

**SJR**

**78**

DATE: 3/2/90

FURTHER: Judiciary

24 hour notice

Date of 5-Day Notice: 5-3-90  
(in accordance with Uniform Rule 23)

DATE TURNED  
INTO OFFICE: 5-4-90

Resources Committee considered

SJR  
78

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

and recommended:

☒ replace with \_\_\_\_\_ CS SJR 78 (Res) ☒ same title  
☐ attached amendment(s) ☐ new title  
☐ \_\_\_\_\_ letter of intent adopted

☐ do pass

☐ do not pass

☐ no recommendation

☒ individual recommendations

☐ further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

☐ fiscal note(s) \_\_\_\_\_

☐ zero fiscal note(s) \_\_\_\_\_

☐ appropriation-no fiscal note

☒ Governor's bill w/fiscal note

SIGNING DO PASS:

[Signature]  
William Sturgulew

OTHER RECOMMENDATIONS:

DO NOT PASS

Thom D. Hagg No Rec

[Signature]  
Chair: Signature and Recommendation

①

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

2

SENATE JOINT RESOLUTION NO. 78

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

Proposing an amendment to the Consti-

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tution of the State of Alaska relating

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to subsistence uses of fish and wildlife

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by rural residents.

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.



(2)

BY SEN. COGHILL

1 IN THE SENATE

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 305

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to personal use of fish and game,  
7 utilization of fish caught by personal use fishermen,  
8 waste of fish, and management of and planning for  
9 certain salmon stocks; repealing subsistence; and  
10 providing for an effective date."

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

12 \* Section 1. FINDINGS. The legislature finds that it is in the best  
13 interest of the state to

14 (1) maximize the utilization of fishery resources on a sustained  
15 yield basis;

16 (2) make the fishery resources of the state available to resi-  
17 dents to the maximum extent possible;

18 (3) allow the commercial utilization of certain fish parts from  
19 fish caught for personal use in order to avoid the waste of fish parts that  
20 have an economic value; and

21 (4) eliminate the waste of less valuable fish parts or carcasses  
22 that would otherwise be discarded by fishermen.

23 \* Sec. 2. AS 16.05.090(c) is amended to read:

24 (c) There is established in the department a section of personal  
25 use [SUBSISTENCE] hunting and fishing.

26 \* Sec. 3. AS 16.05.092 is amended by adding a new subsection to read:

27 (b) The division shall develop plans and programs for reha-  
28 bilitation and enhancement of salmon stocks that spawn in terminal  
29 areas, identified by the Board of Fisheries under AS 16.05.251(g), to

1 meet the needs of personal use, sport, and commercial fishermen who  
2 utilize those salmon stocks.

3 \* Sec. 4. AS 16.05.094 is amended to read:

4 Sec. 16.05.094. DUTIES OF SECTION OF PERSONAL USE [SUBSISTENCE]  
5 HUNTING AND FISHING. The section of personal use [SUBSISTENCE] hunt-  
6 ing and fishing shall

7 (1) compile existing data and conduct studies to gather  
8 information, including data from personal use fishers and hunters  
9 [SUBSISTENCE USERS], on all aspects of the role of personal use [SUB-  
10 SISTENCE] hunting and fishing in the lives of the residents of the  
11 state;

12 (2) quantify the amount, nutritional value, and extent of  
13 dependence on food acquired through personal use [SUBSISTENCE] hunting  
14 and fishing;

15 (3) make information gathered available to the public,  
16 appropriate agencies, and other organized bodies;

17 (4) assist the department, the Board of Fisheries, and the  
18 Board of Game in determining what uses of fish and game, as well as  
19 which users and what methods, should be termed personal use [SUBSIS-  
20 TENCE] uses, users, and methods;

21 (5) evaluate the impact of state and federal laws and  
22 regulations on personal use [SUBSISTENCE] hunting and fishing and,  
23 when corrective action is indicated, make recommendations to the  
24 department;

25 (6) make recommendations to the Board of Game and the Board  
26 of Fisheries regarding adoption, amendment, and repeal of regulations  
27 affecting personal use [SUBSISTENCE] hunting and fishing;

28 (7) participate with other divisions in the preparation of  
29 statewide and regional management plans so that those plans recognize

1 and incorporate the needs for personal use [OF SUBSISTENCE USERS] of  
2 fish and game.

3 \* Sec. 5. AS 16.05.251(a) is amended to read:

4 Sec. 16.05.251. REGULATIONS OF THE BOARD OF FISHERIES. (a) The  
5 Board of Fisheries may adopt regulations it considers advisable in  
6 accordance with the Administrative Procedure Act (AS 44.62) for

7 (1) setting apart fish reserve areas, refuges, and sanctu-  
8 aries in the waters of the state over which it has jurisdiction,  
9 subject to the approval of the legislature;

10 (2) establishing open and closed seasons and areas for the  
11 taking of fish; if consistent with resource conservation and develop-  
12 ment goals, the board may adopt regulations establishing restricted  
13 seasons and areas necessary for persons 60 years of age and older to  
14 participate in sport or [,] personal use [, OR SUBSISTENCE] fishing;

15 (3) setting quotas, bag limits, harvest levels, and sex and  
16 size limitations on the taking of fish;

17 (4) establishing the means and methods employed in the  
18 pursuit, capture, and transport of fish;

19 (5) establishing marking and identification requirements  
20 for means used in pursuit, capture, and transport of fish;

21 (6) classifying as commercial fish, sport fish, personal  
22 use fish, [SUBSISTENCE FISH,] or predators or other categories essen-  
23 tial for regulatory purposes;

24 (7) watershed and habitat improvement, and management,  
25 conservation, protection, use, disposal, propagation, and stocking of  
26 fish;

27 (8) investigating and determining the extent and effect of  
28 disease, predation, and competition among fish in the state, exercis-  
29 ing control measures considered necessary to the resources of the

1 state;

2 (9) prohibiting and regulating the live capture, posses-  
3 sion, transport, or release of native or exotic fish or their eggs;

4 (10) establishing seasons, areas, quotas, and methods of  
5 harvest for aquatic plants;

6 (11) establishing the times and dates during which the  
7 issuance of fishing licenses, permits, and registrations and the  
8 transfer of permits and registrations between registration areas is  
9 allowed; however, this paragraph does not apply to permits issued or  
10 transferred under AS 16.43;

11 (12) regulating commercial, sport, [SUBSISTENCE,] and per-  
12 sonal use fishing as needed for the conservation, development, and  
13 utilization of fisheries;

14 (13) requiring, in a fishery, observers on board fishing  
15 vessels, as defined in AS 16.05.475(d), that are registered under the  
16 laws of the state, as defined in AS 16.05.475(c), after making a  
17 written determination that an on-board observer program

18 (A) is the only practical data-gathering or enforce-  
19 ment mechanism for that fishery;

20 (B) will not unduly disrupt the fishery;

21 (C) can be conducted at a reasonable cost; and

22 (D) can be coordinated with observer programs of other  
23 agencies, including the National Marine Fisheries Service, North  
24 Pacific Fishery Management Council, and the International Pacific  
25 Halibut Commission;

26 (14) establishing nonexclusive, exclusive, and superexclu-  
27 sive registration and use areas for regulating commercial fishing.

28 \* Sec. 6. AS 16.05.251(d) is amended to read:

29 (d) Regulations adopted under (a) of this section must,

1 consistent with sustained yield and the provisions of AS 16.05.263  
2 [AS 16.05.258], provide a fair and reasonable opportunity for the  
3 taking of fishery resources by [PERSONAL USE,] sport [,] and commer-  
4 cial fishermen.

5 \* Sec. 7. AS 16.05.251(e) is amended to read:

6 (e) The Board of Fisheries shall establish criteria for the  
7 allocation of fishery resources among [PERSONAL USE,] sport [,] and  
8 commercial fishing. The criteria may, as appropriate to particular  
9 allocation decisions, include factors such as

10 (1) the history of each [PERSONAL USE,] sport [,] and  
11 commercial fishery;

12 (2) the number of residents and nonresidents who have  
13 participated in each fishery in the past and the number of residents  
14 and nonresidents who can reasonably be expected to participate in the  
15 future;

16 (3) the importance of each fishery for providing residents  
17 the opportunity to obtain fish for personal and family consumption;

18 (4) the availability of alternative fisheries resources;

19 (5) the importance of each fishery to the economy of the  
20 state;

21 (6) the importance of each fishery to the economy of the  
22 region and local area in which the fishery is located;

23 (7) the importance of each fishery in providing recrea-  
24 tional opportunities for residents and nonresidents.

25 \* Sec. 8. AS 16.05.251 is amended by adding a new subsection to read:

26 (g) The Board of Fisheries shall identify terminal areas encom-  
27 passing those rivers and streams that terminate within the state and  
28 that are important to the spawning of salmon stocks traditionally and  
29 customarily utilized by residents of the area. The board shall adopt

1 regulations for the management of salmon stocks that spawn in a termi-  
2 nal area to ensure the continued use of the salmon stocks by those  
3 residents of the area who have traditionally and customarily utilized  
4 the salmon stocks.

5 \* Sec. 9. AS 16.05.255(a) is amended to read:

6 (a) The Board of Game may adopt regulations it considers advis-  
7 able in accordance with the Administrative Procedure Act (AS 44.62)  
8 for

9 (1) setting apart game reserve areas, refuges, and sanctu-  
10 aries in the water or on the land of the state over which it has  
11 jurisdiction, subject to the approval of the legislature;

12 (2) establishing open and closed seasons and areas for the  
13 taking of game;

14 (3) establishing the means and methods employed in the  
15 pursuit, capture, and transport of game, including regulations, con-  
16 sistent with resource conservation and development goals, establishing  
17 means and methods that may be employed by persons with physical dis-  
18 abilities;

19 (4) setting quotas, bag limits, harvest levels, and sex,  
20 age, and size limitations on the taking of game;

21 (5) classifying game as game birds, song birds, big game  
22 animals, fur bearing animals, predators, or other categories;

23 (6) methods, means, and harvest levels necessary to control  
24 predation and competition among game in the state;

25 (7) watershed and habitat improvement, and management,  
26 conservation, protection, use, disposal, propagation, and stocking of  
27 game;

28 (8) prohibiting the live capture, possession, transport, or  
29 release of native or exotic game or their eggs;

1           (9) establishing the times and dates during which the  
2 issuance of game licenses, permits, and registrations and the transfer  
3 of permits and registrations between registration areas and game  
4 management units or subunits is allowed;

5           (10) regulating sport hunting and personal use [SUBSISTENCE]  
6 hunting as needed for the conservation, development, and utilization  
7 of game.

8 \* Sec. 10. AS 16.05.255(d) is amended to read:

9           (d) Regulations adopted under (a) of this section shall provide  
10 that, consistent with the provisions of AS 16.05.263 [AS 16.05.258],  
11 the taking of moose, deer, elk, and caribou by residents for personal  
12 or family consumption has preference over taking by nonresidents.

13 \* Sec. 11. AS 16.05 is amended by adding new sections to read:

14           Sec. 16.05.263. PERSONAL USE OF FISH AND GAME. (a) Personal  
15 use of fish and game by residents for direct personal or family con-  
16 sumption as food, shelter, fuel, clothing, tools, artifacts, or trans-  
17 portation to satisfy physical, customary and traditional, or cultural  
18 needs shall have priority over other consumptive uses of fish and  
19 game.

20           (b) Fish and game taken for personal use may also be used for

21               (1) making handicraft articles for personal or family use  
22 or for sale out of nonedible byproducts of the fish and game;

23               (2) customary trade, barter, or sharing for personal or  
24 family consumption; and

25               (3) incidental sale of byproducts of fish and wildlife  
26 under AS 16.05.833 and regulations of the boards.

27           (c) The Board of Fisheries and the Board of Game shall adopt  
28 personal use fishing, hunting, and trapping regulations.

29           (d) If the harvestable portion of a fish stock or game

1 population is not sufficient to accommodate all consumptive uses of  
2 the stock or population but is sufficient to accommodate personal use  
3 of the stock or population, then personal use shall be accorded a  
4 preference over other consumptive uses, and the regulations shall  
5 provide a reasonable opportunity to satisfy the needs of residents to  
6 take fish and game for personal use. If the harvestable portion is  
7 sufficient to accommodate the personal use of the stock or population,  
8 then the boards may provide for other consumptive uses of the remain-  
9 der of the harvestable portion. If it is necessary to restrict fish-  
10 ing, hunting, or trapping for personal use in order to assure sus-  
11 tained yield of a fish stock or game population, then the preference  
12 shall be limited, and the board shall adopt regulations that establish  
13 criteria, including the following criteria, for determining who may  
14 take the harvestable portion:

- 15 (1) dependence on fish or game as a mainstay of livelihood;
- 16 (2) availability of alternative resources; and
- 17 (3) customary and traditional use of the particular fish  
18 stock or game population.

19 (e) The boards and the department may not close a season or area  
20 to personal use fishing or hunting for a fish or game species while  
21 the season or area is open to other consumptive uses of the fish or  
22 game species.

23 (f) Takings authorized under this section are subject to reason-  
24 able regulation of seasons, catch or bag limits, and methods and  
25 means. Takings and uses of resources authorized under this section  
26 are subject to AS 16.05.831, 16.05.833, and AS 16.30.

27 Sec. 16.05.265. PERSONAL USE PERMIT. (a) The Board of Fisher-  
28 ies and the Board of Game shall provide for personal use permits to be  
29 issued by the department. The boards may provide for permits to take



1 fish and game, fish or game, or a species, stock, or population of  
2 fish or game.

3 (b) A person shall receive a personal use permit if the person  
4 applies to the department and asserts a physical, customary and tradi-  
5 tional, or cultural need to take fish or game for direct personal or  
6 family consumption. If a board determines that it is necessary to  
7 restrict the take of a fish stock or game population for personal use  
8 to assure sustained yield of the stock or population, the board may  
9 impose additional qualifications for a personal use permit to take the  
10 harvestable portion of that stock or population.

11 (c) A person who obtains a personal use permit shall report the  
12 amount and number of fish and game taken under the permit to the  
13 department.

14 (d) A person may not take fish or game for personal use without  
15 having a personal use permit in the person's physical possession.

16 \* Sec. 12. AS 16.05.831 is amended to read:

17 Sec. 16.05.831. WASTE OF FISH [SALMON]. (a) Except as provided  
18 in AS 16.10.173, a [A] person may not waste fish [SALMON] intention-  
19 ally, knowingly, or with reckless disregard for the consequences. In  
20 this subsection [SECTION], "waste" means the failure to utilize the  
21 majority of the carcass, excluding viscera and sex parts, of a fish  
22 [SALMON] intended for

- 23 (1) sale to a commercial buyer or processor;  
24 (2) consumption by humans or domesticated animals; or  
25 (3) scientific, educational, or display purposes.

