS CONTAINED WITHIN "DUE PROCESS" OF LAW AND THEREFORE BINDING UPON THE FEDERAL GEVERNMENT AS WELL.

SO NOW LETS HAVE THE ELECTED REPRESENTATIVES - BOTH FEDERAL AND STATE - EXPLAIN EXACTLY HOW THIS PROPOSED ADMENDMENT CONFORMS TO BOTH CONSTITUTIONS ALASKA'S AND UNITED STATES.

I HAVE A PROBLEM WITH THOSE WHO PROPOSE LAWS WITHOUT INCLUDING THE EXACT DEFINITION OF THE WORDS THEY ARE INCLUDING IN THE PROPOSAL.

IN ADDITION TO THE LACK OF DEFINITION OF SUBSISTENCE, A DEFINITION OF RURAL RESIDENT - PLEASE-

WILL THIS PROPOSED AMENDMENT RETURN TO THE SILLY RULES THAT EXISTED BEFORE MCDOWELL vs ALASKA WHEREIN A BANKING OFFICER IN GLENALLEN WAS ENTITLED TO SUBSISTENCE HUNT AND FISH BUT AN OUT OF WORK, POVERTY LEVEL RESIDENT OF SUTTON WAS NOT ENTITLED.

ANOTHER DEFINITION - PLEASE - THIS TIME A PHRASE, CUSTOMARY AND TRADITIONAL USE, IF MY FATHER, WHO WAS A RESIDENT OF ALASKA, FED HIS FAMILY WITH THE NATURAL RESOURCES OF THE TERRITORY BY HUNTING AND FISHING AND I (HIS SON) MARRIED AND FED MY FAMILY WITH MY EXPERTISE AT HUNTING AND FISHING AND NOW MY SON - MARRIED WITH CHILDREN - FEEDS HIS FAMILY BY HUNTING AND FISHING, AND WE ARE ALL RESIDENTS OF ALASKA, ENTITLED TO EQUAL OPPORTUNITIES. ARE WE CUSTOMARY OR TRADITIONAL USERS ?

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: RYLE AND MARILYN RADKE

TITLE:

ADDRESS: 2136 AIRPORT WAY, SUITE 1

CITY: FAIRBANKS

ZIP: 99701

PHONE: 452-1250

BILL NO: HJR 88

SUBJECT: SUBSISTENCE USES OF FISH &amp; WILDLIFE

MESSAGE: WE ARE OPPOSED TO CHANGE IN THE STATE CONSTITUTION. WE FEEL THAT FISH AND WILDLIFE RESOURCES SHOULD BE MANAGED FOR THE COMMON USE. STATE CONSTITUTION CURRENTLY GIVES EQUAL OPPORTUNITY TO ALL RESIDENTS.

POMID: 07105222

DATE: 03/10/90

TIME: 10:52:22

LIONAME: FAIRBANKS LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BARNES	BOUCHER	ADAMS
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COLLINS	COTTEN	COGHILL
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DONLEY	ELLIS	ELIASON
FINKELSTEIN	FOSTER	FAHRENKAMP
FURNACE	GOLL	FAIKS
GRUENBERG	GRUSSENDORF	FISCHER
HANLEY	HOFFMAN	FRANK
HUDSON	JACKO	HALFORD
KOPONEN	KUBINA	JONES
LARSON	LEMAN	KELLY
MACLEAN	MARTIN	KERTTULA
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NAVARRE	PETTYJOHN	POURCHOT
PHILLIPS	RIEGER	RODEY
SHARP	SHULTZ	STURGULEWSKI
SWACKHAMMER	TAYLOR	SZYMANSKI
ULMER	WALLIS	UEHLING
ZAWACKI		CHAROFF

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: RICK SCHIKORA

TITLE:

ADDRESS: 1416 GILLAM WAY

CITY: FAIRBANKS

ZIP: 99701

PHONE: 456-1566

BILL NO:

SUBJECT: SUBSISTANCE

MESSAGE: PLEASE DO NOT SUPPORT AMENDING THE STATE CONSTITUTION TO GIVE A RURAL PREFERENCE TO SUBSISTANCE. THE STATE MUST GET SOME BACKBONE AND FIGHT THE FEDERAL ANILCA MUST BE CHANGED.

POMID: 07114620

DATE: 03/10/90

TIME: 11:46:20

LIONAME: FAIRBANKS LIO

COPIES: REPRESENTATIVES SENATORS

SHULTZ	FAHRENKAMP
BOYER	FRANK
DAVIS, M.	COGHILL
KOPONEN	
MILLER	
SHARP	
MENARD	
JACKO	
FOSTER	
NAVARRE	
FURNACE	
HUDSON	

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: JIM WEIDNER  
 TITLE:  
 ADDRESS: 5479 CHENA HOT SPRINGS RD.  
 CITY: FAIRBANKS ZIP: 99712  
 PHONE: 488-6366  
 BILL NO: HJR 13  
 SUBJECT: CONST. AMENDMENT: EDUCATION ENDOWMENT  
 MESSAGE: CAN SOMEONE EXPLAIN TO ME HOW WE CAN SPEND 50 PERCENT OF THE EARNINGS PERMANENT FUND FOR INFLATION PROOFING, 50 PERCENT FOR DIVIDENDS, AND 40 PERCENT FOR THE EDUCATION ENDOWMENT AND NOT HARM THE INFLATION PROOFING OR THE DIVIDEND PROGRAM. PLEASE DROP ME A LETTER BY NEXT SATURDAY, MARCH 17, 1990.

POHID: 07111758  
 DATE: 03/10/90  
 TIME: 11:17:58  
 LIONAME: FAIRBANKS LIO

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BARNES	BOUCHER	ADAMS
BOYER	BROWN	BINKLEY
COLLINS	COTTEN	COGHILL
DAVIS, C.	DAVIS, M.	DUNCAN
DONLEY	ELLIS	ELIASON
FINKELSTEIN	FOSTER	FAHRENKAMP
FURNACE	GOLL	FAIKS
GRUENBERG	GRUSSENDORF	FISCHER
HANLEY	HOFFMAN	FRANK
HUDSON	JACKO	HALFORD
KOPONEN	KUBINA	JONES
LARSON	LEMAN	KELLY
MACLEAN	MARTIN	KERTTULA
MENARD	MILLER	PEARCE
NAVARRE	PETTYJOHN	POURCHOT
PHILLIPS	RIEGER	RODEY
SHARP	SHULTZ	STURGULEWSKI
SWACKHAMMER	TAYLOR	SZYMANSKI
ULMER	WALLIS	UEHLING
ZAHACKI		ZHAROFF

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: TERRY MIELKE  
 TITLE:  
 ADDRESS: POB 870988  
 CITY: WASILL ZIP: 99687  
 PHONE: 376-1321  
 BILL NO: HJR 74  
 SUBJECT: CONST. AMDT: SUBSISTENCE PREFERENCE  
 MESSAGE: & HJR 88, HJR 90: I AM STRONGLY OPPOSED TO ANY CONSTITUTIONAL AMENDMENT CALLING FOR RURAL SUBSISTENCE PRIORITY.

POHID: 14133845  
 DATE: 03/10/90  
 TIME: 13:38:45  
 LIONAME: MAT-SU LIO

COPIES: REPRESENTATIVES SENATORS

LARSON	KERTTULA
MENARD	SZYMANSKI
JACKO	FAHRENKAMP
FOSTER	ELIASON
NAVARRE	FRANK
FURNACE	HALFORD
SHARP	STURGULEWSKI
HUDSON	ZHAROFF
DAVIS, M.	

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: MARTY RINIO  
 TITLE:  
 ADDRESS: P.O. BOX 83  
 CITY: ESTER ZIP: 99725  
 PHONE: 479-6950  
 BILL NO: HJR 88  
 SUBJECT: SUBSISTENCE USES OF FISH & WILDLIFE  
 MESSAGE: DON'T SELL US OUT LIKE GOVERNOR COWPER AND FURTHER DIVIDE THE PEOPLE OF ALASKA.

POHID: 07150041  
 DATE: 03/10/90  
 TIME: 15:00:41  
 LIONAME: FAIRBANKS LIO

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BOYER	FAHRENKAMP
DAVIS, H.	FRANK
KOPONEN	COGHILL
MILLER	
SHARP	
MENARD	
JACKO	
FOSTER	
NAVARRE	
FURNACE	
HUDSON	

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: STEVE STRUBE  
 TITLE:  
 ADDRESS: POB 521155  
 CITY: BIG LAKE ZIP: 99652  
 PHONE: 892-7760  
 BILL NO: HJR 74  
 SUBJECT: CONST. AMDT: SUBSISTENCE PREFERENCE  
 MESSAGE: & 88 & 90: I STRONGLY OPPOSE THESE RESOLUTIONS AND IT IS MY HOPE THAT REP MENARD WILL NOT SUGGEST PASSAGE OF THESE OR ANY RESOLUTION THAT MAKE DISCRIMINATION CONSTITUTIONAL. I AM RELYING ON YOU, CURT TO TABLE THIS. THIS IS NOT THE PROPER WAY TO SOLVE THE SUBSISTENCE PROBLEM.

POHID: 14144408  
 DATE: 03/10/90  
 TIME: 14:44:08  
 LIONAME: MAT-SU LIO

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LARSON	KERTTULA
MENARD	SZYMAWSKI
JACKO	FAHRENKAMP
FOSTER	ELIASON
NAVARRE	FRANK
FURNACE	HALFORD
SHARP	STURGULEWSKI
HUBSON	ZHAROFF
DAVIS, H.	

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIOSON

NAME: JIM PAGE  
 TITLE:  
 ADDRESS: POB 872573  
 CITY: WASILLA ZIP: 99687  
 PHONE: 376-7721  
 BILL NO: HJR 74  
 SUBJECT: CONST. AMDT: SUBSISTENCE PREFERENCE  
 MESSAGE: & 88 & 90: I SUPPORT EQUAL RIGHTS FOR ALL ALASKANS. I OPPOSE  
 ANY CONSTITUTIONAL AMENDMENT WHICH PROVIDES SPECIAL PRIVLIIGE TO  
 ANY GROUP.

POMID: 14145207  
 DATE: 03/10/90  
 TIME: 14:52:07  
 LIONAME: MAT-SU LIO

COPIES: REPRESENTATIVES SENATORS

LARSON	KERTTULA
MENARD	SZYMANSKI
JACKO	
FOSTER	
NAVARRE	
FURNACE	
SHARP	
HUDSON	
DAVIS, M.	

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIOSON

NAME: JIM PAGE  
 TITLE:  
 ADDRESS: POB 872573  
 CITY: WASILLA ZIP: 99687  
 PHONE: 376-7721  
 BILL NO: HJR 74  
 SUBJECT: CONST. AMDT: SUBSISTENCE PREFERENCE  
 MESSAGE: & HJR 88 & HJR 90: I OPPOSE ALL RESOLUTIONS TO THE SUBSISTENCE I  
 WE'RE CIRCUMVENTING THE MCDOWELL DECISION OF 1989 IN WHICH SUBSISTENC  
 RULED UNCONSTITUTIONAL. WHY DON'T WE FACE THE MUSIC AND WORK FROM T  
 SUPREME COURT DECISION. MANAGE ALL RESOURCES FOR THE BENEFIT OF ALL  
 ALASKANS! EVERYONE WILL WIN INSTEAD OF BEING LOSERS.

POMID: 14145641  
 DATE: 03/10/90  
 TIME: 14:56:41  
 LIONAME: MAT-SU LIO

COPIES: REPRESENTATIVES SENATORS

LARSON	KERTTULA
MENARO	SZYMANSKI
JACKO	
FOSTER	
NAVARRE	
FURNACE	
SHARP	
HUDSON	
DAVIS, M.	

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: JACK DIORICKSON  
 TITLE:  
 ADDRESS: POB 712  
 CITY: PALMER ZIP: 99645  
 PHONE: 745-3496  
 BILL NO: HJR 74  
 SUBJECT: CONST. AMDT: SUBSISTENCE PREFERENCE  
 MESSAGE: & 88 & 90: I OPPOSE ALL PROPOSALS TO AMEND THE CONSTITUTION OF THE STATE OF ALASKA. THERE IS NOT ANYTHING INHERENTLY WRONG WITH THE CONCEPT OF SUBSISTENCE. THE ERROR IS IN ATTEMPTING TO LIMIT THE USERS. EVERY PERSON IN THE STATE OF ALASKA HAS THE RIGHT TO USE ITS RESOURCES WITHIN STATE REGULATIONS.

POIID: 14150230  
 DATE: 03/10/90  
 TIME: 15:02:30  
 LIONAME: MAT-SU LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

MEHARD	JACKO	FAHRENKAMP
FOSTER	NAVARRE	KERTTULA
FURNACE	GOLL	ELIASON
GRUENBERG	DAVIS, M.	FRANK
ELLIS	MILLER	HALFORD
MARTIN	BOYER	STURGULEWSKI
DAVIS, C.	BOUCHER	ZHAROFF
MACLEAN	DONLEY	RODEY
HANLEY	ZAWACKI	FAIKS
FINKELSTEIN	PETTYJOHN	PEARCE
KUBINA	LARSON	SZYMAWSKI
GRUSSENDORF	HUDSON	POURCHOT
LEMAN	HOFFMAN	ADAMS
SWACKHAMMER	WALLIS	KELLY
KOPONEN	ULMER	UEHLING
BROWN	SHULTZ	FISCHER
RIEGER	PHILLIPS	DUNCAN
BARNES		JONES

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: LINDA H SHUE  
 TITLE:  
 ADDRESS: HC 02 BX 7636  
 CITY: PALMER ZIP: 99645  
 PHONE: 745-4911  
 BILL NO: HJR 74  
 SUBJECT: CONST. AMDT: SUBSISTENCE PREFERENCE  
 MESSAGE: & HJR 88 HJR 90: I SUPPORT EQUAL RIGHTS FOR ALL ALASKANS. I OPPOSE ANY CONSTITUTIONAL AMENDMENT WHICH PROVIDES SPECIAL PRIVILEGE TO ANY GROUP. THE STATE BELONGS TO ALL OF US AND WE ALL NEED TO BE TREATED AS EQUALS.

POIID: 14151611  
 DATE: 03/10/90  
 TIME: 15:16:11  
 LIONAME: MAT-SU LIO

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LARSON	KERTTULA
MEHARD	SZYMAWSKI
BARNES	BINKLEY
BOUCHER	UEHLING
JACKO	DUNCAN
FOSTER	FISCHER
NAVARRE	FRANK
FURNACE	PEARCE
SHARP	ZHAROFF
HUDSON	FAHRENKAMP
DAVIS, M.	ELIASON
GOLL	HALFORD
GRUENBERG	STURGULEWSKI
ELLIS	RODEY
MILLER	FAIKS
MARTIN	POURCHOT

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: ROBERT C HIELKE  
 TITLE:  
 ADDRESS: HC 01 BOX 6020  
 CITY: PALMER  
 PHONE: 745-3119  
 BILL NO: HJR 74

ZIP: 99645

SUBJECT: CONST. AMDT: SUBSISTENCE PREFERENCE  
 MESSAGE: & 88 & 90: ALL ALASKANS ARE ENTITLED TO THE SAME RIGHTS. THESE BILLS  
 WOULD ESTABLISH AN ELITE GROUP BASED ON LOCATION AND ETHNIC ORIGIN.  
 SUBSISTENCE SHOULD BE REDEFINED. IF IT IS TO BE TRADITIONAL, SO  
 SHOULD METHODS OF GATHERING GAME BE TRADITIONAL. REMOVE ALL  
 SUBSISTENCE FROM ALASKAN LAWS.

POHID: 14155927  
 DATE: 03/10/90  
 TIME: 15:59:27  
 LIONAME: MAT-SU LIO

COPIES: REPRESENTATIVES SENATORS

LARSON	KERTTULA
MENARD	SZYMANSKI
JACKO	FAHRENKAMP
FOSTER	ELIASON
NAVARRE	FRANK
FURNACE	HALFORD
SHARP	STURGULEWSKI
HUDSON	ZHAROFF
DAVIS, M.	ROOEY
GOLL	FAIKS
GRUENBERG	PEARCE
ELLIS	
MILLER	
MARTIN	

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: ROBERT D HIEIKE  
 TITLE:  
 ADDRESS: POB 870988  
 CITY: WASILLA  
 PHONE: 376-1321  
 BILL NO: HJR 74

ZIP: 99687

SUBJECT: CONST. AMDT: SUBSISTENCE PREFERENCE  
 MESSAGE: & 88 & 90: I AM STRONGLY OPPOSED TO ANY CONSTITUTIONAL AMENDMENT  
 ALLOWING SUBSISTENCE PRIORITY FOR ANY GROUP. THE STATE SHOULD SUE THE  
 FEDERAL GOVERNMENT IF IT ATTEMPTS TO TAKE OVER FISH AND GAME MANAGEMENT  
 DO NOT DIVIDE THE POPULATION INTO CLASSES OF CITIZENS.

POHID: 14160512  
 DATE: 03/10/90  
 TIME: 16:05:12  
 LIONAME: MAT-SU LIO

COPIES: REPRESENTATIVES SENATORS

LARSON	KERTTULA
MENARD	SZYMANSKI
JACKO	FAHRENKAMP
FOSTER	ELIASON
NAVARRE	FRANK
FURNACE	HALFORD
SHARP	STURGULEWSKI
HUDSON	ZHAROFF
DAVIS, M.	
GOLL	
GRUENBERG	
ELLIS	
MILLER	
MARTIN	

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: RONALD D. GIRARD  
 TITLE:  
 ADDRESS: 4412 E 7TH STREET  
 CITY: ANCHORAGE, AK  
 PHONE: 337-2185  
 BILL NO: HJR 74  
 SUBJECT: SUBSISTENCE  
 MESSAGE: I AM FOR EQUAL USE OF RENEWABLE RESOURCES FOR ALL ALASKANS. ALL ALASKANS SHOULD BE EQUAL. NO PRIORITY GROUPS SHOULD BE FAVORED OVER OTHERS. I AM AGAINST HOUSE RESOLUTIONS PROPOSING CHANGES TO THE STATE CONSTITUTION.  
 /JM

ZIP: 99508

POMID: 03125704  
 DATE: 03/12/90  
 TIME: 12:57:04  
 LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BARNES	BOUCHER	ADAMS
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COLLINS	COTTEN	COGHILL
DAVIS, C.	DAVIS, M.	DUNCAN
DOHLEY	ELLIS	ELIASON
FINKELSTEIN	FOSTER	FAHRENKAMP
FURNACE	GOLL	FAIKS
GRUENBERG	GRUSSENDORF	FISCHER
HANLEY	HOFFMAN	FRANK
HUDSON	JACKO	HALFORD
KOPONEN	KUBINA	JONES
LARSON	LEMAN	KELLY
MACLEAN	HARTIN	KERTTULA
MENARD	HILLER	PEARCE
NAVARRE	PETTYJOHN	POURCHOT
PHILLIPS	RIEGER	RODEY
SHARP	SHULTZ	STURGULEWSKI
SWACKHAMMER	TAYLOR	SZYMAWSKI
ULMER	WALLIS	UEHLING
ZAWACKI		ZHAROFF

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: PHILIP J. DEMBROSKI  
 TITLE:  
 ADDRESS: 733 LORI DRIVE  
 CITY: ANCHORAGE, AK  
 PHONE: 333-1058  
 BILL NO: HJR 74  
 SUBJECT: SUBSISTENCE  
 MESSAGE: I STRONGLY OPPOSE HOUSE JOINT RESOLUTIONS 74, 88 AND 90. I FEEL THE NATURAL RESOURCES BELONG TO AND SHOULD BE SHARED EQUALLY BY ALL ALASKANS.  
 /JM

ZIP: 99504

POMID: 03130658  
 DATE: 03/12/90  
 TIME: 13:06:58  
 LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BARNES	BOUCHER	ADAMS
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COLLINS	COTTEN	COGHILL
DAVIS, C.	DAVIS, M.	DUNCAN
DOHLEY	ELLIS	ELIASON
FINKELSTEIN	FOSTER	FAHRENKAMP
FURNACE	GOLL	FAIKS
GRUENBERG	GRUSSENDORF	FISCHER
HANLEY	HOFFMAN	FRANK
HUDSON	JACKO	HALFORD
KOPONEN	KUBINA	JONES
LARSON	LEMAN	KELLY
MACLEAN	MARTIN	KERTTULA
MENARD	HILLER	PEARCE
NAVARRE	PETTYJOHN	POURCHOT
PHILLIPS	RIEGER	RODEY
SHARP	SHULTZ	STURGULEWSKI
SWACKHAMMER	TAYLOR	SZYMAWSKI
ULMER	WALLIS	UEHLING
ZAWACKI		ZHAROFF

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: KAREN BREWSTER  
TITLE:  
ADDRESS: BOX 1153  
CITY: BARROW ZIP: 99723  
PHONE: 852-5052

BILL NO:  
SUBJECT: SUBSISTENCE  
MESSAGE: PLEASE SUPPORT AMENDING THE ALASKA CONSTITUTION TO AUTHORIZE A  
SUBSISTENCE PRIORITY FOR RURAL RESIDENTS. HJR 88/SJR 78 BEST PROTECTS RURAL  
SUBSISTENCE LIFESTYLES AND CULTURES. ETHNICITY AND INCOME LEVEL SHOULD NOT BE  
USED FOR SUBSISTENCE QUALIFICATION. ONCE STATE SUBSISTENCE LAW COMPLIES WITH  
ANILCA, THEN WILL BE THE TIME TO ARGUE SPECIFIC DEFINITIONS.

POMID: 04132607  
DATE: 03/12/90  
TIME: 13:26:07  
LIONAME: BARROW INFO OFFICE

COPIES: REPRESENTATIVES SENATORS

MACLEAN	ADAMS
MENARD	FAHRENKAMP
JACKO	KERTTULA
FOSTER	ELIASON
NAVARRE	FRANK
FURNACE	HALFORD
SHARP	STURGULEWSKI
HUDSON	ZHAROFF
DAVIS, M.	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: HAROLD AND MARYNE DRAPER  
TITLE:  
ADDRESS: 2020 RIVERVIEW DR.  
CITY: FAIRBANKS ZIP: 99709  
PHONE: 474-9612

BILL NO:  
SUBJECT:  
MESSAGE: WE STRONGLY OPPOSE THE GOVERNOR'S SUGGESTION OF A CONSTITUTIONAL  
AMENDMENT AS A WAY TO CORRECT THE WRONG OF THE PRESENT SUBSISTENCE BILL.

POMID: 07133920  
DATE: 03/12/90  
TIME: 13:39:20  
LIONAME: FAIRBANKS LIO

COPIES: REPRESENTATIVES SENATORS

MENARD	FAHRENKAMP
JACKO	KERTTULA
FOSTER	ELIASON
NAVARRE	FRANK
FURNACE	HALFORD
SHARP	STURGULEWSKI
HUDSON	ZHAROFF
DAVIS, M.	

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: ADAM POLNASZEK  
 TITLE:  
 ADDRESS: 924 GILLIAM  
 CITY: FAIRBANKS ZIP: 99701  
 PHONE: 452-2834  
 BILL NO:  
 SUBJECT: SUBSISTENCE  
 MESSAGE: I REQUEST YOUR SUPPORT IN VOTING AGAINST THE SUBSISTENCE BILL. ALL ALASKA SHOULD BE TREATED EQUALLY.

POMID: 07161926  
 DATE: 03/12/90  
 TIME: 16:19:26  
 LIONAME: FAIRBANKS LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BARNES	BOUCHER	ADAMS
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COLLINS	COTTEN	COGHILL
DAVIS, C.	DAVIS, M.	DUNCAN
DONLEY	ELLIS	ELIASON
FINKELSTEIN	FOSTER	FAHREIKAMP
FURNACE	GOLL	FAIKS
GRUENBERG	GRUSSENDORF	FISCHER
HANLEY	HOFFMAN	FRANK
HUDSON	JACKO	HALFORD
KOPONEN	KUBINA	JONES
LARSON	LEMAN	KELLY
MACLEAN	MARTIN	KERTTULA
MENARD	MILLER	PEARCE
NAVARRE	PETTYJOHN	POURCHOT
PHILLIPS	RIEGER	RODEY
SHARP	SHULTZ	STURGULEWSKI
SWACKHAMMER	TAYLOR	SZYMANSKI
ULMER	WALLIS	UEHLING
ZAWACKI		ZHAROFF

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: DALE HYDER  
 TITLE:  
 ADDRESS: 10233 CHICKALOON  
 CITY: EAGLE RIVER, AK ZIP: 99577  
 PHONE: 694-3354  
 BILL NO:  
 SUBJECT: CONSTITUTIONAL AMENDMENT ON SUBSISTENCE  
 MESSAGE: I STRONGLY OPPOSE THE PROPOSED AMENDMENTS TO THE STATE CONSTITUTION ESTABLISHING RURAL RESIDENTS OR ANY SEGMENT OF THE POPULATION TO PRIORITY USE OF THE STATE'S NATURAL RESOURCES AND FISH AND GAME. WE SHOULD CONTINUE TO STRIVE FOR EQUALITY. /JM

POMID: 03155627  
 DATE: 03/12/90  
 TIME: 15:56:27  
 LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BARNES	BOUCHER	ADAMS
BOYER	BROWN	BINKLEY
COLLINS	COTTEN	COGHILL
DAVIS, C.	DAVIS, M.	DUNCAN
DONLEY	ELLIS	ELIASON
FINKELSTEIN	FOSTER	FAHREIKAMP
FURNACE	GOLL	FAIKS
GRUENBERG	GRUSSENDORF	FISCHER
HANLEY	HOFFMAN	FRANK
HUDSON	JACKO	HALFORD
KOPONEN	KUBINA	JONES
LARSON	LEMAN	KELLY
MACLEAN	MARTIN	KERTTULA
MENARD	MILLER	PEARCE
NAVARRE	PETTYJOHN	POURCHOT
PHILLIPS	RIEGER	RODEY
SHARP	SHULTZ	STURGULEWSKI
SWACKHAMMER	TAYLOR	SZYMANSKI
ULMER	WALLIS	UEHLING
ZAWACKI		ZHAROFF

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: DOUGLAS BROWN  
 TITLE:  
 ADDRESS: 1221 W 80TH  
 CITY: ANCHORAGE  
 PHONE: 276-3363  
 ZIP: 99518  
 BILL NO: HB 396  
 SUBJECT: PROBATION OFFICER 20 YEAR RETIREMENT  
 MESSAGE: I ENCOURAGE YOU TO SUPPORT HB 396, GIVING PROBATION OFFICERS PARITY WITH PEACE OFFICERS IN THE RETIREMENT SYSTEM. WE ARE IN CONSTANT CONTACT WITH CRIMINALS, PLACING OUR SAFETY AND WELFARE IN JEOPARDY, PERFORMING POLICE FUNCTIONS TO PROTECT THE PUBLIC. THIS RETIREMENT WILL HELP RETAIN THE EXPERIENCE WE NOW LOSE DUE TO HIGH TURNOVER IN THIS DEMANDING JOB. I ENCOURAGE YOU TO SUPPORT HB396. -TP

POMID: 03164532  
 DATE: 01/16/90  
 TIME: 16:45:32  
 LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES

BARNES	BOUCHER
BOYER	BROWN
COLLINS	COTTEN
DAVIS, C.	DAVIS, M.
DONLEY	ELLIS
FINKELSTEIN	FOSTER
FURNACE	GOLL
GRUENBERG	GRUSSENDORF
HANLEY	HOFFMAN
HUDSON	JACKO
KOPONEN	KUBINA
LARSON	LEMAN
MACLEAN	MARTIN
MENARD	MILLER
NAVARRE	PETTYJOHN
PHILLIPS	PIEGER
SHARP	SHULTZ
SHACKHAMMER	TAYLOR
ULMER	WALLIS
ZAWACKI	

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: GARY SINKOLA  
 TITLE:  
 ADDRESS: PO BOX 84293  
 CITY: FAIRBANKS  
 PHONE: 474-8071  
 ZIP: 99708  
 BILL NO:  
 SUBJECT: SUBSISTENCE  
 MESSAGE: RAMONA BARNES AT FIRST GLANCE IT APPEARS THAT YOUR SUBSISTENCE BI IS FAIR TO ALL ALASKANS. REMEMBER AN OLD ALASKAN MOTTO - WE DON'T GIVE A DAMN HOW THEY DO IT OUTSIDE. THE FEDS GAVE ALASKA A POLITICAL JUGGERNAUT. EOH/MJD/C

POMID: 07101237  
 DATE: 01/16/90  
 TIME: 10:12:37  
 LIONAME: FAIRBANKS LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BARNES	BOUCHER	ADAMS
BOYER	BROWN	BINKLEY
COLLINS	COTTEN	COGHILL
DAVIS, C.	DAVIS, M.	DUNCAN
DONLEY	ELLIS	ELIASON
FINKELSTEIN	FOSTER	FAHRENKAMP
FURNACE	GOLL	FAIKS
GRUENBERG	GRUSSENDORF	FISCHER
HANLEY	HOFFMAN	FRANK
HUDSON	JACKO	HALFORD
KOPONEN	KUBINA	JONES
LARSON	LEMAN	KELLY
MACLEAN	MARTIN	KERTTULA
MENARD	MILLER	PEARCE
NAVARRE	PETTYJOHN	POURCHOT
PHILLIPS	PIEGER	RODEY
SHARP	SHULTZ	STURGULEWSKI
SHACKHAMMER	TAYLOR	SZYMAWSKI
ULMER	WALLIS	UEHLING
ZAWACKI		ZHAROFF

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: JAN KLUSKA  
 TITLE:  
 ADDRESS: 7736 SNOWVIEW DRIVE  
 CITY: ANCHORAGE ZIP: 99507  
 PHONE: 349-5956  
 BILL NO:

SUBJECT: POLISH FISHERMAN  
 MESSAGE: I AM CONCERNED ABOUT THE POLISH FISHERMAN'S DEPORTATION. I AM A  
 CITIZEN, ALSO POLISH, AND I THINK THAT THEY ARE NOT ABUSING HOSPITALITY OF THIS  
 GOVERNMENT BECAUSE THEY ARE NOT COSTING US THROUGH ANY OF OUR PROGRAMS. THEY  
 ARE HARD WORKERS AND DON'T ASK FOR WELFARE. ALL HELP THEY RECEIVE COMES FROM  
 POLAND. I THINK THAT IT WOULD BE TO OUR ADVANTAGE TO LET THEM STAY. THE MAIN  
 POWER IN POLAND IS STILL COMMUNIST. /DJ

POMID: 03154935  
 DATE: 01/15/90  
 TIME: 15:49:35  
 LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BARNES	BOUCHER	ADAMS
BOYER	BROWN	BINKLEY
COLLINS	COTTEN	COGHILL
DAVIS, C.	DAVIS, M.	DUNCAN
DOHLEY	ELLIS	ELIASON
FINKELSTEIN	FOSTER	FAHRENKAMP
FURNACE	GOLL	FAIKS
GRUENBERG	GRUSSENDORF	FISCHER
HANLEY	HOFFMAN	FRANK
HUDSON	JACKO	HALFORD
KOPONEN	KUBINA	JONES
LARSON	LEMAN	KELLY
MACLEAN	MARTIN	KERTTULA
MENARD	MILLER	PEARCE
NAVARRE	PETTYJOHN	POURCHOT
PHILLIPS	RIEGER	ROEY
SHARP	SHULTZ	STURGULEWSKI
SHACKHAMMER	TAYLOR	SZYMANSKI
ULMER	WALLIS	UEHLING
ZAWACKI		ZHAROFF

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: VERA JOHNSON  
 TITLE:  
 ADDRESS: 625 W 45TH AVE., APT 3  
 CITY: ANCHORAGE ZIP: 99503  
 PHONE: 265-8880  
 BILL NO:

SUBJECT: POLISH DEFECTORS IN ALASKA  
 MESSAGE: EASTERNERS AND MEXICANS BY FAR OUTNUMBER THE FEW POLISH DEFECTORS  
 THIS COUNTRY, SO WHY IS IMMIGRATION SENDING 60 OF THEM FROM ANCHORAGE BACK TO  
 POLAND? THEY ARE VERY HARD WORKERS, AND VERY NICE. ALSO, MOST OF THEM ARE FI  
 MEN, AND SO ARE NOT TAKING ANY JOBS AWAY FROM AMERICAN MEN BECAUSE AMERICAN  
 MEN DON'T CARE TO WORK SO HARD FOR SUCH SMALL WAGES. MANY OF THESE MEN ARE  
 STILL AFRAID TO RETURN TO POLAND.

