

HJR

90

(9)

Date Referred: March 7, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: 4/30/90

The RESOURCES Committee considered:

HJR 90

HOUSE JOINT RES. NO. 90 CONSTITUTIONAL AMENDMENT: SUBSISTENCE

Proposing an amendment to the Constitution of the State of Alaska relating to subsistence uses of plants, fish, and wildlife by Alaska Native residents and rural residents.

RECOMMENDATIONS:

- be replaced with _____ 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 _____
- zero fiscal note House RES-
- zero with analysis _____
- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not
Pass

No REC

Amend

	Do Not Pass	No REC	Amend
<i>Mike Youvan</i> NAVARRE	X		
<i>Scott Menard</i> MENARD	X		
<i>Chip Davidson</i> DAVIDSON			X
<i>Mike Davis</i> DAVIS		X	

Chip Davidson
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Constitutional Amendment:
 Subsistence
 Sponsor: Transportation Comm.
 Requestor: House Resources Committee

Agency Affected: All Agencies
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
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	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Cliff Davidson

Prepared by: House Resources Committee Phone: 2487
 Division: Representative Cliff Davidson Date: 4/30/90

Approved by Commissioner: _____ Date: _____
 Agency: _____

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

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

MAR 15 1990

POUCH V STATE CAPITOL
UNEAU ALASKA 99511
907 465 3300

MEMORANDUM

March 15, 1990

SUBJECT: Sectional Summary of House Joint Resolution 90;
Proposing an amendment to the Constitution of
the State of Alaska relating to subsistence
uses of plants, fish, and wildlife by Alaska
Native residents and rural residents

TO: Representative Kay Wallis

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is a sectional summary of HJR 90.

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 Alaska State Constitution by adding a new section 19 entitled: Subsistence Uses of Plants, Fish, and Wildlife.

The legislature is specifically authorized to limit the taking of plants, fish, and wildlife for subsistence uses to residents of the state who are Alaska Natives or who reside in rural areas. The legislature may further restrict subsistence uses of plants, fish, and wildlife by Alaska Natives and rural residents on the basis of local or community residence, availability of alternative resources, cultural, traditional, and customary uses of plants, fish, or wildlife, or dependence on plants or a fish or wildlife population as a mainstay of livelihood.

This section exempts the legislature from those provisions of the Alaska Constitution that would otherwise prohibit it from limiting subsistence rights to certain classes of 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:mi
wkmi6/057

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 for 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 halibut of Homer.

I share this bit of personal history because 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 of Alaska's indigenous