26 (b) The commissioner, upon request, may authorize other uses of  
27 fish [SALMON] that would be consistent with maximum and wise use of  
28 the resource.

29 (c) A person who violates this section or a regulation adopted

1 under this section [IT] is punishable by a fine of not more than  
2 \$10,000, or by imprisonment for not more than one year [SIX MONTHS],  
3 or by both. In addition, a person who violates this section is sub-  
4 ject to a civil action by the state for the cost of replacing the fish  
5 [SALMON] wasted.

6 \* Sec. 13. AS 16.05 is amended by adding a new section to read:

7 Sec. 16.05.833. COMMERCIAL UTILIZATION OF FISH PARTS FROM FISH  
8 TAKEN FOR PERSONAL USE. (a) The department shall issue a commercial  
9 use permit to a resident who applies for the permit, satisfies appli-  
10 cable personal use fishing permit requirements, and provides proof of  
11 two years of personal use fishing activity within the fish management  
12 region for which the permit is issued. A commercial use permit au-  
13 thorizes the sale of specified amounts of underutilized fish parts of  
14 fish legally taken in a personal use fishery. A commercial use permit  
15 may be issued for more than one species of fish.

16 (b) The number of pounds of roe that may be sold under a commer-  
17 cial use permit is equal to one-half of the product of the number of  
18 fish of each species for which the personal use fishing permit is  
19 issued that the applicant will take to satisfy the applicant's per-  
20 sonal use needs multiplied by the average weight of roe produced by  
21 each species of fish for which the permit is issued.

22 (c) A commercial use permit may not limit the taking of fish for  
23 personal use purposes.

24 (d) A person may not sell underutilized fish parts from fish  
25 taken for personal use without first obtaining a commercial use permit  
26 under this section.

27 (e) The Board of Fisheries shall adopt regulations that are  
28 necessary to implement this section in each fish management region  
29 established by regulation by the board. The regulations for each

1 region must be based on recommendations received from the fish and  
2 game council for that region.

3 (f) The sale of underutilized fish parts under a commercial use  
4 permit is exempt from the requirements of AS 16.05.675, 16.05.680, and  
5 AS 16.43.

6 (g) In this section "underutilized fish parts" means the skin,  
7 bones, viscera, and sex parts, including roe, of fish.

8 \* Sec. 14. AS 16.05.930(e) is amended to read:

9 (e) This chapter does not prevent the traditional barter of fish  
10 and game taken for personal use [BY SUBSISTENCE HUNTING OR FISHING],  
11 except that the commissioner may prohibit by regulation the barter of  
12 [SUBSISTENCE-TAKEN] fish and game taken for personal use, if the  
13 commissioner finds [BY REGULATION, EMERGENCY OR OTHERWISE, IF A DETER-  
14 MINATION ON THE RECORD IS MADE] that the barter is resulting in a  
15 waste of the resource, damage to fish stocks or game populations, or  
16 circumvention of fish or game management programs.

17 \* Sec. 15. AS 16.05.940(5) is amended to read:

18 (5) "commercial fishing" means the taking, fishing for, or  
19 possession of fish, shellfish, or other fishery resources with the  
20 intent of disposing of them for profit [,] or by sale, barter, trade,  
21 or in commercial channels; the failure to have a valid personal use  
22 [SUBSISTENCE] permit in possession, if required by statute or regu-  
23 lation, is considered prima facie evidence of commercial fishing if  
24 commercial fishing gear as specified by regulation is involved in the  
25 taking, fishing for, or possession of fish, shellfish, or other fish  
26 resources;

27 \* Sec. 16. AS 16.05.940(23) is amended to read:

28 (23) "personal use fishing" means the taking, fishing for,  
29 or possession of finfish, shellfish, or other fishery resources [,] by

1 Alaska residents for direct personal or family consumption [USE AND  
2 NOT FOR SALE OR BARTER, WITH GILL OR DIP NET, SEINE, FISH WHEEL, LONG  
3 LINE, OR OTHER MEANS DEFINED BY THE BOARD OF FISHERIES];

4 \* Sec. 17. AS 16.05.940(28) is amended to read:

5 (28) "sport fishing" means the taking of or attempting to  
6 take for noncommercial [PERSONAL] use, and not for sale or barter, any  
7 fresh water, marine, or anadromous fish by hook and line held in the  
8 hand, or by hook and line with the line attached to a pole or rod  
9 which is held in the hand or closely attended, or by other means  
10 defined by the Board of Fisheries;

11 \* Sec. 18. AS 16.10.265(a) is amended to read:

12 (a) It is unlawful for an individual while acting as a fish  
13 processor or primary fish buyer, or as an agent, director, officer,  
14 member, or employee of a fish processor, of a primary fish buyer, or  
15 of a cooperative corporation organized under AS 10.15 to intentionally  
16 or knowingly make an original purchase of fish from a seller who, in  
17 violation of AS 16.43, does not hold a landing permit, an entry per-  
18 mit, [OR] an interim-use permit, or a commercial use permit issued  
19 under AS 16.05.833.

20 \* Sec. 19. AS 16.10.267(a) is amended to read:

21 (a) When a fisherman sells fish, the fisherman shall possess

22 (1) a landing permit, entry permit, or interim-use permit  
23 issued or transferred to the fisherman under AS 16.43, commercial use  
24 permit issued under AS 16.05.833, or other document authorized by  
25 regulation to be used in place of an entry permit or interim-use  
26 permit; and

27 (2) an identification card that has been issued to the  
28 fisherman by a state or federal agency or other organization desig-  
29 nated by the Department of Public Safety and that bears a photograph

1 of the fisherman.

2 \* Sec. 20. AS 16.10.267(b) is amended to read:

3 (b) If requested by the purchaser of the fish or by a peace  
4 officer, the fisherman shall present for inspection the identification  
5 card, entry permit, interim-use permit, commercial use permit, or  
6 other document required to be in the fisherman's possession under (a)  
7 of this section.

8 \* Sec. 21. The division of legal services of the Legislative Affairs  
9 Agency shall prepare a bill containing appropriate amendments to the Alaska  
10 Statutes, outside of AS 16.05, correcting references to "subsistence,"  
11 "subsistence uses," "subsistence users," "personal use of fish and game,"  
12 and similar terms in order to conform to the provisions of this Act. The  
13 bill shall be presented to the House and Senate Rules Committees for intro-  
14 duction on the first day of the First Session of the Seventeenth Alaska  
15 State Legislature.

16 \* Sec. 22. AS 16.05.258, 16.05.259, 16.05.330(c), and 16.05.940(26),  
17 (29), (30), and (31) are repealed.

18 \* Sec. 23. This Act takes effect immediately under AS 01.10.070(c).

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 retention of  
state management of fish and  
wildlife and other wild renewable  
natural resources; and providing  
for an effective date.

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. RETENTION OF NATURAL RESOURCES MANAGEMENT BY  
THE STATE. Nothing in this <sup>Section</sup> ~~constitution~~ prohibits the  
legislature from enacting laws providing that the reasonable  
opportunity to take fish and wildlife and other wild renewable  
resources for subsistence uses is limited to rural residents,  
if those laws are consistent with Title VIII of the Alaska  
National Interest Lands Conservation Act, Pub.L. 96-487, and  
are necessary in order to retain management authority over  
those resources by the State.

\* Section 2. The intent of the amendment proposed by this  
resolution, together with the changes to the Alaska National

Interest Lands Conservation Act (ANILCA), Pub.L. 96-487, required before this amendment becomes effective, as specified in section 4 below, is:

(a) 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;

(b) to require an amendment to ANILCA to conform that act to the provisions of the new statutes and amendments enacted by ch. 52, SLA 1986, and of any regulations adopted under those statutes and amendments, which limit subsistence uses to rural residents who reside in a community or area of the state in which subsistence uses are a principal characteristic of the economy of the community or area, such that the interpretation of ANILCA in the decision of the Ninth Circuit Court of Appeals in Kenaitze Indian Tribe v. State of Alaska, 860 F.2d 312 (9th Cir. 1989) is negated; and

(c) to require an amendment to ANILCA that removes the term "customary trade" from the definition of "subsistence uses" such that in the future the sale (exchange for money) of fish or game, or parts thereof, will not be held to be a "subsistence use" that State law banning such sale must yield to (see e.g. U.S. v. Sakurai, et al., No. A88-026 CR (D. AK 1989)), and further will not be accorded a priority over the taking of fish or game resources for other purposes.

\* Section 3. 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.

\* Section 4. The amendment proposed by this resolution is effective only upon certification of the election returns by the lieutenant governor and certification by the governor that Congress has amended Title VIII of ANILCA in substance as follows:

(a) the term "rural Alaska residents" in ANILCA is defined as a person domiciled in 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;

(b) the term "customary trade" is deleted from the definition of "subsistence uses" in ANILCA; and

(c) the term "customary and traditional uses" in ANILCA is defined as a long-term, consistent pattern of use of indigenous fish and game resources, recurring seasonally, within geographic proximity of and accessible to the users' residences, employing traditional methods and means of harvesting, preparing and preserving such resources for personal use, sharing and barter, and which provides substantial benefit to the economic, cultural, and social welfare of the community.



(4)

BY THE RESOURCES COMMITTEE

1 IN THE SENATE

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to subsistence fishing and hunting."

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

8 \* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

9 (1) new law is needed to ensure that subsistence fishing and  
10 hunting opportunities are maintained;

11 (2) efforts to provide for the needs of residents who primarily  
12 rely on subsistence resources further the legitimate interests of the  
13 state;

14 (3) providing for the needs of residents who primarily rely on  
15 subsistence resources, most of whom reside in rural areas of the state, is  
16 consistent with the purposes and objectives of the Alaska National Interest  
17 Lands Conservation Act (P.L. 96-487);

18 (4) efforts to provide for the needs of residents who signifi-  
19 cantly use subsistence resources further the legitimate interests of the  
20 state;

21 (5) conservation of sound fish and wildlife populations is in  
22 the best interests of all residents of the state;

23 (6) this Act is consistent with the equal protection and common  
24 use principles of the Constitution of the State of Alaska.

25 (b) The purposes of this Act are to

26 (1) establish a fish and wildlife allocation system to provide  
27 reasonable opportunities to certain subsistence users through a preference  
28 system, consistent with fish and wildlife conservation principles;

29 (2) provide for express consideration of the needs of other

1 subsistence users; and

2 (3) establish a fish and wildlife allocation system consist  
3 with the Constitution of the State of Alaska.

4 \* Sec. 2. AS 16.05.258(b) is amended to read:

5 (b) The boards shall determine

6 (1) what portion, if any, of the stocks and populations  
7 identified under (a) of this section can be harvested consistent with  
8 sustained yield; and

9 (2) how much of the harvestable portion is needed to pro-  
10 vide a reasonable opportunity to satisfy the category I subsistence  
11 uses of those stocks and populations.

12 \* Sec. 3. AS 16.05.258(c) is amended to read:

13 (c) The boards shall adopt subsistence fishing and subsistence  
14 hunting regulations for each stock and population for which a harvest-  
15 able portion is determined to exist under (b)(1) of this section. If  
16 the harvestable portion is not sufficient to accommodate all consump-  
17 tive uses of the stock or population, but is sufficient to accommodate  
18 category I subsistence uses of the stock or population, then nonwaste-  
19 ful category I subsistence uses shall be accorded a preference over  
20 other consumptive uses, and the regulations shall provide a reasonable  
21 opportunity to satisfy the category I subsistence uses. If the  
22 harvestable portion is sufficient to accommodate the category I sub-  
23 sistence uses of the stock or population, then the boards may provide  
24 for other consumptive uses, including category II subsistence uses, of  
25 the remainder of the harvestable portion. If the boards do provide  
26 for other consumptive uses of the remainder of the harvestable portion  
27 of the stock or population, the boards shall provide an allocation for  
28 category II subsistence uses. The boards may not allocate a portion  
29 of a stock or population to commercial or sport uses unless an

1 allocation is also made to category II subsistence uses. If it  
2 necessary to restrict subsistence fishing or subsistence hunting :  
3 order to assure sustained yield or continue category I subsistenc  
4 uses, then the preference shall be limited, and the boards shal  
5 distinguish among category I subsistence users, by applying th  
6 following criteria:

- 7 (1) customary and direct dependence on the fish stock or  
8 game population as the mainstay of livelihood;  
9 (2) local residency; and  
10 (3) availability of alternative resources.

11 \* Sec. 4. AS 16.05.258 is amended by adding a new subsection to read:

12 (g) In this section,

13 (1) "category I subsistence uses" means the noncommercial,  
14 customary and traditional uses of wild, renewable resources by a  
15 resident (A) proximate to the domicile of the resident, (B) for whom  
16 subsistence taking constitutes the primary means of securing personal  
17 or family sustenance, and (C) who has customarily and traditionally  
18 participated in subsistence taking as a resident for direct personal  
19 or family consumption as food, shelter, fuel, clothing, tools, or  
20 transportation, for the making and selling of handicraft articles out  
21 of nonedible byproducts of fish and wildlife resources taken for  
22 personal or family consumption, and for the customary trade, barter,  
23 or sharing for personal or family consumption;

24 (2) "category II subsistence uses" means the noncommercial,  
25 customary and traditional uses of wild, renewable resources by a  
26 resident (A) who has customarily and traditionally taken wild, renew-  
27 able resources for personal or family uses and (B) for whom subsis-  
28 tence taking constitutes a significant means of securing personal or  
29 family sustenance for food, shelter, fuel, clothing, tools, or

1 transportation, for the making and selling of handicraft articles out  
2 of nonedible byproducts of fish and wildlife resources taken for  
3 personal or family consumption, and for the customary trade, barter,  
4 or sharing for personal or family consumption;

5 (3) "family" means persons related by blood, marriage, or  
6 adoption, and a person living in the household on a permanent basis.

7 \* Sec. 5. AS 16.05.940(29) is amended to read:

8 (29) "subsistence fishing" means the taking of, fishing for,  
9 or possession of fish, shellfish, or other fisheries resources by a  
10 resident [DOMICILED IN A RURAL AREA OF THE STATE] for subsistence uses  
11 with gill net, seine, fish wheel, long line, or other means defined by  
12 the Board of Fisheries;

13 \* Sec. 6. AS 16.05.940(30) is amended to read:

14 (30) "subsistence hunting" means the taking of, hunting for,  
15 or possession of game by a resident [DOMICILED IN A RURAL AREA OF THE  
16 STATE] for subsistence uses by means defined by the Board of Game;

17 \* Sec. 7. AS 16.05.940(31) is repealed and reenacted to read:

18 (31) "subsistence uses" means category I and category II  
19 subsistence uses as defined in AS 16.05.258.