POMID: 03154538  
 DATE: 01/15/90  
 TIME: 15:45:38  
 LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BARNES	BOUCHER	ADAMS
BOYER	BROWN	BINKLEY
COLLINS	COTTEN	COGHILL
DAVIS, C.	DAVIS, M.	DUNCAN
DOHLEY	ELLIS	ELIASON
FINKELSTEIN	FOSTER	FAHRENKAMP
FURNACE	GOLL	FAIKS
GRUENBERG	GRUSSENDORF	FISCHER
HANLEY	HOFFMAN	FRANK
HUDSON	JACKO	HALFORD
KOPONEN	KUBINA	JONES
LARSON	LEMAN	KELLY
MACLEAN	MARTIN	KERTTULA
MENARD	MILLER	PEARCE
NAVARRE	PETTYJOHN	POURCHOT
PHILLIPS	RIEGER	ROEY
SHARP	SHULTZ	STURGULEWSKI
SHACKHAMMER	TAYLOR	SZYMANSKI
ULMER	WALLIS	UEHLING
ZAWACKI		ZHAROFF

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: JOHN RYBCZYNSKI  
 TITLE:  
 ADDRESS: 3840 YOUNG STREET  
 CITY: ANCHORAGE ZIP: 99508  
 PHONE: 563-3192  
 BILL NO:  
 SUBJECT: POLISH FISHERMEN  
 MESSAGE: I WAS IN THE SAME SITUATION A FEW YEARS BACK. NOW I AM A U.S. CITIZEN AND I AM PROUD. I THINK THAT IF THE OTHER POLISH FISHERMEN ARE LET IN THE UNITED STATE, THEY WILL ALSO BE A CITIZEN LIKE ME. THEY ARE HARD WORKERS AND THEY WILL BUILD A FUTURE FOR A GOOD ALASKA. /BN

POMID: 03140610  
 DATE: 01/15/90  
 TIME: 14:06:10  
 LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BARNES	BOUCHER	ADAMS
BOYER	BROWN	BINKLEY
COLLINS	COTTEN	COGHILL
DAVIS, C.	DAVIS, M.	DUNCAN
DONLEY	ELLIS	ELIASON
FINKELSTEIN	FOSTER	FAHRENKAMP
FURNACE	GOLL	FAIKS
GRUENBERG	GRUSSENDORF	FISCHER
HANLEY	HOFFMAN	FRANK
HUDSON	JACKO	HALFORD
KOPONEN	KUBINA	JONES
LARSON	LEMAN	KELLY
MACLEAN	MARTIN	KERTTULA
MENARD	MILLER	PEARCE
NAVARRE	PETTYJOHN	POURCHOT
PHILLIPS	RIEGER	RODEY
SHARP	SHULTZ	STURGULEWSKI
SHACKHAMMER	TAYLOR	SZYMANSKI
ULMER	WALLIS	UEHLING
ZAWACKI		ZHAROFF

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIOSON

NAME: MR. DENNIS DRAPER  
 TITLE:  
 ADDRESS: 3703 WESTMINSTER WAY  
 CITY: ANCHORAGE ZIP: 99508  
 PHONE: 338-3486  
 BILL NO: HJR 63  
 SUBJECT: DEPORTATION OF POLISH SEAMEN  
 MESSAGE: PLEASE ALLOW THE POLISH SEAMEN WHO HAVE APPLIED FOR ASYLUM IN 1989 REMAIN IN THE UNITED STATES. WE WERE IN POLAND IN JULY OF 1989, AND SAW WHAT ARE AFRAID TO GO BACK TO. ANYTHING YOU CAN DO ON THEIR BEHALF IS GREATLY APPRECIATED. WE ARE CURRENTLY HOUSING 3 OF THE SEAMEN IN HOME, AND WOULD BE GREATLY DISTRESSED BY THEIR DEPORTATION.

POMID: 03161221  
 DATE: 01/15/90  
 TIME: 16:12:21  
 LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

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DONLEY	ELLIS	ELIASON
FINKELSTEIN	FOSTER	FAHRENKAMP
FURNACE	GOLL	FAIKS
GRUENBERG	GRUSSENDORF	FISCHER
HANLEY	HOFFMAN	FRANK
HUDSON	JACKO	HALFORD
KOPONEN	KUBINA	JONES
LARSON	LEMAN	KELLY
MACLEAN	MARTIN	KERTTULA
MENARD	MILLER	PEARCE
NAVARRE	PETTYJOHN	POURCHOT
PHILLIPS	RIEGER	RODEY
SHARP	SHULTZ	STURGULEWSKI
SHACKHAMMER	TAYLOR	SZYMANSKI
ULMER	WALLIS	UEHLING
ZAWACKI		ZHAROFF



# Alaska State Legislature

Please enter into the record my testimony to the Hare Resources Comm.  
 committee name  
 committee on Subsistence, dated 3-1-90  
 bill/subject

I am strongly opposed any constitutional amendment granting a subsistence priority to rural Alaska residents. A subsistence priority should be based on an individual needs basis which means the state Governor + Legislature should work for a change in the Federal Law that mandates a subsistence priority on the rural residency criteria.

Signed Charles W. Derrick Jr. CHARLES W. DERRICK J  
 TESTIMY

Representing (Optional)  
891 SELDOM SEEN RD.  
 Address  
FAIRBANKS, AK 99712  
 Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the \_\_\_\_\_  
committee name

committee on SUBSISTENCE, dated 10 MAR 90  
bill/subject

I oppose any amendment to the state constitution that  
Provides a priority for subsistence to any group, or person  
I support the equal treatment of all Alaskan citizens  
in the use of our resources. It is the non subsistence user  
has been discriminated against. Do not subvert our  
constitution by creating a situation where the majority  
of people are not allowed to hunt & fish.

Signed: Stan Bloom  
Testifier

\_\_\_\_\_  
Representing (Optional)

303 Bentley Dr Fairbanks AK 99701  
Address

452 5068  
Phone No.

The Governor says if we just change our constitution we will return to the pre McDowell status on subsistence. From what I remember that wasn't so good. The State had lost the Kenatzi Case , had lost the Lime Village case, and the Outdoor Councils lawsuit. The judge ruled that Alaska was out of compliance with ANILCA. The State had issued a racially based education permit and had been ordered by the judge to submit a new plan to provide a preference to the Keniatze Indians. The last I heard they still haven't done that. They were saying that the whole Kenia peninsula would have to be called rural. Surely if the Kenai is rural so is Chena Hot Springs Road. ~~I sure wouldn't want to go back to that.~~

All I seem to hear is how the subsistence user is not being treated fairly. It is the urban people who's rights have been violated. We are the injured parties. We have been denied our constitutional rights under the subsistence law. Thank God for courage's people like McDowell. Without someone like him who is not afraid to put up the money and time we would all have to suffer under unconstitutional laws. The legislators who voted for the 86 amendments should ask our forgiveness. Now you have the gall to ask us to change the constitution so we can be discriminated against again. The Governor swore to uphold and to protect our constitution not to subvert it. If you force us to vote on the subsistence ammendment we will hold you accountable, if you vote for it you will have lost my vote forever. You who will be coming back to ask for our votes in November can just remember that.

Its time that we challenge the Federal law in the courts . We should treat all our citizens equally. There is no way to fairly allow some people to use our resources while restricting others. The framers of our constitution foresaw this problem and provided the safeguards that you are trying to subvert

Stan Bloom

1. opost cont ammendment
2. Active Management
- 3.
- 4
- 5
- 6 Basis personal need of Dependent lifestyle

Since I was a boy the constitution has stood as an ultimate and sacred protection of our individual rights such as freedom of speech, religion, Bear arms and freedom of the press. The state constitution is also a sacred document. I don't take your effort to change the constitution to allow circumlocution lightly. Maybe the contrast with the Russians hasn't been such a good thing if we are to retain their idea of democracy. Maybe we need a little more restriction here.



# Alaska State Legislature

Please enter into the record my testimony to the House Resources  
committee name  
committee on HR - 88 , dated 7/10/90  
bill/subject

*See attached*

Signed:

*Tom Scarborough*  
Testifier

Tom Scarborough

*Self*  
Representing (Optional)

*1626 Tarabe Drive, Fairbanks Ak 99709*  
Address

*479-6602*  
Phone No.

THOMAS M. SCARBOROUGH  
1676 TAROKA DRIVE  
FAIRBANKS, ALASKA 99709

March 10, 1990

Re: Comments on HJR-88, Constitutional Amendment Relating  
to Subsistence Uses of Fish and Wildlife by Rural  
Residents

To House Resources Committee

The proposed Amendment as stated in HJR-88 would remove the Civil Rights as granted under Art. 1, Sec. 3 of the Constitution of Alaska. This is the right under which McDowell acted to challenge the State Subsistence Law. This right would be removed by the proposed Amendment. This Amendment may appear to be a short term solution, however the long term must be considered.

Back in 1972 it appeared a good idea to limit entry to Alaska's fisheries. Now 90% of the limited entry permits are owned by non Alaskans. Hindsight tells us that we made a big mistake in that constitutional amendment. To proceed with an amendment on subsistence will be a bigger mistake.

I urge you not to place HJR-88 before the Alaskan public to vote on. The consideration of removing rights that we Alaskan's and Americans have fought for over the past 200 years should not even be given serious consideration.





# Alaska State Legislature

Please enter into the record my testimony to the HOUSE RESOURCES  
committee name  
committee on HJR 88 and 90 , dated 3/7/90  
bill/subject

*Copy of testimony attached*

Signed: *AW Wise* 3/10/90

Testifier

*Self*

Representing (Optional)

*1426-2<sup>nd</sup> AVE FBKs, AK 99701*

Address

*456-5441*

Phone No.

Testimony by:

March 10, 1990

Bud Wiese

Fairbanks, Alaska 99701

I am 68 years old - 49 years in Alaska - 2 children -  
5 grandchildren, all born in Alaska.

Am a conservationist and have worked with sportsmen and  
other groups for over 40 years for the proper management and wise  
use of all our resources.

Also for 40 plus years our family have harvested and processed  
fish, game, berries and etc, for what we feel is a subsistence life  
style as much as anyone with probably very few exceptions both  
rural and/or urban. To elaborate with pride, except for very few  
specialty items such as ham, turkey, oysters or eating out, we have  
fulfilled our needs of fish, red meat, and berries off the land. We  
try hard to take only what we can use - such as now our family group  
has a limit of 6 plus moose plus caribou, sheep, deer and etc, but  
feel 2 moose and some of the smaller animals are what we can use and  
limit ourselves. I assure you we have the capability of taking much  
more. We do not bone animals in the field and in processing, there  
is very little waste. These resources are in most cases shared by  
our group that now number from 17 to 21, this includes the kids of  
our group.

So now that you have heard where I come from - I ask you, do you  
feel that a Constitutional Amendment is necessary to limit my and/or our  
group the opportunity to continue this Subsistence life style because

"continued"

March 10, 1990

Page 2.

Testimony by Bud Wiese -

"continued"

some of us choose to live in an urban area just to conform with Federal regulations that have broken a legal contracts they have with the people of Alaska.

Ask yourself, why have the Feds continued to violate the contracts given to us and they agreed to under the Alaska State Constitution and the Statehood Act? Is it to take back control of Alaska or is it the money they receive from special interest groups to keep us Alaskan divided and weak.

Thank you.



# Alaska State Legislature

Please enter into the record my testimony to the HOUSE RESOURCES  
 committee name  
 committee on HIR 88, dated MAR 10<sup>TH</sup> 1990  
 bill/subject

*See Attached Letter*

Signed: *Charles F. Sorensen*  
 Testifier

*Self and Fairbanks Suburban West in Urban Area*  
 Representing (Optional)

*1011 25TH AVE FBKS 99701*  
 Address

*456-2437*  
 Phone No.

## Subsistence Issue

My name is Chester Sniegowski, and I reside at 1011 25th Avenue in Fairbanks, Alaska.

Adopting a constitutional amendment to ratify a bad Federal law is no answer to the Subsistence issue. I am married and I have five (5) children. My family and I moved to Alaska eleven years ago because this was the Last Frontier. We use approximately seventy salmon, two caribou, and one moose per year. This is not enough resource for my family to subsist on. Just because I chose to settle in Fairbanks, Alaska, I am penalized and treated unequal to other Alaskan living in a rural area.

When you really think about it the only sportsman fishing or hunting in Alaska is the Non-Resident. Every Alaskan should be and rightfully so, considered a subsistence user.

Some Alaskan whether they live in a rural or a urban community, will use the resources less than others. but let's let the individual resident not the government decide, who will get that opportunity.

Let's be fair and just to all Alaskan and make all Alaskan residents subsistence qualified, or fight the Federal government in court to preserve our State Constitution, which guarantee equal use of our fish and game resources to all Alaskan.

Thank you.

P.S. Please refer to the CONSTITUTION OF THE STATE OF ALASKA, Article I Declaration of Rights, Section 1, Section 3, and Section 23. Also Article VIII, Section 3.

Oppose subsistence amendment to Constitution  
Public Testimony -- March 10, 1990

Mary Bishop  
1555 Gus's Grind  
Fairbanks, AK 99709

The state's subsistence law is working pretty well, you <sup>may</sup> say, and we don't want federal take over. Well it's not working well. Have you heard of the serial lawsuits? Madison, Eluska, Ewan, John, Bobby, Kenaitze, McDowell. I'm sure there's more, I think the state has lost them all.

With each one, we've found that the subsistence priority isn't what most people thought it was. <sup>With</sup> each court case, we realize it's worse than we could have imagined. After the ruling in the Lime Village case, Lew Pamplin, director of the state's Division of Wildlife Conservation is quoted in an Anchorage paper as saying, "It's awful. It's real confusing to me. I'm not sure where we are now."

We've learned that the priority exists all the time, not just during a shortage. The priority means that residents of Lime Village have a moose season that calls for no limit, either sex, open six months of the year. The priority means that recreational and commercial use must be eliminated before subsistence use can be restricted below what's "customary and traditional". The priority goes to Nenana residents, but not to people living 4 miles outside Nenana. The priority means that people on the Chena Hot Springs Road must watch residents of Nenana and Minto hunt in their back yard while they can't hunt at all. The priority means that members of a tribal group scattered throughout the Kenai must get a priority over their non-tribal neighbors.

Subsistence, you may say, doesn't exist except in rural areas. So what's the problem with supporting the Governor's proposal.

Well, <sup>J</sup>lots of people seem to disagree about where subsistence does or doesn't exist. We can start with the state's Supreme Court. In the McDowell opinion, page 27, the court used data from the Subsistence Division's research to conclude that

"There are...substantial numbers of Alaskans living in areas designated as urban who have legitimate claims as subsistence users. Likewise, there are substantial numbers of Alaskans living in areas designated as rural who have no legitimate claims."

Rep. Kay Wallis must agree; just two days ago she introduced a

+ several today  
have agreed  
with her.

bill to give all Natives--both rural and urban--special subsistence rights. // Rep. Jacko must think subsistence isn't just rural; he wants a bill that allows for local rather than rural preferences.

The Governor wants to restrict this subsistence right on the basis of rural--but his staff admits they don't know what rural means--and we won't know until the feds tell us. And this is so we can maintain state, rather than federal management?

The Governor says this subsistence use is so important that we must protect it as a Constitutional right--like the right to free speech and the right to assemble. He says we should use the state's Constitution to give one group of citizens a certain right which, in turn, must be taken away from another group of citizens. That's frightening--to use the Constitution for such a purpose.

Then to add insult to injury, we don't even know what rural and non-rural mean--or for that matter what subsistence and non-subsistence mean. Can you, our legislators, define these words? Can you add these words to our Constitution when we don't even really know what they mean? Is this the stuff of which Constitutions should be made?

We mustn't wrong our constitution just because the federal law is wrong. Two wrongs never made a right.

So how do we solve the problem we're in? We must change federal law, and we can. I ~~can~~ personally ~~guaranteed~~ that our Congressional delegation will work for a change in the law--but only if we stand strongly behind them with one voice coming out of our state legislature.

[We must not, in this great state's constitution, make a provision that discriminates so unfairly between citizens.] We must not make any Alaskan citizen's customs and traditions, religion, race or culture more important than his neighbor's customs and traditions, religion, race or culture.

Haven't we learned from history. Don't we have examples enough in this world, right now, of the conflicts and violence that finally erupts when governments discriminate on the basis of race, customs, cultures or religion. ~~Don't do it.~~ Don't do it.



# Alaska State Legislature

Please enter into the record my testimony to the HOUSE RESOURCES  
 committee name  
 committee on HJR 96 & related bills, resolutions, dated 3/10/90  
 bill/subject

*AS PER ATTACHED*

Signed: *Richard Bishop* Richard Bishop  
 Testifier

*SELF*  
 Representing (Optional)

*1535 GUN'S GRIND, FAIRBANKS AK 99709*  
 Address

*907-455-6151*  
 Phone No.

## ALASKA'S SUBSISTENCE DILEMMA

opinion column, by Richard Bishop, March 9, 1990

1555 G45'S GRINDIFAIRBAIRN AK 99709  
PR 907-455-451

Years ago Governor Jay Hammond observed that subsistence was like pornography--everyone could recognize it when they saw it, but no one could define it.

In spite of that insight, subsistence definitions were politically contrived and cast in state and federal law, only to be thrown out by courts 10 years later after unending arguments and serial lawsuits.

In the wake of the frantic pipeline construction era the state legislature passed a law in 1978 giving subsistence use of fish and wildlife priority over other uses. (In that 1978 law, subsistence use was not limited to residents of rural Alaska.) Advocates claimed it would save Alaska's native cultures and would keep Congress from putting the priority in federal law. It did neither.

Ironically, the same advocates pointed to the state law as evidence that Alaskans would not object to a similar federal law. But the word "rural" was added in the 1980 federal law at the insistence of the Alaska Federation of Natives. The state then added "rural" to comply with Federal law. Incredible as it seems, the argument was that by complying fully with federal

mandates, the state would retain its authority to manage fish and wildlife!

Unfortunately no one seriously checked to see if the state law was constitutional. The Alaska Supreme Court declared this fall that it's not.

A priority based on rural residency doesn't comply with the constitution's mandate that fish, waters, and wildlife be managed for "common use".

The law was a loser anyway. Besides its other failings, it dictated that commercial and recreational uses could not be allowed unless and until subsistence use opportunities were fully accommodated. That doesn't sound too bad until you find out in court that the only limits on priority subsistence uses are "custom" and "tradition"--or a threat to the fish or game population's well-being. The state was rapidly heading for a "no-season, no bag limit" situation for subsistence use. And given the technology available, it would be virtually impossible to prove in court that a fish or game population was threatened by subsistence use.

A classic example is the Bobby case, where it was argued that there should be no seasons or bag limits on moose for residents of Lime Village. The state eventually provided a 6 month season, either sex, with no bag limit.

Yet here we are with the Governor and a couple legislators trying to keep this discriminatory and resource-risky scheme in place.

They propose a constitutional amendment that would:

- gut the guarantee of common use/equal opportunity;
- provide for a subsistence use priority based on rural residency, and
- keep the same mushy "custom" and tradition" use limitations that can't protect resources.

Keep in mind that the priority is ALWAYS in effect, not just when there's a resource shortage. Also, other uses cannot legally be allowed unless and until priority subsistence use opportunities are met. The public is seldom told this--but the courts have consistently ruled this way.

What to do? Personal consumptive use of fish and wildlife makes a major contribution to many people's livelihoods, and improves the quality of life for many more, regardless of their location or culture. The state constitution mandates the conservation and management of resources on a sustained yield (self-perpetuating) basis for the maximum benefit of the people. People's needs must be accommodated, within the limits of resources.

The constitutional "common use" provision is insurance against the kinds of special interest management disasters that inflamed the statehood movement. We need to keep it. It's not a threat

to any of our cultures. Laws don't preserve cultures, people do, through their daily decisions on how to live. If culture is the concern, eliminate RATNet (Rural Alaska Television Network).

There are better ways to get the federal government off our resource management back than sabotaging our Constitution. How? Amend ANILCA. Remove the rural priority, and the mandate to manage under federal dictate. No other state has a "do-it-or-I'll-take-it-away" federal threat over its fish and wildlife management. We don't need it to provide resources for Alaskans.

We do need active management to maintain and enhance fish and wildlife populations. Many salmon populations have been enhanced through improved management and hatcheries. Active management could increase wildlife populations and reduce worries about competition among user groups.

The Alaska Constitution and Statehood Act were approved by the federal government. They conveyed to Alaska the authority to manage resources in the state. These laws should be supported, not subverted. ANILCA can and should be amended to conform to the principles established at and for statehood. We need to get on with managing our resources for the benefit of all Alaskans.

If subsistence use is so important that it must be protected by Constitutional amendment, how can 90% of Alaskans be arbitrarily disqualified by limiting it to rural residents only? Our state

and Federal constitutions are often all that stand between the individual's rights and the burdens of government. The constitution should not reduce your rights in the process of trying to increase someone else's. That is a cheap political shot, and the beginning of the end of equal protection under the law.



# Alaska State Legislature

Please enter into the record my testimony to the House Resources  
 committee name  
 committee on HJR 94, HJR 88, dated 10 March 90  
 bill/subject

*as per attachment*

Signed: Samuel Harris - by Mary Bishop  
 Testifier

self  
 Representing (Optional)

Box 80522 - FBKs. AK 99708

Address

457-7815

Phone No.

Points Against Constitutional Amendment Resolutions  
Public Testimony -- March 10, 1990  
Sam Harbo, Box 80522, Fairbanks, Alaska 99708, 457-7815

Alaska Supreme Court, McDowell decision, p. 27.

"There are...substantial numbers of Alaskans living in areas designated as urban who have legitimate claims as subsistence users. Likewise, there are substantial numbers of Alaskans living in areas designated as rural who have no legitimate claims."

Court also says, pages 27 and 28,

"...the equal access clauses of article VIII are a special type of equal protection guaranty..."

The equal access clauses of article VIII are the ones violated by the rural provision.

I think everyone realizes that the equal protection guaranties in our Constitutions constitute the very foundation of our democratic system. Let's not tinker with them.

If subsistence is such a critically important use that it must be granted special protection by Alaska statute, isn't it crazy to modify the Alaska Constitution so that such an important use can arbitrarily be taken from some Alaskans?

The kind of thinking that tolerates such an approach really frightens me.

Some might argue that subsistence use in rural Alaska is different than subsistence use in urban Alaska, and hence we must have a rural or local residency provision in statute. If rural subsistence use can be distinguished from urban subsistence use, then one should be able to define them as separate uses. Our constitution allows preferences among beneficial uses. Hence, no constitutional amendment needed.

Fear of federal takeover without a rural provision?

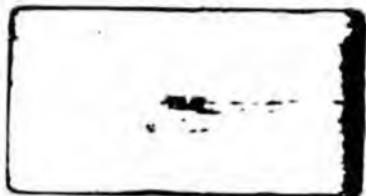
The Alaska Supreme Court in McDowell decision says, page 17:

"State control merely for the sake of control is a questionable goal when the terms infringe upon the open access values of article VIII."

I believe that significantly understates the case!

The clear and compelling reasons why we must not modify the article VIII provisions in our constitution should make for an easy decision for you legislators. You must vote NO on any Constitutional amendment resolution regarding rural or local residency. With such a clear cut case, the argument "I feel I must leave it to the voters" is not only entirely without merit, it is irresponsible.

Given the crystal clear nature of this case, I can only conclude that any legislator who votes in favor of a constitutional amendment resolution does so only because he or she wants to pass discriminatory legislation.





# Alaska State Legislature

Please enter into the record my testimony to the HOUSE RESOURCES COMMITTEE  
 committee name  
 committee on HJR 88 & 90 , dated 3/10/90  
 bill/subject

I OPPOSE HJR 88 AND HJR 90.  
 I DO NOT WANT ALASKA TO CHANGE  
 IT'S STATE CONSTITUTION TO PROVIDE  
 A RURAL ~~PREFERENCE~~ PREFERENCE.

Signed: Clemens M. Clooten CLEMENS M. CLOOTEN  
 Testifier

Representing (Optional)

1163 LINDA LOU LANE

Address

907-457-7604

Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the \_\_\_\_\_

committee name

committee on HJR 88 & HJR 90 , dated 3/10/90

bill/subject

I urge a vote against both HJR 88 & HJR 90 as the bills are racist and place Alaskans against each other on a basis of race or geographical residence location.

All Alaskans should be able to chase and live a subsistence life style regardless of their race or choice of homesite.

Following a bad lead by the Federal Government is not a solution, only an easy way out and failure of Alaskan legislators to do the job they are voted into office to do.

Signed: Del DeMeritt Del DeMeritt

Testifier

Self

Representing (Optional)

2049 Old Steese Hwy. N. F665 AK 99712

Address

457-2692

Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the Home Resource  
 committee name  
 committee on HJR 74, 88, 90, dated 10 March 98  
 bill/subject

When Nels Anderson starts the hearing out by claiming subsistence rights are the Native "birthright" ~~it~~ it's hard to convince the media that this is not a racial issue.

Please see attached testimony.

Signed: Mary Bishop  
 Testifier

self  
 Representing (Optional)

1555 Quin Quad Fbx 99709  
 Address

455-6151  
 Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the Game Resource  
 committee name  
 committee on Wildlife, dated 3/10/90  
 bill/subject

I am opposed to  
 this subsistence Bill.  
 All citizens should  
 be treated equally,  
 no matter where they  
 reside.

FRANK MCGILVARY

Signed:

Testifier

Representing (Optional)

Address

Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the HOUSE RESOURCES  
 committee name  
 committee on HJR 88, 74, dated 3/10/90  
 bill/subject

*I'm OPPOSED TO THE OROUK BILLS*

Signed: *Carl Russell* Carl Russell  
 Testifier

SELF  
 Representing (Optional)

PO BOX 56346 NORTH-POLE AK 99705  
 Address

488-2648  
 Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the HOUSE RESOURCES  
 committee name  
 committee on HSR 88, 74 , dated 3/10/90  
 bill/subject

*I'm opposed To The above bills*

Signed: *Thomas R. Buhite* Thomas R. Buhite  
 Testifier  
*self*  
 Representing (Optional)  
*P.O. Box 80096 College, AK 99708*  
 Address  
*479-2425*  
 Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the HOUSE RESOURCES  
committee name  
 committee on HJR 88.74 , dated 3/10/90  
bill/subject

I'm OPPOSED TO THE ABOVE BILLS

Signed: Gerald Amundson GERALD AMUNDSON  
Testifier

SELF  
Representing (Optional)

1025 LAKEVIEW TER FBKS AK 99701  
Address

456-2207  
Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the State Resources  
 committee name  
 committee on \_\_\_\_\_, dated \_\_\_\_\_  
 bill/subject

*[Faint handwritten text, possibly "State Resources Bill"]*

Signed: Bruce G. Duvleau **BRUCE G. DUVLEAU**  
 Testifier  
 \_\_\_\_\_  
 Representing (Optional)  
 \_\_\_\_\_  
 Address  
 \_\_\_\_\_  
 Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the House Resources  
committee name

committee on HJR 88 + 74 + 90 dated 3/10/90  
bill/subject

I have been a resident of the state for over 13 years and I am a hunter and fisher. My family and I go regularly to hunt and fish to obtain food for our bodies and renewal for our spirits. My residence in Alaska is by choice - not necessity and Alaska's fishing and hunting opportunities are the primary reasons why I choose to live here.

I am strongly opposed to any legislation or constitutional amendment which denies me the opportunity or gives me less opportunity than others based on where I live within the state or based on someone else's perception of what I need to sustain life. The Alaska Constitution is fine as it is - let's leave it alone.

Signed: Joseph F. Wick  
Testifier

Representing (Optional)  
6955 No Name Lane, Fairbanks, AK 99712  
Address

483-4753  
Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the Resources committee name

committee on ASR 74, 88, 90, dated 3/10/90  
bill/subject What's wrong with EQUALITY

Article 1, Section 1 of the Alaska Constitution provides, in Part:  
"All persons are equal and entitled to equal rights, opportunities, and protection under the law."

The U.S. Supreme Court in Zobel v. Williams 457 U.S. 55 (1982) found that Alaska's attempt "To reward citizens for past contributions" was "Not a legitimate state purpose." Alaska's Supreme Court in Schafer v. Ve 680 P.2d 1169 (AK 1984) stated that: "it is clear that the Federal Constitution will not tolerate a state benefit program which "creates fixed, permanent distinctions between... concededly bona fide residents."

Any attempt to racially discriminate among Alaskans or to create a "privileged (rural) class" will violate the U.S. Constitution.

Equality and equal opportunity is constitutionally mandated. Why would anyone want to ~~erase~~ eviscerate these Basic Principles of Democracy. Until you can look <sup>every Alaskan</sup> ~~in~~ in the eye and tell them why you have created a class of persons who have ~~state~~ state sponsored priority to the opportunity to feed their family before the discriminated class.

The proposed rural priority Amendments do not comply with ANILCA Because of the Kenzie case. The grant a ~~racial~~ racial based privilege ~~that~~ will be the next decisive AND Discriminatory action you could conceive and will likely start a WAR Between Alaskans.

Signed:

[Signature]  
Testifier

Lynn Levensgood

Representing (Optional)

Fairbanks F + G Advisory committee & self

Address

931 VIDE way Fbks AK 99709

Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the House Resources  
 committee name  
 HJR 88  
 committee on HJR 74: Const. Subcommittee dated 3-10-90  
 bill/subject

*I oppose changing the  
 Constitution to ~~change~~ solve  
 this problem. It can be solved  
 by legislation.*

Signed:

Bill A. Jeff  
 Testifier

Representing (Optional)

108 Gruening Way Fairbanks, AK 99712  
 Address

457-1478  
 Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the House Resources  
committee name

committee on HJR 74: Const. Subsistence dated 3-10-90  
bill/subject

I oppose a constitutional ammendment to change the subsistence rights. There are proposals which can effectively deal with these issues. These proposals should be utilized to solve our problems.

We have a good constitution and we should not tamper with it to solve short term problems just because the Federal government is exerting pressure from a distant and uninvolved point of view.

Signed: Anna M. Swift  
Testifier

Representing (Optional)  
108 Denning Way Fairbanks, Ak. 99712  
Address

457-1470  
Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the House Resources Committee on  
 committee name HJR 74488  
 committee on \_\_\_\_\_, dated 3/10/90  
 bill/subject \_\_\_\_\_

I am opposed to a Constitutional Amendment because;

- 1) I think we are giving Chesna the Feds are willing - but even if they are not, the Feds would only manage "Substance on Federal lands" - an amendment would merely broaden the discrimination to Federal + State land.
- 2) The requested amendment would do just the opposite of what the framers of the Constitution intended; to wit "to create a "Special minority class" (17%) of the people who could enjoy a privileged position.
- 3) until terms such as "Substance", "Rural" and "Special use" are defined you have no idea what effect or affect the amendment will have.
- 4) "Aboriginal Rights" are nice - as a shame if they are diminished - but we all loose ways of life style as modern times take away options - Should we create an amendment to allow Horse + Buggy on freeways?

Signed: Stephen L. Stone  
 Testifier

del (and about 80% of the people I believe)  
 Representing (Optional)

Address \_\_\_\_\_  
457-2022 (W)      457-5261 (H)  
 Phone No. \_\_\_\_\_

5) Minority  
AFRICAN!

PUBLIC OPINION MESSAGE

FYI

DEAR: REPRESENTATIVE MENARD

NAME: KEN WYME  
 TITLE:  
 ADDRESS: 9571 NOBLEWOOD STREET  
 CITY: ANCHORAGE  
 PHONE: 243-7979  
 ZIP: 99515

TITLE NO:  
 SUBJECT: SUBSTITENCE  
 MESSAGE: COMPER ADMINISTRATION ATTEMPT TO OPEN THE STATE CONSTITUTION FOR SI  
 ITENCE IS ABSURD AND CONTRARY TO THE BEST INTEREST OF ALL ALASKANS. STATE ,  
 FEDERAL BUREAUCRATS HAVE ROBBED ALASKA NATIVES OF THEIR SELF ESTEEM, SELF  
 RESPECT AND SELF RELIANCE RELEGATED THEM TO ASSISTANCE OF WELFARE AND POVER  
 ALASKA NATIVES SHOULD BE TREATED LIKE ALL ALASKANS. THE STATE SHOULD GET T  
 FEDERAL LAW CHANGED. /CMR

POMID: 03090621  
 DATE: 03/02/90  
 TIME: 09:06:21  
 IDNAME: ANCHORAGE LIO

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DAVIS, M.	DONLEY	ELIASON
ELLIS	FINKELSTEIN	FAHRENKAMP
FOSTER	FURNACE	FAIKS
GOLL	GRUENBERG	FISCHER
GRUSSFADORF	HANLEY	FRANK
HOFFMAN	HUDSON	HALFORD
JACKO	KOPONEN	JONES
KUBINA	LARSON	KELLY
LEMAN	MACLEAN	KERTTULA
MARTIN	MILLER	PEARCE
NAVARRE	PETTYJOHN	POURCHOT
PHILLIPS	RIEGER	RODEY
SHARP	SHULTZ	STURGULEWSKI
SHACKHAMMER	TAYLOR	SZYMAWSKI
ULMER	NALLIS	UEHLING
ZAWACKI		ZHAROFF

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: BOB ROBES  
 TITLE:  
 ADDRESS: POB 1286  
 CITY: PALMER  
 PHONE: 745-0248  
 ZIP: 99645  
 BILL NO: SUBSIS  
 SUBJECT: SUBSISTENCE

MESSAGE: I SUPPORT EQUAL RIGHTS FOR ALL ALASKANS AND I OPPOSE ANY  
 CONSTITUTIONAL AMENDMENT THAT PROVIDES SPECIAL PRIVLIDEGE FOR ANY  
 SPECIAL INTEREST.

POMID: 14114345  
 DATE: 03/12/90  
 TIME: 11:43:45  
 IDNAME: MAT-SU LIO

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LARSON	KERTTULA
MENARD	SZYMAWSKI
JACKO	
FOSTER	
NAVARRE	
FURNACE	
SHARP	
HUDSON	
DAVIS, M.	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: JOHN T SHUE JR  
TITLE:  
ADDRESS: HC 02 BX 7636  
CITY: PALMER ZIP: 99645  
PHONE: 745-4911  
BILL NO: HJR 74  
SUBJECT: CONST. AMT: SUBSISTENCE PREFERENCE  
MESSAGE: & 88 & 90: I SUPPORT EQUAL RIGHTS FOR ALL ALASKANS. I OPPOSE  
ANY CONSTITUTIONAL AMENDMENT WHICH PROVIDES SPECIAL PRIVLEDGE  
TO ANY GROUP.