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

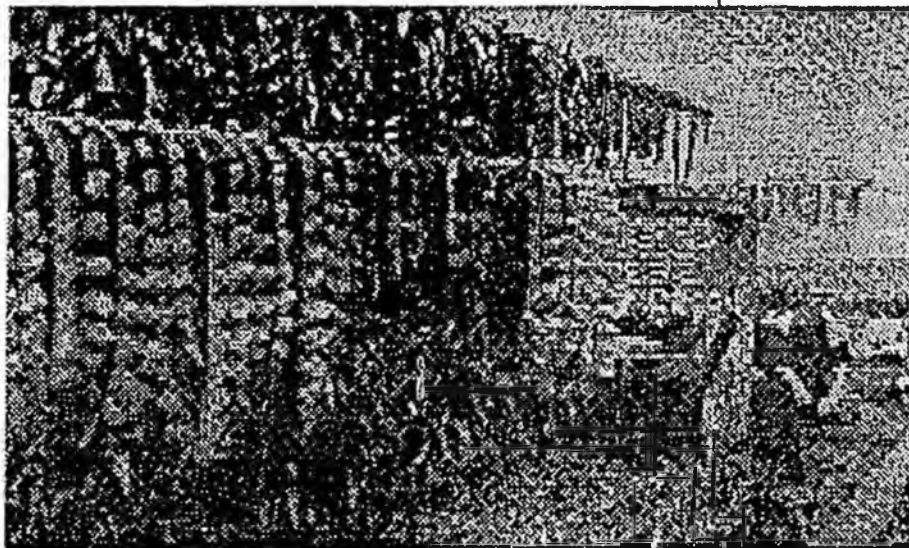
Culture & Tradition

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

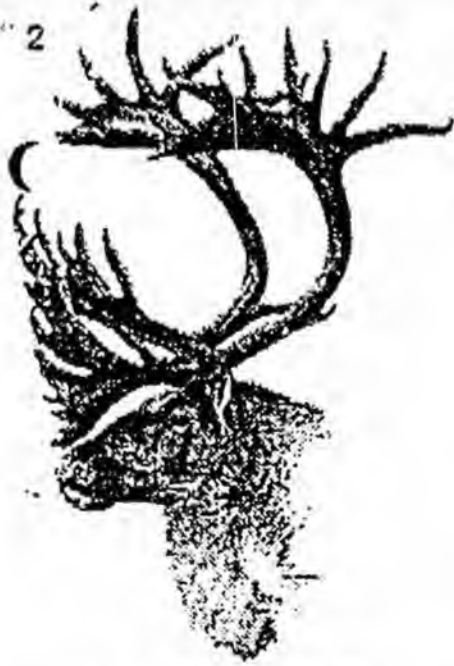
under the Native land claims act. Before that time, when I was brought up in the culture of my people, it's always been 'our culture' and 'our land'. You cannot break out subsistence or the meaning of subsistence or try to identify it, and you can't break it out of the culture. The culture and the life 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 fine 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. ²

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, perhaps, contributed to his banishment from Plymouth! ³

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. ⁴

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. ⁵

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.) ⁶

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. ⁷



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. *

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 ANCSA 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 1³ 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.¹⁰

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 customs 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:

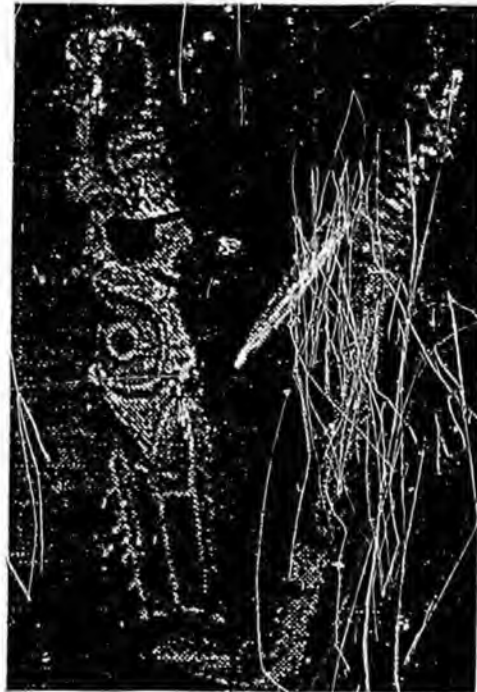
We believe that if Alaskans are going to solve this problem:

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. "

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

HR 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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Fairbanks, Alaska 99709
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Notes:

- ¹Wage Journey, Thomas R. Berger, Hill & Wang, 1985, p. 52
- ²Indians and Other Americans, Fay & McNickle, Harper, 1959, p. 26
- ³Behind the Trail of Broken Treasures, Vine Deloria, Delta, 1974, p. 95
- ⁴Alaska Natives & American Law, David S. Case, U of A Press, 1984, p. 47
- ⁵Ibid., p. 47 ff.
- ⁶Senate Report 92-581, 92nd Congress, 1st Session, December 14, 1971 at 37
- ⁷Case, op. cit., p. 300
- ⁸Ibid., p. 303
- ⁹Ibid., pp. 313, 314
- ¹⁰"Tundra Times", January 29, 1990, p. 29
- ¹¹Case, op. cit., p. 477
- ¹²AFN Newsletter, Special Issue, February 1990, p. 7

Grateful courtesy of:

- Alaska Federation of Natives: Sarah Dyring, page 1
- Doug Lindstrom's Asian Settlements, Caribou & Warden Journals, page 2
- Alaska Federation of Natives: Ice Fishing, page 3
- Sheep Museum Press, Marbut Hood, page 4
- Vancouver Art Gallery & University of British Columbia, Paper Canoe, page 5



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 the 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 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 METLAKATLA. 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 ALSO 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), SAM 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 HERRMANN.

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 1978 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 KERTTULA.

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 KERTTULA 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 UNANANOUS 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.



KAWERAK, INC.



P BOX 948 • NOME, ALASKA 99762

(907) 443-5231

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VILLAGES OF:

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- TELLER
- UNALAKLEET
- WALERS
- 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:

Aleutian/Pribilof
Islands Association Inc

Bristol Bay Native
Association

Central Council
Tribes & HADA

Copper River Native
Association

Kawerak Inc

Kodiak Area Native
Association

Manilaq Association

The North Pacific Rim

North Slope Borough

Unum
-Mutsisi

Tanana Chiefs
Conference Inc

Tyonex
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.

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

*1 inch
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 Native 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 543-3521

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.

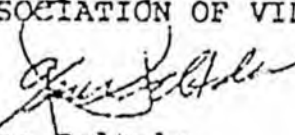
Finally, AVCP unequivocally believes that Alaska Natives should not choose an opening position in the subsistence debate that represents the least that they will settle for. It may be that some form of "rural" solution will prove to be acceptable and possible as the debate progresses. However, if Alaska 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
15 NOT THE ONLY PROBLEM WITH GOING
open to

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