20 \* Sec. 8. AS 16.05.940(26) is repealed.  
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6-2031Sb  
Utermohle

5-2-90

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHJR 74 ( ) (version "S")

Page 1, lines 5 - 10:

Delete all material and insert:

"Proposing an amendment to the Constitution of the State of Alaska authorizing the legislature to enact laws relating to allocation of fish and wildlife and other wild renewable natural resources for subsistence uses that are consistent with federal laws relating to subsistence uses in order to retain state management authority over those resources."

S-2-90

6-2031S  
Utermohle  
5/1/90

Original sponsor(s): REP. JACKO, Goll, Foster, MacLean

IN THE HOUSE

CS FOR 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 subsistence uses of fish and wildlife and other wild renewable natural resources; and providing for an effective date for the amendment.

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 USES OF RENEWABLE NATURAL RESOURCES.

Nothing in this constitution prohibits the legislature from enacting laws of general applicability, consistent with the sustained yield principle, relating to the allocation of fish and wildlife and other wild renewable natural resources for subsistence uses that are consistent with federal laws relating to subsistence uses 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 relating to subsistence uses, the intent of the amendment proposed by this resolution is to validate, ratify, and reinstate existing state subsistence laws including the provisions of ch. 52, SLA 1986, that are consistent with federal laws relating to subsistence uses.

\* 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

1 in conformity with art. XIII, sec. 1, Constitution of the State of Alaska,  
2 and the election laws of the state.

3 \* Sec. 4. The amendment proposed by this resolution if approved by the  
4 voters is effective immediately upon certification of the election returns  
5 by the lieutenant governor.  
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Utermohle  
5/3/90

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1 IN THE SENATE

2 SENATE JOINT RESOLUTION NO.

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 subsistence uses of fish and wildlife;  
8 and providing for an effective date for  
9 the amendment.

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 USES OF FISH AND WILDLIFE. When  
14 consistent with the sustained yield principle and necessary to provide  
15 for subsistence uses, the legislature may grant a preference for the  
16 taking of fish and wildlife for subsistence uses by and among resi-  
17 dents of rural areas of the State.

18 \* Sec. 2. The intent of the amendment proposed by this resolution is to  
19 validate and ratify state subsistence laws, including "An Act relating to  
20 subsistence uses of fish and wildlife; and providing for an effective date"  
21 enacted by the Sixteenth Alaska State Legislature, that are consistent with  
22 federal laws relating to subsistence uses.

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

28 \* Sec. 4. The amendment proposed by this resolution if approved by the  
29 voters is effective immediately upon certification of the election returns



1 by the lieutenant governor.

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1 IN THE SENATE

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to subsistence uses of fish and  
7 game; and providing for an effective date."

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

9 \* Section 1. AS 16.05.251(a) is amended to read:

10 (a) The Board of Fisheries may adopt regulations it considers  
11 advisable in accordance with the Administrative Procedure Act  
12 (AS 44.62) for

13 (1) setting apart fish reserve areas, refuges, and sanctu-  
14 aries in the waters of the state over which it has jurisdiction,  
15 subject to the approval of the legislature;

16 (2) establishing open and closed seasons and areas for the  
17 taking of fish; if consistent with resource conservation and develop-  
18 ment goals, the board may adopt regulations establishing restricted  
19 seasons and areas necessary for persons 60 years of age and older to  
20 participate in sport or [,] personal use [, OR SUBSISTENCE] fishing;

21 (3) setting quotas, bag limits, harvest levels, and sex and  
22 size limitations on the taking of fish;

23 (4) establishing the means and methods employed in the  
24 pursuit, capture, and transport of fish;

25 (5) establishing classification requirements  
26 for means used in pursuit, capture, and transport of fish;

27 (6) classifying as commercial fish, sport fish, personal  
28 use fish, [SUBSISTENCE FISH,] or predators or other categories essen-  
29 tial for regulatory purposes;

1 (7) watershed and habitat improvement, and management,  
2 conservation, protection, use, disposal, propagation, and stocking of  
3 fish;

4 (8) investigating and determining the extent and effect of  
5 disease, predation, and competition among fish in the state, exercis-  
6 ing control measures considered necessary to the resources of the  
7 state;

8 (9) prohibiting and regulating the live capture, posses-  
9 sion, transport, or release of native or exotic fish or their eggs;

10 (10) establishing seasons, areas, quotas, and methods of  
11 harvest for aquatic plants;

12 (11) establishing the times and dates during which the  
13 issuance of fishing licenses, permits, and registrations and the  
14 transfer of permits and registrations between registration areas is  
15 allowed; however, this paragraph does not apply to permits issued or  
16 transferred under AS 16.43;

17 (12) regulating commercial, sport, [SUBSISTENCE,] and per-  
18 sonal use fishing as needed for the conservation, development, and  
19 utilization of fisheries;

20 (13) requiring, in a fishery, observers on board fishing  
21 vessels, as defined in AS 16.05.475(d), that are registered under the  
22 laws of the state, as defined in AS 16.05.475(c), after making a  
23 written determination that an on-board observer program

24 (A) is the only practical data-gathering or enforce-  
25 ment mechanism for that fishery;

26 (B) will not unduly disrupt the fishery;

27 (C) can be conducted at a reasonable cost; and

28 (D) can be coordinated with observer programs of other  
29 agencies, including the National Marine Fisheries Service, North

1 Pacific Fishery Management Council, and the International Pacific  
2 Halibut Commission;

3 (14) establishing nonexclusive, exclusive, and superexclu-  
4 sive registration and use areas for regulating commercial fishing.

5 \* Sec. 2. AS 16.05.251(d) is amended to read:

6 (d) Regulations adopted under (a) of this section must, consis-  
7 tent with sustained yield and the provisions of AS 16.05.263 [AS 16.-  
8 05.258], provide a fair and reasonable opportunity for the taking of  
9 fishery resources by personal use, sport, and commercial fishermen.

10 \* Sec. 3. AS 16.05.255(a) is amended to read:

11 (a) The Board of Game may adopt regulations it considers advis-  
12 able in accordance with the Administrative Procedure Act (AS 44.62)  
13 for

14 (1) setting apart game reserve areas, refuges, and sanctu-  
15 aries in the water or on the land of the state over which it has  
16 jurisdiction, subject to the approval of the legislature;

17 (2) establishing open and closed seasons and areas for the  
18 taking of game;

19 (3) establishing the means and methods employed in the  
20 pursuit, capture, and transport of game, including regulations, con-  
21 sistent with resource conservation and development goals, establishing  
22 means and methods that may be employed by persons with physical dis-  
23 abilities;

24 (4) setting quotas, bag limits, harvest levels, and sex,  
25 age, and size limitations on the taking of game;

26 (5) classifying game as game birds, song birds, big game  
27 animals, fur bearing animals, predators, or other categories;

28 (6) methods, means, and harvest levels necessary to control  
29 predation and competition among game in the state;

1 (7) watershed and habitat improvement, and management,  
2 conservation, protection, use, disposal, propagation, and stocking of  
3 game;

4 (8) prohibiting the live capture, possession, transport, or  
5 release of native or exotic game or their eggs;

6 (9) establishing the times and dates during which the  
7 issuance of game licenses, permits and registrations and the transfer  
8 of permits and registrations between registration areas and game  
9 management units or subunits is allowed;

10 (10) regulating sport hunting [AND SUBSISTENCE HUNTING] as  
11 needed for the conservation, development, and utilization of game.

12 \* Sec. 4. AS 16.05.255(d) is amended to read:

13 (d) Regulations adopted under (a) of this section shall provide  
14 that, consistent with the provisions of AS 16.05.263 [AS 16.05.258],  
15 the taking of moose, deer, elk, and caribou by residents for subsis-  
16 tence use [PERSONAL OR FAMILY CONSUMPTION] has preference over taking  
17 by nonresidents.

18 \* Sec. 5. AS 16.05 is amended by adding a new section to read:

19 Sec. 16.05.263. SUBSISTENCE USES OF FISH AND GAME. (a) Resi-  
20 dents may take fish and game for subsistence uses as provided by law.

21 (b) The Board of Fisheries and the Board of Game shall identify  
22 the fish stocks and game populations, or portions of stocks and popu-  
23 lations, that are customarily and traditionally used for subsistence.  
24 The boards shall identify rural subsistence areas.

25 (c) The boards shall determine

26 (1) what portion, if any, of the stocks and populations  
27 identified under (b) of this section can be harvested consistent with  
28 sustained yield; and

29 (2) how much of the harvestable portion is needed to

1 provide a reasonable opportunity for subsistence uses of those stocks  
2 and populations by all residents and by residents of rural subsistence  
3 areas.

4 (d) The boards shall adopt subsistence fishing and subsistence  
5 hunting regulations for each stock and population for which a harvest-  
6 able portion is determined to exist under (c) of this section.

7 (e) If the harvestable portion of a stock or population is  
8 sufficient to accommodate the subsistence uses of the stock or popu-  
9 lation by residents of rural subsistence areas, then the boards may  
10 provide for subsistence uses by nonresidents of rural subsistence  
11 areas and for other consumptive uses of the remainder of the harvest-  
12 able portion. If the harvestable portion of a stock or population is  
13 sufficient to accommodate subsistence uses of the stock or population  
14 by residents of rural subsistence areas, but is not sufficient to  
15 accommodate all consumptive uses of the stock or population, then  
16 subsistence uses of the stock or population by residents of rural  
17 subsistence areas shall be accorded a preference over other consump-  
18 tive uses, and the regulations must provide a reasonable opportunity  
19 to satisfy the subsistence uses. If the harvestable portion of a  
20 stock or population is not sufficient to accommodate all subsistence  
21 uses of a stock or population by residents of rural subsistence areas  
22 and it is necessary to restrict subsistence uses in order to assure  
23 sustained yield of the stock or population or continue rural subsis-  
24 tence uses, then the preference for subsistence uses of the stock or  
25 population by residents of rural subsistence areas shall be maintained,  
26 and the boards shall distinguish among residents of rural subsistence  
27 areas by applying the following criteria:

28 (1) customary and direct dependence on the fish stock or  
29 game population as the mainstay of livelihood;

1 (2) local residency; and

2 (3) availability of alternative resources.

3 (f) The boards may adopt regulations consistent with this sec-  
4 tion that authorize the taking of fish and game for nonsubsistence  
5 uses.

6 (g) Takings authorized under this section are subject to reason-  
7 able regulation of seasons, catch or bag limits, and methods and  
8 means. Takings and uses of resources authorized under this section  
9 are subject to AS 16.05.831 and AS 16.30.

10 \* Sec. 6. AS 16.05.330(c) is amended to read:

11 (c) The Board of Fisheries and the Board of Game may adopt  
12 regulations providing for the issuance and expiration of subsistence  
13 permits for areas, villages, communities, groups, or individuals as  
14 needed for authorizing, regulating, and monitoring the subsistence  
15 harvest of fish and game. The boards shall adopt these regulations  
16 when the rural subsistence area preference under AS 16.05.263 requires  
17 a reduction in the harvest of a fish stock or game population by  
18 subsistence users who do not receive a preference and by nonsubsis-  
19 tence users.

20 \* Sec. 7. AS 16.05.940(23) is amended to read:

21 (23) "personal use fishing" means the taking, fishing for,  
22 or possession of finfish, shellfish, or other fishery resources from a  
23 fishery established by the Board of Fisheries, by [ALASKA] residents  
24 for personal use and not for subsistence uses, sale, or barter, with  
25 gill or dip net, seine, fish wheel, long line, or other means defined  
26 by the Board of Fisheries;

27 \* Sec. 8. AS 16.05.940(29) is amended to read:

28 (29) "subsistence fishing" means the taking of, fishing for,  
29 or possession of fish, shellfish, or other fisheries resources by a



1 resident [DOMICILED IN A RURAL AREA OF THE STATE] for subsistence uses  
2 with gill net, seine, fish wheel, long line, or other means defined by  
3 the Board of Fisheries;

4 \* Sec. 9. AS 16.05.940(30) is amended to read:

5 (30) "subsistence hunting" means the taking of, hunting for,  
6 or possession of game by a resident [DOMICILED IN A RURAL AREA OF THE  
7 STATE] for subsistence uses by means defined by the Board of Game;

8 \* Sec. 10. AS 16.05.940(31) is amended to read:

9 (31) "subsistence uses" means the noncommercial, customary  
10 and traditional uses of fish and game [WILD, RENEWABLE] resources by a  
11 resident [DOMICILED IN A RURAL AREA OF THE STATE] for direct personal  
12 or family consumption as food, shelter, fuel, clothing, tools, or  
13 transportation, for the making and selling of handicraft articles out  
14 of nonedible by-products of fish and wildlife resources taken for  
15 personal or family consumption, and for the customary trade, barter,  
16 or sharing for personal or family consumption [; IN THIS PARAGRAPH,  
17 "FAMILY" MEANS PERSONS RELATED BY BLOOD, MARRIAGE, OR ADOPTION, AND A  
18 PERSON LIVING IN THE HOUSEHOLD ON A PERMANENT BASIS];

19 \* Sec. 11. AS 16.05.940 is amended by adding new paragraphs to read:

20 (36) "family" means persons related by blood, marriage, or  
21 adoption living in a household and other persons living in the house-  
22 hold on a permanent basis;

23 (37) "rural subsistence area" means a subsistence area  
24 outside the road connected area of a municipality or other community  
25 with a population of 7,000 or more, as determined by the Department of  
26 Community and Regional Affairs;

27 (38) "subsistence area" means an area where significant  
28 subsistence uses occur.

29 \* Sec. 12. AS 16.05.258, 16.05.259, and 16.05.940(26) are repealed.



1       \* Sec. 13. AS 16.05.090(c), 16.05.094, 16.05.251(d), 16.05.255(d),  
2 16.05.258, 16.05.259, 16.05.330(c), 16.05.930(e), 16.05.940(2), 16.05.-  
3 940(26), 16.05.940(29), 16.05.940(30), and 16.05.940(31) are repealed.

4       \* Sec. 14. The division of legal services of the Legislative Affairs  
5 Agency shall prepare a bill containing appropriate amendments to the Alaska  
6 Statutes correcting references to "subsistence," "subsistence uses," "sub-  
7 sistence users," and similar terms in order to conform to the provisions of  
8 this Act. The bill shall be presented to the House and Senate Rules Com-  
9 mittees for introduction on the first day of the First Session of the  
10 Seventeenth Alaska State Legislature.