POMID: 14134203  
DATE: 03/10/90  
TIME: 13:42:03  
LIONAME: MAT-SU LIO

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LARSON	KERTTULA
MENARD	SZYMANSKI
JACKO	FAHRENKAMP
FOSTER	ELIASON
NAVARRE	FRANK
FURNACE	HALFORD
SHARP	STURGULEWSKI
HUDSON	ZHAROFF
DAVIS, M.	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: WAYNE WOODS  
TITLE:  
ADDRESS: POB 3037  
CITY: PALMER ZIP: 99645  
PHONE: 745-2534  
BILL NO: HJR 74  
SUBJECT: CONST. AMT: SUBSISTENCE PREFERENCE  
MESSAGE: & 88 & 90: I AM STRONGLY OPPOSED TO ANY CONSTITUTIONAL AMENDMENT  
THAT WOULD DISCRIMINATE AGAINST ANY GROUP OF ALASKANS IN ALLOCATING  
USES OF OUR COMMON WILDLIFE RESOURCES. NONE-TENTHS OF MY INCOME IS  
REALIZED BY COMMERCIAL CONSUMPTION OF OUR WILDLIFE RESOURCES. AS A  
THIRD GENERATION ALASKAN, I WISH TO PROTECT THE RIGHTS OF MY CHILDRI

POMID: 14181520  
DATE: 03/10/90  
TIME: 18:15:20  
LIONAME: MAT-SU LIO

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LARSON	KERTTULA
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JACKO	FAHRENKAMP
FOSTER	ELIASON
NAVARRE	FRANK
FURNACE	HALFORD
SHARP	STURGULEWSKI
HUDSON	ZHAROFF
DAVIS, M.	

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: CAL WILLIAMS  
 TITLE: POLITICAL CHAIRMAN, N.A.A.C.P.  
 ADDRESS: P.O.BOX 200332  
 CITY: ANCHORAGE  
 PHONE: 276-8698  
 ZIP: 99520

BILL NO:  
 SUBJECT: SUBSISTANCE  
 MESSAGE: WE SUPPORT NATIVE PREFERENCE TO ALL FISH AND GAME SHORT OF THIS. WE SUPPORT HJR 90./CHR

POMID: 03133405  
 DATE: 03/12/90  
 TIME: 13:34:05  
 LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES

DAVIS, M.  
 FOSTER  
 FURNACE  
 JACKO  
 MENARD  
 NAVARRE  
 SHARP

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE MENARD

NAME: STEVE JANIK  
 TITLE:  
 ADDRESS: 1650 THUJA  
 CITY: ANCHORAGE  
 PHONE: 349-4854  
 ZIP: 99507

BILL NO:  
 SUBJECT: SUBSISTENCE  
 MESSAGE: I AM OPPOSED TO REPRESENTATIVE JACKO'S PROPOSAL TO AMEND THE STATE CONSTITUTION THAT WOULD ALLOW DISCRIMINATION BASED ON RESIDENCY. DISCRIMINATION BASED ON RESIDENCY IS NO DIFFERENT THAN DISCRIMINATION BASED ON RACE OR RELIGION. /BN

*No response necessary*

POMID: 03075523  
 DATE: 02/02/90  
 TIME: 07:55:23  
 LIONAME: ANCHORAGE LIO

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DAVIS, M.	DONLEY	ELIASON
ELLIS	FINKELSTEIN	FAHRENKAMP
FOSTER	FURNACE	FAIKS
GOLL	GRUENBERG	FISCHER
GRUSSENDORF	HANLEY	FRANK
HOFFMAN	HUDSON	HALFORD
JACKO	KOPONEN	JONES
KUSINA	LARSON	KELLY
LEMAN	MACLEAN	KERTTULA
MARTIN	MILLER	PEARCE
NAVARRE	PETTYJOHN	POURCHOT
PHILLIPS	RIEGER	RODEY
SHARP	SHULTZ	STURGULEWSKI
SHACKHAMMER	TAYLOR	SZYHANSKI
ULMER	WALLIS	UEHLING
ZAWACKI		ZHAROFF

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: DOROTHY T. SIMPSON  
TITLE:  
ADDRESS: 2130 KNOTTINGHAM DR  
CITY: FAIRBANKS  
PHONE: 479-2632  
BILL NO: HJR 88  
SUBJECT: SUBSISTENCE  
MESSAGE: I STRONGLY OPPOSE THE GOVERNOR'S SUBSISTENCE BILL.

ZIP: 99709

POMID: 07143108  
DATE: 03/12/90  
TIME: 14:31:08  
LIONAME: FAIRBANKS LIO

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JACKO	KERTTULA
FOSTER	ELIASON
NAVARRE	FRANK
FURNACE	HALFORD
SHARP	STURGULEWSKI
HUDSON	ZHAROFF
DAVIS, M.	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: EVIE WITTEN  
TITLE:  
ADDRESS: 525 N STREET  
CITY: ANCHORAGE  
PHONE: 258-5647  
BILL NO:  
SUBJECT: SUBSISTENCE  
MESSAGE: PLEASE SUPPORT HJR 88: AMEND THE ALASKA STATE CONSTITUTION TO AGREE WITH ANILCA. SUBSISTENCE RIGHTS SHOULD NOT BE GRANTED ON THE BASIS OF RACE, HEALTH, AND TRADITIONAL RURAL USES SHOULD BE ALLOWED TO CONTINUE WITHOUT CUMBERSOME BUREAUCRATIC CONTROL. KEEP SUBSISTENCE RIGHTS UNDER STATE CONTROL. WORK OUT DETAILS AFTER 7/1/90.

ZIP: 99510

POMID: 04131859  
DATE: 03/12/90  
TIME: 13:18:59  
LIONAME: BARROW INFO OFFICE

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FOSTER	ELIASON
NAVARRE	FRANK
FURNACE	HALFORD
SHARP	STURGULEWSKI
HUDSON	ZHAROFF
DAVIS, M.	

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: T. K. FOSS  
 TITLE:  
 ADDRESS: 1509 BANWISTER  
 CITY: ANCHORAGE, AK ZIP: 99508  
 PHONE: 272-6354  
 BILL NO: HJR 90  
 SUBJECT: CONSTITUTIONAL AMENDMENT-SUBSISTENCE  
 MESSAGE: RE HJR90, HJR80, HJR74 I AM OPPOSED TO THE PASSAGE OF THE ABOVE  
 HJR 80, HJR 74, HJR 90. /JM

POMID: 03104659  
 DATE: 03/12/90  
 TIME: 10:46:59  
 LIONAME: ANCHORAGE LIO

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DONLEY	ELLIS	ELIASON
FINKELSTEIN	FOSTER	FAHRENKAMP
FURNACE	GOLL	FAIKS
GRUENBERG	GRUSSENDORF	FISCHER
HANLEY	HOFFMAN	FRANK
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KOPONEN	KUBINA	JONES
LARSON	LEMAN	KELLY
MACLEAN	MARTIN	KERTTULA
MENARD	MILLER	PEARCE
NAVARRE	PETTYJOHN	POURCHOT
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SHARP	SHULTZ	STURGULEWSKI
SHACKHAMER	TAYLOR	SZYMAWSKI
ULMER	WALLIS	UEHLING
ZAWACKI		ZHAROFF

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: GARY FEASTER  
 TITLE: MAT VALLEY SPORTSMENS CLUB  
 ADDRESS: POB 1875  
 CITY: PALMER ZIP: 99645  
 PHONE: 745-3841  
 BILL NO: HJR 74  
 SUBJECT: CONST. AMOT: SUBSISTENCE PREFERENCE  
 MESSAGE: & 80 & 90: I REPRESENT 110 MEMBERS OF THE MATAHUSKA VALLEY  
 SPORTSMENS CLUB. WE STRONGLY OPPOSE ANY AMENDMENTS TO THE CONSTITUTION  
 WHICH PROVIDE SPECIAL PRIVILIGES TO ANY GROUP. SUCH AMENDMENTS WILL  
 VIOLATE THE RIGHTS OF ALL ALASKANS.

POMID: 14114757  
 DATE: 03/12/90  
 TIME: 11:47:57  
 LIONAME: MAT-SU LIO

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LARSON	KERTTULA
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SHARP	STURGULEWSKI
HUDSON	ZHAROFF
DAVIS, M.	

when such action will only exacerbate the present situation? How will they craft an amendment that will not fly in the face of Article I and/or Article VIII of the State Constitution?

Is it the intent of the legislature to once again exhibit their most famous posture--supine--and leave it to the public to clean up the sorry messes (laws) foisted upon them as we have had to do so many times?

6. . If the federal government moves to manage for subsistence uses on federal land sue at the first and every additional opportunity. A determined effort in the courts will hasten resolution of the issue.

7. Lastly, let us not hear a single legislator state "I'm voting for the resolution to amend the Constitution in order to let the voters decide." If any legislator can't do better than that--resign and go home now!

Robert A. Rausch  
P.O. Box 32662  
Juneau, Alaska 99803

789-3764

A CONSTITUTIONAL AMENDMENT ESTABLISHING  
A SUBSISTENCE PRIORITY FOR RURAL ALASKANS

Position paper prepared by  
Alaska Department of Fish and Game  
and  
Alaska Department of Law

March 7, 1990

I. The problem

On December 22, 1989, the Alaska Supreme Court issued a decision in McDowell v. State that the rural preference in the state subsistence law was unconstitutional. This ruling makes it constitutionally impossible for Alaska to enact a law consistent with Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). That section makes federal officials responsible for providing a preference for subsistence uses of fish and wildlife by rural residents on federal public lands unless, in laws of general applicability, the state provides for such uses.

Without a solution to the problem created by the McDowell decision, management of fish and wildlife will be conducted both by the federal and the state governments. This will undoubtedly lead to conflicts over the allowable uses of fish and wildlife and take many of the decisions out of the hands of Alaskans and give them to the federal government. The state was granted a stay by the Supreme Court until July 1 with respect to existing regulations only.

II. Objectives to be achieved in any solution

We believe that any solution must meet the following objectives:

The state must retain its traditional role as manager of the fish and wildlife resources in Alaska in order to ensure the continued health and viability of those resources, as well as to make sure management of the resources is responsive to the needs of Alaskans.

There should be a priority for subsistence uses of fish and wildlife by those Alaskans who most rely on such uses, the majority of whom live in rural areas of the state.

The greatest certainty and predictability must be given to all fish and wildlife users, requiring that potential management conflicts between state and federal management agencies be minimized.

### III. Review process

In the two months since the ruling, the administration has received comments from a wide range of interested and affected Alaskans, reviewed a number of recommended solutions, and met with a variety of user groups including Alaska Native organizations, commercial fishing organizations, and sportsmen and outdoor groups. Since allocation of Alaska's fish and wildlife resources touches nearly everyone in the state, the administration has kept an open mind in reviewing all proposed solutions. For that reason, a great deal of time has been spent in reviewing the legal parameters of the court ruling and all such proposals.

### IV. Solutions suggested

\* Ask the Alaska Supreme Court to reconsider its decision in McDowell.

The state requested a rehearing of the supreme court's decision, arguing that the court overlooked or misconceived several legal principles and material facts. That request for rehearing has been denied.

\* Amend the Alaska Constitution to authorize a subsistence priority for rural residents.

Since this is the preferred option chosen by Governor Cowper, it will be discussed in more detail in sections V and VI of this paper.

\* Amend ANILCA to eliminate the federal subsistence priority for rural residents.

The administration rejected this approach primarily because it does not have the support of either the Alaska Congressional delegation or the Alaska Native community, both of which would be essential for any amendment to pass Congress. ANILCA was crafted as a compromise which balanced a number of competing interests. Amending it would require an agreement among the state, the Alaska Native community, and the Alaska Congressional delegation at the very minimum. In addition, since the 1978 subsistence statute, throughout the ANILCA legislative process, in the 1982 statewide ballot referendum, and in the 1986 subsistence statute the state has continually supported a subsistence priority for rural residents.

\* Amend ANILCA to preempt state law as necessary to grant rural residents a subsistence priority statewide.

Under this scenario, we would ask Congress to apply the supremacy clause and require the state to give rural residents a subsistence priority statewide, despite the constitutional problems addressed by the Alaska Supreme Court in McDowell. Because of state sovereignty principles, this was not considered to be an option that the state should willingly support. Without state support, it is probably not politically attainable.

\* Amend state law to provide a subsistence priority to state residents most dependent on fish and wildlife, as determined through some kind of individualized permitting system, and then amend ANILCA to conform to the state law.

This option was initially suggested by Governor Cowper early in the debate on how to resolve the dilemma posed by the supreme court's ruling. State officials went to great lengths to attempt to develop a system that would be consistent with the state constitution. The tentative proposal was for a three-member Subsistence Commission with powers and authorities similar to the Commercial Fisheries Entry Commission to determine who was a "subsistence user," using a set of criteria for making those determinations. This option was eventually rejected because 1) it would be extremely burdensome and intrusive on those Alaskans it was intended to protect; 2) it would create a large, cumbersome bureaucracy with a cost of many millions of dollars a year; 3) it was estimated that at least 100,000 individual determinations would need to be made, all of them subject to appeals and litigation; 4) it would require a minimum of three to four years to establish such a system and make the initial determinations; and 5) there was a serious question whether such a system would be consistent with the Alaska Constitution as interpreted in McDowell.

In addition, this approach would still result in state law being inconsistent with the subsistence preference provisions of ANILCA, in the absence of an amendment to ANILCA, already determined to be unattainable. This would create an unacceptable risk of a federal takeover of fish and wildlife management.

\* Interpret section 804 of ANILCA as preempting state law on federal lands (as those may ultimately be defined by the courts), with implementation carried out by state officials.

State and federal attorneys agree that Congress intended the ANILCA subsistence priority for rural residents to apply on federal lands and to preempt conflicting state laws. A legal argument can be made that, under the supremacy clause of the United States Constitution, state officials can implement the ANILCA subsistence priority by rural residents on federal lands directly under ANILCA. On the other hand, it can be argued that state officials are bound by the state constitution and cannot implement a conflicting federal law.

Another uncertainty is the geographic scope of the ANILCA preference. "Public lands" are defined as "land situated in Alaska which, after the date of enactment of this Act, are Federal lands, except [valid state and Native corporation selections]." "Federal land" is defined as "lands the title to which is in the United States after the date of enactment of this Act." "Land" is defined as "lands, waters, and interests therein."

The possible geographic scope of the ANILCA preference under these definitions ranges from "narrow" (wildlife only when they are physically present on federal land, and fish only when in non-navigable waters on federal land) to "broad" (wildlife throughout their migratory range, even when not on federal land, and fish wherever they are in any waters of the state, including the territorial sea).

This option is not the preferred option for reasons in addition to the uncertainty over the geographical scope of ANILCA. Since the state would be acting under federal, as opposed to state, authority there would undoubtedly be litigation challenging the ability of the state to proceed directly under ANILCA. The more direct avenue is to amend the state constitution to allow state agencies to act directly under state law. However, the preemption option may provide a fallback position if the constitutional amendment fails.

\* Seek cooperative agreements with the Secretaries of Interior and Agriculture under which the ANILCA priority would be implemented by them, perhaps only through closure authority to avoid dual management of the resource.

It is clear that a failure by the state to give rural residents a subsistence priority, something which McDowell now says is impossible under the state constitution, would result in a federal takeover of fish and game management for subsistence uses on federal public lands. The Secretary of the Interior has made it clear he wishes to see the state resolve this issue in order to bring us into compliance with the provisions of ANILCA. One former Interior Department official believes that the Secretaries' authorities to implement a subsistence priority for rural residents on federal lands is limited under ANILCA to their authority to close the lands to the taking of fish and wildlife until the priority is satisfied. However, current Department of the Interior officials have also made it clear that they believe their authority to be much more expansive than mere closure authority.

This is an option that, of necessity, is being discussed with federal officials both for the time period between July 1 and the effective date of a constitutional amendment, and in the event an amendment does not pass the Legislature or the voters. Because it

easily could result in a federal takeover of fish and wildlife management however, it is not the preferred option.

\* Use current management tools -- seasons, bag limits, same-day (or even two-day) airborne prohibitions, etc. -- creatively to benefit those most dependent on fish and wildlife.

Some people point to the fact that prior to the state's 1978 statute giving subsistence uses a priority, the Boards of Fisheries and Game had the authority to provide for subsistence uses using the traditional regulatory tools of methods and means. They argue that in order to make the state approach consistent with ANILCA, these traditional regulatory tools could be employed to explicitly favor rural residents. Any direct attempt by the boards to implement such a priority through regulations would be subject to the same constitutional challenge as the rural preference struck down in McDowell. In addition, ANILCA only stays the federal responsibility for providing the subsistence priority by rural residents on federal lands if the state has, in laws of general applicability, the same definition of and priority for subsistence as the federal law. Simply using traditional management tools would not satisfy that requirement of ANILCA, again running the risk of a federal takeover.

\* Challenge the ANILCA subsistence priority for rural residents and/or Congress' power to require such a priority on constitutional grounds.

The administration does not support this option primarily because we support the rural subsistence preference contained in ANILCA and believe an attempt to challenge that priority is not warranted. Such a challenge would probably be based on the grounds that the ANILCA priority violates 1) equal protection, applicable to federal statutes under the due process clause of the Fifth Amendment to the United States Constitution, and 2) the statehood compact. With respect to the first argument, the federal constitution has a much more deferential equal protection test than the Alaska Constitution, and the state is not considered to have very strong legal arguments. With respect to the second argument, a unanimous United States Supreme Court ruled in 1976 that the federal government has the constitutional authority to regulate fish and wildlife on federal lands.

\* Amend the Alaska Constitution to authorize a subsistence priority for Alaska Natives.

Although many of the rural residents who most rely on fish and wildlife for their economic and cultural well-being are Alaska Natives, there are also many non-Native rural residents who depend on the same fish and wildlife. The administration does not support

a Native only preference. Further, such a priority would not be consistent with ANILCA.

\* Amend ANILCA to authorize a subsistence preference for Alaska Natives.

The same position as above applies to this option.

V. The administration's preferred approach

In McDowell, the Alaska Supreme Court struck down the state's subsistence priority for rural residents because it violated article VIII of the Alaska Constitution. It did not rely on any provisions of the federal constitution in striking down the subsistence priority for rural residents. Accordingly, the Alaska Constitution can be amended to make constitutional the subsistence priority by rural residents struck down in McDowell.

Amending the state constitution is the cleanest way to allow the state to again be consistent with ANILCA and provide a subsistence priority by rural residents. Such an amendment would ensure that the state would retain management of fish and wildlife on federal land, a goal which played a major role in the statehood movement. In addition, it would permit the state to ensure that rural residents most reliant on fish and wildlife have the necessary opportunities to take those resources when needed. The state has attempted to do so for more than 10 years now, only to be stymied by one court decision after another. By authorizing a subsistence priority for rural residents in the Alaska Constitution, the state would have clear authority to finally implement what has been state policy for more than a decade.

VI. Further Discussion and Considerations

A. The amendment and its effect.

The governor has proposed a constitutional amendment which would authorize the limitation of subsistence uses of fish and wildlife to rural residents. Such uses already can be the subject of a priority under the current article VIII, section 4, which authorizes "preferences among beneficial uses." The proposed section 19 would be added to article VIII, and would read:

Nothing in this constitution prohibits the Legislature from limiting the taking of fish and wildlife for subsistence uses to rural residents, and from providing for the allocation of that taking among rural residents on the basis of local or community residents, availability of alternative resources, and customary and direct dependence on

a fish or game population as the mainstay of livelihood.

The wording of the proposed resolution makes clear that:

The intent of the amendment proposed by this resolution is to validate, ratify, and reinstate any provisions of [the 1986 state subsistence law] and of any regulations adopted [thereunder], which otherwise might have to be declared invalid under the Alaska Supreme Court's decision in McDowell v. State, 785 P.2d 1 (Alaska 1989), and to explicitly reverse the effect of the McDowell decision as to those provisions and regulations.

If this resolution passes the Legislature and in the November general election, the state would be authorized to have legislation consistent with ANILCA and the legislation which was enacted in 1986 would be validated retroactively, rather than requiring reenactment. The principle of retroactive validation is accepted in caselaw from other jurisdictions, and has been noted by the Alaska Supreme Court in Matthews v. Quinton, 362 P.2d 932, 938 (Alaska 1961).

B. What happens between July 1 and the general election?

If this resolution passes the Legislature, the state could ask the Alaska Supreme Court for an extension of the stay in McDowell until after the November general election results were certified. The justification for the request would be that, if the amendment does pass in the general election, the disruptions and start-up costs for a contingency plan which would only be effective from July 1 through the general election would not be in the best interests of the state.

The court may not be receptive to such a request, since in a February 26, 1990, order denying a request that the current stay be vacated, the court stated:

The stay entered on January 5, 1990, will expire on the close of business July 1, 1990. Extensions to the stay will not be granted.

The court may have been indicating that the state must face up to the consequences of the McDowell decision. The comment, however, was made in a context in which no party had asked for an extension of the stay. It is possible that if a constitutional amendment did pass the Legislature, the court might consider an extension. At the same time, we cannot rely on an extension of the stay. Thus, a contingency plan will have to be developed which would apply from July 1 until after the November election, in the

event the stay were not continued. The state is currently participating in the federal contingency planning process.

C. The amendment's relationship to the Kenaitze problem.

The proposed amendment only attempts to resolve the problem created by the supreme court's decision in McDowell, which conclusively precludes the state from having a law that is consistent with the definition of and priority for subsistence uses in ANILCA. This imminently threatens the unified management so necessary for the welfare of the fish and wildlife in Alaska and for those who use those resources. The proposed amendment does not attempt to address other subsistence issues, such as the inconsistency of the state's definition of "rural" and Congress's use of that term in ANILCA, as identified by the ninth circuit court of appeals in Kenaitze Indian Tribe v. State, 860 F.2d 312 (9th Cir. 1988).

In that case, the court held that the state's current definition of "rural area" found in AS 16.05.940(25) is not consistent with the use of the term "rural" in ANILCA. The state had defined "rural area" as:

a community or area of the state in which the noncommercial, customary, and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy of the community or area.

The ninth circuit concluded that focusing on the economy of the community or area was not consistent with Congress's intent. It based its view on what it considered the "common sense" meaning of "rural" as being connected to population levels and densities. If the proposed constitutional amendment passes, it would not resolve the "rural" issue; unless the proposed constitutional amendment passes, however, the state cannot even attempt to achieve consistency between its definition of "rural" and the federal one.

Even if the McDowell decision had not been issued, it would still be premature to consider changing state law to define "rural" in a way which would be consistent with ANILCA. Although the ninth circuit said the state definition was not consistent, it did not say what the term "rural" in ANILCA meant, and gave the state no clear guidance as to how the state definition should be amended to make it consistent with ANILCA. The meaning of "rural" in the federal law is currently the subject of federal district court proceedings in the Kenaitze case. Until that litigation provides more guidance as to what would be consistent with ANILCA, it would be inappropriate to try to amend state law to match the federal law. At this point, of course, the state does not even

have the authority to define subsistence-in terms of rural residents, quite apart from refining the "rural" definition.

If this constitutional amendment passes, the state will in the meanwhile have gathered more information about the scope of the term "rural" in ANILCA through the federal district court case. A reasoned decision can then be made whether the best course is to repeal the state definition, replace the state definition with another definition, or attempt to amend ANILCA to reflect the state definition in the federal law.

#### D. Severability.

If the constitutional amendment validating the 1986 subsistence law does not pass, the ANILCA standards will apply to federal land in the state. However, what the rules would be for state and private lands depends on the question of severability.

Under McDowell, the limitation of the subsistence priority to only rural residents in the 1986 state law is invalid on state and private lands. However, the court did not decide whether the remainder of the 1986 law, including the priority of subsistence uses over other uses, is also invalid.

The basic question is whether the Legislature would have intended the subsistence mandate and priority to remain in effect if the class of subsistence users included all Alaskans. In that event, hunting by nonresidents and sport and commercial fishing would have to be eliminated before subsistence uses (open to all Alaskans) on any fish stock or game population could be cut back. (The subsistence uses would be subject to reasonable regulation, however, without requiring other uses be eliminated.)

If the Legislature intended that the rest of the law fall if the rural limitation were invalid, then the boards would not be required to authorize subsistence fishing and hunting (open to all Alaskans), and would not be required to give it a priority. The boards could in their discretion, however, authorize subsistence uses and give these uses (as opposed to users) a priority, in any given situation.

This question will probably be presented to the superior court when the case returns there from the supreme court.

# ALASKA FEDERATION OF NATIVES, INC.

411 W. 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-3611



## FEDERAL/STATE OPTIONS

The following is an outline of the major legal options which have been suggested to date for solving the current subsistence problem in Alaska, beginning with an historical review of how we got here.

### I. CHRONOLOGY OF EVENTS LEADING TO MCDOWELL V. STATE:

1960 - The *Federal government* transferred authority for management of fish and game in Alaska to the new State government.

1971 - The *Alaska Native Claims Settlement Act (ANCSA)* extinguished aboriginal hunting and fishing rights. No law was enacted on protection of subsistence, but the Conference Report stated Native subsistence and subsistence lands would be protected by the State of Alaska and Department of Interior.

1978 - The *State subsistence law* created a priority for subsistence over all other fish and game uses. It did not define subsistence users (e.g., as "rural residents," "Natives," or other).

1980 - The *Alaska National Interest Lands Conservation Act (ANILCA)* required a subsistence priority for rural residents on Federal "public lands." It also said the State of Alaska could manage fish and game on all lands if it enacted a law granting a subsistence priority to rural residents, in compliance with ANILCA.

1982 - The Federal government said the State was in compliance with ANILCA, after the Boards of Fisheries and Game adopted regulations creating a rural subsistence priority.

1982 - *Ballot Proposition 7* to repeal the State's subsistence priority was rejected by voters.

1985 - The *Madison* decision was issued by the State Supreme Court which ruled that the 1978 State law did not specifically allow the Boards to grant a subsistence priority to rural residents.

1986 - The *State subsistence law* (1978) was amended by the Legislature to give a specific subsistence priority to rural residents.

1989 - The *Kenaitze decision* was issued by the Federal appeals court which said the State's definition of "rural" (the economic nature of the community) was not consistent with that of ANILCA (the population of the community).

## II. McDOWELL v. STATE DECISION

On December 22, 1989, the State Supreme Court ruled that the State law (1978, amended in 1986) granting a subsistence priority based solely on residency is unconstitutional under the Alaska State Constitution.

The impact of this decision is clear: State law is now out of compliance with ANILCA. The former rules remain in effect until July 1, 1990, as a result of the Supreme Court's stay. After that, if there is no State and/or Federal solution, "dual management" will occur: the Federal government will take over management of fish and game on its "public lands" (more than 60 percent of lands in Alaska), while the State will retain management on State and private lands (including Native corporation lands).

## III. LEGAL AND POLITICAL OPTIONS FOR SOLUTION

Over all, there are four kinds of choices: to amend the State Constitution, to amend ANILCA, to amend both the State Constitution and ANILCA, or to do nothing.

### A. AMEND THE STATE CONSTITUTION.

Process: The Alaska Legislature must pass an amendment resolution by 2/3 vote of both houses (at least 27 Representatives and 14 Senators). The amendment must then be approved by a majority of voters in the General Election on November 6.

Substance: At least two major options have been mentioned to date.

1. Amend the State Constitution to allow the Legislature to adopt a law giving a subsistence priority to rural residents, thus complying with ANILCA.

Advantage: This option would leave the current system in place. The State of Alaska could continue to manage fish and game on all lands. This option requires no amendment to ANILCA.

Disadvantage: This option still requires a definition of "rural" (Kenaitze decision). The definition chosen by the Federal District Court might exclude some Native communities from the subsistence priority (particularly the Kenai Peninsula, Southeast Alaska and perhaps some regional centers).

2. Amend the State Constitution to allow the State to retain fish and game management on all lands by permitting the Legislature to adopt laws consistent with valid Federal law (ANILCA).

Advantage: This option holds greater appeal for Alaska legislators and voters, stressing State management rather than allocation priorities. It also leaves the current system of management in place under the State, while requiring no amendment to ANILCA.

Disadvantage: This option still requires a definition of "rural."

B. AMEND THE STATE CONSTITUTION AND ANILCA TO AGREE.

Process: The Alaska Legislature must pass an amendment resolution by a 2/3 vote of both houses (at least 14 senators and 27 representatives). The amendment must then be approved by a majority of voters in the General Election on November 6. The U.S. Congress (both the House of Representatives and Senate) must then adopt an amendment to ANILCA, and this must be signed by the President.

Substance: At least three major options have been mentioned to date.

1. Amend the State Constitution and ANILCA to allow a subsistence priority for Alaska Natives.

Advantage: This option protects Natives' subsistence rights statewide and includes all Natives resident in Alaska. It does not require that "rural" be defined.

Disadvantage: This option excludes non-Native rural people who depend on subsistence (many of whom are members of Native families). This may be seen by legislators and voters as a racial distinction.

2. Amend the State Constitution and ANILCA to allow a subsistence priority for Natives and rural residents.

Advantage: This option protects both Native subsistence rights statewide and the interests of other rural residents who depend on subsistence.

Disadvantage: This option may be seen by legislators and voters as a partly racial distinction. It still requires a definition of "rural."

3. Amend the State Constitution and ANILCA to allow a subsistence priority for rural residents and members of identifiable groups with cultures and traditions of subsistence use.

Advantage: This option would probably protect both Native and non-Native rural subsistence rights.

Disadvantage: "Cultures and traditions" might be interpreted in ways which harm Native interests. This option may still be seen by legislators and voters as a de facto racial distinction. It still requires a definition of "rural."

#### C. AMEND ANILCA.

Process: The U.S. Congress (both the House and Senate) must adopt an amendment to ANILCA, and this must be signed by the President.

Substance: At least two major options have been mentioned to date.

1. Amend ANILCA to conform to the State Constitution, (e.g., permit system or other criteria).  
NOTE: This would require that a new State law implementing this system be adopted by the Legislature and signed by the Governor.

Advantage: Some urban subsistence users, such as urban Natives, might qualify.

Disadvantage: This option is not certain to satisfy the State Supreme Court's standards of constitutionality. It might also divide villages and Native families, according to the permit criteria chosen. It would be expensive, creating a large new bureaucracy and much paperwork.

2. Amend ANILCA to pre-empt State law, requiring a subsistence priority for particular groups (currently rural residents) on all lands in Alaska. (NOTE: This might be managed directly by Federal agencies or imposed by Congress on implementing State agencies.)

Advantage: This option unifies all fish and game management in Alaska under Federal law.

Disadvantage: Politically, it is very difficult to achieve, particularly without the agreement of the State and the Alaska Congressional Delegation.

D. DO NOTHING.

On July 1, 1990, the Federal government (Secretaries of Interior and Agriculture, with the U.S. Fish and Wildlife Service as lead) will take over management of fish and game on its "public lands," while the State of Alaska will have fish and game management on the remaining State and private lands.

Unresolved Issues:

1. Will the Federal government manage fish and game on its "public lands" directly (through the Federal agencies) or indirectly (by imposing Federal subsistence priority for rural residents on State agencies)?
2. Will Federal jurisdiction include only federally-owned "public lands," or more than that? Will Federal jurisdiction reach out for migratory salmon in navigable waters or migrating animals on any lands, in order to avoid management chaos?
3. Will the State and Federal management systems have very different regulations, making it difficult for subsistence users to follow? Will confusion and uncertainty lead to community disruption and/or management chaos?
4. How will the Federal government define "rural," and how will this impact the Kenai Peninsula, Southeast and perhaps regional centers?
5. Will the accumulation of problems and resentments from a dual management system have further negative impact on statewide politics and ethnic group relations in Alaska? Will the increased problems and resents be focused on Alaska Natives and the U.S. Congress, and will they lead to a repeal or watering down of federal subsistence law?

NOTE: A fifth strategy (judicial) has already been tried, without success. Both the State of Alaska and AFN petitioned the State Supreme Court to rehear the McDowell case and to reconsider its decision. The petitions were rejected.

# ALASKA FEDERATION OF NATIVES, INC.

411 W. 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-3611



AFN TESTIMONY TO STATE HOUSE RESOURCES COMMITTEE BY JULIE KITKA

(APRIL 20, 1990)

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, LADIES AND GENTLEMEN:

I APPRECIATE THE OPPORTUNITY TO TESTIFY TODAY ON THE ISSUE OF SUBSISTENCE. I DO SO REPRESENTING THE BOARD OF DIRECTORS OF THE ALASKA FEDERATION OF NATIVES AND ITS CONSTITUENT ORGANIZATIONS AND COMMUNITIES. WHAT I WILL PRESENT TODAY IS THE CONSENSUS POSITION OF THE STATEWIDE ALASKA NATIVE COMMUNITY ON THE SUBJECT OF SUBSISTENCE AND AN EXPLANATION OF SEVERAL SPECIFIC LEGAL QUESTIONS WHICH ARISE UNDER IT.

THE FIRST THING I MUST TRY TO MAKE CLEAR IS THAT SUBSISTENCE IS MORE THAN A POLITICAL ISSUE. FOR NATIVE PEOPLE, SUBSISTENCE IS THE FOUNDATION OF CULTURE - A SET OF TRADITIONAL PRACTICES WHICH ARTICULATE OUR RELATIONSHIP TO THE LAND - A HERITAGE RECEIVED FROM OUR ANCESTORS WHICH WE MUST PASS ON TO OUR DESCENDENTS.

AS ALASKA NATIVES, WE FIND OURSELVES AT A CRITICAL JUNCTURE IN OUR CONTEMPORARY POLITICAL HISTORY. A PROFOUND CHALLENGE CONFRONTS US: HOW TO PROTECT OUR SUBSISTENCE LIFESTYLES AND PRACTICES FROM THE DAMAGE WROUGHT BY THE RECENT ALASKA SUPREME COURT DECISION IN MCDOWELL V. STATE. IN THE EFFORT TO PROTECT THE CULTURES AND ECONOMIES OF OUR VILLAGES, WE, LIKE ALL ALASKANS, FIND OURSELVES CAUGHT BETWEEN ANILCA, WHICH GUARANTEES A RURAL PRIORITY FOR SUBSISTENCE HUNTING AND FISHING, AND THE ALASKA CONSTITUTION, WHICH WILL NOT PRESENTLY ALLOW SUCH A PREFERENCE.