11       \* Sec. 15. NONSEVERABILITY. Notwithstanding AS 01.10.030, if a pro-  
12 vision of AS 16.05.263 as enacted by sec. 5 of this Act, or if AS 16.05.-  
13 940(23) as amended by sec. 7 of this Act, AS 16.05.940(29) as amended by  
14 sec. 8 of this Act, AS 16.05.940(30) as amended by sec. 9 of this Act,  
15 AS 16.05.940(31), as amended by sec. 10 of this Act, or AS 16.05.940(37) or  
16 (38) as enacted by sec. 11 of this Act, is held invalid by the decision of  
17 a court of competent jurisdiction, then that provision is not severable  
18 from other provisions of AS 16.05 as amended by or enacted by secs. 2 and  
19 4 - 11 of this Act.

20       \* Sec. 16. Sections 2, 4 - 12, and 15 of this Act take effect only if  
21 an amendment to the Constitution of the State of Alaska relating to subsis-  
22 tence uses of fish and wildlife is approved by the voters of the state at  
23 the 1990 general election.

24       \* Sec. 17. Sections 1, 3, 13, and 14 of this Act take effect only if an  
25 amendment to the Constitution of the State of Alaska relating to subsis-  
26 tence uses of fish and wildlife is submitted to and disapproved by the  
27 voters at the 1990 general election.

28       \* Sec. 18. This Act takes effect upon certification of election returns  
29 for the 1990 general election by the lieutenant governor.

PROPOSED JOINT RESOLUTION ADDRESSING SUBSISTENCE

JOINT RESOLUTION NO. \_\_\_\_\_  
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; and  
providing for an effective date."

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 USES OF FISH AND WILDLIFE.  
The people are entitled to take, consistent with the principle  
of sustained yield, fish and wildlife for subsistence uses.  
The Legislature may provide by law for a reasonable  
opportunity for the people to take fish and wildlife for  
subsistence uses.

\* Section 2. (Intent to validate, ratify, etc.)

\* Section 3. (Place before voters, etc.)

\* Section 4. (Immediate effective date upon passage by  
voters.

4

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 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 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. 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 would create an unacceptable risk of a federal takeover of fish and wildlife management.

\* Interpret section 204 of ANILCA as preempting state law on federal lands (which 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.

SUBSISTENCE OPTIONS EXPLORED BY THE DEPARTMENT OF LAW

- \*1 Ask the Alaska Supreme Court to reconsider its decision in McDowell
- \*2 Amend the Alaska Constitution to authorize a subsistence priority for rural residents
- \*3 Amend ANILCA to eliminate the federal subsistence priority for rural residents
- \*4 Amend ANILCA to preempt state law as necessary to grant rural residents a subsistence priority statewide
- \*5 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
- \*6 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
- \*7 Amend state law to provide a subsistence priority to state residents most dependent on fish and wildlife, and then amend ANILCA to conform to the state law
- \*8 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
- \*9 Challenge the ANILCA subsistence priority for rural residents and/or Congress' power to require such a priority on constitutional grounds

## CHRONOLOGY OF THE STATE'S SUBSISTENCE LAW

**1978 STATE'S FIRST SUBSISTENCE LAW:** The state passes its first subsistence law which, once sustained yield has been ensured, requires that subsistence uses be allowed, with a priority if necessary. The law defines subsistence uses as "customary and traditional uses" of fish and game for specific purposes such as food.

**1980 ANILCA:** Congress passes the Alaska National Interest Lands Conservation Act, creating 104 million acres of new national parks, preserves and wildlife refuges. Title VIII of that act mandates that the state maintain a subsistence hunting and fishing preference for rural residents, or forfeit management of these subsistence uses on public lands. If the state fails to protect subsistence as described in ANILCA, the act stipulates that the federal government will take over management of fish and wildlife on the two-thirds of the state that is federal land.

**1982 CONSISTENCY:** The joint Boards of Fisheries and Game adopt a regulation specifying that customary and traditional uses are rural uses, and the Department of Interior certifies the state's consistency with ANILCA.

**1982 REPEAL INITIATIVE:** A statewide effort to repeal the subsistence law fails by a large margin at the polls.

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

**1985 MADISON DECISION:** The Alaska supreme court, in the Madison decision, rules that state regulations limiting subsistence to rural residents are not consistent with the state's 1978 subsistence law. The Interior Department notifies the state that the Madison decision violates the provisions of ANILCA and threatens takeover of fish and wildlife management on public lands unless the state comes up with a new subsistence law, incorporating the rural limitation.

**1986 NEW SUBSISTENCE LAW:** The Alaska Legislature enacts a new law limiting subsistence to rural residents. In state superior court, the McDowell suit is amended to challenge the new subsistence law. The Kenaitze Indian Tribe also files a suit in federal court under ANILCA to protest the classification of the Kenai Peninsula as an urban area.

1987      KENAITZES INITIALLY DENIED: A federal judge rules against the Kenaitzes, saying the state subsistence law's definition of rural agrees with the use of the word "rural" in federal subsistence law.

1987      MCDOWELL INITIALLY DENIED: The state superior court holds that the 1986 subsistence law is constitutional.

1988      KENAITZE DECISION REVERSED: The ninth U.S. circuit court of appeals in San Francisco reverses the Kenaitze decision and holds that the state definition of rural is not consistent with ANILCA. The U.S. Supreme Court ultimately denies review.

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

1989      MCDOWELL DECISION: On December 22, the Alaska supreme court rules the 1986 state subsistence law is unconstitutional because it excludes urban residents from subsistence activities.

1990      STAY GRANTED: On January 5 the Alaska supreme court granted the state a stay in the McDowell decision until July 1 with regard to existing regulations. As a consequence, all existing regulations are in effect and are enforceable until that time.



### Composition of Statewide Subsistence Harvest

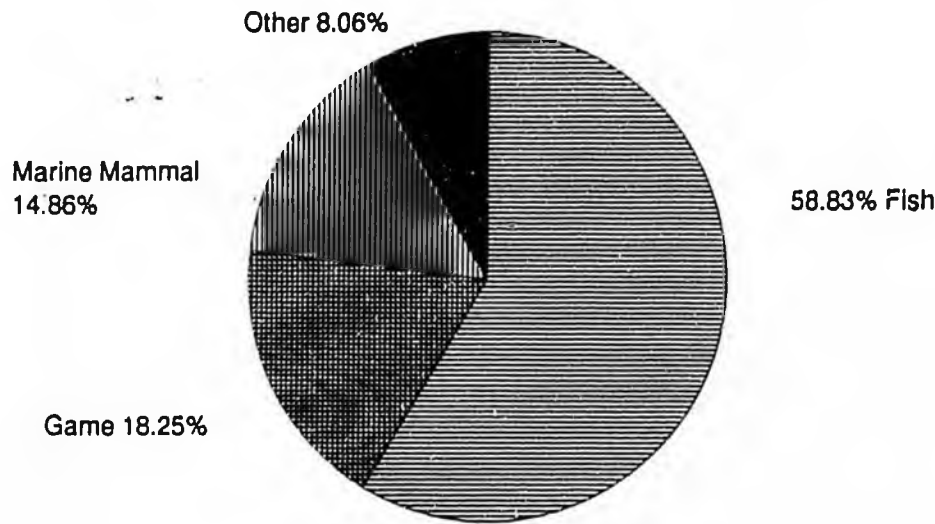


Figure 2. Statewide Subsistence Harvest Composition

#### How Large is the Subsistence Harvest?

Statewide, non-commercial fishing and hunting provided an estimated 35-45 million pounds of food annually to rural areas during the 1980s. This comes to about 300-400 lbs per person a year, or about a pound of food per day.

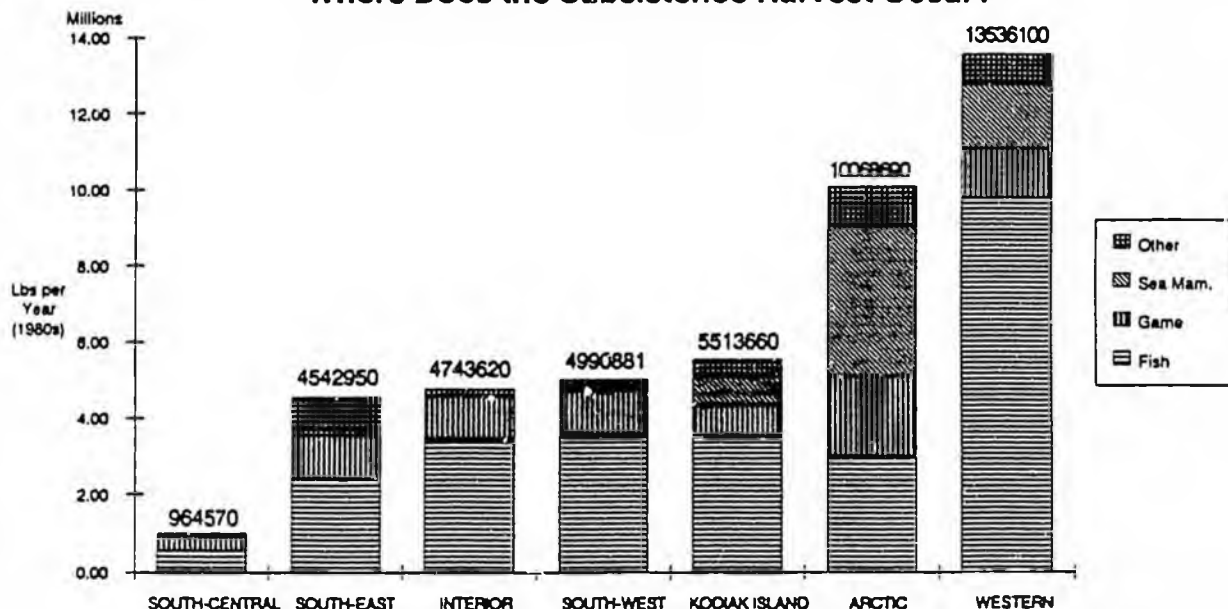
Most of the subsistence harvest was fish (about 59 percent by weight), along with marine mammals (about 15 percent), land mammals (about 18 percent), and other wild resources (about 8 percent, including shellfish, birds, and wild plants) (Fig. 2).

#### 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 lbs) and Arctic regions (about 10 million lbs). Other sizable non-commercial harvests occur on Kodiak Island (5.5 million lbs), Southwest Region (5.0 million lbs), the Interior Region (4.7 million lbs), and the Southeast Region (4.5 million lbs). The smallest harvest occurs in the Southcentral Region (.9 million lbs), primarily in the Copper River Basin, Tyonek, English Bay, and Port Graham (Fig. 3).

Figure 3. Subsistence Harvests by Region

### Where Does the Subsistence Harvest Occur?





### How Does Subsistence Compare with Commercial and Sport Uses?

While subsistence is important, it represents a comparatively small portion of the wild resources harvested annually in Alaska. In Alaska's salmon fisheries, subsistence harvests generally represent less than 1 percent of the total salmon harvests. Considering all fish and game harvested in the state, about 4 percent by weight went to subsistence uses, 1 percent went to sport uses, and 95 percent went to commercial uses (Fig. 4).

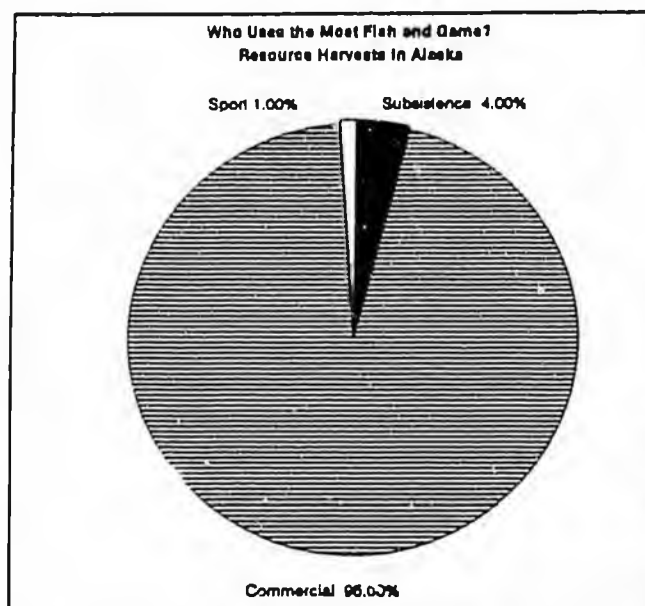


Figure 4. Fish and Game Harvests by Principal User Group

### Subsistence and Cash

Our studies indicate that in many rural areas, subsistence is part of a traditional regional economy, termed a "mixed, subsistence-market economy". This type of economy occurs in the Canadian north as well. In mixed, subsistence-market economies, fishing and hunting are central activities conducted by extended family groups. The family invests in small-scale, efficient technologies, such as fishwheels, gill nets, motorized skiffs, and snowmachines, used for producing food. Subsistence production is not oriented toward market sale or accumulated profit, as is commercial market production. Rather, it is directed toward meeting the self-limiting needs of families and small communities.

A family's subsistence production is augmented and supported by cash employment by family members. Depending upon the region, employment commonly is in commercial fishing, commercial trapping, and public sector wage

employment. Typically, but not always, mean annual monetary incomes in the region are modest and intermittent. Families follow an economic strategy of using a portion of the annual monetary earnings to capitalize in subsistence technologies for producing food. This combination of subsistence and commercial-wage activities by extended family groups characterizes the mixed, subsistence-market economy.

This mixed, subsistence-market system underlies the economies of most rural areas of the state. The mixed economic system has existed in various forms since before the Russian period. It is very durable, which indicates its success in providing for rural families.

### Traditional Harvest Areas

Our studies show that subsistence users tend to harvest in traditional use areas surrounding their communities. This means that most subsistence harvest areas tend to be relatively accessible from the community, although seasonal camps are used for certain species.



Figure 5. Subsistence Fishing Areas, Hoonah, 1920-1985.

Consequently, subsistence harvest areas for particular groups of people are definable and relatively predictable. Subsistence users generally do not harvest outside their community's traditional use areas (Fig. 5).

### Subsistence Values

In addition to its nutritional value, subsistence provides important cultural and social values to rural communities. Our studies indicate that subsistence are central activities unifying extended families and small communities. The traditional wide-scale sharing of subsistence products between families help unify communities.

Subsistence activities bring meaning and purpose to life in many communities. This is especially true for Alaska Native groups. In many places, subsistence still expresses ancient spiritual linkages between humans, wild animals, and the land handed down by oral traditions.