AS YOU KNOW, MR. CHAIRMAN, A WIDE VARIETY OF OPINION ABOUT WHAT SHOULD BE DONE TO SOLVE THIS DILEMMA HAS ARISEN WITHIN THE NATIVE COMMUNITY DURING THE PAST FOUR MONTHS. SOME NATIVE PEOPLE HAVE FAVORED AMENDING BOTH THE STATE CONSTITUTION AND ANILCA TO PROVIDE FOR A "NATIVE" SUBSISTENCE PRIORITY, FOR A "NATIVE-PLUS-RURAL" PRIORITY OR FOR OTHER ALTERNATIVES. OTHER NATIVE PEOPLE HAVE ADVOCATED AMENDING THE STATE CONSTITUTION, EITHER TO RE-ESTABLISH THE RURAL PRIORITY OR TO PERMIT THE LEGISLATURE TO KEEP FISH AND GAME MANAGEMENT IN STATE HANDS BY COMPLYING WITH FEDERAL LAW. THERE ARE POTENTIALLY MANY VARIATIONS ON THESE MAJOR THEMES. BUT ONE THING IS CERTAIN: NO ISSUE IN RECENT MEMORY HAS SO EFFECTIVELY GALVANIZED THE PARTICIPATION OF NATIVE PEOPLE IN THE POLITICAL PROCESS AS HAS THE FALL-OUT FROM MCDOWELL.

AS YOU ALSO KNOW, MR. CHAIRMAN, AFN SPONSORED A STATEWIDE NATIVE SUMMIT CONFERENCE ON SUBSISTENCE IN ANCHORAGE LAST WEEK. OUT OF THAT GATHERING, A BROAD POLICY CONSENSUS EMERGED. IT CONTAINED MANY DETAILED SUB-ISSUES, INCLUDING THE CALL FOR A THOROUGH EVALUATION OF STATE SUBSISTENCE MANAGEMENT, A CONTINGENCY POSITION REGARDING FEDERAL MANAGEMENT AND SEVERAL LONG-RANGE GOALS. BUT WITH REGARD TO THE LEGISLATION NOW PENDING BEFORE THIS COMMITTEE, THE CONFERENCE RESOLUTION WAS BRIEF AND TO THE POINT. IT DIRECTED ALL NATIVE ORGANIZATIONS TO "ACT TO GAIN APPROVAL OF AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF ALASKA THAT ALLOWS THE STATE TO EXERCISE MANAGEMENT JURISDICTION OVER ALL FISH, WILDLIFE, PLANT AND OTHER RENEWABLE NATURAL RESOURCES WITHIN ITS BOUNDARIES AND PROVIDES THAT THE STATE SHALL EXERCISE MANAGEMENT OF SUBSISTENCE RESOURCES THEREIN IN ACCORDANCE WITH APPLICABLE FEDERAL LAW."

THAT IS THE HEART OF IT. THE STATEWIDE NATIVE COMMUNITY IS NOW UNANIMOUSLY ON RECORD IN FAVOR OF A CONSTITUTIONAL AMENDMENT TO KEEP FISH AND GAME MANAGEMENT IN THE HANDS OF THE STATE GOVERNMENT, IN COMPLIANCE WITH FEDERAL LAW. WE DO NOT - AND I EMPHASIZE NOT - WISH TO SEE A FEDERAL TAKEOVER AFTER JULY 1. SUCH A SCENARIO COULD ONLY BE THE RESULT OF A TRAGIC POLITICAL FAILURE IN ALASKA. WHAT NATIVES WANT IS FOR THE LEGISLATURE AND THE PEOPLE TO FIX THE ISSUE HERE, TO COMPLY WITH FEDERAL LAW AND TO KEEP FISH

AND GAME MANAGEMENT AT HOME, IN ALASKAN HANDS.

IN ORDER TO ACCOMPLISH THIS, A CONSTITUTIONAL AMENDMENT MUST BE ADOPTED BY AT LEAST 2/3 OF BOTH HOUSES BEFORE ADJOURNMENT AND BY A MAJORITY OF THE VOTERS ON NOVEMBER 6. THERE ARE SEVERAL BILLS CURRENTLY BEFORE THIS COMMITTEE WHICH EFFECTIVELY PERFORM THAT FUNCTION. AFTER CAREFUL LEGAL REVIEW, WE RECOMMEND THAT THE LANGUAGE SUGGESTED BY REPRESENTATIVE LYMAN HOFFMAN BECOME THE VEHICLE FOR SUCH A CONSTITUTIONAL AMENDMENT. WE FURTHER RECOMMEND THAT IT BE INSERTED AS AN AMENDMENT TO ANY OF THE CURRENTLY PENDING BILLS WHICH THE COMMITTEE DEEMS APPROPRIATE.

WE URGE THE HOFFMAN LANGUAGE BECAUSE OF ITS EMPHASIS ON ALLOWING THE LEGISLATURE TO ENACT LAWS, CONSISTENT WITH VALID FEDERAL LAWS, WHICH WILL KEEP FISH AND GAME MANAGEMENT IN STATE HANDS. IF THAT IS THE FUNDAMENTAL PURPOSE OF ALL THIS, THEN THAT IS WHAT THE VOTERS SHOULD READ IN THE TEXT OF THE AMENDMENT WE ARE ASKING THEM TO APPROVE.

I ALSO WANT TO POINT OUT THAT THE HOFFMAN LANGUAGE IS "PERMISSIVE" TO THE LEGISLATURE. IT DOES NOT BIND STATE GOVERNMENT TO ANY SPECIFIC SUBSISTENCE POLICY - SUCH AS A STATED PRIORITY FOR ANY GROUP. ALL IT PROVIDES IS THE CONSTITUTIONAL AUTHORITY FOR THE LEGISLATURE TO COMPLY WITH FEDERAL LAW, A POWER IT DOES NOT PRESENTLY ENJOY. AFTER RECEIVING SUCH AUTHORITY FROM THE VOTERS, THE LEGISLATURE HAS EVERY RIGHT NOT TO EXERCISE IT, IF IT SO CHOOSES. THAT

IS POLITICS. ALL THE AMENDMENT ITSELF WOULD DO IS TO CLEAR AWAY THE CONSTITUTIONAL OBJECTION FOUND BY THE SUPREME COURT IN MCDOWELL AND TO GIVE THE LEGISLATURE A POLITICAL OPTION IT CANNOT NOW CHOOSE, EVEN TO SAVE ITS OWN CONTROL OF FISH AND GAME.

SEVERAL BRIEF TECHNICAL ISSUES ON THE HOFFMAN LANGUAGE NEED TO BE CLARIFIED: FIRST, WE HAVE RECENTLY HEARD THE CRITICISM THAT, SINCE THE HOFFMAN LANGUAGE IS PURPOSELY GENERAL IN SCOPE, AND SINCE THE THREE SECTIONS OF ARTICLE VIII OF THE STATE CONSTITUTION WHICH THE SUPREME COURT USED IN MCDOWELL TO INVALIDATE THE RURAL PRIORITY ARE SPECIFIC IN SCOPE, A FUTURE COURT MIGHT INTERPRET THE HOFFMAN LANGUAGE AS NOT SPECIFICALLY SUPERSEDING ANY OR ALL OF THOSE SECTIONS. THIS ARGUMENT IS SPECIOUS. THE HOFFMAN LANGUAGE CAREFULLY BEGINS WITH THE WORDS "NOTHING IN THIS CONSTITUTION." THAT MEANS WHAT IT SAYS. ALL ARTICLES AND SECTIONS WHICH THE SUPREME COURT FOUND VIOLATED IN MCDOWELL ARE IN THIS CONSTITUTION, AND WE FEEL CERTAIN THAT ANY FUTURE COURT WOULD FIND LIKEWISE.

A SECOND CRITICISM OF THE HOFFMAN LANGUAGE COULD BE THAT IT SHOULD SAY "ANILCA," RATHER THAN "FEDERAL LAW." WE DISAGREE. THE USE OF THE TERM "FEDERAL LAW" PROVIDES THE LEGISLATURE WITH THE BROADEST POSSIBLE AUTHORITY TO ACT. IT ASSURES THE ABILITY OF FUTURE LEGISLATURES, IF THEY SO WISH, TO ENACT LAWS IN COMPLIANCE WITH FUTURE FEDERAL FISH AND

GAME STATUTES WHICH MIGHT OTHERWISE THREATEN A FEDERAL MANAGEMENT TAKEOVER. AGAIN, THIS DOES NOT REQUIRE THE LEGISLATURE TO DO SO. IT GIVES IT THE FREEDOM TO ACT. IF THE LEGISLATURE WISHES TO NARROW THE SCOPE OF ITS PRESENT LEGISLATION TO ADDRESS ONLY ANILCA, THIS LANGUAGE WOULD ALLOW IT TO DO SO WITHOUT PUTTING UNNECESSARY LIMITATIONS ON THE AUTHORITY OF FUTURE LEGISLATURES TO ADDRESS - PRO OR CON - FUTURE FEDERAL ENACTMENTS.

ANOTHER CONCERN WHICH MIGHT BE RAISED IS THAT THE HOFFMAN LANGUAGE PROVIDES A "BLANK CHECK" TO THE FEDERAL GOVERNMENT TO IMPOSE FUTURE FEDERAL POLICY JUDGMENTS ON STATE FISH AND GAME MANAGEMENT. THE OBVIOUS RESPONSE IS THAT THE FEDERAL GOVERNMENT ALREADY HAS SUCH AUTHORITY, AS IT CLEARLY EXERCISED IN TITLE VIII OF ANILCA. WHAT THE HOFFMAN AMENDMENT WOULD DO IS TO ALLOW THE STATE TO ENACT LAWS WHICH KEEP FISH AND GAME MANAGEMENT IN STATE HANDS. NOTHING IN THE HOFFMAN LANGUAGE EITHER EXPANDS OR DIMINISHES THE LEGAL AUTHORITY OF THE UNITED STATES GOVERNMENT - NOR COULD IT.

I CANNOT OVERSTATE, MR. CHAIRMAN, THE IMPORTANCE OF ACTING EXPEDITIOUSLY. ADJOURNMENT OF THIS SESSION IS SCHEDULED IN LESS THAN THREE WEEKS. SEVEN DAYS AGO THE UNITED STATES FISH AND WILDLIFE SERVICE PUBLISHED IN THE FEDERAL REGISTER ITS FORMAL NOTICE OF "INTENTION TO PROPOSE INTERIM RULES IMPLEMENTING TITLE VIII OF THE ALASKA NATIONAL

INTEREST LANDS CONSERVATION ACT." WHY? AS INTERIOR SECRETARY LUJAN STATED AT OUR CONFERENCE LAST WEEK, THE UNITED STATES DOES NOT WISH TO COME INTO ALASKA AND TAKE OVER FISH AND GAME MANAGEMENT ON FEDERAL LANDS. BUT IT WILL DO SO IF THERE IS NO SOLUTION AT THE STATE LEVEL BY JULY 1. THE INTERIOR DEPARTMENT IS NOW GEARING UP TO DO JUST THAT, AND FEDERAL LAW REQUIRES IT TO GO THROUGH A PUBLIC CONSULTATION PROCESS ON INTERIM AND PERMANENT RULE - MAKING. THE DEADLINE FOR RECEIPT OF RECOMMENDATIONS AND COMMENTS AT INTERIOR IS MAY 14.

IN ADDITION, THE DEPARTMENT OF THE INTERIOR IN ALASKA HAS BEEN AT WORK FOR ALMOST TWO MONTHS, THROUGH A SPECIAL DEPARTMENTAL TASK FORCE, DRAWING UP A PLAN FOR A FEDERAL MANAGEMENT TAKEOVER. BECAUSE THE NATIVE COMMUNITY IS NOT A PARTY TO THAT PROCESS, I CAN NOT TELL YOU WHAT THE PLAN WILL LOOK LIKE. BUT I AM CONVINCED THAT THE DEPARTMENT IS MOVING QUICKLY TO CARRY OUT ITS NON-DISCRETIONARY RESPONSIBILITY UNDER FEDERAL LAW.

ONE ADDITIONAL ISSUE, MR. CHAIRMAN, NEEDS TO BE AIRED. AS WE HEAD TOWARDS ADJOURNMENT, THE GREAT QUESTION IN EVERYONE'S MIND IS WHETHER BOTH HOUSES OF THIS LEGISLATURE WILL ADOPT SOME FORM OF CONSTITUTIONAL LANGUAGE TO KEEP FISH AND GAME IN ALASKAN HANDS, OR WHETHER THE BODY WILL TURN ITS BACK ON THE ISSUE AND GO HOME WITHOUT TAKING ACTION. A THIRD ALTERNATIVE, OF COURSE, IS THAT THE LEGISLATURE MIGHT

BE PERSUADED TO ADOPT SOME FORM OF STATUTORY LANGUAGE WHICH, WHILE PERHAPS SATISFYING THE STATE CONSTITUTION, WOULD STILL BE OUT OF COMPLIANCE WITH FEDERAL LAW. I URGE THE COMMITTEE TO SEE THAT EITHER OF THE LAST TWO OPTIONS REPRESENTS A FAILURE OF POLITICAL WILL AND WILL PRECIPITATE A LONG-TERM CRISIS OF FISH AND GAME MANAGEMENT IN ALASKA WHICH WE SHALL ALL COME TO REGRET.

THERE MAY BE, ON THE PART OF SOME LEGISLATORS, A CAREFULLY UNSPOKEN ASSUMPTION THAT WHAT REALLY NEEDS TO BE DONE - NO MATTER HOW LONG THE EFFORT AND HOW PAINFUL THE COST - IS TO FORCE THE CONGRESSIONAL OPENING OF ANILCA IN ORDER TO GET RID OF THE RURAL SUBSISTENCE PRIORITY. MY RESPONSE TO THAT SILENT AGENDA IS TWO FOLD: FIRST, THAT IT SHOULD NOT BE SILENT; AND, SECOND, THAT IT WON'T WORK.

ON THE QUESTION OF SILENCE, LET ME SAY THAT ANY AGENDA WHICH ASSUMES THAT THE FINAL BLOW TO SUBSISTENCE CAN ONLY BE DELIVERED BY PURPOSEFULLY RAISING THE LEVEL OF REGULATORY CONFUSION, POLITICAL ANGER AND INDIVIDUAL PAIN IN THIS STATE TO A POINT WHERE THE MAJORITY WILL BE FORCED TO TURN ON THE MINORITY IS IRRESPONSIBLE. IF THIS SHOULD TURN OUT TO BE THE COURSE WHICH THE STATE OF ALASKA HONESTLY WISHES TO PURSUE, IT HAS EVERY RIGHT TO DO SO. BUT IT SHOULD SAY SO. IT SHOULD STEP OFF ON THAT PATH CONSCIOUSLY, KNOWING THE CONSEQUENCES AND SAYING THE TRUTH. NO ONE, IN GOOD FAITH, MAY KNOWINGLY ENGINEER A POLITICAL AND SOCIAL CRISIS AND

LATER DESCRIBE IT AS HAVING BEEN UNAVOIDABLE OR UNINTENDED.

ON THE ISSUE OF POLITICAL FEASIBILITY, LET ME BE EQUALLY FRANK. I THINK IT IS HIGHLY UNLIKELY THAT THE UNITED STATES CONGRESS WILL OPEN ANILCA. BUT IF IT DOES, I CAN PROMISE YOU THAT ITS RECONSIDERATION OF THIS ENORMOUS FEDERAL STATUTE WILL NOT BE LIMITED TO SUBSISTENCE. ONCE YOU OPEN ANY PART OF IT, ALL OF ITS PROVISIONS BECOME FAIR GAME. SOME PEOPLE IN ALASKA OBVIOUSLY DO NOT BELIEVE THAT, BUT THE POLITICAL REALITY IS THAT THERE ARE DOZENS OF OUTSIDE INTERESTS (AND THEIR ADVOCATES IN THE CONGRESS) WHO WILL MAKE IT COME TRUE.

AT BEST, ANY AMENDING OF ANILCA WILL BE A THREE TO FIVE-YEAR PROCESS, DURING WHICH TIME THE FEDERAL GOVERNMENT WILL BE IN ALASKA ANYWAY, MANAGING MOST OF OUR FISH AND GAME. EVEN IF THE CONGRESSIONAL PROCESS STARTS WITH SUBSISTENCE, DOZENS OF OVERSIGHT HEARINGS, FLOOR SPEECHES, BILLS AND AMENDMENTS WILL EVENTUALLY REACH OUT AND TOUCH EVERY FEDERAL LAND USE QUESTION IN ALASKA. SENATOR STEVENS AND OTHER MEMBERS OF OUR CONGRESSIONAL DELEGATION HAVE DESCRIBED THAT SCENARIO IN STARK LANGUAGE. HOW MUCH DOES ALASKA REALLY WANT TO PAY TO THE REST OF THE COUNTRY IN ORDER TO GET RID OF THE SUBSISTENCE PRIORITY? HOW LONG WILL IT TAKE? AND WHAT WILL THE PERMANENT CONSEQUENCES BE FOR THE POLITICAL, ECONOMIC AND SOCIAL ENVIRONMENT OF OUR STATE?

I HAVE CONCLUDED THAT THE REAL OUTCOME OF AMENDING ANILCA WILL BE SO COSTLY TO THE STATE GOVERNMENT, TO THE STATEWIDE BUSINESS COMMUNITY AND TO THE GENERAL PUBLIC THAT-ONCE THEY SEE IT-THEY WILL INSIST THAT THIS PANDORA'S BOX REMAIN CLOSED. FISH AND GAME IS GOING TO HAVE TO BE DEALT WITH HERE. I URGE ALL MEMBERS OF THE LEGISLATURE TO RECOGNIZE THAT THE UNSPOKEN AGENDA OF TARGETING ANILCA, INSTEAD OF AMENDING THE STATE CONSTITUTION, IS A PROCESS BY WHICH POLITICAL MISPERCEPTION PRODUCES BAD LAW.

IN CLOSING MR. CHAIRMAN, I WISH TO GO BACK TO A NATIVE PERSPECTIVE ON ALL OF THIS. DURING LAST WEEK'S STATEWIDE SUBSISTENCE CONFERENCE, ONE OF THE NATIVE ELDERS WHO SPOKE TO US WAS EDWARD HOPSON, AN INUPIAT ESKIMO LEADER FROM THE ARCTIC SLOPE REGION. I WANT TO QUOTE SEVERAL LINES FROM WHAT HE TOLD US, IN THE HOPE THAT HIS GOD-GIVEN ELOQUENCE MIGHT SUCCEED WHERE MY WORDS FAIL.

MR. HOPSON SAID:

"WE ALL HAVE A RESPONSIBILITY TO MANAGE THE RESOURCES AND THE ANIMALS GOD HAS PUT ON THIS EARTH. WE MIGHT ASK OURSELVES WHO ARE WE MANAGING IT FOR. IS THIS AN ISSUE OF WHO GETS TO TAKE THE LAST SEAL OR THE LAST CARIBOU? IS THIS AN ISSUE OF RETURNING TO A LIFESTYLE WHICH HUNTS WITH BOWS AND ARROWS OR LIVES WITHOUT MODERN CONVENIENCES? OR IS IT, MORE APPROPRIATELY, AN ISSUE OF KEEPING OUR CULTURE ALIVE

AND DYNAMIC, NOT A MUSEUM RELIC? A CULTURE IS TO BE LIVED AND EXPERIENCED, NOT STUDIED AND OBSERVED.

"... HUNGER KNOWS NO LAW. WHEN OUR PEOPLE ARE HUNGRY THEY WILL HUNT AND FISH. WHEN THE DUCKS FLY, WE WILL HARVEST DUCKS. WHEN THE CARIBOU COME, WE WILL TAKE THEM. TO DO LESS WILL MEAN THE DEATH OF OUR PEOPLE. IT WILL MEAN THE DEATH OF BOTH SPIRIT AND BODY. TO ALLOW THE BODY ALONE TO LIVE ON WITH STORE-BOUGHT OR WESTERN MAN'S FOOD WILL SURELY SEE THE DEATH OF THE SPIRIT AND OF THE CULTURE OF THE PEOPLE. THE BODY WILL SOON FOLLOW. FOR OUR OLD PEOPLE IT WILL COME SOONER, AND PERHAPS FOR THEM IT WILL BE A MORE HUMANE DEATH. FOR THE YOUNGER PEOPLE IT WILL MEAN A SLOWER DEATH OF THE BODY, AND IT WILL COME FROM ALCOHOL, DRUGS AND CANCER THAT COMES FROM THESE FOODS AND FROM THE LOSS OF SPIRIT.

"...NO LAW CAN CREATE A CULTURE. WE MUST DO THAT OURSELVES AND WE MUST WORK CONSTANTLY TO PROTECT IT.

MR. CHAIRMAN, FOR ALASKA NATIVES SUBSISTENCE REPRESENTS EVERYTHING. WHAT IS BEING CONSIDERED IN THIS LEGISLATURE IS OUR ECONOMIC SURVIVAL, OUR CULTURAL IDENTITY AND OUR PHYSICAL AND PSYCHOLOGICAL HEALTH.

FROM THAT PERSPECTIVE, WE STRONGLY URGE THE LEGISLATURE TO ACT EXPEDITIOUSLY, TO ADOPT A CONSTITUTIONAL AMENDMENT IN COMPLIANCE WITH FEDERAL LAW AND TO MOVE FORWARD IN THE

EFFORT TO RETAIN FISH AND GAME IN THE HANDS OF THOSE WHO  
KNOW BEST HOW TO MANAGE THEM - THE ALASKANS.

THANK YOU.

ALASKA FEDERATION  
OF NATIVES, INC.



**JANICE E. RYAN**  
PUBLIC INFORMATION OFFICER

3707

411 W. 4th Avenue  
Suite 301

Anchorage, AK 99501  
(907) 274-3611



## **SUBSISTENCE: A Strategy for Our Future**

**Egan Convention Center  
Anchorage, Alaska  
April 10-11, 1990**



*A Conference of the Native Community*

Species		Historic range	State	When listed	Critical habitat	Special rules
Scientific Name	Common Name					
Boreognathes—Borage family						
<i>Cryptomus crassipes</i>	Tongue Creeper cat's-eye	U.S.A. (TX)	E		NA	NA

Dated: February 28, 1990  
 Richard N. Smith,  
 Acting Director, Fish and Wildlife Service,  
 [FR Doc. 90-8577 Filed 4-12-90; 8:45 am]  
 BILLING CODE 4310-06-M

## 50 CFR Part 36

RIN 1016-AB43

### Intention To Propose Interim Rules Implementing Title VIII of the Alaska National Interest Lands Conservation Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to propose rules and request for comments.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces that it will be developing interim regulations pertaining to the implementation of the subsistence priority for rural residents of Alaska under title VIII of the Alaska National Interest Lands Conservation Act of 1980. The Alaska Supreme Court recently ruled that the laws used by the State of Alaska to provide the subsistence priority required by title VIII violated the Alaska Constitution. The Alaska Supreme Court stayed its decision until July 1, 1990. Should the State be unable to rectify the situation, the Federal government may be required to take over the implementation of title VIII on public lands on July 1, or potentially sooner.

**DATE:** For written comments to be considered in the initial drafting of the rules, they should be received by May 14, 1990.

**ADDRESSES:** Comments should be addressed to the Regional Director, ATTN: Glenn Ellison, 1011 E. Tudor Road, Anchorage, Alaska 99503.

**FOR FURTHER INFORMATION CONTACT:** Glenn Ellison, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3542.

**SUPPLEMENTARY INFORMATION:** Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126) requires the Secretary of the

Interior to implement a program to grant preference in favor of subsistence uses of fish and wildlife on public lands unless the State of Alaska implements a subsistence program consistent with ANILCA's requirements. The State of Alaska has implemented such a program since the enactment of ANILCA in 1980 pursuant to findings by the Department of the Interior that the State subsistence program is consistent with ANILCA. In December 1989, however, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural limitation in the State subsistence definition, which is required by ANILCA, violates the Alaska Constitution. The Court stayed the effect of the decision until July 1, 1990.

As a result, the Department of the Interior may be required to take over the implementation of title VIII of ANILCA on public lands on July 1, 1990. The Service, as the lead agency in the process of writing interim regulations for subsistence management on public lands, these rules would impact the subsistence use of fish and wildlife resources on public lands in Alaska managed by the Fish and Wildlife Service, National Park Service, Bureau of Land Management, Forest Service, Air Force, Army and various other Federal land managing agencies. This notice solicits comments and suggestions from resource users, other Alaskans and the general public on how title VIII should be implemented on public lands. Due to the uncertain nature of the situation and short time available, the development of these regulations is a contingency against the sudden requirement for the Federal government to take over implementation of title VIII on public lands. The mandates under which the regulations must operate include, but are not limited to the following:

- (1) Ensure the maintenance of healthy fish and wildlife populations;
- (2) Define subsistence uses as the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the

making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; and for customary trade;

(3) Provide for nonwasteful subsistence uses of fish and wildlife and other renewable resources as the priority consumptive use of such resources on public lands, when it is necessary to restrict consumptive uses;

(4) Provide subsistence users reasonable access; and

(5) Provide for a system of regional participation.

The subsistence priority will not be based on race, color, or creed.

The potential need for quick action precludes a longer comment period than would normally be the case. Should Federal management become reality, it is the Federal government's intention to work in close cooperation with the State and minimize disruption to fish and wildlife users and historical state management of resident fish and wildlife. Title VIII allows reasonable regulations to provide access and to protect the viability of all wild renewable resources. The protection of wild renewable resources and the opportunity to utilize those resources by rural Alaskan residents on public lands for subsistence purposes are of paramount importance to the Federal government and to the public as a whole.

If Federal management appears to be required beyond December 31, 1990, the development of permanent regulations will commence in early July 1990. Permanent regulations will provide for regional councils and extensive public involvement in development of the permanent regulations and annual rule making. This regulation writing effort will include a Notice of Intent, public comment period and the acceptance of written and verbal comments throughout the process.

Dated: April 6, 1990.  
 John F. Turner,  
 Director, U.S. Fish and Wildlife Service,  
 [FR Doc. 90-8534 Filed 4-12-90; 8:45 am]  
 BILLING CODE 4310-06-M



## **SUBSISTENCE:**

### **A Strategy for Our Future**

**Egan Convention Center - Lower Level  
Anchorage, Alaska  
April 10-11, 1990**

## **Conference Guide & Agenda**

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# ALASKA FEDERATION OF NATIVES, INC.

411 W. 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-3611



Open Letter to Alaska Native leaders:

On behalf of the Alaska Federation of Natives and its member organizations, I would like to extend a heart-felt welcome to you. Thank you for taking the time to attend this important two-day summit conference.

As you know, on December 22, 1989, the Alaska Supreme Court ruled the State subsistence law unconstitutional. Since January, in meetings across the state, Native people have been reviewing the legal situation and the range of possible solutions to the serious situation we now face.

Over the course of these next two days, we hope to review the best possible information on the consequences of the McDowell decision as it affects Native people and hunting and fishing rights. We believe that if Native people are informed about political and legal developments which affect them, they can more effectively protect and promote their own interests and the public interest.

Immediately following the two-day meeting, the House and Senate Resources Committees of the Alaska State Legislature will hold a joint hearing on subsistence. The hearing is scheduled for Wednesday, April 11, from 5:30-9:00PM. It will be held at the Egan Convention Center in the same room as this conference. AFN strongly urges you to plan on testifying. Many legislators do not understand why subsistence is critical to the cultural and economic survival of Native families. This is an opportunity for you to share your knowledge and your views on how the situation should be resolved.

Protecting subsistence hunting and fishing will continue to be a challenge to Alaska Natives for some time. We urge you to continue to stay involved. Thank you.

Sincerely,

A handwritten signature in cursive script that reads 'Julie E. Kitka'.

Julie E. Kitka  
President

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# AGENDA

Tuesday, April 10, 1990

- 8:00am WELCOME - Julie Kitka, AFN President  
INVOCATION - Rev. Anna Frank, Episcopal Diocese of Alaska
- 8:40 INTRODUCTION & PURPOSES - Ralph Eluska, AFN  
PRESENTATION Walter Charley, Athabascan Elder
- 8:55 REVIEW OF AGENDA - Co-moderators Perry Eaton & Marlene Johnson
- 9:00 PANEL: "CHALLENGES FACING ALASKA NATIVES - SUBSISTENCE"  
Panel Moderators: Perry Eaton & Marlene Johnson Julie Kitka, AFN  
John Shively, NANA Bob Polasky, RurAL CAP Chris McNeil, SEALASKA
- Resource people: Don Mitchell, AFN Counsel  
Bill Caldwell, Alaska Legal Services  
Alan Mintz, DC Counsel  
QUESTIONS FROM THE FLOOR
- 10:30 Break
- ISSUE #1: FEDERAL PRE-EMPTION & DUAL MANAGEMENT OF FISH & GAME
- 10:45 FEDERAL/STATE PANEL: "HOW WOULD IT WORK?"  
Panel Moderator: Johnny Hawk  
Glenn Elison, USF&S Steve Behnke, ADF&G  
Tom Koester, Dept. of Law Stan Leaphardt, CACFA  
QUESTIONS FROM THE FLOOR
- 11:30 PANEL: "HOW WILL IT AFFECT US?"  
Panel Moderator: Chris McNeil, SEALASKA  
Trefon Angasan, BBNC, "Unanswered Questions & Continuing Litigation"  
Ken Johns, CRNA, "Impacts on Villages Surrounded by State & Federal Land"  
Myron Naneng, AVCP, "Impacts on the Y-K Delta"  
Clare Swan, Kenaitze Indian Tribe, "Kenaitze Lawsuit"  
Ed Thomas, T&H, "Co-Management under '638'"  
Walter Sampson, NANA, "Living with Federal Management"  
QUESTIONS FROM THE FLOOR
- 12:30pm Break for lunch

cont. on page 4

Conference Guide '3

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# AGENDA

## Tuesday, April 10, 1990

2:00pm REMARKS BY CO-MODERATORS (AGENDA/PRODEDURES)

**ISSUE #2: CONGRESS & ANILCA**

2:05 PANEL: "OPENING ANILCA"

Panel Moderator: Edgar Blatchford

David Eluska, RurAL CAP

Cheryl Sutton, KPFA

Willie Kasayulie, ANC

Robert Willard, SENSC

Mitch Demientieff, TCC

Emily Barnett, Sierra Club

Bud Burris, Alaska Outdoor Council    Wayne Anthony Ross, Alaska Outdoor Council

QUESTIONS FROM THE FLOOR

4:00 PRESENTATION BY SENATOR TED STEVENS VIA TAPE

Marie Matsuno Nash, Senator Stevens' Staff Representative

4:20 PANEL: "CONGRESSIONAL STAFF QUESTIONS & ANSWERS"

Panel Moderator: Tim Wallis

Greg Renkas, Chief of Staff, Senator Frank Murkowski

Greg Chapados, Chief of Staff, Senator Ted Stevens

Rick Agnew, Counsel, Congressman Don Young

CLOSING REMARKS, Eddie Hopson, Inupiat Elder

5:30 Recess

## Wednesday, April 11, 1990

8:30am REMARKS BY CO-MODERATORS (AGENDA/PROCEDURES)

8:40 OPENING REMARKS, Rev. Billy Sheldon, Sr., Inupiat Elder

**ISSUE #3: STATE CONSTITUTIONAL AMENDMENT**

9:00 GOVERNOR STEVE COWPER

9:20 QUESTIONS & ANSWERS, Mike Irwin, Office of the Governor

9:45 CONGRESSMAN DON YOUNG

10:15 Break

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# AGENDA

Wednesday, April 11, 1990

10:30am LEGISLATORS' PANEL: "THE NEXT FOUR WEEKS - OPTIONS AVAILABLE TO THE ALASKA STATE LEGISLATURE"  
Panel Moderator: Nels A. Anderson, Jr.  
Sen. Al Adams                      Rep. Eileen MacLean                      Rep. George Jacko  
Rep. Kay Wallis                      Sen. Jack Coghill                      Rep. Lyman Hoffman  
QUESTIONS FROM THE FLOOR

12:30pm Break for lunch

ISSUE #4: CONSTITUTIONAL AMENDMENT APPROACH

1:30 PANEL: VILLAGE PERSPECTIVES  
Dolly Garza, Southeast      Tom Tilden, Bristol Bay      Gary Oskolkoff, Southcentral  
Paul John, Western Alaska      Ronald Brower, Jr., North Slope      Will Mayo, Interior

2:20 PANEL: REGIONAL PERSPECTIVES  
Myron Naneng, AVCP      Robert Willard, SENSC      Mitch Demientieff, TCC  
Trefon Angasan, BBNA      Sam Demientieff, FNA

3:10 Break

3:30 PANEL: "WHERE DO WE GO FROM HERE?"  
Ralph Eluska, AFN      Matthew Iya, RARA      Dewey Skan, Jr., Rural CAP  
Bart Garber, NARF      Byron Mallott, SEALASKA      Willie Kasayulie, ANC

4:45 CLOSING REMARKS Dr. Walter Soboleff, Tlingit Elder

5:00 BENEDICTION Bishop Jacob Nelson, Moravian Mission of Alaska, Bethel

CONFERENCE CLOSING

5:30pm- JOINT HOUSE/SENATE RESOURCES HEARING  
9:00pm

**PLEASE TESTIFY:** This joint House/Senate Resources Committee Hearing is an excellent opportunity for Native people from throughout the State to make clear how critically important subsistence activities are to our cultures, economies and lifestyles. Please take advantage of it and testify.

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# FEDERAL/STATE OPTIONS

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The following is an outline of the major legal options which have been suggested to date for solving the current subsistence problem in Alaska, beginning with an historical review of how we got here.

## I. CHRONOLOGY OF EVENTS LEADING TO McDOWELL v. STATE

1960 - The *Federal government* transferred authority for management of fish and game in Alaska to the new State government.

1971 - The *Alaska Native Claims Settlement Act (ANCSA)* extinguished aboriginal hunting and fishing rights. No law was enacted on protection of subsistence, but the Conference Report stated Native subsistence and subsistence lands would be protected by the State of Alaska and Department of Interior.

1978 - The *State subsistence law* created a priority for subsistence over all other fish and game uses. It did not define subsistence users (e.g., as "rural residents," "Natives," or other).

1980 - The *Alaska National Interest Lands Conservation Act (ANILCA)* required a subsistence priority for rural residents on Federal "public lands." It also said the State of Alaska could manage fish and game on all lands if it enacted a law granting a subsistence priority to rural residents, in compliance with ANILCA.

1982 - The Federal government said the State was in compliance with ANILCA, after the Boards of Fisheries and Game adopted regulations creating a rural subsistence priority.

1982 - *Ballot Proposition 7* to repeal the State's subsistence priority was rejected by voters.

1985 - The *Madison* decision was issued by the State Supreme Court which ruled that the 1978 State law did not specifically allow the Boards to grant a subsistence priority to rural residents.

1986 - The *State subsistence law* (1978) was amended by the Legislature to give a specific subsistence priority to rural residents.

1989 - The *Kenaitze decision* was issued by the Federal appeals court which said the State's definition of "rural" (the economic nature of the community) was not consistent with that of ANILCA (the population of the community)

## II. McDOWELL v. STATE DECISION

On December 22, 1989, the State Supreme Court ruled that the State law (1978, amended in 1986) granting a subsistence priority based solely on residency is unconstitutional under the Alaska State Constitution.

The impact of this decision is clear: State law is now out of compliance with ANILCA. The former rules remain in effect until July 1, 1990, as a result of the Supreme Court's stay. After that, if there is no State and/or Federal solution, "dual management" will occur: the Federal government will take over management of fish and game on its "public lands" (more than 60 percent of lands in Alaska), while the State will retain management on State and private lands (including Native corporation lands). Over all, there are four kinds of choices: to amend the State Constitution, to amend ANILCA, to amend both the State Constitution *and* ANILCA, or to do nothing.

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### III. LEGAL AND POLITICAL OPTIONS FOR SOLUTION

#### A. AMEND THE STATE CONSTITUTION.

Process: The Alaska Legislature must pass an amendment resolution by 2/3 vote of both houses (at least 27 Representatives and 14 Senators). The amendment must then be approved by a majority of voters in the General Election on November 6.

Substance: At least two major options have been mentioned to date.

1. Amend the State Constitution to allow the Legislature to adopt a law giving a subsistence priority to rural residents, thus complying with ANILCA.

Advantage: This option would leave the current system in place. The State of Alaska could continue to manage fish and game on all lands. This option requires no amendment to ANILCA.

Disadvantage: This option still requires a definition of "rural" (Kenaitze decision). The definition chosen by the Federal District Court might exclude some Native communities from the subsistence priority (particularly the Kenai Peninsula, Southeast Alaska and perhaps some regional centers).

2. Amend the State Constitution to allow the State to retain fish and game management on all lands by permitting the Legislature to adopt laws consistent with valid Federal law (ANILCA).

Advantage: This option holds greater appeal for Alaska legislators and voters, stressing State management rather than allocation priorities. It also leaves the current system of management in place under the State, while requiring no amendment to ANILCA.

Disadvantage: This option still requires a definition of "rural."

#### B. AMEND THE STATE CONSTITUTION AND ANILCA TO AGREE.

Process: The Alaska Legislature must pass an amendment resolution by a 2/3 vote of both houses (at least 14 senators and 27 representatives). The amendment must then be approved by a majority of voters in the General Election on November 6. The U.S. Congress (both the House of Representatives and Senate) must then adopt an amendment to ANILCA, and this must be signed by the President.

Substance: At least three major options have been mentioned to date.

1. Amend the State Constitution and ANILCA to allow a subsistence priority for Alaska Natives.

Advantage: This option protects Natives' subsistence rights statewide and includes all Natives resident in Alaska. It does not require that "rural" be defined.

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Constitution Guide 7

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## FEDERAL/STATE OPTIONS

Disadvantage: This option excludes non-Native rural people who depend on subsistence (many of whom are members of Native families). This may be seen by legislators and voters as a racial distinction.

2. Amend the State Constitution and ANILCA to allow a subsistence priority for Natives and rural residents.

Advantage: This option protects both Native subsistence rights statewide and the interests of other rural residents who depend on subsistence.

Disadvantage: This option may be seen by legislators and voters as a partly racial distinction. It still requires a definition of "rural."

3. Amend the State Constitution and ANILCA to allow a subsistence priority for rural residents and members of identifiable groups with cultures and traditions of subsistence use.

Advantage: This option would probably protect both Native and non-Native rural subsistence rights.

Disadvantage: "Cultures and traditions" might be interpreted in ways which harm Native interests. This option may still be seen by legislators and voters as a de facto racial distinction. It still requires a definition of "rural."

### C. AMEND ANILCA.

Process: The U.S. Congress (both the House and Senate) must adopt an amendment to ANILCA, and this must be signed by the President.

Substance: At least two major options have been mentioned to date.

1. Amend ANILCA to conform to the State Constitution, (e.g., permit system or other criteria).  
NOTE: This would require that a new State law implementing this system be adopted by the Legislature and signed by the Governor.

Advantage: Some urban subsistence users, such as urban Natives, might qualify.

Disadvantage: This option is not certain to satisfy the State Supreme Court's standards of constitutionality. It might also divide villages and Native families, according to the permit criteria chosen. It would be expensive, creating a large new bureaucracy and much paperwork.

2. Amend ANILCA to pre-empt State law, requiring a subsistence priority for particular groups (currently rural residents) on all lands in Alaska. (NOTE: This might be managed directly by Federal agencies or imposed by Congress on implementing State agencies.)

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## FEDERAL/STATE OPTIONS

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Advantage: This option unifies all fish and game management in Alaska under Federal law.

Disadvantage: Politically, it is very difficult to achieve, particularly without the agreement of the State and the Alaska Congressional Delegation.

D. DO NOTHING.

On July 1, 1990, the Federal government (Secretaries of Interior and Agriculture, with the U.S. Fish and Wildlife Service as lead) will take over management of fish and game on its "public lands," while the State of Alaska will have fish and game management on the remaining State and private lands.

### UNRESOLVED ISSUES:

1. Will the Federal government manage fish and game on its "public lands" directly (through the Federal agencies) or indirectly (by imposing Federal subsistence priority for rural residents on State agencies)?
2. Will Federal jurisdiction include only federally-owned "public lands," or more than that? Will Federal jurisdiction reach out for migratory salmon in navigable waters or migrating animals on any lands, in order to avoid management chaos?
3. Will the State and Federal management systems have very different regulations, making it difficult for subsistence users to follow? Will confusion and uncertainty lead to community disruption and/or management chaos?
4. How will the Federal government define "rural," and how will this impact the Kenai Peninsula, Southeast and perhaps regional centers?
5. Will the accumulation of problems and resentments from a dual management system have further negative impact on statewide politics and ethnic group relations in Alaska? Will the increased problems and resents be focused on Alaska Natives and the U.S. Congress, and will they lead to a repeal or watering down of federal subsistence law?

NOTE: A fifth strategy (judicial) has already been tried, without success. Both the State of Alaska and AFN petitioned the State Supreme Court to rehear the McDowell case and to reconsider its decision. The petitions were rejected.

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## UNANSWERED QUESTIONS & CONTINUING LITIGATION

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**1. Assuming that on July 1, 1990, the State is not in compliance with Title VIII of ANILCA, how did Congress intend the Title VIII subsistence priority to be implemented?**

There are two possibilities. The first possibility is that Congress intended the Title VIII subsistence priority to take the place of State law and intended the U.S. Fish and Wildlife Service and other federal agencies to take the place of the Alaska Board of Fisheries and Board of Game. The second possibility is that Congress intended the Title VIII subsistence to take the place of State law, but intended the Alaska board of Fisheries and Board of Game to implement priority (subject to federal oversight). The first possibility results in dual regulation of the same fish stocks and game populations. The second possibility allows regulation of the taking of fish stocks and game populations to be done by one regulator using two legal standards.

**2. What is the jurisdiction of the Title VIII subsistence priority?**

Section 804 of ANILCA establishes a federal subsistence priority for the taking of fish stocks and game populations on "public lands" in Alaska. 1) What stocks and populations did Congress intend the term "public lands" to include? 2) Does the section 804 priority apply fishing for fish stocks throughout their ranges (for example, to subsistence fishing for a Yukon River salmon stock up and down the entire Yukon River)? Or is the priority just limited to subsistence fishing that occurs on federal land (for example, fishing inside the boundaries of the Yukon Delta Wildlife Refuge)? 3) Similarly, does the section 804 priority apply to game animals only when they are hunted on federal land? Or does it apply to the hunting of game animals everywhere they roam?

**3. Which hunters and fishermen did Congress intend the Title VIII subsistence priority to benefit?**

Section 803 of ANILCA limits the subsistence priority to hunters and fishermen who are "rural Alaska residents." In 1986, the Alaska Legislature enacted a law that says that "rural Alaska residents" live in communities and areas in which hunting and fishing for food is a principal characteristic of the economy of the community or area. The Ninth Circuit Court of Appeals has held that Congress intended "rural Alaska residents" to be hunters and fishermen who live in locations that are "sparsely populated, where the economy centers on agriculture or ranching." According to the court: "rural is the antonym of urban and includes all areas in between cities and towns of a particular size." Because of the conflict between these definitions - if the Alaska Constitution is amended to give the Legislature authority to enact laws that comply with Title VIII of ANILCA - the State must deal with the question of "rural." Three policy choices have been identified to date:

- 1) amend the State definition of "rural area" to conform to the Ninth Circuit definition,
- 2) Congress must amend section 803 of ANILCA to conform to the State definition,
- 3) or Congress and the State must amend both federal and state law to enact a new, mutually agreed upon "rural" definition.

*cont. on page 11*

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## Unanswered questions (cont.)

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### *4. Should the Alaska Legislature pass, and should the voters adopt, a constitutional amendment that authorizes the Legislature to enact laws that comply with Title VIII of ANILCA?*

In 1978, and again in 1986, the Alaska Legislature passed laws of general applicability that the Legislature thought established a subsistence priority in Title VIII of ANILCA. ANILCA requires the benefits of the subsistence priority to be limited to "rural Alaska residents." In McDowell v. State, the Alaska Supreme Court held that the Alaska Constitution does not grant the Legislature authority to limit the benefits of a subsistence priority to rural residents." To give the Legislature the authority that the Court has said it lacks, the Governor and several legislators have introduced bills to amend the Alaska Constitution to allow the Legislature to establish a "rural resident" subsistence priority. The important unanswered questions include:

- 1) Should such an amendment be adopted? If not, should an amendment be adopted that allows the subsistence priority to be limited to Natives, Natives and non-Natives who live in ANCSA villages, or some other group of hunters and fishermen?
- 2) If such an amendment should be adopted, what is the likelihood that the Alaska Legislature, by a 2/3 vote of each house, would agree to put such an amendment on the 1990 election ballot?
- 3) And if it were to appear on the 1990 election ballot, what is the likelihood that such an amendment would be approved by a majority of the voters?

## COURT CASES

There are a number of cases in the federal and state courts in which subsistence users have challenged a variety of State restrictions on subsistence hunting and fishing practices. Some of the most important of these cases were described below. If the McDowell decision results in a dual management system after July 1, these cases will be affected in different ways.

### *THE "RURAL" RESTRICTION*

Kenaitze Indian Tribe v. Alaska (federal court). In this case, the federal court of appeals threw out the State Legislature's 1986 definition of "rural area" (as a place where subsistence is "a principal characteristic of the economy"). This definition had been used to deny subsistence fishing rights to the Kenaitze Tribe and most other subsistence users on the Kenai Peninsula. The court of appeals ruled that the definition was inconsistent with ANILCA's use of the "rural" classification, and that "rural" must be given its ordinary meaning. The federal district court is now considering whether the entire Kenai Peninsula, or only parts of it, are rural for subsistence purposes.

Last summer, the Kenaitze Indian Tribe was permitted, by a preliminary injunction, to operate a single tribal subsistence fishing net. A similar preliminary injunction for the upcoming season is currently being negotiated between the Kenaitze Indian Tribe and the State. The issue of whether the State or the federal government will have jurisdiction over the Kenai fisheries after July 1 has not yet been raised in this case.

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## RESTRICTIONS ON "CUSTOMARY AND TRADITIONAL" USES

Kitka v. Alaska (federal court). This lawsuit was filed by residents of Sitka. Although the Joint Boards had determined that Sitka was a "rural area" under the State's definition, the Board of Fisheries, following an approach similar to the approach the Joint Boards follow in making the "rural area" determination, ruled that Sitka residents do not qualify for "customary and traditional" uses of any fish or shellfish species, except sockeye salmon and herring. The Board therefore refused to authorize any subsistence uses of shellfish, groundfish, four species of Pacific salmon, and all other finfish. The plaintiffs have challenged these restrictions as violations of ANILCA; they also allege that they are unconstitutional under the federal Constitution. On its own initiative, the federal court has indicated that it might find parts of the City and Borough of Sitka to be non-"rural."

Sumner Strait Advisory Committee v. Alaska (federal court). In this case a local advisory committee and non-Native residents of Port Protection and Port Baker (on the northwest tip of Prince of Wales Island) challenge the finding of the Board of Fisheries that local residents do not qualify for "customary and traditional" subsistence uses of any species of fish (even though the Board of Game has found that they are entitled to subsistence uses of deer). Plaintiffs allege that the Board's action violates ANILCA. They also allege that the Board illegally refused to follow the recommendation of the regional advisory council.

Bobby v. Alaska (federal court). This is the Lime Village case in which the federal court ruled unlawful the Board of Game's closed-season and individual-bag-limit restrictions on subsistence moose and caribou hunting. The court held that the closed seasons were inconsistent with traditional hunting seasons, and that individual bag limits were in conflict with the communal system of sharing game resources. In response to the court's order, the Board eliminated individual bag limit, replacing them with a community harvest-reporting system (but individual harvest tickets are still required). The Board also eliminated the closed season on caribou, but retained two closed moose seasons. Lime Village has objected to the closed moose seasons and the requirement for individual harvest tickets, and the Board of Game has agreed to reconsider those restrictions at its next subsistence meeting. The hunting grounds of Lime Village include both federal and non-federal lands.

John v. Alaska (federal court). In this case residents of Mentasta and Dot Lake, along with the Mentasta Village Council, have successfully argued that ANILCA requires the Board of Fisheries to allow a subsistence fishery at the historic site of Batzulnetas on the upper Copper River, which has been closed to subsistence fishing since 1964. The court ruled that in refusing to permit the subsistence fishery, the Board had not taken the steps and made the findings necessary under the State subsistence law and ANILCA. The court therefore directed the Board to adopt new regulations consistent with the law. A subsistence fishery was conducted at Batzulnetas last summer under a preliminary injunction, and a new preliminary injunction for this upcoming season is currently being negotiated.

Native Village of Dot Lake v. Alaska & Kluti Kaah Native Village of Copper Center v. Alaska (federal court). These cases were filed the first week of January this year when the Alaska Department of Fish and Game, after the McDowell decision came down, issued emergency orders closing the winter Dot Lake subsistence moose hunt and the winter Nelchina subsistence caribou hunt. The hunts were reinstated when the Alaska Supreme Court stayed the effect of its McDowell decision until July 1. The plaintiffs in both cases allege that existing restrictions on their subsistence hunting violate ANILCA; they also allege that they have a constitutional right to engage in subsistence hunting. The Dot Lake moose hunting grounds include mostly non-federal lands, whereas subsistence hunting of the Nelchina caribou herd takes place on both federal and non-federal lands.

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## Continuing Litigation

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Morry and Kwethluk IRA Council v. State (State court at Barrow). In this case a resident of Anaktuvuk Pass and the Kwethluk Tribe challenge, under both ANILCA and the State subsistence law, the \$25.00 tag fee and the hide and skull sealing requirements as applied to the subsistence hunting of grizzly bears. The bear hunting grounds of both villages include mostly federal lands.

### *CUSTOMARY TRADE*

Tanana Fish and Game Association v. Alaska (federal court). In this case the people of Tanana challenge a Board of Fisheries regulation which prohibits them from selling the roe from Yukon River salmon lawfully taken for subsistence uses. The bulk of this incidental by-product is otherwise wasted. The Village fish and game association argues that limited exchanges of this incidental roe for cash qualifies as "customary trade" within ANILCA's definition of subsistence uses, and that the State therefore cannot lawfully prohibit this trade. The association has developed a program to regulate and limit the roe trade. The local advisory committee adopted the program, but the Board of Fisheries rejected it. The issue whether the Yukon River subsistence salmon fisheries should be managed by the State or the federal government has been raised in this case.

United States v. Sakurai (federal court). In this federal criminal prosecution under the Lacey Act for selling herring roe-on-kelp, the court dismissed the charges against two residents of Hydaburg, who had earned \$7,000 to \$9,000 for such sales during each of the previous two years. The court ruled that such sales were "customary trade" within the meaning of ANILCA, and that the amounts involved did not constitute a "significant commercial enterprise."

### *SUSTAINED YIELD*

Kwethluk IRA Council v. Alaska (federal court). This case was filed after the Board of Game in March rejected an emergency petition from the Kwethluk Tribe for an immediate, limited subsistence hunt of the Kilbuck Mountains caribou herd. The Board attempted to base its decision on the sustained yield principle. Last week the federal court granted a preliminary injunction requiring the State to make available to the Tribe between April 5 and April 15 a subsistence hunt, with a quota of 50 caribou. The court rejected the Board's sustained yield determination because the State did not have a game management plan for the Kilbuck herd and the Board had not adopted "an articulated and evenly applicable definition of sustained yield." The court criticized the Board for acting "in an *ad hoc* fashion, as though it had unfettered discretion to decide what meaning it would attribute to the sustained yield issue in any particular case." The court found that a hunt of 50 animals would not adversely affect the herd, and that Kwethluk had demonstrated an urgent need for the meat.

Tlingit and Haida Central Council v. State (State court). In this recently filed case, individual Tlingit and Haida Indians and Tlingit and Haida Central Council challenge the State's management of sea cucumbers harvests in Southeast Alaska. They allege that the State is mismanaging this resource by allowing commercial harvests in violation of the sustained yield principle, to the detriment of long-established subsistence uses of sea cucumbers throughout the region.

*THE FOLLOWING BILLS have been introduced by various legislators and the Governor in an attempt to provide a legislative solution to the current situation regarding subsistence. They are listed in order of when they were introduced. For more information on these proposals please contact the bill's sponsor.*

## SPONSORED BY REP. RAMONA BARNES

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 415  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SIXTEENTH LEGISLATURE - SECOND SESSION  
A BILL

For an Act entitled: "An Act relating to subsistence hunting and fishing." BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. AS 16.05.258(a) is amended to read:

(a) The Board of Fisheries and the Board of Game shall identify the fish stocks and game populations, or portions of stocks and populations, that are customarily and traditionally used for subsistence [IN EACH RURAL AREA IDENTIFIED BY THE BOARDS].

\* Sec. 2. AS 16.05.258(c) is amended to read:

(c) The boards shall adopt subsistence fishing and subsistence hunting regulations for each stock and population for which a harvestable portion is sufficient to accommodate the subsistence uses of the stock or population, then the boards may provide for other consumptive uses of the remainder of the harvestable portion. If it is necessary to restrict subsistence fishing or subsistence hunting in order to assure sustained yield or continue subsistence uses, then the preference shall be limited, and the boards shall distinguish among subsistence users on the basis of their [BY APPLYING THE FOLLOWING CRITERIA:

(1)] customary and direct dependence on the fish stock or game population as the mainstay of livelihood [;

(2) LOCAL RESIDENCY,] and the

(3)] availability of alternative resources.

\* Sec. 3. AS 16.05.258 is amended by adding a new subsection to read:

(g) Methods and means employed in the pursuit, capture, and transport of fish or game for subsistence use may not include

(1) motorized vehicles, including motorized boats, aircraft, snow machines, trucks, and automobiles;

(2) poison or a similar substance;

(3) explosive devices or charges that could affect more than one animal at a time;

(4) gill nets, seines, or long lines;

(5) traps or snares that the Board of Fisheries or Board of Game determines to be inhumane.

\* Sec. 4. AS 16.05.940(29) is amended to read:

(29) "subsistence fishing" means the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources [BY A RESIDENT DOMICILED IN A RURAL AREA OF THE STATE] for subsistence uses with a dip net, spear [GILL NET, SEINE], fish wheel, [LONG LINE,] or other means defined by the Board of Fisheries;

\* Sec. 5. AS 16.05.940(30) is amended to read:

(30) "subsistence hunting" means the taking of, hunting for, or possession of game [BY A RESIDENT DOMICILED IN A RURAL AREA OF THE STATE] for subsistence uses by means defined by the Board of Game;

\* Sec. 6. AS 16.05.940(31) is amended to read:

(31) "subsistence uses" means the noncommercial, customary, and traditional uses of wild, renewable resources [BY A RESIDENT DOMICILED IN A RURAL AREA OF THE STATE] for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of non-edible by-products of fish and wildlife resources taken for personal or family consumption; in this paragraph, "family" means persons related by blood, marriage, or adoption living in the same household, and a person living in the household on a permanent basis;

\* Sec. 7. AS 16.05.940(26) is repealed.

SPONSORED BY REP. GEORGE JACKO, REP. PETER GOLL  
HOUSE JOINT RESOLUTION NO. 74  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SIXTEENTH LEGISLATURE - SECOND SESSION

Proposing an amendment to the Constitution of the State of Alaska relating to a preference for subsistence use of fish and wildlife and state-owned renewable natural resources.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. Article VIII, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 19. SUBSISTENCE USE OF RENEWABLE NATURAL RESOURCES. The legislature may grant a preference for subsistence use of fish and wildlife and State-owned renewable natural resources. This constitution does not restrict the power of the legislature to allocate access among residents to fish and wildlife and State-owned renewable natural resources for subsistence uses on the basis of local residency, customary or traditional use, or dependence on the resources for food and other purposes.

\* Sec. 2. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the State.

INTRODUCED BY GOVERNOR COWPER

HOUSE JOINT RESOLUTION NO. 88 IN THE LEGISLATURE OF THE STATE OF ALASKA  
SIXTEENTH LEGISLATURE - SECOND SESSION

Proposing an amendment to the Constitution of the State of Alaska relating to subsistence uses of fish and wildlife by rural residents.

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

\* Section 1. Article VIII, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE. Nothing in this constitution prohibits the legislature from limiting the taking of fish and wildlife for subsistence uses to rural residents, and from providing for the allocation of that taking among rural residents on the basis of local or community residence, availability of alternative resources, and customary and direct dependence on a fish or wildlife population as the mainstay of livelihood.

\* Sec. 2. The intent of the amendment proposed by this resolution is to validate, ratify, and reinstate any provisions of the new statutes and amendments enacted by ch. 52, SLA 1986, and of any regulations adopted under those statutes and amendments, which otherwise might have to be declared invalid under the Alaska Supreme Court's decision in McDowell v. State, 785 P.2d 1 (Alaska 1989), and to explicitly reverse the effect of the McDowell decision as to those provisions and regulations.

\* Sec. 3. The amendment proposed by this resolution, and the intent of the amendment as set out in this resolution, shall be placed before the voters of the state as one ballot proposition at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the State.

PROPOSED LEGISLATION (cont.)

SPONSORED BY REP. KAY WALLIS

HOUSE JOINT RESOLUTION NO. 90  
IN THE LEGISLATURE OF THE STATE OF ALASKA

**SIXTEENTH LEGISLATURE - SECOND SESSION**

Proposing an amendment to the Constitution of the State of Alaska relating to subsistence uses of plants, fish, and wildlife by rural residents.

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

\* Section 1. Article VIII, Constitution of the State of Alaska, is amended by adding a new section to read:

**SECTION 19. SUBSISTENCE USES OF PLANTS, FISH, AND WILDLIFE.** Nothing in this constitution prohibits the legislature from limiting the taking of plants, fish, and wildlife for subsistence uses by rural residents, and from providing for the allocation of that taking among rural residents on the basis of local or community residence, availability of alternative resources or cultural, traditional, and customary uses of plants, fish, or wildlife, or dependence on plants or fish or wildlife population as the mainstay of livelihood.

\* Section 2. The amendment proposed by this resolution shall be placed before the voters of the State of Alaska at the next general election in conformity with Article XIII, Section 1, Constitution of the State of Alaska, and the election laws of the State.

*REP. LYMAN HOFFMAN'S PROPOSED AMENDMENT  
TO HB88 - GOVERNOR COWPER'S PROPOSAL*

**Section 19. RETENTION OF FISH AND WILDLIFE  
MANAGEMENT BY THE STATE.** Nothing in this constitution prohibits the legislature from enacting laws relating to the allocation for subsistence uses of fish and wildlife and wild renewable natural resources which are consistent with valid federal laws in order to retain management authority over such resources by the State of Alaska.

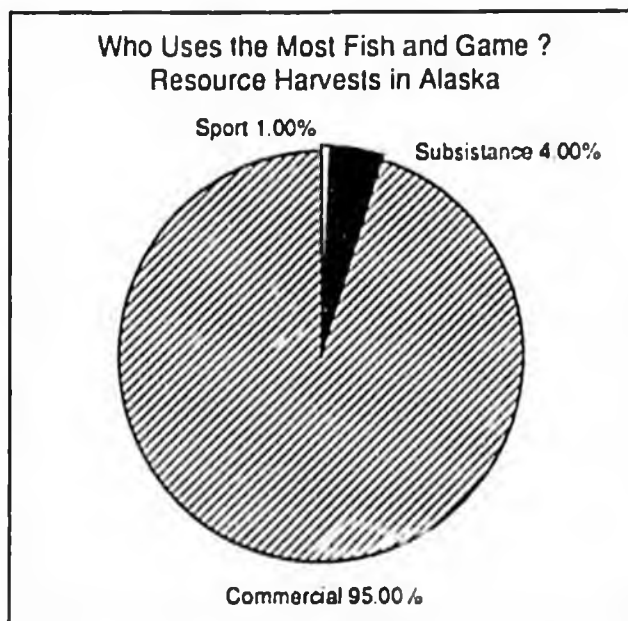
## APPENDIX

### Does subsistence take most of Alaska's fish & game?

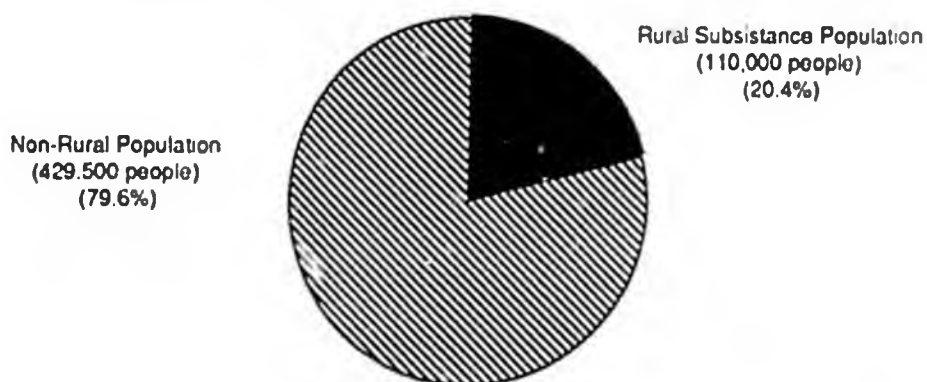
" As a general rule, no. Commercial fishing outstrips subsistence many times. In Alaska in 1986, commercial fisheries harvested about 8,500,000 pounds of salmon, halibut, herring and shellfish. This compares with a harvest of 40,305,449 pounds of subsistence foods and 7,072,046 of sport-caught fish and game. Thus, commercial fisheries took 95 percent, subsistence took 4 percent, and sport took 1 percent of the total statewide harvest. (This does not include commercial ground fish harvests, which totaled 2,995,200,000 pounds.)

Of course, the proportions vary by area. In the areas with roads, the sport harvest is usually larger than the subsistence harvest. In the areas without roads, the subsistence harvest is larger than the sport harvest. But commercial fishing is the clear leader in overall volume."

*SOURCE: Alaska Fish & Game Magazine.*



### How Many Subsistence Participants, 1985 ?

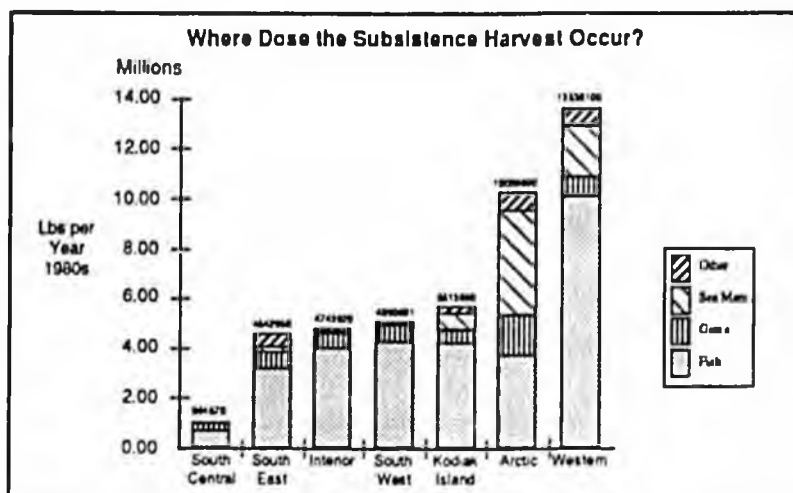


How many people participate in subsistence? " During the 1980s, our best estimate is that there were about 110,075 people in about 225 communities who participated in subsistence practices to some degree. Of these, about 50,000 were Alaska Native, and about 60,000 were not Alaska Native.

This represents the number of people living in rural areas having subsistence uses, as determined by the Boards of Fisheries and Game under the laws and regulations that existed during the 1980s. By comparison, there were about 429,500 non-rural residents, who could hunt and fish under sport, commercial, and personal use regulations, but not under subsistence regulations (Fig. 1). "

*SOURCE: Subsistence in Alaska: A Summary. Division of Subsistence, Alaska Department of Fish & Game, February 26, 1990.*

## APPENDIX



Where does the subsistence harvest occur? " Subsistence uses occur in all regions of the state. The largest annual harvests occur in the Western Region (about 13.5 million pounds) and Arctic regions (about 10 million pounds). Other sizable non-commercial harvests occur on Kodiak Island (5.5 million pounds), Southwest Region (5.0 million pounds), the interior Region (4.7 million pounds), and the Southeast Region (4.5 million pounds). The smallest harvest occurs in the Southcentral Region (.9 million pounds), primarily in the Copper River Basin, Tyonek, English Bay and Port Graham (Fig. 3). "

*SOURCE: Subsistence in Alaska: A Summary, Division of Subsistence, Alaska Department of Fish and Game, February 26, 1990.*

**PUBLIC HEARING NOTICE:** The Joint House and Senate Resources Committee of the Alaska State Legislature is holding a Public Hearing at the AFN Subsistence Conference, Wednesday, April 11 from 5:30 to 9:00PM (see conference agenda, page 5). The hearing will take place in the Summit Room of the Egan Convention Center, on the lower level.

Although we realize this is short notice, this hearing is of GREAT importance to Alaska Native people. The Joint Committee needs to hear your views and testimony on various bills, proposals and options being considered by the Legislature.

We strongly urge you to attend and to present your views. Depending on the number of participants, testimony may have to be limited to 3 minutes per person. However, **WRITTEN TESTIMONY IS WELCOME.** If you have had time to prepare written testimony, please mail it to the Alaska State Legislature, Joint House/Senate Resources Committee, P.O. Box V, Juneau, AK 99811.

# Natives reach consensus on subsistence

## Summit endorses Hoffman proposal

by Geoff Kennedy  
for the Tundra Times

Alaska Natives are now publicly speaking with one voice. They've agreed to seek a rural preference constitutional amendment in the immediate future and Native preference as a long-term solution to the state's subsistence problem.

### The people speak

—Page four

The Alaska Federation of Natives Subsistence Summit Conference, which drew about 700 people, produced the long-awaited consensus after a three-hour, closed-door meeting Wednesday.

Conference participants endorsed a proposal by Rep. Lyman Hoffman, D-Bethel, to amend the State Constitution to allow the state to conform to federal law. The Alaska National Interest Lands Conservation Act of 1980 provided a subsistence priority for rural Alaskans.

The 1986 state subsistence law conformed to ANILCA, but the state Supreme Court last December declared that the law violated the State Constitution.

Hoffman's proposal doesn't endorse a rural preference in so many words, but does so indirectly by endorsing conformity to the federal law which provides the rural preference.

A member of Hoffman's staff says the proposal also would provide the state flexibility in case ANILCA is amended to provide a Native preference.

The conference also resolved "that Native tribes and organizations will work in the long-term to gain a subsistence priority for Alaska Native tribal members and to affirm the power of Alaska Native tribes to manage and regulate subsistence uses by their members."

The conference supported the continuation of state management of fish and game on federal lands in Alaska. But it threatened to withdraw that support unless the state reviews and revises its subsistence management system.

In such a review, the state should define rural to include as many Alaska Natives as possible, the conference said, and it should establish a subsistence system for persons who don't live in rural areas but who can show a "traditional and customary" use of subsistence resources.

The review and revision process must include representatives of Native organizations, the conference said, and the state must devise a management system "that is responsive to the true subsistence needs of affected Alaskans."

If the state fails to enact a subsistence law that meets federal requirements, the conference wants the federal government to involve Native organizations directly in any federal takeover of fish and game management on federal lands in the state.

The conference doesn't want the state to contract with the federal government to manage such federal lands. Instead, it encourages the federal government to contract with tribal organizations to do that job.

Interior Secretary Manuel Lujan says federal law requires him to take over the management of federal lands in Alaska unless the state enacts a law that meets federal requirements. Lujan gave that message at least three times Wednesday: at an Anchorage Chamber of Commerce breakfast, at the summit conference and at a special evening legislative teleconference held at the site of the conference.

As the leadoff witness at the teleconference, Lujan told lawmakers there is "no better thing than for the Legislature to pass a constitutional amendment, and, of course, get it signed by the governor so that we can continue the arrangement which we have right now."

During the summit conference, Rep. Don Young, R-Alaska, and Gov. Steve Cowper endorsed a rural preference constitutional amendment. Sen. Ted Stevens, R-Alaska, sent a videotaped message urging participants to "let reason prevail" and support a rural preference.