### The Importance of Subsistence

In summary, Alaska's rural regions tend to be different from Alaska's urban centers in terms of culture, traditional food use, and economic circumstance, reflecting the state's historic pluralism. Subsistence continues to be an essential part of the economy and culture of many rural areas. Subsistence fishing and hunting produces a substantial portion of the state's food supply in rural areas. Subsistence provides economic stability to many areas which have mixed, subsistence-market economic systems. And subsistence expresses a number of traditional values of importance to Alaska's diverse cultural groups.

### Additional Reading

Alaska Department of Fish and Game, Division of Subsistence, Technical Paper Series. This series is the primary source of information on contemporary subsistence uses in Alaska. Write Technical Report Librarian, Division of Subsistence, ADF&G, Box 2-3000, Juneau, AK 99802, for listings and reports.

Wolfe, Robert J. and Robert J. Walker (1987) Subsistence Economies in Alaska: Productivity, Geography, and Development Impacts. Arctic Anthropology 24(2):56-81. This paper describes subsistence harvests in Alaska for the 1980s by geographic region.

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## Subsistence in Alaska: A Summary

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February 26, 1990

### Introduction

Subsistence is important to the economy and culture of many families and communities in Alaska. This report describes some characteristics of subsistence in Alaska, based on studies by the Division of Subsistence, Alaska Department of Fish and Game.

### What Is Subsistence?

Subsistence is part of the cultures, traditions, and economies of many families and communities in Alaska. In current state and federal law, subsistence is defined as customary and traditional, non-commercial uses of wild resources, for a variety of purposes. These uses include harvesting and processing wild resources for food, clothing, fuel, transportation, construction, arts, crafts, sharing, and customary trade.

Alaska has a subsistence law because subsistence continues to support a major part of state's rural economy and culture. Alaska is unique in this regard. Alaska is a pluralistic state. A sizable number of traditional cultures and economies exist side-by-side in the state. These traditional cultures and economies coexist with the industrial-capitalism of Alaska's urban centers.

The stated intent of the federal and state subsistence

statutes was to provide the opportunity for these traditional cultures and economies to continue to exist.

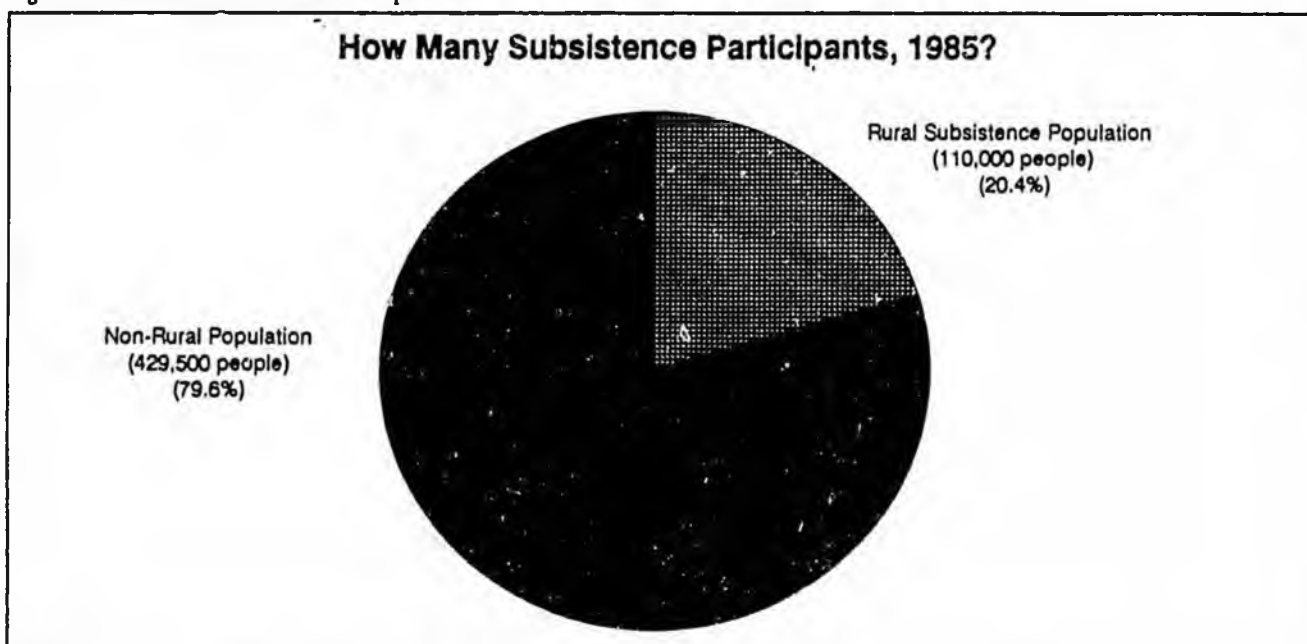
### How Many People Participate in Subsistence?

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).

Our studies indicate that not all 110,000 rural residents actually harvested wild resources for subsistence. In fact, harvesting fish and game was the responsibility of a minority of people in rural areas. However, subsistence foods are widely distributed through non-market networks in rural communities. Because of non-commercial sharing, most residents in rural communities make use of subsistence foods during the course of a year to some extent. Thus, the best estimate of the number of participants in subsistence is the size of the rural population.

Figure 1. Alaska Rural and Non-Rural Population



Summary of Recent Decisions and  
Active Cases Involving Subsistence

Excerpted from

Alaska Bar Association  
1989 Subsistence Update

1. *Akutan v. Hodel*, Nos. A85-701 Civ., J85-037 Civ., and J85-038 Civ. (consolidated) (D. Alaska) (von der Heydt), *appeals pending*, Nos. 88-3610, 88-3703, 88-3703 (9th Cir.)

This case was initially filed in December 1985 and involved the interpretation of Section 810 of ANILCA. Its focus was on when the Secretary of the Interior must follow procedures designed to ensure that use and/or disposition of federal lands does not unnecessarily restrict subsistence uses. Interior's position was that it had only to undertake such procedures when the proposed use or disposition had a probability of significantly restricting subsistence uses. The plaintiffs contended that Interior had to undertake the procedures whenever such use or disposition might significantly restrict subsistence uses.

The district court held that Interior erred when it applied the "probability" standard in determining when to undertake the procedures. Its decision was based on the Court of Appeals' earlier decision in *Village of Gambell v. Hodel*, 774 F.2d 1414 (9th Cir. 1985) (*Gambell I*). Both the government and the intervening oil companies appealed and the Ninth Circuit affirmed. *Tribal Village of Akutan v. Hodel*, 792 F.2d 1376 (9th Cir. 1986). The government and the oil companies petitioned for certiorari. Following the Supreme Court's decision in *Amoco Production Co. v. Village of Gambell*, 107 S. Ct. 1396 (1987) (see discussion below), the Supreme Court granted their petitions, reversed, and remanded for reconsideration in light of *Amoco*, 107 S. Ct. 1598 (1987).

On remand to the district court, the tribal villages amended their complaint to allege aboriginal hunting and fishing rights in the lease sale area. The parties then agreed to a stay of all proceedings on the Tribes' aboriginal title claim pending a decision by the Ninth Circuit in *Gambell* on remand. Meanwhile, the State, the tribal villages, and various environmental organizations sought summary judgment on their claims that the lease sale violated the Outer Continental Shelf Lands Act, the National Environmental Policy Act, and the Endangered Species Act. On January 22, 1988, the district court denied the State's claims under the OCSLA and on March 11, 1988 denied the NEPA and ESA claims. The plaintiffs appealed both decisions to the Ninth Circuit and moved the district court for an order enjoining the sale pending the appeal. On March 15, 1988, the district court granted the injunction pending appeal.

On October 5, 1988, the Court upheld the District Court's decision on all counts. It held that the Secretary properly decided not to accept the State's recommendations under OCSLA; that the Secretary could remedy any deficiencies in his Environmental Impact Statement at the exploratory or production stages of development; and that the Secretary's reasons for rejecting recommendations by the National Marine Fisheries Service to implement the ESA were not arbitrary or capricious.

Plaintiffs moved for a rehearing, with a suggestion for rehearing *en banc*, together with a request that the sale be stayed pending rehearing. The motion for stay was denied as moot shortly after the lease sale was held in mid-October; the petition for rehearing was rejected on March 9, 1989, although the Court did modify its opinion in some minor respects on that date. Plaintiffs are now evaluating whether to file an appeal in the Supreme Court.

2. *Alaska Fish and Wildlife Federation and Outdoor Council, Inc. v. Dunkel*, 829 F.2d 933 (9th Cir. 1987), *cert. denied*, 56 U.S.L.W. 3682 (April 4, 1988), *on remand*, No. J84-013 Civ. (D. Alaska) (von der Heydt)

This case was filed in the Spring of 1984 by the Alaska Fish and Wildlife Federation and Outdoor Council and the Alaska Fish and Wildlife Conservation Fund (Conservation Fund). The plaintiffs sought a declaration that two cooperative agreements (the Hooper Bay Agreement and the 1985 Goose Management Plan) entered into by the Fish & Wildlife Service, the ADF&G, AVCP and the California Department of Fish and Game violate the Migratory Bird Treaty Act, 16 U.S.C. § 712, the notice and comment provisions of the federal Administrative Procedure Act, the National Environmental Policy

Act, and provisions of ANILCA, 16 U.S.C. § 668dd, which create the Yukon Delta Wildlife Refuge.

The challenged cooperative agreements grew out of recognition by the federal and state governments that migratory birds represent an important part of the traditional Native diet on the Yukon-Kuskokwim Delta. Even though the Migratory Bird Treaty Act, through the 1978 Fish and Wildlife Improvement Act, 16 U.S.C. § 712, permits the Secretary of the Interior to authorize hunting of migratory birds in the spring and summer, it requires that the hunting be consistent with the four migratory bird treaties to which the United States is a party. The 1916 U.S./Canada treaty prohibits harvest of migratory birds in the spring and summer. Even though the Fish and Wildlife Service had long assumed that all harvesting of migratory birds between March 10 and September 1 is prohibited, it adopted a written policy in 1975 stating that subsistence hunting in Alaska during the closed season would not be punished. This enforcement policy was adopted in part because the service recognized the importance of spring waterfowl to Alaska Natives and in part because of the practical problems of enforcing the game laws in the vast reaches of rural Alaska.

Because of the recent decline of four populations of migratory birds, the U.S. Fish and Wildlife Service, the Alaska Department of Fish and Game, the California Department of Fish and Game, and the Association of Village Council Presidents entered into a cooperative agreement under which the harvest of those four species would be minimized in the spring and summer. This plan, known as the Hooper Bay Agreement, prohibited sport hunting of cackling Canada geese and reduced the hunting of white-fronted geese and black brants during the 1985 season. Enforcement was to be a joint effort by the various governmental agencies and local village councils. During 1984, the parties complied with the terms of the agreement. In 1985, the Hooper Bay Agreement was replaced with the 1985 Goose Management Plan.

The Conservation Fund initially sought an injunction to prohibit the Fish and Wildlife Service from agreeing to the taking of migratory birds during the 1984 closed season. Shortly thereafter, the intervenors (AVCP) filed a cross-claim against the Fish and Wildlife Service alleging that the 1985 Alaska Game Law rather than the Migratory Bird Treaty Act governed the subsistence hunting of migratory game birds in Alaska and until the agency promulgated regulations under the 1978 Wildlife Improvement Act, Interior had no authority to enforce the Migratory Bird Treaty Act's closed seasons. The district court denied the preliminary injunction for the 1984 season. It subsequently ruled that the 1925 Alaska Game Law repealed the Migratory Bird Treaty Act insofar as it applied to Alaska. The court dismissed all of the other claims as moot. *Memorandum and Order* (Jan. 24, 1985).

On appeal, the Ninth Circuit reversed with respect to the 1925 Game Act, pointing out that the 1916 U.S./Canadian treaty did not provide for spring and summer hunting, and thus it could not be authorized under the 1978 Fish and Wildlife Improvement Act. The court remanded the case to the district court on all of the original challenges to the plan under the Migratory Bird Treaty Act, the migratory bird treaties, the federal Administrative Procedure Act, NEPA and the section of ANILCA creating the Yukon



Delta National Wildlife Refuge. 829 F.2d 933 (9th Cir. 1987). The Supreme Court denied AVCP's petition for certiorari. 56 U.S.L.W. 3682 (April 4, 1988).

On remand, the district court found that by agreeing to language in the Hooper Bay Agreements which indicated that subsistence hunting for certain species was "ok" during parts of the period closed to hunting by treaty, the U.S.F.W.S. adopted a "substantive rule" in violation of the notice and comment procedures mandated by the APA, 5 U.S.C. § 553. The Court also found that U.S.F.W.S. failure to prepare an environmental assessment of its "substantive rule" violated the requirements of NEPA. Finally, the Court found that by adopting a substantive rule authorizing hunting during a period closed to hunting by treaty, the Secretary acted beyond the scope of his authority and thus violated the Migratory Bird Treaty Act. *Memorandum and Order* (June 29, 1988).

Meanwhile, on April 22, 1988, the Regional Director for the Fish and Wildlife Service announced a new policy on migratory bird hunting in Alaska. The policy is intended to prevent hunting of cackling Canada or emperor geese at any time; hunting Pacific white-fronted geese or black brant when they are nesting, raising young, or are flightless; taking eggs from any of the above four species of geese; using private or charter aircraft for purposes of hunting migratory birds during closed seasons; or hunting other waterfowl (ducks, geese, swans) when they are nesting, raising young or are flightless, or taking their eggs. The policy states that *limited harvest of migratory birds for food in unforeseen emergency situations will not be prosecuted* and enforcement of the policy will concentrate on "violations that have the greatest impact on waterfowl resources." As an adjunct to this policy, the Service has announced that it continues to view the Yukon-Kuskokwim Delta Goose Management Plan as an important element in the conservation of the four species.

On April 29, 1988, the Yukon-Kuskokwim Delta Goose Management Plan for 1988, which corresponds with the Service's recently adopted policy on migratory bird hunting in Alaska, was signed by the Service and Native Groups in the Yukon-Kuskokwim Delta. The state fish and game departments from both Alaska and California also signed the plan. The plan lists priorities the signatories will observe to enforce the closed season on migratory birds in spring and summer. It calls for a cooperative effort in monitoring compliance. Reports of violations will be coordinated with local village governments, which will assist in investigations conducted by the Service. The Service also agreed to make a "good faith effort to reach agreement with Canada" on an amendment to the Migratory Bird Treaty. As noted above, that treaty, signed in 1916, makes most hunting for migratory birds, even for subsistence, illegal.

3. *Association of Village Council Presidents, Tanana Chiefs Conference, Paul Philip, and Jonathon Solomon v. Alaska Board of Fish and Commissioner of Fish and Game*, No. 4BE-87-155 Civ. (Alaska Superior Court) (Fraties)

The False Pass commercial fishery occurs near the Alaska Peninsula in June, targeting mainly on sockeye salmon. Along with the sockeye salmon are incidentally harvested chum salmon, five to ten percent of which (at most) may be Yukon fall chum salmon.