Cowper and Rep. George Jacko, D-Pedro Bay, have also introduced measures to provide a rural preference constitutional amendment. Rep. Kay Wallis, D-Fort Yukon, has introduced a measure that would provide a Native-preference constitutional amendment.

Amending the constitution requires approval by two-thirds of each house of the Alaska Legislature and then approval by a majority of the state's voters.

Mike Lane of KSKO in McGrath assisted in this story.

# Native people speak out on subsistence

by Geoff Kennedy  
for the Tundra Times

It started as an informational meeting, but the flow of information soon reversed direction at the Alaska Federation of Natives subsistence conference last week in Anchorage.

AFN had drawn criticism from many rural Natives when it supported an amendment to the State Constitution to provide a subsistence preference for rural Alaskans. Critics complained that the AFN made the decision in Anchorage without consulting rural Natives who want a Native preference instead.

AFN maintains that such a proposal has almost no chance of getting by the first step in the legislative process, approval by two-thirds of both houses of the Legislature.

A Supreme Court justice has given the state until July to replace the subsistence law declared unconstitutional last December.

By the middle of the first day of the two-day conference, a number of participants grew impatient with the format, which consisted of panels of agency representatives briefing participants about recent court decisions, prospects of federal and state co-management of fish and game on federal and state lands in Alaska, implications of changing the Alaska National Interest Lands Act and prospects of changing the State Constitution to provide subsistence priorities for rural and Native residents.

Participants increasingly used the question-and-answer periods to communicate their thoughts and feelings instead.

Rudy James of Ketchikan took issue with Sen. Ted Stevens, R-Alaska, Rep. Don Young, R-Alaska, and Interior Secretary Manuel Lujan, all of whom warned Alaskans that the federal government would be forced to take over management of fish and game on federal lands in Alaska July

1, if the state does not devise a subsistence law that conforms to ANILCA. They said this would not be desirable.

James said Southeast Alaska Natives fared better before the state took over management of fish and game.

"Non-Natives control the Legislature. Our lifestyles have been crushed by (the state)," he said to Sen. Jack Coghill, R-Nenana.

The state doesn't have to answer to anyone for its treatment of Natives, he said, but the federal government has to answer to the United Nations. When President Bush mentions human rights violations in the Soviet Union, he knows Soviet President Mikhail Gorbachev can point out how the United States treats Natives, James said.

Coghill said he, like James, was an Alaska Native.

"What tribe?" James retorted.

Coghill said he comes from a clan in Scotland. The Nenana senator said he's aware of the mistreatment of Native Americans in other states and that's why he and others who drew up the State Constitution ensured no one would discriminate against Natives. When Alaska became a state, it prevented the federal government from taking Alaska's wealth out of the state, Coghill said.

Then, why is it, James asked, that before statehood 90 percent of the fishermen in his area were Native and now 90 percent are non-Natives?

Later, James answered his own question.

"It comes down to money. The fact that we've been doing it for thousands of years means nothing."

James blames the state government itself for what he considers the erosion of Native subsistence rights.

As an example, he said, his niece, Lillian Charles, was arrested once for scraping pitch from a tree for Native medicine.

The solution to all subsistence pro-



Jesse Foster of Quinhagak addresses the legislative teleconference Wednesday.

blems is a simple one, he said.

"You can't have tribal subsistence without tribal sovereignty. The answer to all these problems is for the state and the federal government to allow tribal sovereignty. One of the greatest crimes is they have taken away our way of living."

Politicians pass laws to govern Tlingit people without even taking the time to understand the culture they're trying to govern, said Matilda Kushnik of Saxman.

Alaska Natives cannot tell the peoples of Europe, Asia and Africa what to do; in the same way European settlers and their descendants cannot come to Alaska and tell Natives how to live, either, Kushnik said. Most non-Native Americans are decent people, she said, and if they understood the situation Alaska Natives are facing, they would permit Natives to carry out their lifestyles.

Elizabeth Keating, originally from Holikachuk, told a panel of Bush Caucus legislators, "We have a consensus in the Native community. We want a Native preference, but you're saying we can't have that."

Gov. Steve Cowper said he understands the sentiments behind the

support for a Native preference, but he said such a proposal is unrealistic.

"I cannot support any policy that has no chance of passage in the 16th Alaska Legislature," he said.

Cowper agreed with Stevens and Young that the state would be worse off trying to amend ANILCA because animal rights activists in other states could seize the opportunity to ban all hunting and trapping in Alaska.

Doing nothing and allowing a federal takeover would result in two different forms of management of lands in Alaska, and that's poor public policy, Cowper said.

Earlier, Bud Burris of the Alaska Outdoor Council and Wayne Anthony Ross, vice president of the National Rifle Association, said all Alaskans should oppose both a rural and a Native subsistence priority. Ross considers any such priority discriminatory.

Walter Charley of Glennallen disagreed sharply. Charley said he was thrown out of a hotel and denied service at a restaurant in Anchorage in 1940 because he is Native. That, he said, is discrimination.

"Subsistence is not discrimination," he said.



*Integrity. Pride in Heritage. Progress*

# NEWS RELEASE

FOR IMMEDIATE RELEASE  
April 13, 1990

CONTACT: Janice Ryan  
274-3611

## NATIVE SUBSISTENCE CONFERENCE ADOPTS RESOLUTION

More than 700 Alaska Natives, representing villages, regional and statewide organizations, gathered at the Egan Convention Center in Anchorage this week for two days of intensive discussions of the current subsistence issue. The Conference, to which all Native people and organizations were invited, was hosted by the Alaska Federation Natives on April 10 and 11. It concluded with a five-hour public hearing before the House and Senate Resources Committees of the Alaska State Legislature.

The issue at stake is continued Federal and State protection of subsistence uses for Alaska Natives and other rural residents throughout the State.

During the first day and one-half, participants listened to speakers and panelists, including Governor Steve Cowper, Senator Ted Stevens (by pre-recorded videotape), Congressman Don Young, Interior Secretary Manuel Lujan, State legislators, Native leaders and representatives of commercial fishing, environmental and sport hunting and fishing groups. Among the topics presented and submitted for discussion on the floor:

- the recent Alaska-Supreme Court decision in McDowell v. State which declared that the State subsistence law of 1986 - providing a subsistence priority to all rural Alaskans, Native and non-Native alike - was unconstitutional;
- the imminent prospect of a Federal takeover of fish and game management on Federal lands, if no State solution to the constitutional crisis can be found by July 1, 1990;
- how such a system of "dual management" (with the Federal government implementing a rural subsistence priority on Federal lands and the State government an as-yet unknown subsistence policy on State and private lands) would actually work, given unknown plans of the Federal agencies and unresolved issues in Federal and State courts;

\*\*\*\*more\*\*\*\*

- the political risks to Alaska Natives and the State as a whole of persuading the U.S. Congress to open the Alaska National Interest Lands Conservation Act (ANILCA) to amend the federal subsistence law; and,
- various options and legislative processes by which the State Constitution might be amended to bring Alaska back into compliance with Federal law and avoid Federal intervention.

On Wednesday, Secretary Lujan addressed the Conference, stating that the Federal government will fulfill its non-discretionary obligations under ANILCA and is already deeply involved in planning for that contingency on July 1. However, the Secretary strongly urged that the State of Alaska act expeditiously to solve the problem at the State level, and to avoid the necessity of a Federal takeover. Governor Cowper echoed this point in his remarks, while making it clear that he would not support a state measure which was not politically viable and did not have the backing of the Native community. Senator Stevens and Congressman Young reiterated previous public statements on the dangers of opening ANILCA in the Congress, and urged that the State Legislature and the Governor solve the problem in Juneau before the end of the legislative session.

On the final afternoon of the Conference, a lengthy debate within the Native community was held and a variety of positions were presented and argued. Prior to adjournment, conferees unanimously adopted several resolutions representing a balance of viewpoints, recommending that all Native organizations seek:

- to continue to support the inherent Native rights to subsistence uses and resources;
- to gain approval of a State constitutional amendment allowing the State of Alaska to continue exercising fish and game management on all lands within its boundaries in accordance with applicable Federal law (ANILCA);
- to advocate a thorough review of the entire system of State management of subsistence, involving Native individuals and organizations directly affected, addressing the definition of "rural," emphasizing the needs and rights of customary and traditional subsistence users, and recommending necessary changes in statutes and regulations to improve State operation of subsistence management - and to make such a review process a prerequisite for continued Native support of a constitutional amendment to retain fish and game management in State hands;

- to involve Native people and their organizations directly in the development and implementation of any Federal subsistence management regime on Federal lands, in the event that dual management occurs after July 1, with specific intention to resist any attempt by the State of Alaska to contract with the Federal government for any role in managing subsistence on Federal lands and to maximize opportunities for the contracting of federal management responsibilities to Native tribal organizations;
- to initiate a campaign of public education to familiarize legislators, other officials and the general public with the facts of subsistence resources and uses;
- to initiate a vigorous campaign of voter registration throughout Alaska.

\*\*\*\*3\*\*\*\*

# ALASKA FEDERATION OF NATIVES, INC.

411 W. 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-3611



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# ALASKA FEDERATION OF NATIVES, INC.

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## THE ALASKA FEDERATION OF NATIVES

The Alaska Federation of Natives (AFN) is a statewide advocacy organization working on behalf of 80,000+ Eskimos, Aleuts and Indians. It is the largest Alaska Native organization with a membership of 137 villages, 13 Alaska Native regional corporations, and 10 regional non-profit organizations.

The mission of AFN is to enhance and promote the cultural, economic and political voice of the entire Alaska Native people, their governments and organizations, with respect to federal, state and local laws; to foster and encourage preservation of Alaska Native cultures; to promote understanding of the economic needs of Alaska Natives and encourage development consistent with those needs; to protect, retain and enhance all lands owned by Alaska Natives and their organizations; and to promote and advocate programs and systems which instill pride and confidence in individual Alaska Natives.

## HISTORY

The Alaska federation of Natives was formed in October of 1966 when Alaska Natives came together for a statewide conference to address the need for a settlement of Alaska Native aboriginal land claims.

Between 1966 and 1971, AFN worked to attain passage of the Alaska Native Claims Settlement Act (ANCSA). When this goal was achieved in December of 1971, it was not an end for AFN but a new beginning.

As Alaska Natives began the task of implementing ANCSA, AFN offered technical assistance and managed a number of statewide human service programs. As the strength and independence of the regional associations grew, the human service programs were transferred to these associations.

A responsive AFN organization evolved to address the new challenges and issues facing Alaska Natives. Funds collected through membership fees allowed AFN to become a prime negotiator in the federal legislative process to ensure Alaska Native interests were addressed, clarified and protected under the development and passage of the Alaska National Interest Lands Conservation Act of 1980; the 1987 Amendments to the Alaska Native Claims Settlement Act (1991 legislation) and other federal legislation impacting Native Americans.

AFN BACKGROUND  
PAGE 2

AFN assumed an active role in the Alaska State legislative process by promoting legislation for funding new and/or maintaining existing rural programs in the areas of health, education, resource development, labor and government.

AFN CONVENTION

Since 1966, the annual AFN convention has become a traditional meeting place for over 3,000 Alaska Natives. Each October, the convention provides delegates from each Alaska community with an opportunity to discuss current issues of importance to the Native community, to establish the AFN priorities for the upcoming year, to renew old friendships, and, most importantly, to strengthen common bonds among the diverse ethnic group of the state. Each voting delegate is authorized by resolution to participate in the decision-making process of the convention. During the convention, delegates act on resolutions received from the many entities and individuals, elect the AFN Chairman and the village representatives to the AFN Board of Directors. The Board, in turn, directs AFN staff to carry out the direction set by the delegates. AFN becomes the VOICE OF THE PEOPLE.

# ALASKA FEDERATION OF NATIVES, INC.

411 W 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-3611



April 16, 1990

The Honorable Steve Cowper  
Governor - State of Alaska  
Pouch A  
Juneau, Alaska 99811

Dear Governor Cowper:

On behalf of the AFN Board of Directors, I would like to express our appreciation to you for making time in your schedule to attend the recent AFN statewide subsistence conference. As you know, the Native leaders who attended spent two days discussing the subsistence issue, and, prior to adjourning, passed several resolutions, copies of which are enclosed, that urge the AFN Board to adopt and implement a comprehensive subsistence policy. The thoughts you shared with those in attendance about how best to achieve our mutually shared goals were both informative and helpful.

In your presentation to the conference, you reiterated what you have publicly stated on many occasions - "any proposal, if it is to go anywhere, must enjoy the support of both the Native community and myself. In short, we have to be together on this one."

I applaud you for your commitment to the people most affected by the McDowell decision - the Native people of Alaska. On behalf of AFN, I pledge our continued cooperation and assistance to a timely resolution of the situation facing us today.

In your presentation you outlined three requirements for an acceptable solution.

- (1) The approach must be along the lines of a constitutional amendment;
- (2) the constitutional amendment must, at a minimum ensure the continued subsistence priority for rural Alaskans on both state and federal lands; and

(3) passage of the constitutional amendment cannot be put at risk by the inclusion of language that will meet with opposition from those - legislators and voters alike - who might otherwise endorse a rural subsistence preference.

As a result of our deliberations over the two-day meeting, I believe we are in agreement with your three requirements.

In that regard, by a unanimous vote, on April 11 the conference adopted a resolution that urges AFN to support an amendment to the Alaska Constitution to grant the legislature authority to regulate subsistence resources consistently with federal laws and retain fish and game management authority on federal lands. The amendment that Representative Lyman Hoffman recently proposed would achieve that result.

However, the resolution's support for a constitutional amendment is not unconditional. Rather, the amendment conditions support on the State, prior to July 1, initiating a review of "all State subsistence statutes, policies, regulations, programs and practices in every area of State jurisdiction in order to establish all overall subsistence management regime that is responsive to the true subsistence needs of affected Alaskans." Such a review has an important purpose. The Alaska subsistence statute merely establishes state policy. The statute delegates implementation of that policy to the Alaska Board of Fisheries and Board of Game, whose members have broad administrative discretion to exercise independent judgment. For that reason, no matter how wise the policy it codifies and no matter how carefully it is drafted, over time, no subsistence statute is any better or worse than the people who implement it.

As you know, in the early 1980s several Board members exercised their administrative discretion in a manner purposely and repeatedly calculated to prove that the State subsistence law was unworkable. While considerable progress has been made since then, both during your and during the previous administration, to ensure that individuals appointed to the boards are committed to exercising administrative discretion to implement the Alaska subsistence statute in good faith and with appropriate sensitivity to the needs and lifestyle of Alaska Natives and other residents who depend upon fish and game for their sustenance, at best, the boards' implementation has been uneven, particularly in southeast Alaska.

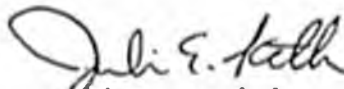
In addition, time and time again, problems between subsistence users and the State regulatory system escalate and

turn into conflicts which eventually end up in court. This costs both the State and the subsistence users much time, energy and money. In our view, litigation should be an avenue of last resort. A thorough review of the State regulatory system as it affects real people could provide us both an opportunity to make government work better for people and cut down the costs in continuing to litigate problems.

For these reasons, the Native leaders who attended the statewide subsistence conference were of the strong opinion that a thorough independent review of the boards' implementation of the Alaska subsistence statute is long overdue.

To be effective, such a review must involve Native organizations whose membership has been adversely affected by board implementation decisions. On behalf of AFN, I would like to commit our organization to working with you, Commissioner Collinsworth, ADF&G staff, the boards and all other interested parties to ensure that such a comprehensive review can proceed as soon as possible.

Sincerely,



Julie E. Kitka  
President

cc: AFN Board of Directors  
AFN Legislative Committee  
RurAL CAP  
Association of Village Council Presidents  
Tanana Chiefs Conference  
Southeast Native Subsistence Commission

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## SUBSISTENCE SUMMIT CONFERENCE ALASKA FEDERATION OF NATIVES RESOLUTION NO. 90-1 APRIL 11, 1990

ENTITLED: Alaska NATIVE SUBSISTENCE RIGHTS:  
AN AFFIRMATION AND A STRATEGY

WHEREAS, the Alaska Federation of Natives, constituted of Regional Corporations, Regional non-profit organizations and other affiliated groups from throughout Alaska, represents those entities and communities in advancing their subsistence rights and interests; and

WHEREAS, approximately four percent (4%) of all fish and wildlife harvested in Alaska is taken by subsistence users; and

WHEREAS, less than one percent (1%) of salmon harvested in the State is taken by subsistence users; and

WHEREAS, in the 1980s, 50,000 Natives and 60,000 non-Natives were subsistence users; and

WHEREAS, approximately 40,000 urban Natives are deprived of their subsistence rights; and

WHEREAS, under ANILCA, the determination of priority subsistence rights among resource users is made only when it is necessary to restrict the taking of populations of fish and wildlife in order to protect the continued viability of such populations; and

WHEREAS, Congress declares that the continuation of opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands, and by Alaska Natives on Native lands is essential to Native physical, economic, traditional and cultural existence and to non-Native physical, economic, traditional and social existence; and

WHEREAS, as identified in Alaska Native Health Service studies, Alaska Natives may be adversely affected by the unavailability or scarcity of traditional foods and changes in Native lifestyle; and

WHEREAS, Title VIII of ANILCA was enacted in part to fulfill the unmet subsistence oriented requirements and purposes of ANCSA and to essentially protect the cultural and traditional Alaska Native lifestyle;

NOW THEREFORE BE IT RESOLVED that the Alaska Federation of Natives is directed by the delegates herein assembled at the Subsistence Summit Conference to adopt as its principal direction and recommends to all appropriate Native organizations the following:

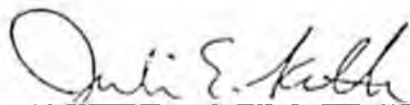
- Act to continue to support the inherent Native rights to subsistence resources and uses.
- Act to gain approval of an amendment to the Constitution of the State of Alaska that allows the State to exercise management jurisdiction over all fish, wildlife, plant and other renewable natural resources within its boundaries and provides that the State shall exercise management of subsistence resources therein in accordance with applicable federal law.
- Act prior to July 1, 1990, to have the State of Alaska review and revise as necessary all State subsistence statutes, policies, regulations, programs and practices in every area of State jurisdiction in order to establish an overall subsistence management regime that is responsive to the true subsistence needs of affected Alaskans. Such review and revision shall include representation from Native organizations that represent those Alaskans directly affected. This review shall seek to establish a definition of "rural" which includes as many Alaska Native people as possible and that the State administration adopt a subsistence system for individuals not in "rural" areas who can demonstrate traditional and customary utilization of natural resources. Such review and revision shall be undertaken with the fundamental intent to allow those Alaskans who by custom, tradition, location, and circumstance have practiced subsistence use of Alaska's resources up to the present and will in the future, to do so in an appropriately responsive, sensitive, comprehensive, timely and continuing manner.

- Act immediately to request and to take action to involve affected Native organizations directly and fully in development, promulgation and implementation of any federal subsistence management regime developed for federal lands in the event State management is terminated. Native organizations shall resist, with all possible force, any attempt by the State of Alaska to contract with the federal government for any role in managing federal lands for subsistence uses. Tribal contracting for management of federal lands for subsistence uses will be strongly supported.
- Act to initiate a vigorous campaign to educate and familiarize public officials and legislators with all aspects of subsistence resources and uses.
- Act to initiate a vigorous registration campaign across the State of Alaska.

BE IT FURTHER RESOLVED that all Native entities and organizations shall withdraw after July 1, 1990, their support for State subsistence management on federal lands and for a State constitutional amendment if there is not a satisfactory resolution pursuant to the review and revision of State subsistence management requested herein; and

BE IT FINALLY RESOLVED that in the event of the above withdrawal of Native support, all affected Native organizations shall pursue with all appropriate resources any and all legal and Congressional actions to secure their rights to Alaska's subsistence resources and uses.

Passed and approved unanimously by delegates to the AFN Subsistence Summit Conference this 11th day of April, 1990.

  
\_\_\_\_\_  
Julie E. Kitka  
President

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SUBSISTENCE SUMMIT CONFERENCE  
ALASKA FEDERATION OF NATIVES  
RESOLUTION NO. 90-2  
APRIL 11, 1990

ENTITLED: ALASKA NATIVE SUBSISTENCE RIGHTS: A PRIORITY FOR  
ALASKA NATIVE TRIBAL MEMBERS

WHEREAS, Alaska Native tribes have managed fish and game in their traditional areas since before anyone can remember, and both the Native people and the animals benefited from tribal management; and

WHEREAS, members of Alaska Native tribes today, and in the future, rely on the right to harvest subsistence resources to nourish their bodies, and for the survival of their culture; and

WHEREAS, the only way to guarantee subsistence rights for members of the Alaska Native tribes is for tribal members to be given a priority to harvest subsistence resources on all lands in Alaska that they have traditionally and customarily used;

NOW THEREFORE BE IT RESOLVED that Native tribes and organizations will work in the long-term to gain a subsistence priority for Alaska Native tribal members, and to affirm the power of Alaska Native tribes to manage and regulate subsistence uses by their members.

Passed and approved unanimously by the delegates to the AFN Subsistence Summit Conference this 11th day of April, 1990.

A handwritten signature in cursive script, reading 'Julie E. Kitka', written over a horizontal line.

Julie E. Kitka  
President

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SUBSISTENCE SUMMIT CONFERENCE  
ALASKA FEDERATION OF NATIVES  
RESOLUTION NO. 90-3  
APRIL 11, 1990

WHEREAS, the McDowell v. State decision by the Alaska Supreme Court puts the State out of compliance with the federal subsistence preference found in Title VIII of ANILCA and will lead to a federal assumption of fish and game management authority on federal lands in the State after July 1, 1990, unless the law is changed; and

WHEREAS, there is a substantial doubt that the law can be changed in time to avoid federal takeover of fish and game management on federal lands; and

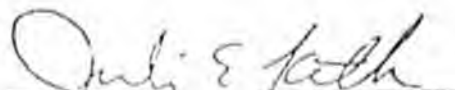
WHEREAS, joint State and federal planning for implementing a dual fish and game management system in the State after July 1, 1990, has taken place without participation or over consultation with the Alaska Federation of Natives or other Native organizations; and

WHEREAS, the sound management of Alaska's fish and game resources is inseparable from Native culture and tradition and must be protected by all possible means; and

WHEREAS, Representative Lyman Hoffman has proposed a State constitutional amendment which would allow the State to manage subsistence resources in accordance with federal law and retain fish and game management authority on federal lands.

NOW THEREFORE BE IT RESOLVED that the body assembled herein directs the Alaska Federation of Natives to work towards amending the State constitution to allow the State to manage subsistence resources consistently with federal laws and retain fish and game management authority on federal lands.

Passed and approved unanimously by the delegates to the AFN Subsistence Summit Conference this 11th day of April, 1990.

  
Julie E. Katka  
President

# AFN NEWSLETTER

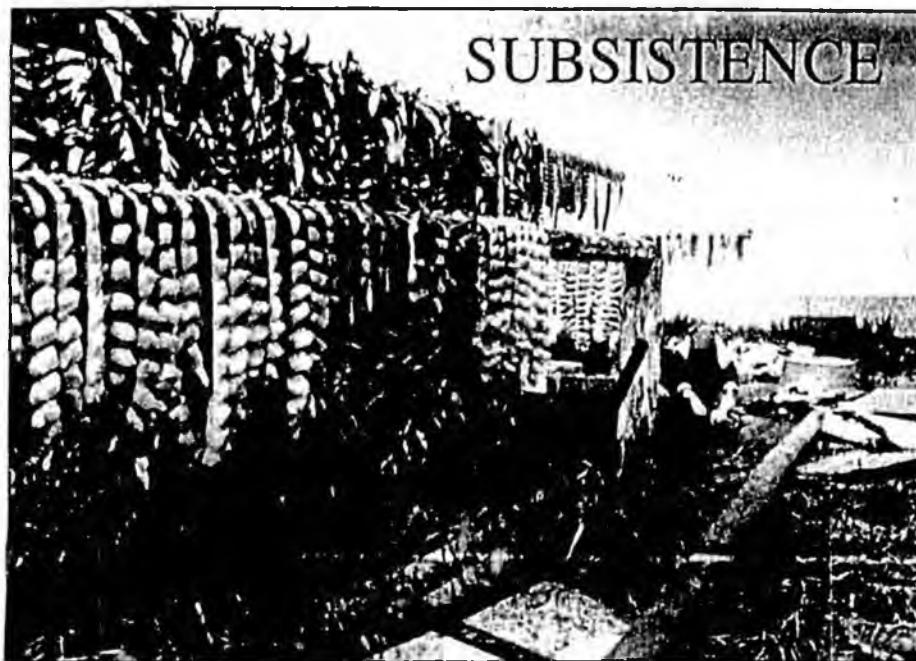
## SPECIAL ISSUE



Volume VIII, Number 2

Alaska Federation of Natives

February 1990



### THE CURRENT CRISIS: McDOWELL V. STATE

THE SITUATION of federal and state laws governing subsistence in Alaska was abruptly upset on December 22, 1989, when the Alaska Supreme Court issued its opinion in *McDowell v. State*. At issue in this case was whether the existing Alaska subsistence law, which provided priority subsistence hunting and fishing opportunities to rural Alaska residents, was permitted by the Alaska State Constitution.

Special subsistence privileges violates Article VIII, Sections 3, 15 and 17 of the Alaska Constitution. Section 3 reserves fish and wildlife in their "natural state" to the people of Alaska for "common use." Section 15 prohibits the Legislature from creating a fishery allocation system that results in an "exclusive right or special privilege of fishery." Section 17 requires statutes governing hunting and fish-

the Alaska Supreme Court, on December 22, 1989, reversed the decision of the lower court. The Supreme Court held that providing rural Alaskans

up the case again. If rehearing is denied, the case will be sent back to the Superior Court to determine the practical consequences of this new rule of constitutional law.

One of the first things the Superior Court will have to decide is which part or parts of the Alaska subsistence law the Supreme Court struck down. Did the Supreme Court intend to invalidate the entire subsistence priority, or did it throw out only the rural resident limitation, leaving the subsistence priority intact?

In either case, state law is once again out of compliance with the rural subsistence priority in Title VIII of ANILCA.

position in which, if no remedy can be found by July 1, the Secretary of the Interior has a legal responsibility under Title VIII of ANILCA to assume fish and game management (with the federal rural subsistence priority) on public lands and waters in Alaska. If this should happen, the geographical extent of the Secretary's jurisdiction and his various options for management systems remain to be decided.

Various remedies for this legal dilemma have been suggested in Alaska during the last several weeks. The substantive results and political processes of each are discussed, without comment or analysis, in the article on "options" on page 5 of

SUBSISTENCE

WORKBOOK

ISSUE: REVIEW OF THE STATE MANAGEMENT SYSTEM

The Southeast Native community, through the Southeast Native Subsistence Commission and the General Assembly of the Tlingit and Haida Indian Tribes of Alaska, has agreed to work cooperatively with the Alaska Federation of Natives and the State of Alaska in gaining approval of an amendment to the Constitution of the State of Alaska which allows the State to exercise management jurisdiction over all fish, wildlife, plant and other renewable natural resources within its boundaries and requires that the State shall exercise management of subsistence resources therein in accordance with applicable federal law providing *the State will review and revise as necessary all state subsistence statutes, policies, regulations, programs and practices in every area of state jurisdiction in order to establish an overall subsistence management regime that is responsive to the true needs of Alaskans.* This workbook was prepared in cooperation with the Southeast Native Subsistence Commission to assist the State in its review of the system.

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AFN SUBSISTENCE SUMMIT CONFERENCE  
SOUTHEAST NATIVE SUBSISTENCE COMMISSION

ISSUE  
REVIEW OF STATE MANAGEMENT SYSTEM

Prior to July 1, 1990, Native Alaskan representatives would meet with the State of Alaska to identify areas within statutes, regulations, policies, programs, procedures, practices and organizational structures that might be reviewed and revised in order to establish an overall subsistence management regime that is responsive to the true subsistence needs of affected Alaskans. At this point, matters of concern include, but are not limited to, the following:

- o In the recent past, Native Alaskans have been confronted with experiences incurred in their exercise of subsistence rights which have created personal unhappiness, extra cost and expense, legal confrontations with legal officials or the Alaska Department of Fish and Game, or in some manner have been denied access to resources. Please find attached as Exhibit "A" an outline of some of these events.
  
- o The Alaska Department of Fish and Game and the Alaska Board of Game have time and again provided for commercial fishing, or sports hunting and fishing or some other use or allocation of plant, fish and

wildlife resources without first establishing the scientific and baseline management information on the populations of resources. Upon determination of this information, policy consideration of sustained yield and subsistence requirements before allocation to commercial, sports and other uses has been lacking and not established as envisioned and required by ANILCA Title 8.

- o The implementation of Alaska statutes, regulations, policies and enforcement procedures - are the source of many problems experienced by subsistence users and other members of the public. These are evidenced in many decisions of the federal and state courts and in cases still pending. Please see attachment "B" which outlines a synopsis of these occurrences. A review and consideration of revisions to these Alaska statutes, regulations, policies, and enforcement procedures is proposed. Simultaneously, a review and evaluation of all pending appeals and cases pending consideration in state and federal courts for possible withdrawal, dismissal or alternative resolution by the State of Alaska is proposed. These suits are costly, and create disharmony in any good faith effort to find solutions among Natives, the public and the government.

- o It is observed that the ADF&G, Division of Habitat lacks legal and management authority with respect to subsistence resources and uses. This matter needs legislative policy review.
  
- o It is observed that the ADF&G, Division of Subsistence, which is responsible for researching and documenting subsistence uses, is isolated from the advisory, policy and rulemaking system. Yet those activities require research data and information on which to base resource decisions. Closer interaction between the research and the policy making processes would enable the state to manage the resources in accordance with the priority subsistence provision and consistent with the important mandate under ANILCA.
  
- o The definition of "rural", whether the federal or state management is controlling, needs to be resolved in a non-judicial manner, "which includes as many Alaska Native people possible and in a manner that encourages that the State Administration to adopt a subsistence system for individuals not in "rural" areas who can demonstrate traditional and customary utilization of natural resources". It is observed that ANILCA Section 804 does not trigger a subsistence priority until a resource shortage occurs. Prior to that time a policy

to provide for subsistence allocations to non-rural individuals should be established.

- o The role, the policy interface, the funding and the membership constitution of the local advisory committees, and the regional councils as contemplated by Title 8 of ANILCA has been poorly supported and implemented. Please find attached as Exhibit "C" the Sealaska Corporation paper entitled Summary Recommendations and Conclusions of Sealaska's Southeast Regional Council White Paper.
- o The ADF&G enforcement policies and procedures are lacking in consistence, uniformity, guidance and sensitivity to the rights of Alaska Natives and others. The many court decisions and pending cases bear witness to this current condition. Please see Exhibit B for specific situations.
- o Technical and policy interaction with federal agency planning and administration for activities on federal lands which may impact subsistence resources has occurred on a limited basis by State ADF&G, ADNR and other appropriate State agencies. More effective research, interface, advocacy and management needs to occur.

## EXHIBIT A

### DOCUMENTATION OF SUBSISTENCE USER PROBLEMS WITH THE EXISTING ADF&G SYSTEM

**Resource Use:** Subsistence Hunting - Deer  
**Time Frame:** December 1990-January 1991 Hunting Season  
**Source:** Raymond Dick  
**Community or Impact Area:** Hoonah, Alaska  
**Date of Interview:** April 24, 1990

**Nature of Problem:** While he is sure there are problems which have been ongoing, there is one of immediate concern to Mr. Dick. Apparently two ADF&G representatives, Bob Schroeder and Matt Kookesh, did some research in the community concerning the possible closure of the deer season in December or possible reductions in bag limits with a January month closure. Mr. Dick feels such a closure or limitation on take would create a hardship on community residents who customarily and traditionally hunt during that time period. He feels if sustained yield were truly jeopardized in which case subsistence uses could be limited, that all other outside uses should be cut off. The only change in outside permits is that there is a 3 bag limit.

**Resource Use:** Commercial Fishing - Regional Regulations  
**Time Frame:** Future Commercial Openings  
**Source:** Raymond Dick  
**Community or Impact Area:** Southeast, Alaska  
**Date of Interview:** April 24, 1990

**Nature of Problem:** Mr. Dick has been on the Board for 14 years. He has had plenty of opportunity to examine the issues for the various fisheries and between the various regions. He feels it is appropriate for the subsistence group to recommend a reduction in the percentage paid by fishermen to support the Northern and Southern Southeast Resource Associations from 3% to 1%. They have done this in the Prince of William Sound and it seems to be working. He has proposed this several times with no result. The benefit will be to fishermen throughout the region.

**Resource Use:** Juneau Hatchery - Enhancement Efforts  
**Time Frame:** Future Impacts on Other Uses in Other Areas  
**Source:** Raymond Dick  
**Community or Impact Area:** Juneau, Alaska & Surrounding Communities  
**Date of Interview:** April 24, 1990

**Nature of Problem:** Speaking from his perspective as a Board member, Mr. Dick brought up a concern about the Juneau hatchery (DIPAC). Mr. Dick is concerned about the potential impacts to other fisheries and other community uses of the resources. He has heard comments about the fish given away by the hatchery to local individuals and is concerned that the State may attempt to interpret this sort of supply as meeting a subsistence need. He is also concerned about the quality of fish and suggests that the situation be studied in detail to ensure that there are no undue negative impacts to the natural fisheries and uses.

**Resource Use:** Hydaburg Subsistence Fishery - Herring Eggs on Kelp  
**Time Frame:** Over the Past Several Years to Present  
**Source:** Bob Sanderson  
**Community or Impact Area:** Hydaburg & Surrounding Area  
**Date of Interview:** April 20, 1990

**Nature of Problem:** Mr. Sanderson has indicated that problems with the herring egg fishery have been ongoing for a number of years now. The most recent occurred with the most recent spawning and gathering effort. He feels that ADF&G is overly aggressive in their enforcement and may even be selectively enforcing or focusing their efforts on the Hydaburg residents. He is willing to recount years of this sort of harassment by the enforcement people. The most recent incident involved confiscation of herring eggs which were being obtained for an elder in the community (Sam Douglas). The enforcement people confiscated the eggs because Mr. Douglas hadn't signed his permit even though Mr. Douglas was there to receive the eggs and it was obvious that he needed help to get his allowance. Frank "Hammy" Natkong witnessed the confiscation. Bob Sanderson contends that this is not an isolated incident. It goes on all the time. He is incensed that so many limitations and such strict enforcement is focused on subsistence users which commercial users carry off tons of herring eggs. He contends that the massive harvesting for commercial uses has taken its toll. There is hardly any spawn in traditional harvest areas where "you could almost walk on the water" the spawn was so thick".

**Resource Use:** Saxman Subsistence - All Species  
**Time Frame:** Over the Past Several Years to Present  
**Source:** Tillie Kushnik  
**Community or Impact Area:** Saxman & Surrounding Area  
**Date of Interview:** April 24, 1990

**Nature of Problem:** Ms. Kushnik is a recognized leader from the community of Saxman. She has been a strong vocal spokesperson at the various subsistence summit conferences and sits on SENSC. Her disgruntlement with the system is apparent by her written and verbal testimony which she has presented. She is particularly concerned about the permit and enforcement process which has begun to make criminals out of our people for no larger crime than going to get our Native food to live on. She does not feel that this is what was intended under ANILCA and that it is certainly undermining to our basic Native rights which have never been respected and our needs which have never been met. She is now concerned about ADF&G plans to commercialize the sea cucumber. She is afraid that resource will be depleted in the same manner as the herring egg resource and with no thought to the Native subsistence uses. The Saxman IRA Council conducted a meeting on April 24 and voted to support Ms. Kushnik's input as typical of the kinds of problems that the community has encountered with the system.

**Resource Use:** Sitka Subsistence - Abalone  
**Time Frame:** 1981-82  
**Source:** Mark Jacobs, Jr.  
**Community or Impact Area:** Sitka & Surrounding Area  
**Date of Interview:** April 20, 1990

**Nature of Problem:** Mr. Jacobs has provided copies of correspondence that he had with ADF&G concerning problems that he had with the subsistence permit process. That

supporting documentation is attached at the request of Mr. Jacobs. At the time that Mr. Jacobs applied for a subsistence permit for abalone, he was seeking to include his wife and two children on his permit as head of household. He was denied while two others (both non-Native) were issued head of household permits. He immediately protested to the Commissioner of ADF&G. His contention was that even with a stronger aboriginal claim to use of the resources he did not even get equal treatment in the system. He also raised the issue of limited subsistence uses in the face of more extensive, less limited commercial uses.

**Resource Use:** Sitka Subsistence Fishery  
**Time Frame:** Past and Present  
**Source:** Mark Jacobs, Jr.  
**Community or Impact Area:** The Region  
**Date of Interview:** April 24, 1990

**Nature of Problem:** Mr. Jacobs has expressed particular concern about regulatory language which gives sports fishermen a higher priority than subsistence users for certain fish species in certain areas by not recognizing them as having been traditionally used for subsistence. King salmon, coho and sockeye are the targeted species. His example is that sockeye salmon in Redoubt Bay near Sitka are harvested almost exclusively by sports fishermen. He has submitted strong supporting testimony concerning the cultural importance of subsistence foods to the Native cultures. That eloquent document is also enclosed because it speaks of the Native culture, including the origin of tribal and clan names which stem from land and the resources of the land.

**Resource Use:** Sitka Subsistence Fishery  
**Time Frame:** Past and Present  
**Source:** Mark Jacobs, Jr.  
**Community or Impact Area:** The Region  
**Date of Interview:** April 24, 1990

**Nature of Problem:** Another concern of Mr. Jacobs involves the limitations placed on the types of gear the permittee can use. Subsistence users are continually losing gear through confiscation for alleged violations. In addition, the system threatens termination of any access rights if the permit holder loses or doesn't report take. He does not believe that federal law requires this sort of heavy handed management and presents a very eloquent statement concerning the need for ADF&G to even use permits, bag limits. Of course, people resist this system and process. Mr. Jacobs expressed concern that this resistance to reporting take or even applying for a permit, could be used to demonstrate decreased need and importance.

**Resource Use:** Personal Use Fishery  
**Time Frame:** The Past Year  
**Source:** Bill Thomas  
**Community or Impact Area:** Ketchikan & Surrounding Community  
**Date of Interview:** April 25, 1990

**Nature of Problem:** Mr. Thomas is a Native residing in an "urban" community. As a result, he must use a personal use permit to satisfy his subsistence needs, which it does only marginally. Personal-use does not have the same protections as subsistence use and will eventually lose out as competition for the resources becomes more fierce or in the

event sustained yield is jeopardized. He is afraid that the Native people may be convinced to accept personal use permits instead of subsistence permits throwing them into the competing use arena and that this may be used to demonstrate decreased subsistence need. His own experience with personal use is that gear and use limitations with that sort of permit are unacceptable.

**Resource Use:** State Subsistence Management  
**Time Frame:** Ongoing  
**Source:** Victor Burgess, Bob Sanderson - Hydaburg  
**Community or Impact Area:** The State  
**Date of Interview:** April 24, 1990

**Nature of Problem:** Bob Sanderson (SENSC) and Victor Burgess (Hydaburg Fishery Advisory Committee) have identified flaws in subsistence law which must be corrected. They believe that Natives have rights superior to other state citizens and therefore should not concern themselves with discussion of a constitutional amendment. They also believe that any appearance of acquiescence or agreement is a form of compromise and thus a potential weakening of the Native position in protecting those rights. They suggest:

- o The term "reasonable" be defined in the state statute so Native hunting and fishing rights are not qualified. Subsistence regulations should be judged by the standard of whether they are necessary for conservation. The less stringent due process standard of reasonableness normally required for regulating is not applicable.
- o Amend ANILCA so that Native subsistence rights are not qualified (e.g., non-commercial, customary trade). Some terms are inconsistent with Title VIII of ANILCA.
- o Criteria for customary and traditional uses should be defined in statute with concurrence of Native community.
- o Restrict the power of Fish and Game Boards on regulations dealing with subsistence (e.g., functions of regional councils and advisory committees, rules of operation).
- o Statutes and regulations related to subsistence to be more readily understood and usable should be separate and apart from other regulations.
- o Recognition by the State that Natives have exclusive subsistence rights on Native land. [Refer to Title VIII of ANILCA, Section 801, Section 1]

**Resource Use:** State Subsistence Management  
**Time Frame:** Ongoing  
**Source:** John P. Feller (Wrangell)  
**Community or Impact Area:** The State  
**Date of Interview:** April 24, 1990

**Nature of Problem:** The Native community in Wrangell is in support of the Goldbelt position which suggest an allocation of resources to residents in the balance of the state which would include their shareholders residing in an area termed "urban".

**Resource Use:** Subsistence Fishery - Hooligan  
**Time Frame:** 1988-1990  
**Source:** Haines ANB/ANS Camp 5 (Marilyn Wilson)  
**Community or Impact Area:** Chilkat and Chilkoot Rivers - Haines  
**Date of Interview:** April 24, 1990

**Nature of Problem:** The Haines ANB/ANS Camp 5 has submitted a resolution concerning disruption of the hooligan fishery in the Chilkat and Chilkoot Rivers and suggesting a right of way to be given to hooligan fishermen and that ADF&G enforce a subsistence priority.

**Resource Use:** Subsistence Fishery  
**Time Frame:** Future Uses  
**Source:** Haines ANB/ANS Camp 5 (Marilyn Wilson)  
**Community or Impact Area:** Chilkat Lake - Haines  
**Date of Interview:** April 24, 1990

**Nature of Problem:** Native subsistence users are recommending the opening of Chilkoot Lake to subsistence.

**Resource Use:** Subsistence Fishery  
**Time Frame:** Future Uses  
**Source:** Haines ANB/ANS Camp 5 (Marilyn Wilson)  
**Community or Impact Area:** Chilkoot Inlet - Haines  
**Date of Interview:** April 24, 1990

**Nature of Problem:** Subsistence users have recommended that subsistence fishing be allowed on Chilkoot Inlet 7 day a week.

**Resource Use:** Subsistence Fishery  
**Time Frame:** Future Uses  
**Source:** Haines ANB/ANS Camp 5 (Marilyn Wilson)  
**Community or Impact Area:** All Areas  
**Date of Interview:** April 24, 1990

**Nature of Problem:** Subsistence users have recommended that the limitation on number of fish taken for subsistence be removed.

**Resource Use:** Subsistence Fishery - Halibut  
**Time Frame:** Future Uses  
**Source:** Haines ANB/ANS Camp 5 (Marilyn Wilson)  
**Community or Impact Area:** Haines & Surrounding Area  
**Date of Interview:** April 24, 1990

**Nature of Problem:** Subsistence users have recommended the protection of halibut.

**Resource Use:** Subsistence - Seaweed

**Time Frame: Future Uses**  
**Source: Haines ANB/ANS Camp 5 (Marilyn Wilson)**  
**Community or Impact Area: Haines & Surrounding Areas**  
**Date of Interview: April 24, 1990**

**Nature of Problem:** Subsistence users have recommended the protection of seaweed areas.

**Resource Use: Subsistence**  
**Time Frame: Future Uses**  
**Source: Haines ANB/ANS Camp 5 (Marilyn Wilson)**  
**Community or Impact Area: All Areas**  
**Date of Interview: April 24, 1990**

**Nature of Problem:** Subsistence users have recommended the development and implementation of a traditional management plan.

**Resource Use: Subsistence Fishery - Hooligan**  
**Time Frame: Future Uses**  
**Source: Haines ANB/ANS Camp 5 (Marilyn Wilson)**  
**Community or Impact Area: All Areas**  
**Date of Interview: April 24, 1990**

**Nature of Problem:** Subsistence users have recommended that ADF&G take measures to protect the hooligan resource.

**Resource Use: State Management System**  
**Time Frame: Present & Future**  
**Source: Haines ANB/ANS Camp 5 (Marilyn Wilson)**  
**Community or Impact Area: Haines & Skagway & Surrounding Areas**  
**Date of Interview: April 24, 1990**

**Nature of Problem:** Subsistence users have recommended that Haines and Skagway be allowed to have their own ADF&G local advisory committees.

**Resource Use: Subsistence Uses**  
**Time Frame: Present & Future**  
**Source: Haines ANB/ANS Camp 5 (Marilyn Wilson)**  
**Community or Impact Area: All Areas**  
**Date of Interview: April 24, 1990**

**Nature of Problem:** Subsistence users have recommended that the regulatory system allow the taking and harvesting of traditional subsistence foods, such as sea gull eggs.

**Resource Use: Subsistence Hunting - Moose & Bear**  
**Time Frame: Present & Future**  
**Source: Haines ANB/ANS Camp 5 (Marilyn Wilson)**  
**Community or Impact Area: Haines Area**  
**Date of Interview: April 24, 1990**

**Nature of Problem:** Subsistence hunters have recommended that the number of outside moose hunters in the area be limited and that the bag limit on bears be increased in areas where bears impact the moose population.

**Resource Use:** Subsistence Fishery - Enhancement  
**Time Frame:** Present & Future  
**Source:** Haines ANB/ANS Camp 5 (Marilyn Wilson)  
**Community or Impact Area:** All Areas  
**Date of Interview:** April 24, 1990

**Nature of Problem:** Subsistence users have recommended that the state involve itself in more fishery enhancement programs.

**Resource Use:** Subsistence Fishery - Enhancement  
**Time Frame:** Present & Future  
**Source:** Haines ANB/ANS Camp 5 (Marilyn Wilson)  
**Community or Impact Area:** Chilkoot River & Inlet  
**Date of Interview:** April 24, 1990

**Nature of Problem:** Subsistence users have recommended that salmon fingerlings be dumped into the Chilkoot River and not in the Chilkoot Inlet in order to ensure salmon return.

**Resource Use:** State Subsistence Management  
**Time Frame:** Present & Future  
**Source:** Marilyn Wilson  
**Community or Impact Area:** All Areas  
**Date of Interview:** April 24, 1990

**Nature of Problem:** Ms. Wilson suggests that the Board of Fisheries and the Board of Game make determinations from the criteria of each unit rather than statewide determination, such as the bear population in Haines highly impacts the population of moose which is causing an imbalance in the population. She also suggests more accountability and consistency in Board determinations concerning subsistence areas and subsistence uses; that the State actively seek financial assistance promised to them by ANILCA for implementation; that rules and regulations be simplified and minimized; and that the State ensure that only subsistence representatives sit on regional councils in compliance with ANILCA.

**Resource Use:** Subsistence Uses  
**Time Frame:** Present & Future  
**Source:** Klawock Heenya Fisheries Committee (Corrine Garza)  
**Community or Impact Area:** Area 3B  
**Date of Interview:** April 25, 1990

**Nature of Problem:** The Klawock Heenya Fisheries Committee supports the AFN, SENSC and CCTHITA position on subsistence. For their area, they recommend that Area 3B be closed to commercial harvest of wild stocks of yane (sea cucumber), macrosistis kelp, black seaweed, red ribbon seaweed, geoducks, abalone, crab, sea otter,

wild asparagus, and herring eggs. They especially object to the removal of kelp from their area for use in the Prince William Sound Fishery. It is particularly disturbing since the herring roe on kelp pound fishery proposal was rejected by the Board of Fisheries.

**Resource Use:** State Subsistence Management  
**Time Frame:** Present & Future  
**Source:** Klawock Heenya Fisheries Committee (Corrine Garza)  
**Community or Impact Area:** All Areas  
**Date of Interview:** April 25, 1990

**Nature of Problem:** Klawock has recommended that faxed permit applications should be accepted since ADF&G personnel are not in their office during harvest times but are out on their boats enforcing the permit regulations. Fines for not having a permit in possession should be nominal if the person already has a permit. Permits should be transferrable when issued to the elderly or handicapped.

**Resource Use:** Subsistence Fishery - Halibut & Red Snapper  
**Time Frame:** Present & Future  
**Source:** Klawock Heenya Fisheries Committee (Corrine Garza)  
**Community or Impact Area:** All Areas  
**Date of Interview:** April 25, 1990

**Nature of Problem:** Klawock recommends that commercial fishing of red snapper year round be cut and that the red snapper subsistence limit be increased. They also recommend that ADF&G provide for year round subsistence taking of red snapper and halibut.

**Resource Use:** State Subsistence & Sport Fishing Management  
**Time Frame:** Present & Future  
**Source:** Klawock Heenya Fisheries Committee (Corrine Garza)  
**Community or Impact Area:** All Areas  
**Date of Interview:** April 25, 1990

**Nature of Problem:** Klawock recommends that ADF&G not require sport fishing license for subsistence activities. For example, clam digging.

**Resource Use:** State Subsistence & Commercial Fish Management  
**Time Frame:** Present & Future  
**Source:** Klawock Heenya Fisheries Committee (Corrine Garza)  
**Community or Impact Area:** All Areas  
**Date of Interview:** April 25, 1990

**Nature of Problem:** Klawock recommends that ADF&G allow seiners to give caught king salmon to subsistence users rather than to throw them back when they may have already died.

**Resource Use:** State Subsistence Uses - Traditional  
**Time Frame:** Present & Future  
**Source:** Klawock Heenya Fisheries Committee (Corrine Garza)

**Community or Impact Area: All Areas**  
**Date of Interview: April 25, 1990**

**Nature of Problem:** Klawock recommends that ADF&G allow for taking of subsistence foods out of season for traditional ceremonies and practices, such as potlatches and 40-day parties.

**Resource Use: Sitka Subsistence Fishery**  
**Time Frame: Past and Present**  
**Source: Mark Jacobs, Jr.**  
**Community or Impact Area: The Region**  
**Date of Interview: April 25, 1990**

**Nature of Problem:** Mr. Jacobs speaks to the issue of designation of subsistence species. In Sitka's case only sockeye and herring were determined subsistence species. He contends that this sort of screening and designation defeats the purpose of ANILCA and seriously erodes Native rights. He speaks to the long term uses of all wild resources in the area by Native people and of their ongoing importance and use in traditional, religious and cultural activities.

ALSC  
Daniels/Caldwell  
April 26, 1990

Exhibit B

CONCERNS WITH STATE OF ALASKA'S IMPLEMENTATION OF THE  
SUBSISTENCE PROVISIONS OF ANILCA

As a result of the AFN sponsored statewide Subsistence Summit Conference held in Anchorage on April 10 and 11, 1990, Native leaders passed resolutions urging the AFN Board to adopt and implement a comprehensive subsistence policy. By a unanimous vote, the conference adopted a resolution directing AFN "to work towards amending the State constitution to allow the State to manage subsistence resources consistently with federal laws and retain fish and game management authority on federal lands". Resolution No. 90-3. In a separate resolution, the Native community conditioned its support for a constitutional amendment upon the State's agreement to, prior to July 1, 1990:

review and revise as necessary all State subsistence statutes, policies, regulations, programs and practices in every area of State jurisdiction in order to establish an overall subsistence management regime that is responsive to the true subsistence needs of affected Alaskans. Such review and revision shall include representation from Native organizations that represent those Alaskans directly affected. This review shall seek to establish a definition of "rural" which includes as many Alaskan Native people as possible and that the State administration adopt a subsistence system for individuals not in "rural" areas who can demonstrate traditional and customary utilization of natural resources. Such review and revision shall be undertaken with the fundamental intent to allow those Alaskans who by custom, tradition, location, and circumstances have practiced subsistence use of Alaska's resources up to the present and will in the future, to do so in an appropriately responsive, sensitive, comprehensive, timely and continuing manner.

Resolution 90-1.

That there is widespread dissatisfaction with the State's implementation of the subsistence priority is reflected by the proliferation of litigation in recent years. At the heart of the problem is the State's reluctance to fully embrace the concept of providing a priority for subsistence users. Indeed, the results

of a recent Rural CAP survey indicate that the State's fish and game management system generally favors sport and commercial interests over subsistence interests. Results of A Survey: Implementation of ANILCA's Subsistence Priority and Advisory Committee System by the State of Alaska, Rural Alaska Community Action Program, Subsistence Department, September, 1989. Plainly, a thorough review of the State's regulatory system is needed, as is a review of the State's position in all pending subsistence cases in state and federal courts. The following list of major concerns need to be addressed,.

I.  
THE PRIORITY

a. Definition of "Rural"

The State's current definition of rural was invalidated in the Kenaize case. On April 17, 1990, Judge Holland ruled that the Court of Appeals' decision in Kenaize cannot be read as finding that the entire Kenai Peninsula is rural. Instead, he found that the Court of Appeals in Kenaize only provided the district court and the parties with its definition of the term "rural" and left the district court and the Alaska fisheries regulators the job of applying that definition. He suggested that should Alaska's subsistence law survive the McDowell decision, a remand to the Board of Fisheries (or the Joint Boards) would be required so those bodies could determine what portions of the Kenai Peninsula are rural in accordance with the interpretation of the term "rural" by the Court of Appeals. Judge Holland gave no guidance to the State on what would be acceptable in the way of a definition of rural.

The definition of "rural" should be resolved in a non-judicial manner. If a constitutional amendment is approved by the Legislature, and then by the voters in November, which would allow the State to continue to manage subsistence uses on the public lands in Alaska, the State should amend its statutory definition of rural in such a manner as to ensure that the maximum number of Alaska Natives who wish to continue to participate in a subsistence way of life have the opportunity to do so. As was proposed in negotiations with the State prior to the McDowell decision, this could be accomplished by adopting the proposal submitted by RARA which essentially calls for a freeze of all current rural designations and the implementation of a permit system for individuals, who, either themselves or a member of an identifiable group, household or tribe, have engaged in customary and traditional uses in the past. This would give non-

rural subsistence users a priority over sport and commercial users, but not over rural subsistence users. Such a system would be consistent with ANILCA and could be implemented in non-rural areas by a permit system.

b. Customary and Traditional Uses

1. The "eight criteria" for identifying customary and traditional subsistence users as set out at 5 AAC99.010(b) needs to be revised so as to be more helpful to the Boards of Fisheries and Game and to more accurately reflect the diverse subsistence lifeways and lifestyles of rural Alaska. See RURAL CAP's Comments in Support of Discussion Proposal for Revising the Eight Criteria (submitted to Joint Boards on 10/24/89).

2. Eliminate statutory and regulatory prohibitions on subsistence uses of certain species and stocks, i.e., those recently introduced or reintroduced, or those which historically have been utilized as a secondary subsistence resource.

3. The Boards of Fish and Game must be consistent in their respective application of criteria for determining customary and traditional uses.

4. The boards have applied the criteria for customary and traditional uses by focusing on the number of people in a community with subsistence uses, rather than on the existence of such uses. This excludes people from the priority simply because a majority of their neighbors do not have such uses.

c. Customary Trade

1. The Board of Fisheries prohibits any cash sales of fish and fish by-products taken for subsistence purposes. See 5 AAC 1.010(d). This regulation is currently the subject of challenge in Tanana Fish and Game Association v. Alaska. The plaintiff asserts that the regulation violates §804 of ANILCA which mandates that customary and traditional uses, including customary trade, be given priority over competing non-subsistence uses.

Under ANILCA, the State is affirmatively obligated to provide for customary trade. Since ANILCA's passage, the State has concluded no studies to determine the extent of customary trade of fish and fish by-products and thus has enacted no regulations which provide for such uses. The Subsistence Division has reportedly undertaken such a study; it should be directed to complete its research and, where customary limited exchanges for cash are found, the Board of Fisheries should enact regulations providing a priority for such customary trade.

2. The State currently has no definition of "customary trade". One should be included in the State's revision of the "eight criteria". This definition should make plain that in identifying "significant commercial enterprises" as opposed to

subsistence "customary trade", the boards should evaluate the income earned from the trade by the subsistence users and not the earnings, processors, wholesalers, etc. The court in United States v. Sakurai dismissed criminal charges against two residents of Hydaburg who had earned \$7,000 to \$9,000 for the sale of herring roe-on-kelp during the previous two years finding that such sales were "customary trade" within the meaning of ANILCA and that such amounts did not constitute a "significant commercial enterprise".

d. Reasonable opportunity

1. Title VIII of ANILCA requires that subsistence uses be given priority. The "reasonable opportunity" standard has been used to deny the priority. This statutory term should be defined in a way that is meaningful. In John v. Alaska, the State used the "reasonable opportunity" standard to deny residents of Mentasta and Dot Lake the right to fish at their historical fishing site of Batzulnetas on the upper Copper River.

e. Tier II Situations

1. The State needs to develop standards for protecting subsistence uses where there is a shortage of the resources. There are some hunts open to sport hunters which should be limited to local subsistence users. The Nelchina caribou herd in Game Management Unit 13 is a good example. It is heavily harvested by hunters from the Anchorage bowl, the Matsu Valley and the Glenn Highway areas. At the same time, subsistence hunts are severely restricted. The State should consider invoking Tier II protections in such areas.

f. Seasons, bag limits and means restrictions

1. Regulations which impose seasons and bag limits should be reviewed to determine their consistency with traditional hunting seasons and harvest practices. The federal court in Bobby v. Alaska invalidated such restrictions on subsistence moose and caribou hunting in Lime Village because they were inconsistent with traditional hunting seasons and with the communal system of sharing game resources. Where seasons and bag limits are imposed, they must conform to actual subsistence practices.

2. The same can be said for means restrictions.

3. State regulations need to allow flexible, exigency-of-the-occasion, hunting inasmuch as it is an inextricable part of Alaska Natives subsistence way of life. Hunting in such situations should not be illegal.

g. Controlled use by sport fishermen

Use by sport fishermen should be controlled on certain rivers where their use disturbs traditional harvest areas used by local subsistence users, e.g. on the Togiak, Kanektok and Goodnews rivers. Their use has also resulted in habitat destruction, as along the banks of the Russian River on the Kenai Peninsula.

## II. SUSTAINED YIELD

a. The Department of Fish and Game and the boards have time and again provided for commercial fishing, or sport hunting and fishing, or some other use or allocation of plant, fish and wildlife resources without first establishing the scientific and baseline management information necessary to determine sustained yield and subsistence requirements. This determination must be made for each resource before allocation can be made to commercial, sport and other uses.

b. The State needs to protect subsistence resources that are currently experiencing trouble, e.g.,

1. Salmon (over-harvest and high-seas interception)
2. Abalone (predation pressures added by expanding sea otter herd)
3. King crab (possible over-harvest and natural unexplained causes)
4. Dungeness crab (overharvest and loss of habitat due to log transfer sites)
5. Problems with certain fish runs in streams affected by logging along stream banks.

c. The State should develop subsistence management plans for newly developing commercial fisheries, such as sea cucumbers, urchins and Goeducks. The lack of such a plan for sea cucumber harvests in Southeast Alaska is currently the subject of litigation in Tlingit and Haida Central Council v. State.

d. At the same time, the State must define "sustained yield" and stop invoking the concept as an excuse for denying subsistence uses when no scientific sustained yield determination has been made. The lack of any articulated definition of the statutory term combined with the absence of any formal game management plan for the Kilbuk caribou herd is the subject of litigation in Kwethluk IRA Council v. Alaska.

III.  
ACCESS

[Any problems here? What about use of ATV's by subsistence users, or use of airplanes by sport hunters?]

IV  
REGIONAL COUNCILS AND LOCAL ADVISORY COMMITTEES

Congress intended the system of local and regional advisory committees to serve as the major mechanism to ensure local and regional participation in making decisions which affect subsistence uses of fish and wildlife on federal and other lands in Alaska. This system has never been properly implemented. See Southeast Regional Council White Paper, dated November 1989. Some of the problems include:

a. The regional councils and advisory committees are not adequately funded. Lack of funds for staffing and travel contribute to the committees' and councils' inability to fulfill their statutory mandate. The councils and advisory committees should be provided sufficient funding to attend meetings prior to scheduled meetings of the Fish and Game Boards. They should also be given sufficient funding to send a representative to the board meetings.

b. Members of the regional councils and local advisory committees receive little or no training. As a result, many do not understand what their role is, what the function of the committee or council is, or how the whole system of fish and game management works.

c. Composition of the councils and committee often is heavily weighted in favor of sport and commercial interests. "Indeed, in the Southeast region, commercial users outnumbered subsistence users, and in the South Central region, both sport and commercial users outnumbered subsistence users". See RuRAL CAP Survey. Congress mandated the advisory committee and regional council system so subsistence concerns could be addressed. This purpose is frustrated when the committees and regional councils are dominated by commercial or sports interests.

d. Reports by committees to the Secretary of the Interior are seldom completed because of lack of funds and/or staff. When reports are submitted, there is no follow-up from either the State or the federal government.

V.  
LAND USE DECISIONS

Technical and policy interaction with federal agency planning and administration for activities on federal lands which may impact subsistence resources has occurred on a limited basis by State ADF&G, ADNR and other appropriate State agencies. More effective research, interface, advocacy and management needs to occur.

VI  
BOARDS OF FISH AND GAME

a. Composition

The Boards are heavily weighted to favor sport and commercial interests. This is perhaps the most fundamental problem encountered by Native subsistence users. As the Kotzebue Advisory Committee has concluded:

The process used in the past to create the state wildlife regulations did not allow Native participation. The system currently used by the Alaska Board of Game and the Alaska Department of Fish and Game effectively precludes Native participation in the design, implementation and enforcement of state game regulations. While there is the appearance of participation in the form of advisory committees competing statewide sport-hunting and commercial-hunting interests seem always to outweigh Native Alaskan testimony in front of the Board of Game. The Alaska Department of Fish and Game still does not allow effective, local input into the design of management plans before the plans are brought to the Board. The situation is just as if the State of Alaska had invited the Native Alaskan hunter to the meeting, then asked him to please sit in the back and remain quiet.

Kotzebue Fish & Game Advisory Committee, Regulation Review: A Review of Game Regulations Affecting Northwest Alaska 25 (October, 1986). And as former Board of Fisheries member Jessee Foster recently observed about the processes of the fish board:

fishermen from Western Alaska...most of the time are treated as strangers to the State management system. In most cases, they have to sit by themselves, and usually are treated accordingly by most of the Board members and ADF&G staff.

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These comments point to another aspect of the problem, and that is the overwhelming influence of the Department of Fish and Game on the decision-making process of the boards. As reported by the Legislature's Senate Advisory Council, for example:

Since 1976, the board has approved over 92% of the 1500 plus department regulatory proposals that have come to a vote. Less than 26% of the 2600 voted on proposals from other sources have been approved. The bulk of the 1400 to 1700 proposals not voted on by the board, and thus rejected, were proposed (by) non-departmental resources.

The Alaska Board of Fisheries: Fisheries Management Alternatives 12 n.1 (October 1987). This problem could be ameliorated if the Department made recommendations favorable to subsistence uses, but it does not, and neither does the Department's Subsistence Division. As RurAL CAP noted in its October 1989 comments to the Joint Boards on the eight criteria (pp. 1.2):

The problem, as we see it, is that the mere random listing of all of the known components of subsistence uses has not proved especially helpful in the regulatory process. One more reason for this is that the Subsistence Division, which has the expertise to do so, has refused to make specific recommendations on whether a particular use either does or does not qualify as a subsistence use under the eight criteria. Rather, the Division is content simply to present all of the known facts (sometimes in great detail) about a particular use or use pattern, leaving it to the boards without guidance to sort through the facts and attempt to apply the criteria. We are not suggesting that the boards should be bound by the recommendations of the Subsistence Division, just that they should direct the Division to make such recommendations for the benefit of the boards. It is, after all, the statutory duty of the Division not only to gather the facts, but also to "make recommendations to the Board of Game and Board of Fisheries regarding adoption, amendment and repeal of regulations affecting subsistence hunting and fishing", AS 16.05.094(6).

#### b. Procedures

1. The Fish and Game Boards routinely ignore recommendations of the Regional Councils. Although required by state law to explain their reasons for rejecting Regional Council recommendations in writing, the Boards rarely do so. This practice is currently the subject of litigation in federal district court in *Sumner Strait Advisory Committee v. Alaska*, No. 90-040 Civ.

2. The Joint Boards' anti-petition policy, 5 AAC 96.625(f), violates the Administrative Procedure Act, AS 44.62.220 et seq., which gives interested persons the right to petition the Board of Game for the adoption, modification or repeal of a regulation at any time, regardless of the existence of an emergency. It also violates the Boards' affirmative duty under ANILCA and AS 16.05.258 to repeal, modify and adopt regulations necessary to accord priority to subsistence uses. The validity of 5 AAC 96.625(f) is currently the subject of litigation to State

Superior Court in Native Village of Dot Lake v. Alaska. No. 5FA-89-997 Civ.

3. Fish and Game Board proposals dealing with subsistence must sometimes wait up to two years to be calendared for action. The Boards provide no priority for subsistence proposals.

4. Agendas for Board meetings provide no way for interested persons to know when a specific proposal will be considered. This is a strong disincentive to participate in the process by attending the meetings.

5. The Boards must regulate in a fashion that is both consistent with scientific management procedures and in a manner that has the least possible impact on subsistence users.

6. The Boards need to make findings of fact with respect to data presented and identify any scientific principles which are being applied.

7. The Board of Game should enact separate subsistence regulations for subsistence hunting. Often, all seasons and bag limits are the same for commercial, sport and subsistence users.

[8. No subsistence defense, AS 16.05.259--is this still a problem after Bobby?]

#### VII.

#### ALASKA DEPARTMENT OF FISH AND GAME

a. The Division of Subsistence receives inadequate funding, staff, or support within State Government.

b. The Division of Habitat lacks legal and management authority with respect to subsistence resources and uses. It also receives inadequate funding, staff, or support within State Government.

c. The Division of Subsistence needs to develop comprehensive subsistence harvest plans for each region which can be integrated with sport and commercial fish and wildlife plans. Such plans will require a quantitative analysis of past and present subsistence harvests in each area of the state.

d. The Division of Subsistence, which is responsible for researching and documenting subsistence use, does not interact with the resource management authority, especially the Regional Council and Advisory Committee system.

e. As noted above, the Division of Subsistence has the statutory duty not only to gather information about the subsistence socio-economic/socio-cultural systems of rural Alaska, but also to "make recommendations to the Board of Game and Board of Fisheries regarding adoption amendment and repeal of

regulations affecting subsistence hunting and fishing". AS 16.05.094(6). Instead of making specific recommendations to the Boards on whether a particular use qualifies as a subsistence use under the eight criteria, the Division simply presents all the known facts about a particular use or use pattern, leaving it to the Boards to attempt to sort through the facts and attempt to apply the criteria. The Division should be advocating on behalf of subsistence users--as the sport and commercial division do for their user groups.

f. ADF&G enforcement policies and procedures are lacking in consistency, uniformity, guidance and sensitivity to the rights of Alaska Natives and others. The many court decisions and pending cases reflect this fact.

g. A computerized database of all subsistence information in Alaska should be created from which all interested parties can retrieve and/or contribute information.

#### VIII MISCELLANEOUS

a. Catch and release

b. State regulations are often inconsistent with traditional practices, i.e., grizzly bear regulations which violate traditional values.

c. Coastal Zone Management Plans not implemented to protect subsistence.

d. State should adopt regulations to protect anadromous fish habitat.

EXHIBIT B(1)

## Subsistence Legal Issues

### I. Why Are we Here?

A. The Deal among the Federal Government, the State of Alaska and Native People has been upset.

1. Title VIII of ANILCA is the Agreement
2. The rule of ANILCA is that the State is entitled to manage fish and game on federal lands, if and only if, they provide for a subsistence priority for rural residents. Otherwise, the State is not entitled to manage fish and game on federal lands.
3. The manner in which the State must fulfill their part of the deal is through a law of general applicability.
4. The State attempted to fulfill that promise with the 1986 State Subsistence law which provided for a rural subsistence preference.
5. The McDowell case (McDowell v. State, December 1989, Supreme Court of Alaska) upset the appellate because it held that the rural priority in the State Subsistence law was unconstitutional under the State's Constitution.
6. The McDowell case is a focal point and catalyst of this subsistence conference, but not the only reason.
  - a) We also need to examine how ANILCA is being implemented by the State in relationship to other issues.