In May, 1987, AVCP, Tanana Chiefs Conference, Paul Philip and Jonatho Solomon, on behalf of themselves and all other persons similarly situated, filed suit against the Alaska Board of Fish and Commissioner of Fish and Game. They asserted that the information presented to the Board of Fisheries indicated that not enough fall chum salmon would return to the Yukon in 1987 to provide for both escapement and subsistence fisheries. They argued that the federal and state subsistence laws required that the False Pass commercial fishery be closed.

The State and intervenors (Concerned Area M. Fishermen and Peninsula Marketing Association) argued that the information before the Board of Fisheries justified the board's conclusion that there was no need to close the False Pass fishery. The board did not believe it was likely that there would not be enough fall chum salmon to provide for escapement and subsistence fishing at historical levels in the Yukon. Plaintiff's request for a preliminary injunction was denied. Plaintiffs sought review by the state supreme court via a petition for review, which was also denied.

The State supplied discovery in response to some pending requests by plaintiffs and the Board of Fisheries imposed a chum salmon cap on the False Pass fishery for the 1988 season. The case was subsequently dismissed when ADF&G's estimate of fish returning proved to be inaccurate and more than enough fish returned. (See discussion of *Peninsula Marketing Ass'n v. State*, p. 21, a subsequent and related case).

4. *Bobby v. Alaska*, No. A84-544 Civ. (D. Alaska) (Holland)

This case was filed in November, 1984, by Wasilie Bobby, Sr., individually and on behalf of the people of Lime Village.

Lime Village, a community of about 40 people, alleged that the then-existing state moose and caribou regulations which applied to the Lime Village area did not adequately accommodate subsistence uses. Since that time, the Board of Game modified the regulations in several steps. The regulations ultimately reviewed by the Court imposed two closed seasons on moose (spring through mid-summer, and in the late fall) and one closed season on caribou (spring through mid-summer). The bag limits for residents of Lime Village reviewed by the court were 2 moose and 5 caribou per person.

Plaintiff argued that individual bag limits are not necessary for any conservation or management purpose in the case of Lime Village and are not consistent with the village's historic hunting patterns. Plaintiff asserted that several good hunters may supply the entire community with meat over the course of the year, rather than each household hunting for itself. Plaintiff also argued that the now-existing closed seasons for moose and caribou harvest are not consistent with ANILCA. Plaintiff asserted that under ANILCA, there should not be a closed season at all unless necessary to protect the resource. The State's position was that ANILCA regulations provide a "reasonable opportunity" for subsistence uses, but not necessarily year round seasons.

Another issue raised in this case is whether people can harvest game or fish outside the existing regulations and then successfully defend in a criminal case by asserting that the regulations did not adequately accommodate subsistence uses. This "subsistence



defense" was originally created by the Alaska Court of Appeals in *State v. Eluska*, 698 P.2d 174 (Alaska App. 1985), but was reversed by the Alaska Supreme Court in *State v. Eluska*, 724 P.2d 514 (Alaska 1986). The Supreme Court held that AS 16.05.920(a), which prohibits taking fish and game unless authorized, is controlling and is necessary in order to adhere to the constitutionally mandated sustained yield standard. The court's ruling followed, but did not refer to, the legislature's articulation in May 1986 of that same principle with respect to subsistence fishing and hunting in AS 16.05.261. The State's position was that neither the legislature nor the Alaska Supreme Court prevented people from requesting the Boards of Fish and Game to change regulation\* or prohibited people from challenging existing regulations in civil cases, based on a perceived lack of reasonable opportunity for subsistence.

*Status of the Case:* The court ruled on the pending motions for summary judgment of February 14, 1989. The judge held that seasons and bag limits are permissible under the subsistence law, but only when those seasons and bag limits are consistent with customary and traditional uses. He indicated that he would defer to the Board of Game's determinations, but that in this instance, in part because of the (at that time) constantly changing ground rules under which the Board of Game was operating, the analysis required by the state 1986 subsistence law about how much moose and caribou were needed to accommodate subsistence hunting by residents of Lime Village was not done. The judge also held that the existing Board of Game record did not reconcile a specific finding by the board that residents of Lime Village had historically harvested moose and caribou opportunistically throughout the year with the seasons contained in the regulations, nor did the record reconcile the evidence therein that the best hunters from Lime Village did most of the hunting and shared with the other villagers with the bag limits contained in the regulations. The judge also interpreted the state "no subsistence defense" statute in a way which he believed was consistent with fundamental principles which allow a defendant to challenge the validity of regulation he or she is charged with violating, and with the Alaska Supreme Court's ruling in *Eluska*; by concluding that the provision was only intended to preclude a defendant in a criminal proceeding from claiming a subsistence right in gross, outside of and apart from validly enacted subsistence regulations.

Judge Holland declined to issue a preliminary injunction, but ordered the state to submit revised regulations by June 15, 1989. The Game Board met on April 27 to review the regulations. As a result of the meeting, the regulations were amended to lift the individual bag limits, establish a 100 caribou quota, and allow year round season on caribou, except that cows and calves may not be taken in the spring or summer, not impose a moose quota, but retain closed moose seasons.

These regulations will be submitted to the court by June 15, and plaintiff at that time may express any unresolved objections.

##### 5. *Cook v. Secretary of the Interior*, F87-42 Civ (D. Alaska) (Kleinfeld)

This case was filed on August 17, 1987, by a resident of the Yukon-Charley Rivers National Preserve who lives a subsistence lifeway. He alleges that a fly-in trapper from Eagle, Alaska has engaged in trapping activities within the area he claims as his trapline, depleting furbearer resources and negatively affecting his own trapping efforts. The basic

legal issue presented by the case is whether the National Park Service has any legal obligation under Title VIII of ANILCA to provide affirmative protection to subsistence users on Park Service lands.

The plaintiff takes the position that Title VIII of ANILCA imposes upon the Secretary of the Interior the affirmative duty to protect the plaintiff's subsistence uses. Plaintiff contends that subsistence-trapline management implicates land-use and land-management policy with respect to which NPS, as land manager, has jurisdiction and principal responsibility. Even though the Park Service's regulations authorize it to declare plaintiff's subsistence trapline off-limits to all other trappers (36 C.F.R. § 13.40), or to prohibit aircraft from operating on his trapline for the purpose of trapping, § 13.13, the Secretary argues that this is a subsistence-resource "allocation" issue over which jurisdiction has been confided exclusively in the State. Under the Secretary's theory, the federal government has no authority to protect subsistence users in the National Parks.

On October 14, 1987, the plaintiff moved for a preliminary injunction to require the Secretary to take all actions necessary to protect his trapline from encroachment by any other trapper during the marten season or until such time as the merits of the case could be decided. Judge Kleinfeld denied the plaintiff's request for a preliminary injunction on November 20, 1987. The government then moved for summary judgment, which the plaintiff opposed. At the conclusion of arguments on the motion for summary judgment on June 23, 1988, Judge Kleinfeld noted that while the question of whether the Park Service or the State had jurisdiction to protect subsistence traplines was a complex and difficult issue, the case had to be dismissed as moot since the fly-in trapper had promised, under oath, not to trap on plaintiff's line. The dismissal was not appealed.

6. *Didrickson v. United States Department of Interior*, No. A85-336 Civ. (D. Alaska) (Holland)

This case, formerly captioned in the name of the original plaintiff, Katelnikoff, was brought pursuant to the Marine Mammal Protection Act of 1972 (MMPA). Both Marina Katelnikoff and Didrickson sought the return of a number of articles they had fashioned out of sea otter pelts. The articles were confiscated by federal enforcement agents on the ground that they were not "authentic native articles of handicrafts and clothing" within the meaning of the Native handicraft exemption to the MMPA, 16 U.S.C. § 1371(b), as defined by controlling federal regulations.

At stake is the proper interpretation of the Alaska Native exemption to the MMPA and its regulations. The MMPA, enacted in 1972, established a comprehensive moratorium on the taking of marine mammals but created an exception for the taking of marine mammals by Alaska Natives for subsistence purposes and for making "authentic native articles of handicrafts and clothing." 16 U.S.C. § 1371(b). The regulation implementing this exemption defines "authentic native articles of handicrafts and clothing" to include only those items which "were commonly produced on or before December 21, 1972." 50 C.F.R. § 18.3.

Plaintiffs argued that the limitation in the regulation was inconsistent with the MMPA in that it focuses on whether the final craft item produced was traditional rather

than whether the production *technique* was traditional. Plaintiffs argued that an item can be "authentic" even if it was not commonly produced prior to 1972.

In July 1986, Judge Holland rejected these arguments and upheld the validity of the regulation largely based on deference to agency interpretation. Ms. Katelnikoff was dismissed from the lawsuit to pursue her administrative remedies.

Judge Holland's decision upholding the regulation as consistent with the MMPA led Didrickson to amend his complaint to allege that the regulation is unconstitutionally vague because no one, not even the enforcement agents, can determine what is permitted by the regulation. Sea otter use by Natives has been limited since the mid-1700's due to bans imposed by the Russians and then by the United States and also due to population declines caused by Russian overhunting, and it is difficult or impossible to determine exactly what use Natives made of sea otter at that time.

Didrickson has moved for summary judgment on his constitutional claim. In denying the government's motion to dismiss, Judge Holland indicated that problems with the regulation and its enforcement call for an administrative resolution. In response, the Fish and Wildlife Service instituted a formal rulemaking proceeding, proposing to change its regulatory definition to totally prohibit Native use of sea otter for handicrafts and clothing. This rule is based upon Fish and Wildlife Service's conclusion that there has been no recent use of sea otter by Natives and no recent sales by Natives of sea otter items. The comment period on the proposed rule will continue until November 30, 1989. Public hearings are planned for October, 1989, in several coastal villages.

Meanwhile, Katelnikoff (now by marriage, Beck) lost her administrative hearing as to all items crafted from sea otter pelts except hats. Having exhausted her administrative remedies, she has moved to intervene in the federal court litigation.

7. *Gambell v. Lujan*, \_\_\_ F.2d \_\_\_ (9th Cir. 1989), petition for rehearing pending, on remand, Nos. 83-3735; 83-3781 (D. Alaska) (von der Heydt)

On March 4, 1983, the tribal villages of Gambell and Stebbins sued the Secretary of the Interior alleging that he had violated either their aboriginal hunting and fishing rights or Section 810 of ANILCA in holding Outer Continental Shelf Lease Sale 57. Oil companies interested in bidding on the sale intervened.

The Tribes' principal claim was that ANCSA and Title VIII of ANILCA had to be consistently interpreted by the Secretary. ANCSA extinguished Native hunting and fishing rights "in Alaska." Title VIII applies to Native hunting and fishing rights "in Alaska." The Tribes argued that the two acts had the same geographic scope. If both acts applied only within the territorial boundaries of the State, then they retained their aboriginal hunting and fishing rights outside the territorial boundaries. Alternatively, if both acts applied outside the territorial boundaries of the State, then the Secretary had violated Section 810 in holding the sale.

Judge von der Heydt granted summary judgment to the government and the intervening oil companies and dismissed the suit. The Ninth Circuit reversed in part and affirmed in part. It held that ANCSA applies to the OCS and operated to extinguish

aboriginal hunting and fishing rights in this area. It also held that ANILCA applied to the OCS and since the Secretary had not complied with Section 810 of ANILCA, the court reversed and remanded for a determination as to whether the sale should be voided. *Gambell v. Clark*, 746 F.2d 572 (9th Cir. 1984) (*Gambell I*).

In April, 1985, a companion case, *Gambell v. Hodel*, was filed challenging OCS Lease Sale 83 in the Navarin Basin, alleging both that the Secretary had failed to comply with Section 810 of ANILCA in holding the sale as well as that the Secretary's decision to lease the area violated his trust responsibilities to protect subsistence uses and resources.

The plaintiffs in both cases moved the district court for a preliminary injunction against exploratory drilling pending the district court's determination on the merits. The motions were consolidated. Although the district court found that the Department of the Interior did not comply with Title VIII of ANILCA in holding the lease sales, it ruled that a preliminary injunction was not warranted. The court reasoned that the nation's quest for new oil and gas resources and energy independence outweighed the harm that might result to subsistence users from continued exploratory activities on the leases.

On appeal the Ninth Circuit reversed the district court, finding that the tribal villages had a certainty of prevailing on the merits and ordered the oil companies to immediately cease all operations in the leased areas. Its ruling rested on the principle that under Section 810 the national interest in the subsistence lifestyle of Alaskan Natives outweighs the competing interest in the rapid development of OCS oil leasing in Alaska. *Gambell v. Hodel*, 774 F.2d 1414 (9th Cir. 1985) (*Gambell II*).

The government and the oil companies petitioned for certiorari. The tribal villages cross-petitioned on the aboriginal title issue decided in *Gambell I*. The Supreme Court granted both the petitions and the Tribes' cross-petition. It reversed the lower court's holding that ANILCA applied to the OCS and vacated the ruling that ANCSA applied to the same area and remanded the case for further proceedings on the aboriginal title claim. *Amoco Production Co. v. Gambell*, 107 S.Ct. 1396 (1987).

On remand, the Court of Appeals reversed the district court's original judgment in *Gambell I*, holding that aboriginal subsistence rights of Alaska Natives in the OCS were not extinguished by ANCSA. It also rejected the Secretary's and the oil companies' arguments that (1) the federal government's paramount interests in the OCS extinguished aboriginal rights; (2) that the United States had not assumed sufficient control over the OCS so as to constitute sovereignty which requires recognition of aboriginal rights; and (3) that recognition of aboriginal rights would be inconsistent with principles of international law. On remand, the district court must decide (1) whether the Villages possess aboriginal rights in the OCS; (2) if so, whether the drilling and other activities by the oil companies will interfere significantly with the Villages' exercise of those rights; and (3) whether the Outer Continental Shelf Lands Act extinguishes aboriginal subsistence rights in the OCS. *Gambell v. Lujan*, \_\_\_ F.2d \_\_\_ (9th Cir. 1989) (*Gambell III*).

The oil companies and the Secretary have petitioned for rehearing.

8. *Hanlon v. Barton*, No. J88-025 Civ. (D. Alaska) (von der Heydt)

This case was filed in July 1988 on behalf of six Native residents of Hoonah and one non-Native resident of Angoon, all of whom hunt near Hoonah. Two of the plaintiffs are chiefs of Hoonah-area Tlingit clans -- all depend on the resources, particularly the deer, of the Tongass National Forest. Their suit attacks a Forest Service decision to authorize four years of logging and roadbuilding near Hoonah without first holding the hearings and making the findings required by § 810 of ANILCA, 16 U.S.C. § 3120. That statute requires Federal agencies to consider the effects on subsistence of major land use decisions. If a proposed action may impose significant restrictions on subsistence uses of the public lands, the Federal agency involved must make specific findings about the necessity of the action and the measures which will be taken to minimize its effect on subsistence uses.

Plaintiffs filed a motion for preliminary injunction. The Alaska Pulp Corporation, the principal beneficiary of the logging program, intervened in the case. Plaintiffs argued that the Forest Service applied the wrong standard in determining that its logging program will not significantly restrict subsistence uses in the Hoonah area. They also asserted that the Forest Service failed to consider the impacts of related actions, and based on the information available to it, should have concluded that its logging program would result in significant restrictions to subsistence uses, thus invoking the procedures outlined in §810 (a) (1) - (3). The plaintiffs also alleged violations of the National Environmental Policy Act, the National Historic Preservation Act, and the Administrative Procedure Act.

On November 14, 1988, the district court denied the plaintiffs' request for a preliminary injunction. Although the court found that the plaintiffs had shown a "near certainty" of success on the merits of three of their five claims, the court found insufficient proof of irreparable harm. Instead of granting an evidentiary hearing, the court denied the injunction and suggested that the parties agree on the formulation of the terms of injunctive relief pending compliance by the Forest Service with its obligations under NEPA and ANILCA. Unable to reach agreement, the plaintiffs filed an appeal and moved the district court for an injunction pending appeal. Prior to the hearing on plaintiffs' motion, the parties agreed to the entry of an injunction.

The injunction requires the Forest Service to conduct the hearings mandated by ANILCA § 810 and to prepare a supplemental environmental impact statement. Pending completion of the hearings and supplemental review, logging and roadbuilding are enjoined in the most critical subsistence use areas, including sixteen cutting units in the Hoonah area. The injunction also prohibits creation of a log dump in Whitestone Harbor. The § 810 hearings are scheduled for June, 1989.

9. *John v. Alaska*, No. A85-698 Civ. (D. Alaska) (Holland)

This case was filed in December, 1985, by Katie John, Doris Charles, and the Mentasta Village Council. Since 1964, the State limited subsistence fishing in the Copper River Basin to that portion of the Copper River below its confluence with the Slana River. In 1984, Katie John and Doris Charles, residents of Mentasta and Dot Lake, respectively, requested the Board of Fisheries to open a subsistence fishery at the old village site of

Batzulnetas, where the proponents have pending and patented (respectively) Native allotments. The board rejected the proposal, voicing concerns about fishing on stocks of fish at or near their spawning grounds ("terminal fisheries"). This lawsuit followed.

Plaintiffs claim that the Batzulnetas site is a customary and traditional subsistence salmon fishing site and that closure of this area is not required to protect sustained yield. The case involves a complex river system (the Copper River, in which there are at least 124 separate sockeye salmon stocks).

Questions are raised regarding what constitutes a "reasonable opportunity" to obtain subsistence salmon and whether this is the applicable standard under ANILCA, what steps the State must take to determine whether a fishery can be conducted without jeopardizing sustained yield, and what standard of review the federal court should apply in reviewing State subsistence regulations, among others. There is also a question of whether the State of Alaska has jurisdiction to regulate fish uses on a Native allotment.

After completion of extensive discovery and filing by plaintiffs of a motion for summary judgment, the parties entered into a stipulation in 1987 to stay the case pending the Board of Fisheries' review of a new proposal from plaintiffs for a subsistence fishery. The State agreed to allow plaintiffs a carefully structured interim subsistence fishery for the 1987 season.

In its winter 1987-88 meeting, the board acted on plaintiffs' proposal and found that the existing subsistence fishery for the Copper River provided a "reasonable opportunity" for plaintiffs to meet their subsistence uses; however, the board also found that a subsistence fishery in excess of "reasonable opportunity" could be authorized at Batzulnetas without jeopardizing sustained yield. The board adopted a regulation establishing a subsistence fishery at Batzulnetas and setting the season, methods of take, and scope of this new fishery. Cross motions for summary judgment were filed on whether the new regulations are adequate under ANILCA. Plaintiffs claim that the Board was required to establish a subsistence fishery at Batzulnetas which was not categorized as extra to reasonable opportunity. Those motions are still pending.

Meanwhile, plaintiffs have filed a motion for a preliminary injunction which seeks more fishing opportunities for the summer of 1989 at the site than the 2-3 1/2 days currently provided in the regulations.

10. *Kenaitze Indian Tribe v. State of Alaska*, 860 F.2d 312 (9th Cir. 1988), *petition for cert. filed*, 57 U.S.L.W. 3689 (U.S. April 18, 1989) (No. 88-1642), *on remand*, No. A86-367 Civ. (D. Alaska) (Holland).

This case was filed on July 15, 1986, under §807 of ANILCA by the Kenaitze Indian Tribe. The plaintiff members consist of the descendants of aboriginal inhabitants of the Cook Inlet area. The Tribe alleged that the State's definition of "rural area" in its 1986 subsistence law, Ch. 52, SLA 1986, was inconsistent with the meaning of the term "rural" in Title VIII of ANILCA. Sections 803 and 804 of ANILCA provide an absolute hunting and fishing priority for rural Alaska residents. The State's definition of "rural area" extends the priority only to those who live in "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. Plaintiff claimed that the term "rural" had to be given its ordinary meaning -- that of a geographic area with a small population -- and that it could not be defined so as to restrict the priority to only those who live in an area where subsistence activities are a principal component of the economy. It was their position that tribal members living on the Kenai Peninsula are rural residents and their customary and traditional harvests of fish and game for subsistence uses are entitled to preference over competing non-subsistence uses.

Plaintiff filed a motion for preliminary injunction in July 1986. On August 14, 1986, the State of Alaska filed a motion to dismiss, arguing that Section 807 of ANILCA does not confer jurisdiction upon the federal court to hear a challenge to the State's "laws of general applicability" (i.e., statutory provisions that comply with Section 805 and allow the State to have management jurisdiction over subsistence uses on federal lands). The State argued that § 807 only grants jurisdiction to challenge the State's implementing regulations. The court denied the State's motion to dismiss. *Memorandum of Decision*, February 13, 1987.

In the meantime, the Tribe filed a motion for partial summary judgment and the State filed a cross motion for summary judgment on the underlying question of whether the state statutory definition of "rural area" complies with ANILCA. On July 9, 1987, Judge Holland denied the Tribe's request for a preliminary injunction and granted the State's motion for partial summary judgment. Essentially deferring to the State's interpretation of the term "rural" (and the Department of the Interior's "approval" of the State's 1986 subsistence law), the court found that the State's definition of "rural area" was not inconsistent with Section 804 of ANILCA.

On October 24, 1988, the Court of Appeals reversed the lower court's denial of the Tribe's request for a preliminary injunction. The court first concluded that it owed no deference to the interpretation adopted by the Department of the Interior or the State of Alaska. Interpreting the statute's meaning *de novo*, it found that Congress used the term "rural" in its plain and ordinary sense to refer to areas of Alaska that are "sparsely populated." It noted that adopting the State's "contorted definition" of rural would "materially change the sweep of the statute . . . and lead to an inconsistency within the statute." The court noted that giving the term rural its conventional meaning avoided an internal inconsistency. Relying on *Amoco Production Co. v. Gambell*, 107 S. Ct. 1396 (1987), the court refused to resort to the legislative history of ANILCA in search of a contrary meaning. Concluding that the State's definition of rural was inconsistent with ANILCA, the court reversed and remanded the case to the district court for entry of a preliminary injunction.

On denial of the State's petition for rehearing, the Court of Appeals amended its decision on January 4, 1989, to specifically address the State's argument that article IV, §4 of the U.S. Constitution and the Tenth Amendment preclude a federal court from ordering a state to amend its laws to make them consistent with ANILCA. The Court noted that this proposition had no application since the court did not purport to be directing the state to amend its laws: "it is free to eschew any further entanglement with the federal government

by advising the Department of the Interior that it is withdrawing from its role in administering ANILCA."

The State has petitioned for certiorari and plaintiff's opposition is due to be filed in late May, 1989. Since neither the Court of Appeals nor the Supreme Court would agree to stay the mandate pending review of the case on certiorari, the case has been remanded to the district court for the entry of a preliminary injunction. At the request of the district court, both parties submitted proposals for a preliminary injunction in late March. The State's proposed preliminary injunction was that it be required by May 15, 1990, to either demonstrate that its laws are consistent with ANILCA, or, advise the Department of the Interior that it is withdrawing from its role in administering ANILCA. The Tribe proposed a detailed plan for establishing a subsistence fishery for its members on the Kenai Peninsula.

On April 26, 1989, Judge Holland rejected both proposals and entered a preliminary injunction ordering the State "to elect, on or before May 15, 1989, whether it will or will not afford plaintiff on an interim basis priority over all other consumptive uses for the subsistence use of hooligan and all species of salmon on the Kenai Peninsula." *Preliminary Injunction* at 10. Assuming the State elects to continue to comply with ANILCA, the court ordered the State to afford members of plaintiff tribe a priority over all other consumptive uses, for the subsistence use of hooligan and all species of salmon. To that end, the Board of Fisheries was directed to, on or before May 30, 1989, adopt emergency regulations to effect such priority. The court also gave the parties the alternative of entering into a consent preliminary injunction to the same general effect.

Following the remand of this case for the entry of a preliminary injunction, the State filed a series of motions: motion to dismiss for lack of jurisdiction under the Eleventh Amendment; renewed motion to reconsider denial of its motion to dismiss for lack of jurisdiction under ANILCA §807; motion to dismiss with respect to salmon fishing for lack of standing; and motion to remand the question of whether the Tribe's uses are customary and traditional to the Board of Fisheries. In the event that the jurisdictional motions were denied, the State also moved to have the issues certified for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). On May 4, 1989, Judge Holland denied all of the State's motions.

11. *McDowell v. Collinsworth*, No. 3AN-83-1592 Civ. (Alaska Superior Court) (Serdahely)

This lawsuit was filed in 1983 by Sam McDowell, Dale Bondurant, Harold Eastwood, and Ronald Mahle, challenging the constitutionality of the 1978 State subsistence law. The State's 1978 law had been interpreted by the joint boards of fisheries and game as defining subsistence uses as "customary and traditional uses" by rural residents, although the statutes did not contain the word "rural." AFN intervened on behalf of the State. The State was awarded summary judgment on a number of constitutional allegations, and briefing was about to begin on the remaining equal protection and due process claims when the Alaska Supreme Court decided *Madison v. ADF&G*, 696 P.2d 168 (Alaska 1985).



*Madison* held that in 1978 the legislature had not limited subsistence uses to rural residents and that the boards had incorrectly interpreted the 1978 law. The *McDowell* lawsuit was put on hold until the legislature enacted a new subsistence law in 1986 (Ch. 56, SLA 1986), because until that occurred, it was not known how or if subsistence uses would be defined in state law or who would constitute the class of people eligible for them.

After the 1986 law was enacted, plaintiffs amended their complaint, again challenging the constitutionality of the new law. (Also, two additional lawsuits, *Bondurant v. State* and *Sims v. State* were filed, raising similar challenges. These two cases were consolidated with *McDowell*). The main issue (from the State's perspective) is whether people who live in rural areas as defined by the law are situated differently (with respect to their use of fish and game) from people in other parts of the state.

On cross motions for summary judgment, Judge Serdahely issued, on January 25, 1988, a 25 page memorandum decision finding for the State on all counts, viz, that the State subsistence statute does not violate: Article VIII, Sections 2 and 3 ("maximum benefit" and "common use"); Article VIII, Section 15 ("exclusive right of fishery"); due process, and equal protection provisions of the State Constitution.

An appeal to the Alaska Supreme Court was filed and oral arguments were heard on April 20, 1989.

12. *Native Village of Tanana v. Cowper*, No. F83-034 Civ., and *Tanana Chiefs Conference, Inc. v. Cowper*, No. F83-402 Civ. (D. Alaska) (Kleinfeld)

These cases were filed in 1983 and present the issue of whether the State's prosecution of five residents of Tanana and two residents of Ruby for taking a moose during closed season violates Section 804 of ANILCA. The cases were consolidated by the court, and both parties filed summary judgment motions. The motions focused on whether the areas involved were Indian country; whether there were exemptions from State authority over fish and game for Native activities sponsored by a Native council; whether P.L. No. 280 precludes State regulation of Native fishing and hunting; and whether there was any interference with subsistence rights under ANILCA or with First Amendment rights.

On November 6, 1987, the court ruled as follows:

1) That ANILCA'S subsistence protections are limited to direct personal or family consumption or barter or customary trade; and plaintiffs presented no evidence that the taking was for one of these reasons. Judge Kleinfeld also found that there was no evidence that the takings took place on the lands to which ANILCA applies.

2) The court declined to rule on whether Tanana or Loudon are Indian country because plaintiff failed to present any evidence about where the takings took place. Also, the court declined to rule on whether State authority may be exercised within Indian country, until the predicate -- a showing of where the events took place -- was made. Judge Kleinfeld noted that based upon the record, he was inclined to think that Tanana was not Indian country and not a dependent Indian community, but it was not necessary for the court to reach that issue.

3) The court found that Tanana Chiefs has standing to assert the rights of individual Natives, citing *UAW v. Brock*, 106 S. Ct. 2523 (1986).

4) As to P.L. 280, Judge Kleinfeld held that the exemption from state criminal laws contained in 18 U.S.C. § 1162(b) for hunting and fishing rights of Natives under "Federal treaty, agreement, or statute" does not apply where there is no treaty or statute. He concluded that the State may exercise jurisdiction over fish and game offenses even in Indian country in the Tanana area. The court based its ruling in part on *Kake v. Egan*, 369 U.S. 60 (1962) which it construed to hold that off-reservation hunting and fishing is subject to state regulation. The court further held that *California v. Cabazon Band of Mission Indians*, 107 S. Ct. 1083 (1987), did not apply because this case involved criminal offenses, unlike the regulatory bingo offenses at issue in *Cabazon*.

5) The judge denied plaintiffs' motion for summary judgment on the freedom of religion issue, finding that proof was lacking of several essential elements of the claim, in particular the religious nature and necessity of memorial potlatches.

In 1989, *Native Village of Tanana* was dismissed by stipulation. The village submitted a proposal to the Board of Game, asking that subsistence regulations be adopted allowing the community to take moose for a traditional festival, Nuchalwoyya. During its March 1989 meeting, the board found that the community had a customary and traditional use of moose for that purpose, and adopted the requested regulation.