### B. Where does this leave us?

1. Under the McDowell case, the State has until July 1, 1990 to comply with ANILCA, or it is likely there will be dual management of fish and game.
  - a) Various federal agencies would manage federal lands
  - b) The State would manage State lands

2. It is more probable than not that if the State does not meet the deadline, there will be dual management.

a) Mr. Stieglitz, Regional Director of the US Fish and Wildlife Service has indicated that the federal agencies are planning for *all contingencies* to implement federal management.

b) Judge Holland in the recent Kwethluk v. State (District Court Alaska) has already invited the federal government to enforce fish and game priorities in a subsistence case, prior to July 1st.

(1) While McDowell is unresolved, a federal judge is prepared to direct the federal government to enforce when he is concerned that the State may not do so.

## II. Subsistence is a Resource Management *and* a Resource Allocation Issue

A. THEORY: A key issue is that the State has already *allocated* fish and game resources, notwithstanding the fact that much of the public debate about subsistence is couched in terms of resource management and equal access.

1. We cannot overlook the obvious. According to the Alaska Department of Fish and Game, in 1985, 95% of the fish went to commercial fisherman, 1% to subsistence users, and 4% to sport fisherman. *Alaska Fish & Game, November - December 1989, p.18*

2. The percentages might be subject to some debate either way, but one cannot miss the fact that the vast majority of the fisheries resource goes to commercial fishermen. This was a fact which was not lost on the Court of Appeals in the Ke-naitze case (860 F.2d 312, 9th Circuit, 1988).

3. How can this be? In order to understand this, one must look to how plant, fish and game resources are managed and allocated under the State constitution. First Concepts.

B. Resource Management is a concept which relates primarily to the concept of keeping the resource healthy.

1. This is stated in the *Sustained Yield* concept in Article VIII, Section 4 of the State Constitution.

2. Article VIII, Section 4. *Fish, forests, wildlife, grasslands, and all other replenishable resources belongs to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.*

C. Resource Allocation is a concept which related primarily to how one divides up the pie of the fish and game resource.

1. The State Constitution also has a provision for this in the same section.

2. The Phrase "... *subject to preferences among beneficial uses.*" effectively permits the State, by law and regulation to allocate the resources among classes of uses.

3. In other words, within the concept of *sustain yield* the State can give more or less of the resource to one use over another. This is how 95% of the resource can be allocated to a commercial fishery and much less to subsistence and sport fisheries.

4. Equality of allocation of the plant, fish and wildlife resources is not required by the State Constitution.

a) Kenai Peninsula Fisherman's Cooperative Association, Inc. v. State. (628 P.2d 897, Alaska 1981)

D. In order to understand how this works we must review these concepts from State Constitutional Perspective in addition to understanding how the federal subsistence priority works under ANILCA.

E. Three Major Fish and Game Management Decisions types by the State Supreme Court

F. The general rules are these:

1. The fish and game resources of the State are for the common use of the people.

a) That is, there is to be open access to the fish and game resources by all of the people.

b) Article VIII, Section 3. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

2. There will be no exclusive rights or special privileges, unless you have an exception within the State Constitution.

a) This further describes the general idea that fish and game resources are generally available to the people and cannot be limited by special rights unless you have an exception to the general rule.

b) Article VIII, Section 15. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fisher-

men and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

c) This same section outlines what appears to be the only exception to the rule of no exclusive rights or special privileges: It states: *This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.*

3. What does this all mean? I suggest that as things stand today and under Alaska Constitutional law, the exception has literally swallowed the rule, hook line and sinker.

a) The exception in the State Constitution which allows the establishment of limited entry fishery has become the rule. 95% of the fishery resource is effectively allocated to commercial fishery. This provision would probably not be constitutional, but for the exception.

b) Access to the remaining 5% of the States fish and wildlife resources, including subsistence and sport fishery, is governed by the common use rule and no exclusive rights or special privileges.

c) Native people and the sports fishermen are fighting with each other about a very small percentage of the overall States fisheries resources. And this is all notwithstanding the fact that the letter of the State subsistence law is to provide subsistence users with a preference for use of the resource.

d) How does this work?

#### 4. Limited Entry for Fish

a) Commercial Fisheries Entry Commission v. Apokedak, (606 P.2d 1255, Alaska 1980)

b) Stands for the proposition that grandfathering fisheries rights is ok under the Alaska Constitution. The fact that you had to be a gear owner and hold a gear license in order to qualify for a limited entry fishery permit passes the Equal Protection test of the State and federal Constitutions.

c) State v. Ostrosky, 667 P.2d 1184 (Alaska 1983)

(1) Held the Limited Entry Permit law constitutional according to Article VIII, Sections 3, 15, and 17.

(2) This is structurally exactly the same constitutional analysis which was made in McDowell, but the Court upheld the LEP law, rather than struck it down.

5. Exclusive Guide Areas

a) Owsichek v. State, 763 P.2d 488 (Alaska 1988)

(1) The State Statute which provided for Exclusive Guide Areas which were effectively owned by guides, was held unconstitutional in violation of Article XIII, Section 3, the common uses of fish and wildlife clause

(2) When reviewed in the context of overall State constitutional law on fish and game management, it meant that unless there was some constitutional exception, like for limited entry fisheries, the law is unconstitutional.

(3) Section 3 - Common Use. Whenever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

6. Subsistence

a) Madison v. State, 696 P.2d 168 (Alaska 1985)

(1) Subsistence regulations imposed by the Fisheries Board which gave a preference to rural residents were struck down as inconsistent with the 1978 Subsistence statute. This concerned first tier subsistence rule which allowed a subsistence preference when there was no resource scarcity and the State statute did not expressly state a rural residency requirement.

b) McDowell v. State, December 1989, Supreme Court of Alaska

(1) McDowell held that the rural residency requirement of the 1986 State Subsistence law was unconstitutional because it was in violation of Articles VIII,

(a) Section 3: Common Use

(b) Section 15: No exclusive rights or special privileges

(c) Section 17: Equal Protection for access to Natural Resources

i) Article VIII, Section 17. Laws and regulation governing the use or disposal of natural resources shall apply equally to all person similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

G. What is the moral of this story?

1. A constitutional amendment to the State Constitution is necessary in order to bring the State into compliance with ANILCA Title VIII.

2. The State is accustomed to allocating its fish and wildlife resources among uses and with it, to users.

3. The allocation of State fish and wildlife resources does not have to be equal and it is not equal.

4. The Supreme Court is imposing increasingly stringent equal protection standards on fish and wildlife management and allocation issues.

a) The limited entry fishery statute was subjected to only least stringent equal protection standards, as the court found that no fundamental right was at stake.

b) On the other hand, the Exclusive Guide Areas and the Rural Subsistence Preference were both subjected to harsher and more difficult court equal protection standards.

5. If the State Subsistence dispute is not resolved through some form of negotiations among all of the parties which have an interest in it, it will be resolved piecemeal by litigation or a probable attempt to get Congress to resolve the dispute.

6. The most inevitable dispute should the State decide not to comply with ANILCA and there is dual management will be who has jurisdiction over the fish-

eries under ANILCA. The State could contend that it has control of the fisheries because it has jurisdiction of navigable waterways. On the other hand, the claim could be made that the federal government has jurisdiction over fish under ANILCA because the navigable waterways are defined as *public lands* under ANILCA

### **III. Compliance with ANILCA: Disputes between the State and Native people who are subsistence users over the implementation of the ANILCA Subsistence priority.**

A. Definition of *RURAL*: Kenaitze v. State. The State failed to provide a subsistence priority for the Kenaitze Tribe because it determined that the entire Kenai Peninsula was not *rural*. The Court held that the State's definition of *rural* in the State Subsistence Statute is inconsistent with the definition of *rural* in Title VIII of ANILCA. The Court ordered the State to provide a limited subsistence fishery to the Kenaitze.

1. The State definition of *rural area* is where subsistence is a "principle characteristic of the economy", where the Court said that *rural* should be given its ordinary meaning, consistent with how the term is used in other federal statutes.

2. Even if the State should amend its constitution to provide a rural preference, there is a strong likelihood that the Kenaitze issue of the definition of *rural* would still be unresolved, unless the State also amended its subsistence law to meet the ANILCA standards.

3. The Court has suggested that perhaps a numerical criteria would be the answer to a definition of what is *rural* and what is not.

4. While Kenaitze has been criticized by some as failing to understand Alaska and ANILCA's legislative history, the 9th Circuit Courts decision recognizes culture and a dynamic view of cultural change within the framework of ANILCA. In the Courts view, the simple infusion of cash into cultural and traditional uses does not defeat a subsistence right.

5. The Court announced that it will not necessarily defer to either the Secretary of the Interior or the State of Alaska when it comes to interpreting ANILCA.

B. Customary and Traditional Uses: The State Boards of Fisheries and Game have not agreed with Alaska Native definitions of *Customary and Traditional Uses* and how these uses should impact seasons and bag limits, among others. The courts have said in:

1. Bobby v. State, (Alaska Civil No. A84-544). The State Game Board had imposed a closed season and bag limit on the Lime Village for caribou and mouse. The Court held that the closed season was inconsistent with traditional hunting seasons and the bag limits were not consistent with the traditional communal sharing of the resources.

a) The Court also decided that the State was required to make a scientific determination of game populations and subsistence uses when it made regulatory decisions concerning subsistence. The State had not done this in this case and because of this the Court refused to defer to the Boards judgment..

2. John v. State, (Alaska Civil No. A85-698). The State had closed a traditional fishing site on the upper Copper River [Batzulnetas] since 1964. None of personal use, sport use, or commercial fishery had been restricted in the Copper River drainage in favor of subsistence. The State had not gathered sufficient information concerning fish management to support its regulatory decision to keep subsistence fishery closed. By injunction, the Court permitted a 1000 sockeye subsistence catch for 1989.

3. The Court revisited the case in January 1990 to resolve outstanding issues. This issues included:

a) A key issue was the location of the subsistence fishery. The State argued that it could locate the subsistence fishery so long as it afforded a reasonable opportunity to subsistence users. The Court concluded that it was the Boards obligation to identify customary and traditional uses and fish stocks and that the Boards intense focus on location was misdirected.

b) Once a record shows that there is a customary and traditional use of a fish stock, the Board is compelled to implement a subsistence fishery by the least intrusive means. These regulations must provide a realistic expectancy that the customary and traditional use *levels* of each stock will be achieved.

c) The Board has the power to regulate subsistence fishery in times plenty in Tier I as well as in times of shortage, in Tier II.

4. Kitka v. State. (Complaint filed June 30, 1989, U.S. District Court Alaska), The Board of Fisheries determined that Sitka qualified for "customary and traditional uses" for sockeye salmon and herring roe, but not for any other fish or shell fish. Kitka claims that these determination are in violation of ANILCA Title VIII. While the case is undecided, the Court has indicated that it could find some parts of Sitka to be non-rural for purposes of ANILCA.

C. Sustained Yield. Under the State Constitution, the State is compelled to manage fish and game resources on a sustained yield principle, including subsistence.

1. Kwethluk v. State. (District Court Alaska). Kwethluk IRA sought an emergency caribou hung from the Kilbuck herd. The State Game Board determined that the herd could not maintain a sustained yield even with a limited hunt.

a) The State had neither a management plan for the herd, nor even an applicable definition of sustained yield.

b) The Court concluded that the Game Board was making game management decisions based upon its own views of "policy", rather than upon scientific game management principles.

c) The Court ordered an unusual 50 caribou hunt:

d) The State was ordered to issue special registration permits

(1) The IRA Council was ordered to a special reporting relationship of the hunt date to the ADFG

(2) The US Fish and Wildlife Service was ordered to assist in administration of the hunt, including enforcement.

(3) This scheme suggests a new three cornered implementation of ANILCA while the State's role is limited by its own laws and uncertain.

2. THCC v. State. (District Court Alaska). The Tlingit and Haida Central Council recently challenged the standard method of ADFG management of a "new"

fishery, in this case sea cucumbers and seaweed, which permits open fisheries until the resource appears to be depleted.

a) The case all requests that the State follow the State Subsistence priorities and resource determination regimes.

b) It request closure until these determinations are made.

D. The Court's Role in Implementing ANILCA and State Subsistence laws construing ANILCA. The Court has been making a concerted effort to define the limits of its involvement in the implementation of ANILCA. To this point, however, its role is constantly enlarging, rather than diminishing.

1. The Court has stated that it will be the final arbiter of the interpretation of ANILCA, rather than the Secretary of the Interior or the State of Alaska. In Indian rights cases, the ordinary rule would be to defer to the judgment of the federal agency. Kenaitze
2. The Court has stated that it does not intend to be a fish and game manager.
3. The Court regards its role as reviewing a record of Board rulemaking of subsistence regulations according to applicable standards, rather than starting all over again and substituting its judgment for a fish or game board. John v. State
4. The Court is prepared to defer the scientific game management expertise of State game managers in defining and implementing sustained yield if they utilize their professional scientific expertise, rely on proper methodologies and relevant data.

#### E. Customary Trade

1. US v. Skinna. On appeal to the 9th Circuit as to whether or not Skinna's take of herring roe for interstate trade falls within the meaning of customary trade under ANILCA. The question is important to determine how customary trade is implemented and how much cash is permitted before it become a commercial activity.

#### F. Aboriginal Hunting and Fishing Rights.

1. Gambell v. Lujan is currently being litigated in the federal district court whether there are remaining aboriginal hunting and fishing rights beyond the territorial boundaries of the State.

by: Chris McNeil, Jr.

(4/90)

## SUMMARY RECOMMENDATIONS AND CONCLUSIONS OF SEALASKA'S SOUTHEAST REGIONAL COUNCIL WHITE PAPER

The subsistence lifestyle is important to Alaska's Native people for cultural, religious, social and economic reasons. It is the least threatening of all resource uses, yet because of its complexity, it has become one of Alaska's most controversial and most misunderstood issues. In order to better understand the issue, Sealaska has authorized certain research projects. The Southeast Regional Council (SERC) White Paper is a part of that effort. The conclusions and recommendations resulting from that study are summarized here.

### THE REGIONAL COUNCIL - FEDERAL AND STATE LAW

ANILCA establishes an extremely specific and discreet area of concern and responsibility for the regional councils over subsistence uses and needs. Under state law, the local advisory committees and regional advisory councils have a much broader area of concern. The local advisory committees provide a forum on matters relating to the management of *all* fish and wildlife resources - not just subsistence uses. Not only must the regional council system provide for public participation in the regulatory process to help protect subsistence uses, but it must also provide a forum for input on matters relating to all fish and wildlife resources.

The Southeast Regional Council recognized the tension created by these two governing laws in November 1986 when they determined that first priority would be given to subsistence-related issues and proposals with other region-wide fish and game issues to be discussed as time allowed. Non-subsistence allocations issues would not be discussed unless all other business has been completed and adequate time remained for proper discussion and consideration.

While the councils have not been effective, with proper guidance and budgetary support, they could ensure that the resources are managed in accordance with the priority subsistence provisions and consistent with the important mandate under ANILCA.

### THE PRESENT SYSTEM AS IMPLEMENTED BY THE STATE

ANILCA requires an administrative structure be established to enable rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on public lands in Alaska. At the time ANILCA passed, the state already had a network of local advisory committees making it necessary to establish the regional councils to comply with ANILCA. The ADF&G Division of Boards administers state and federal funds which maintain the committee/council system.

There are 79 local advisory committees and 6 regional councils in the state. In Southeast there are 21 local committees. The chairmen of which comprise the regional council. Committees and councils meet twice a year in the fall and spring before the regulatory hearings. Council representatives attend 2 board meetings each year.

SERC has held 20 meetings since 1982 (1-2 meetings/year). Individuals most likely to understand the importance of subsistence to the Native/rural communities have comprised the majority at 60% of the meetings. This figure demonstrates that while the composition of the council is important, composition alone cannot guarantee that subsistence concerns will be met. In order for the regional councils to effectively ensure that the land and its resources are being properly managed to meet the needs of subsistence users as provided by ANILCA, there must be strong guidance and support for the regional councils from the state, both from a policy perspective and budgetary perspective.

#### Comparison of Regional Council Proposals and Board of Fisheries Regulations

Section 805(d) requires the Board to adopt the advice and recommendations of the regional councils unless such recommendations are not supported by substantial evidence, violate recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs.

At the Board's Juneau hearing in February 1989, the Board of Fisheries refused to accept SERC recommendations because they had not been transmitted to the Board ten (10) days prior to their meeting. However, even in cases where SERC has met the ten (10) day notification requirement or the requirement has been waived, the Board has almost always ruled contrary to the advice of SERC without setting out the factual basis and reasons for its decision. ANILCA does not impose an artificial timeline for the conveyance of those recommendations. The Board of Fisheries is out of compliance with the requirements of ANILCA.

Section 805(a) of ANILCA requires the committees and regional councils to advise the boards on the subsistence use of fish and wildlife resources. The state system requires the committees/councils to advise the board on the management of all fish resources (commercial, sport, personal use, subsistence). Under state law, the members of the advisory committees must be representative of all user groups in the area. These requirements create a tension on the committees and councils that is inimical to the primary purpose for which Congress enacted the subsistence provisions in ANILCA - to assure the ability of rural people engaged in a subsistence lifestyle to continue to do so. The state advisory committee/regional council system is out of compliance with ANILCA.

The Alaska Department of Law has an opinion which seems to support Sealaska conclusions:

Title VIII is important for four major reasons. First is that it establishes an absolute priority for subsistence users over all other competing consumptive purposes. Second is that it guarantees subsistence users access to fish and game on federal land which would otherwise be closed to hunting and fishing. Third is that it requires federal land managers to incorporate subsistence uses in their land use decision process. Fourth is that it establishes an administrative structure which would potentially serve to increase the representation of Alaska Native interests in fish and game management. [1989 Subsistence Update, Alaska Native Law Section]

## ROLE OF REGIONAL COUNCILS WITH RESPECT TO OTHER AGENCIES

The role of the regional councils, as envisioned by ANILCA, is critical to both the federal management and state regulatory processes. In addition to providing recommendations to the state boards, ANILCA requires that the regional councils and local advisory committees be permitted to influence the decisions of all other federal agencies having authority over public lands, where agency decisions could significantly affect subsistence.

In Southeast, the primary federal agency having the authority to manage public lands is the Forest Service. The USFS and Sealaska differ on the priority to be given to subsistence pursuant to ANILCA. Sealaska's position is that ANILCA requires that subsistence must be given the priority over all other consumptive uses of the forest. This, in turn, would result in the "least adverse impact possible on rural residents who depend upon subsistence uses . . . consistent with . . . the purposes for each unit established, designated or expanded by or pursuant to Titles II through VII of this Act."

In Sealaska's opinion, to effectively manage subsistence (as well as other consumptive uses) in the Tongass, the USFS must investigate and identify subsistence in the forest prior to making any determinations of use of the forest. Only after the USFS has determined the subsistence use and area, and only then, can it make section 810 determinations. The burden of proof should not be on the rural residents to establish how they are adversely affected, but on the federal agency to meet the terms and conditions of section 810(a)(1)-(3).

To comply with section 810 of ANILCA, first the agency must make a threshold determination whether its proposed action may "significantly restrict" subsistence uses, including an evaluation of the *cumulative and synergistic effects* as well as the immediate effects of the proposed action. That is, whether the proposed action presents a threat to subsistence uses from "the effects of the proposed action when combined with those of *past, present, or reasonably foreseeable future actions.*" Hanlon v. Barton. The District Court for Alaska has stated "the threshold for triggering ANILCA's notice and hearing requirement is quite low: it is triggered whenever the contemplated action may significantly restrict subsistence uses." Sierra Club v. Penfold, citing Tribal Village of Akutan v. Hodel; People of Village of Gambell v. Hodel; Kunakana v. Clark.

Second, if the agency finds that the proposed action may significantly restrict subsistence uses, the agency must give notice of the proposed action to the applicable *advisory committees, regional council, state agency, and local residents*, and make specific findings regarding the impact of the land proposal upon subsistence. The second stage is not reached if the agency finds that no significant restriction will occur.

Affected parties may challenge a federal agency finding of no significant possibility of significant restriction in federal court. A court will review the agency finding under an "abuse of discretion" standard. [Hanlon v. Barton] Agency findings can be challenged if they are unsupported by the record, illogical, or implausible, or if improper factors were considered or proper factors were ignored. If the challenge is successful, the court may enjoin the proposed action, remand the threshold question back to the agency for proper findings, or order the agency to hold hearings. Sierra Club v. Penfold, 664 F.Supp. at 1309.

Similarly, after the agency has given notice and held hearings under Section 810(a)(1) and (2) and made findings pursuant to Section 810(a)(3), affected parties can challenge agency findings concerning the proposed action. Often the challenge can be

coupled with the claim that the agency failed to follow NEPA and issued an erroneous or incomplete environmental impact statement.

Federal courts have addressed the proper interpretation of the ANILCA phrase "*significantly restrict subsistence uses.*" For example, the Hanlon case indicated that if clearcutting caused deer populations to move further away from a dependent village. The need for hunters to travel greater distances could qualify as a significant restriction even where the population of deer remained the same. Forest Service failure to consider the distance factor could constitute a violation of ANILCA and invalidate USFS decisions to allow clearcutting and its environmental impact statement. Also, the USFS was required to consider whether a substantial decline in deer populations, occurring as long as 100 years after the agency action, "*significantly restricted*" subsistence uses at an earlier date.

While subsection (d) of 810 refers to its requirements as "procedural", legislative history states that the word "procedural" was added to clarify that "until the requirements of the section have been satisfied the proposed action may not proceed, but once the requirements of the section are satisfied and incorporated into existing land use planning processes the proposed action may proceed even though its effect may be adverse to subsistence uses."

#### DRAFT 1989 ANILCA SECTION 806 SUBSISTENCE MONITORING REPORT

Section 806 of ANILCA requires the Interior Secretary to advise the State of Alaska and Congress annually on the implementation of Title VIII. The 806 Report must address the state's provision of preference in accordance with section 804 and explain any exercise of the Secretary's closure or other administrative authority to protect subsistence resources or uses.

Section 805 authorizes regional councils to submit annual reports to the Secretary which identify subsistence needs and make recommendations for subsistence management on federal lands. Only the Southcentral Regional Council submitted a 1989 report. The Southeast council did submit a late 1988 report. The Fish and Wildlife Service fails to investigate why this might have occurred. Sealaska suggests several reasons: lack of policy guidance from the state, lack of technical support from the state, lack of funding and other support services to enable the regional councils to effectively carry out their responsibilities. It is important to know why the regional council system is not operating in accordance with its legal mandates.

The 806 report recognizes the lack of coordination between state and federal land/resource agencies and functions in the following manner:

Due to the concerns of the Federal agencies that there has not been a consistent, coordinated Federal presence at State Board of Game meetings, a Federal/State working group on subsistence requested that the Fish and Wildlife Service take the lead in providing a Federal representative at all meetings, primarily to act as a conduit for information to all concerned Federal agencies.

The report, however, makes no reference to the role that the regional councils should play in facilitating and channeling information to federal agencies.

## ADMINISTRATION/FEDERAL ASSISTANCE

Subsections 805(e)(1) and (2) of ANILCA provide for reimbursement of reasonable costs relating to the establishment and operation of councils and committees not to exceed \$5,000,000 in any one fiscal year. The Interior Secretary is to advise Congress on a 5 year basis whether the amount is adequate to ensure the effectiveness of the state program established to provide preference for subsistence uses.

Each year the ADF&G Division of Subsistence and Division of Boards cooperatively apply for federal assistance from the U.S. Fish and Wildlife Service in order to execute the state subsistence management and use program. From the time the State began to request reimbursement from the Secretary, it has received less than 50% of its costs and considerably less than the \$5,000,000 upper limit. As a matter of fact, internal DOI budget constraints have restricted the reimbursement to about \$1,000,000 a year. ADF&G has asked the Secretary Interior to request funds for adequate reimbursement from Congress. The Interior's response was that federal budgets were tight and that one must consider the relative importance of the subsistence grant in relation to other high priorities in the Interior.

Attorney General's opinion on the funding situation is that: "It is practically 'black letter law' that an Act authorizing the expenditure of funds by Congress in no way requires Congress to actually appropriate funds for that purpose. . . . For that reason, we view our opportunity for legal redress on the issue to be, at best, very limited."

Of the money received from the federal government, relatively small portions have gone to support the committee/regional council system. ADF&G has admitted that their support of the system has been rather limited. However, since the reorganization of the Division of Boards, 6 regional program assistants have been hired to staff the committees. It is ADF&G's hope that they will improve council effectiveness.

ADF&G recognizes more more fundamental problems with the current system.

We believe the committees/councils can be more effective than they currently are because their role lacks an agreed upon definition. For example, are the committees supposed to simply pass along popularity type advise, act as agency watch dogs, depolarize interests that are at each others throats, build a constituency for the agency's cause, act as referees in particular disputes, carry messages back and forth, to give the agencies content-type advice? Or, are the committees/councils to provide a local forum for competing users to narrow options for the boards to consider or provide recommended solutions where possible?

Four objectives in ADF&G's FY 1990 proposal. The first involves working with the committees to develop consent about their role in the regulatory process. The second recognized that meetings alone are not a very effective way of ensuring that boards/committees get the best possible information. The objective, therefore is to identify and implement other techniques which will increase public involvement. The third objective is to identify changes in the regulatory process which will focus attention on problem solving rather than on position taking. The fourth objective is to streamline the process for developing regulations, including board sessions, and to make it more efficient. As a result of the improved process proposed in their FY 1990 Application for Federal Assistance, ADF&G contends that the "public, through the committees, will be intimately involved".

Sealaska feels that two advisory committee meetings and two regional council meetings a year is hardly intimate public involvement, nor does it seem adequate to carry out the responsibilities and authorities listed in ANILCA. It also does not remedy the problem of interaction (or the lack thereof) with the Boards of Fisheries and Game, which operate to the exclusion of any real meaningful input from the councils and committees. Similarly, this does not address the role of the regional councils in the federal land/resource management processes.

Conclusion - The state government and the federal government (as the ultimate authority for implementing the law - ANILCA) have been remiss in their responsibility to the regional council system and subsistence users. This conclusion brings us to the question "can the federal government implement the law more effectively than the state government?"

There are advantages and disadvantages to both management authorities. Under state management, there is a question about whether they are willing or whether they have the constitutional basis of meeting the needs of the Native community as a specific user group through recognition of their historic, aboriginal connection to the land and its resources. On the other hand federal law recognizes the special trust relationship that they have with the indigenous people of the land. However, like the state's attitude the attitude of the federal government is also in question. There is also a problem of what sort of funding treatment we would receive in the highly competitive national budgeting process.

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SUBSISTENCE SUMMIT CONFERENCE  
Alaska FEDERATION OF NATIVES  
RESOLUTION NO. 90-1  
APRIL 11, 1990

ENTITLED: Alaska NATIVE SUBSISTENCE RIGHTS:  
AN AFFIRMATION AND A STRATEGY

WHEREAS, the Alaska Federation of Natives, constituted of Regional Corporations, Regional non-profit organizations and other affiliated groups from throughout Alaska, represents those entities and communities in advancing their subsistence rights and interests; and

WHEREAS, approximately four percent (4%) of all fish and wildlife harvested in Alaska is taken by subsistence users; and

WHEREAS, less than one percent (1%) of salmon harvested in the State is taken by subsistence users; and

WHEREAS, in the 1980s, 50,000 Natives and 60,000 non-Natives were subsistence users; and

WHEREAS, approximately 40,000 urban Natives are deprived of their subsistence rights; and

WHEREAS, under ANILCA, the determination of priority subsistence rights among resource users is made only when it is necessary to restrict the taking of populations of fish and wildlife in order to protect the continued viability of such populations; and

WHEREAS, Congress declares that the continuation of opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands, and by Alaska Natives on Native lands is essential to Native physical, economic, traditional and cultural existence and to non-Native physical, economic, traditional and social existence; and

WHEREAS, as identified in Alaska Native Health Service studies, Alaska Natives may be adversely affected by the unavailability or scarcity of traditional foods and changes in Native lifestyle; and

WHEREAS, Title VIII of ANILCA was enacted in part to fulfill the unmet subsistence oriented requirements and purposes of ANCSA and to essentially protect the cultural and traditional Alaska Native lifestyle;

NOW THEREFORE BE IT RESOLVED that the Alaska Federation of Natives is directed by the delegates herein assembled at the Subsistence Summit Conference to adopt as its principal direction and recommends to all appropriate Native organizations the following:

- Act to continue to support the inherent Native rights to subsistence resources and uses.
- Act to gain approval of an amendment to the Constitution of the State of Alaska that allows the State to exercise management jurisdiction over all fish, wildlife, plant and other renewable natural resources within its boundaries and provides that the State shall exercise management of subsistence resources therein in accordance with applicable federal law.
- Act prior to July 1, 1990, to have the State of Alaska review and revise as necessary all State subsistence statutes, policies, regulations, programs and practices in every area of State jurisdiction in order to establish an overall subsistence management regime that is responsive to the true subsistence needs of affected Alaskans. Such review and revision shall include representation from Native organizations that represent those Alaskans directly affected. This review shall seek to establish a definition of "rural" which includes as many Alaska Native people as possible and that the State administration adopt a subsistence system for individuals not in "rural" areas who can demonstrate traditional and customary utilization of natural resources. Such review and revision shall be undertaken with the fundamental intent to allow those Alaskans who by custom, tradition, location, and circumstance have practiced subsistence use of Alaska's resources up to the present and will in the future, to do so in an appropriately responsive, sensitive, comprehensive, timely and continuing manner.
- Act immediately to request and to take action to involve affected Native organizations directly and fully in development, promulgation and implementation of any federal subsistence management regime developed for federal lands in the event State management is terminated. Native organizations shall resist, with all possible

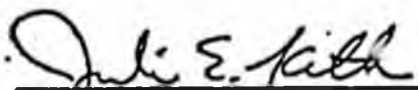
force, any attempt by the State of Alaska to contract with the federal government for any role in managing federal lands for subsistence uses. Tribal contracting for management of federal lands for subsistence uses will be strongly supported.

- Act to initiate a vigorous campaign to educate and familiarize public officials and legislators with all aspects of subsistence resources and uses.
- Act to initiate a vigorous registration campaign across the State of Alaska.

BE IT FURTHER RESOLVED that all Native entities and organizations shall withdraw after July 1, 1990, their support for State subsistence management on federal lands and for a State constitutional amendment if there is not a satisfactory resolution pursuant to the review and revision of State subsistence management requested herein; and

BE IT FINALLY RESOLVED that in the event of the above withdrawal of Native support, all affected Native organizations shall pursue with all appropriate resources any and all legal and Congressional actions to secure their rights to Alaska's subsistence resources and uses.

Passed and approved this 11th day of April, 1990, by delegates to the AFN Subsistence Summit Conference.



Julie E. Kitka  
President

SUBSISTENCE SUMMIT CONFERENCE  
ALASKA FEDERATION OF NATIVES  
RESOLUTION NO. 90-2  
APRIL 11, 1990

ENTITLED: ALASKA NATIVE SUBSISTENCE RIGHTS: A PRIORITY FOR  
ALASKA NATIVE TRIBAL MEMBERS

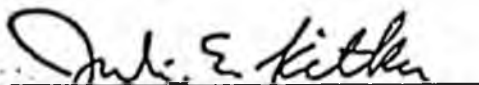
WHEREAS, Alaska Native tribes have managed fish and game in their traditional areas since before anyone can remember, and both the Native people and the animals benefited from tribal management; and

WHEREAS, members of Alaska Native tribes today, and in the future, rely on the right to harvest subsistence resources to nourish their bodies, and for the survival of their culture; and

WHEREAS, the only way to guarantee subsistence rights for members of the Alaska Native tribes is for tribal members to be given a priority to harvest subsistence resources on all lands in Alaska that they have traditionally and customarily used;

NOW THEREFORE BE IT RESOLVED that Native tribes and organizations will work in the long-term to gain a subsistence priority for Alaska Native tribal members, and to affirm the power of Alaska Native tribes to manage and regulate subsistence uses by their members.

Passed and approved unanimously by the delegates to the AFN Subsistence Summit Conference this 11th day of April, 1990.



Julie E. Kitka  
President

SUBSISTENCE SUMMIT CONFERENCE  
ALASKA FEDERATION OF NATIVES  
RESOLUTION NO. 90-3  
APRIL 11, 1990

ENTITLED:

WHEREAS, the McDowell v. State decision by the Alaska Supreme Court puts the State out of compliance with the federal subsistence preference found in Title VIII of ANILCA and will lead to a federal assumption of fish and game management authority on federal lands in the State after July 1, 1990, unless the law is changed; and

WHEREAS, there is a substantial doubt that the law can be changed in time to avoid federal takeover of fish and game management on federal lands; and

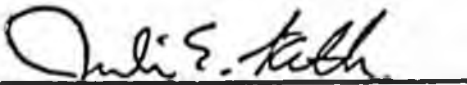
WHEREAS, joint State and federal planning for implementing a dual fish and game management system in the State after July 1, 1990, has taken place without participation or over consultation with the Alaska Federation of Natives or other Native organizations; and

WHEREAS, the sound management of Alaska's fish and game resources is inseparable from Native culture and tradition and must be protected by all possible means; and

WHEREAS, Representative Lyman Hoffman has proposed a State constitutional amendment which would allow the State to manage subsistence resources in accordance with federal law and retain fish and game management authority on federal lands.

NOW THEREFORE BE IT RESOLVED that the body assembled herein directs the Alaska Federation of Natives to work towards amending the State constitution to allow the State to manage subsistence resources consistently with federal laws and retain fish and game management authority on federal lands.

Passed and approved unanimously by the delegates to the AFN Subsistence Summit Conference this 11th day of April, 1990.

  
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Julie E. Kitka  
President