In 1988, the state filed a motion for summary judgment in *Tanana Chiefs Conference* on the outstanding equal protection and due process claims. At issue is the lack of regulations allowing memorial potlatches. Tanana Chiefs Conference has never asked the Board of Game to authorize that use as a subsistence use. In response to the state's motion, TCC again raised the freedom of religion issue, basically contending that the equal protection and due process arguments must be viewed with strict scrutiny by the court because of the first amendment. The state's position is that plaintiff still has not demonstrated the religious nature and necessity of memorial (as contrasted to funeral) potlaches. Oral argument is scheduled for June, 1989.

### 13. *Payton v. State*, 3AN-88-12223 Civil (Ripley)

This case was filed in 1988 and challenged the finding by the Board of Fisheries that residents of the Skwemna area (a rural area across Cook Inlet from Anchorage) did not have customary and traditional uses of salmon, and consequent failure to adopt subsistence regulations for that area.

Plaintiffs alleged a number of violations: (1) that the finding was arbitrary and capricious, because the Board of Game had authorized subsistence moose hunting there; (2) that the finding was not supported by the record; (3) that the action violated ANILCA (though the case was filed in state court); (4) that the board used an impermissible durational residency requirement; (5) that the board applied its criteria in a way that discriminates on the basis of race (in favor of Alaska Natives); and, (6) that the composition of the board violated due process, because of the presence of commercial and sport fishermen.

The court awarded summary judgment to the state on March 15, 1989. A final judgment was entered in early April, and the time for an appeal had not run as of this writing.

14. *Peninsula Marketing Association v. State of Alaska*, 3AN-88-12324 Civil (Hunt)

This case was filed in the late fall of 1988, challenging the False Pass chum salmon cap which the Board of fisheries had imposed, beginning in June 1988. For the facts and background of this case, see *Association of Village Council Presidents*, p. 9. Plaintiffs in this case include the intervenors in that case. The chum cap is challenged on a number of grounds. The Yukon-Kuskokwim Fisheries Task Force and 4 residents of western Alaska have intervened on the State's side to support the cap, and have filed a cross claim against the State, arguing for the same reasons put forward in *Peninsula Marketing Association* that the False Pass fishery should be closed. Cross motions for summary judgment have been filed on plaintiffs' claims (not intervenors), and argument on those motions is scheduled for early June.

15. *Sierra Club v. Penfold*, 857 F.2d 1307 (9th Cir. 1988), on remand, A86-083 Civ. (D. Alaska) (von der Heydt)

This case challenges BLM's approval of placer mining plans. In addition to claims under NEPA and BLM's regulations on the procedure for approving and receiving notice of mining activities on BLM administered lands, plaintiffs asserted claims under Section 810 of ANILCA. The subsistence issues of interest include the following:

a) *Subsistence Reviews Must Evaluate Cumulative Impacts*

In a published decision on May 28, 1987, the federal district court held for the first time that Section 810 of ANILCA, 16 U.S.C. § 3120, requires a federal land management agency to consider cumulative impacts when determining whether a federal action may significantly restrict subsistence uses. *Sierra Club v. Penfold*, 664 F. Supp. 1299, 1307 (D. Alaska 1987). The court drew an analogy to NEPA law and held that the "common-sense principles" of NEPA, which require analysis of cumulative impacts when agencies determine the environmental significance of federal actions, would be applied to subsistence evaluations too.

On the facts of the case, the court then held that the cumulative impacts of multiple placer mines on subsistence uses of Birch Creek were "significant" and triggered the notice and hearing requirements of § 810(a)(1)-(3). The court specifically found that mineral development "severely degrade[d]" Birch Creek Village's subsistence fishery and "interfere[d] with use of river water for drinking by village residents." The court also held that the cumulative impacts of placer mining on Minto had been unlawfully ignored and remanded the case to the BLM for a determination of the significance of these impacts.

b) *Mining Regulations Invalid for Failure to Consider Subsistence Impacts*

In a subsequent unpublished decision of November 6, 1987, the court invalidated 1983 amendments to BLM's mining regulations because, among other reasons, the

amendments were promulgated without a § 810 evaluation. *Memorandum and Order* . 31-34 (Nov. 6, 1987). These amendments had the effect of allowing mines on "withdraw lands" (lands closed to new mineral entry) to operate under "notices" without subsistence review if the mines kept their operations under five acres.

On motion for reconsideration, the court also excused the failure of the subsistence plaintiffs to exhaust administrative remedies, relying on the point that the failure to exhaust could be attributed to the agency's failure to provide the notice required by Section 810. *Minute Order* (Nov. 12, 1987) ("the Secretary cannot shield his complete failure to comply with § 810 by arguing that the very groups intended to benefit indirectly from the notice provisions of the statute should have reminded him of his statutory duty").

c) *Village Councils Have Parens Patriae Standing*

A final decision of note is the unpublished decision of November 21, 1986, where the court considered and rejected a BLM argument that the IRA and village council plaintiffs in the case lacked standing to sue on behalf of their residents. *Memorandum and Order* at 24-26 (Nov. 21, 1986). The court held that *parens patriae* standing is appropriate when a sovereign entity sues "to prevent a violation of federal laws by federal agencies." *Id.* at 25. The court then went on to assume that IRA and village councils have sovereign attributes, without deciding the question. *Id.* at 26. Finally, the court ruled that environmental organizations do not have standing to bring Section 810 actions.

On September 21, 1988, the Court of Appeals affirmed the lower court in all respects. Of primary importance was its conclusion that BLM violated NEPA and § 810 of ANILCA by failing to prepare EIS's addressing the cumulative impact and effect on subsistence uses of all placer mines in each of the four watersheds involved in the litigation (Birch Creek, Beaver Creek, Fortymile River and Minto Flats). The Appeals Court left in place the district court's injunctions prohibiting approval of any placer mines in the four watersheds pending completion of the EIS's.

Following the Court of Appeals decision, BLM completed its final Environmental Impact Statements for all four drainages and then moved to lift the injunctions. At plaintiff's request, the district court agreed to delay its ruling on the motion until BLM issued its final decisions. Final decisions have now been issued for all but the Minto Flats drainage, and plaintiff is evaluating the adequacy of the EIS's and the final decisions before deciding whether to oppose the government's motion to lift the injunctions.

16. *Tanana Fish and Game Association v. State of Alaska*, No. F88-04 Civ. (D. Alaska) (Kleinfeld), *on appeal*, No. 88-4112 (9th Circuit).

This case was filed on February 10, 1988 by the Tanana Fish and Game Association, an unincorporated association organized to represent and advance the interests of users of fish and wildlife resources in and around the Village of Tanana. Plaintiff alleges that its members have been selling the roe from their subsistence harvests of Yukon River (fall chum) for at least 20 years. Currently the sale of roe from subsistence taken salmon is illegal under 5 AAC 1.010 (d). Plaintiff asserts that the regulation violates

Section 804 of ANILCA, which mandates that customary and traditional subsistence use including customary trade, be given priority over competing non-subsistence uses. Based on the fact that the definition of "subsistence uses" in both state and federal law contains a "customary trade" component which has been interpreted to mean limited exchanges for cash not amounting to a significant commercial enterprise, plaintiff seeks to have the State recognize the right of the residents of Fishing District 5 of the Yukon River to engage in customary trade of Yukon River salmon roe.

The State moved to dismiss the case, arguing that plaintiff had not exhausted its administrative remedies since it had never asked the Board of Fisheries to authorize the sale of subsistence salmon roe in Fishing District 5 of the Yukon River. On April 29, 1988, the day after the Board had scheduled a special Memorial-Day weekend meeting in Fairbanks to consider changing the management plan for commercial fishing on the Tanana River (District 6), plaintiff petitioned the Board to schedule its subsistence-ro-sale proposal for a hearing at the same meeting. The Board rejected the petition. Subsequently, the Tanana local fish and game advisory committee unanimously endorsed the proposal.

Meanwhile, on June 6, plaintiff filed a motion for a preliminary injunction and summary judgment. Plaintiff sought a preliminary order allowing its roe-sale proposal to take effect for the fall-chum season beginning August 15, and to restrain the State from bringing criminal charges against any of its members. (Plaintiff later withdrew its motion to enjoin criminal prosecutions when it became clear that no such charges were likely to be filed). Plaintiff also moved for expedited consideration of the motion for a preliminary injunction.

The court refused to expedite consideration of plaintiff's request for preliminary relief, and proceeded instead with a hearing on the State's motion to dismiss. Following arguments on August 4, 1988, Judge Kleinfeld granted the State's motion to dismiss on the ground that plaintiff failed to exhaust administrative remedies. The court ruled that exhaustion of the State's rulemaking process -- both the normal proposal process and the local advisory committee/regional council process -- were jurisdictional prerequisites to a suit pursuant to §807 of ANILCA challenging the validity of a previously promulgated regulation. Plaintiff appealed the decision. Briefing was completed in mid-February, but oral argument has yet to be scheduled.

In the meantime, plaintiff presented its customary roe-trade proposal to the Board of Fisheries for consideration at its regular fall meeting. Following hearings in December, 1989 in Anchorage, the Board rejected the proposal.

17. *Tarnai v. Fisher & Patton*, No. F87-68 (D. Alaska) (Kleinfeld)

Alex Tarnai is a trapper who is the sole permanent resident of the Nowitna National Wildlife Refuge. His residency on the Refuge area predates ANILCA and the creation of the Refuge. He holds cabin permits from the Fish and Wildlife Service for one cabin which is his residence and two other "line" cabins for his traplines. In January 1986, Tarnai invited a friend to visit and stay with him at his home. Prior to the friend's arrival, defendants Fisher and Patton (the refuge manager and assistant manager) informed the

friend that she would not be allowed to stay with Tarnai in his home. Fisher went to Tarnai's home in late December and informed Tarnai that the friend would not be allowed to stay with Tarnai in his cabin.

Plaintiff's friend was forced to spend her visit in a wall tent near Tarnai's cabin until she could be moved off the Refuge. Tarnai's subsistence trapping work was disrupted and his friend had to spend the rest of her visit off the Refuge. During her visit, the defendant Fish and Wildlife Service officials conducted and/or caused to be conducted an intensive aerial surveillance of Tarnai's cabins and traplines on the Refuge, and on at least three occasions the Fish and Wildlife Service officials and/or persons acting at their direction conducted warrantless searches of Tarnai's cabins, including his home, without his permission.

The plaintiff is suing for declaratory relief and compensatory and punitive damages. He seeks a declaration that he enjoys the same constitutional rights with respect to his home on the Refuge that apply to any person who does not reside there, including association, privacy, to be secure from unreasonable and warrantless searches and seizures, and procedural and substantive due process of law; that Section 1303 of ANILCA which gives individuals living in the Refuge the right to five year renewable permits to continue to live in the Refuge further protects these rights; and that these rights were violated by the actions of the defendants.

Discovery is virtually complete. The government has filed a motion for summary judgment and the plaintiff has moved for partial summary judgment against the government officials in their official capacity. The judgment would declare that the plaintiff enjoys the same constitutional freedoms of association and privacy in the use and occupancy of his home and trapline cabins as persons who do not live in a National Wildlife Refuge. The court has scheduled a hearing on the motions for July 6, 1989.

18. *Tenakee Springs v. Courtright*, J86-024 Civ (D. Alaska) (von der Heydt)

This case involves a challenge to the Forest Service approval in 1980 of a 5-year timber harvest and road construction plan by Alaska Pulp Corp. on Chichagof, Baranof and Kuiu Islands. The plaintiffs in the case are the Sierra Club, Southeast Alaska Conservation Council, the Wilderness Society, and the City of Tenakee Springs. In addition to claims relating to NEPA compliance, the plaintiffs also claimed that the Forest Service failed to comply with Section 810 when it determined to "withdraw, reserve, lease or otherwise permit the use, occupancy, or disposal" of public lands.

The case raised two issues relative to ANILCA. The first is what entities have standing to bring actions for a violation of Section 810. The other relates to the applicability of Section 810 to the 5-year harvest plan, since it was adopted prior to ANILCA, but implemented afterwards. The government argued that mere implementation of the decision to "withdraw, reserve, lease or otherwise permit the use, occupancy, or disposal" of public lands did not trigger Section 810. It argued that the determination to authorize the roads and harvest units was made prior to the passage of ANILCA in 1980 when the Forest Service approved the 5-year plan.



The federal government argued that state-created municipalities could not *su. parens patriae*, therefore the City of Tenakee Springs had no standing to bring Section 810 actions. The plaintiffs, relying upon cases giving municipalities standing in NEPA cases, claimed they had standing by virtue of Section 802(3) which declares that it shall be a policy of Congress for federal land managing agencies to cooperate with adjacent land owners. They also argued that the City had standing because it performed land planning functions relating to subsistence with which the Forest Service actions conflicted.

Judge von der Heydt (decision June 26, 1987) agreed with the federal government and ruled that the City of Tenakee Springs had no standing to raise a cause of action under § 810. Citing *In re Multidistrict Vehicle Air Pollution M.D.L. No. 31*, 481 F.2d 122, 131 (9th Cir.), *cert. denied*, 414 U.S. 1045 (1973), the court reasoned that the City does not engage in subsistence and its indirect interest in the economic well-being of the taxpayer base was not sufficient to confer standing. The court made no finding as to whether the Forest Service had complied with §810, but cautioned "[s]ince other plaintiffs not now parties to this suit could raise the Section 810 issue at a later time, prudence would dictate that the Forest Service reevaluate whether it has complied with the section."

On the NEPA issues, the court enjoined further roading and harvest beyond the existing roads in a given area pending preparation of a supplemental EIS. Completion of the Supplemental EIS – originally projected for May, 1989 – has been delayed because of the *Hanlon* litigation. (See *Hanlon*, p. 15.)

19. *Tukisarmute Native Community Council v. Conquergood*, A85-604 Civ. (D. Alaska) (Holland)

This case involves a challenge to a gold dredging permit and mining plan on the Tuluksak River. Defendants are the Corps of Engineers and the BLM. The Corps of Engineers is the agency responsible for the issuance of dredge and fill permits (commonly known as 404 permits, see 33 U.S.C. § 1344) involving navigable waters. The Bureau of Land Management approves mining plans involving more than five acres of public land.

The plaintiff claims that BLM failed to comply with its statutory responsibilities under both NEPA and Section 810 of ANILCA. Specifically, they claim that the BLM erroneously concluded that it need not prepare a full environmental impact statement in conjunction with its permit authorizing Northland Gold to relocate a 1½ mile stretch of the Tuluksak River across BLM lands in order to dredge the main channel of the river. While BLM did an 810 analysis before approving the mining plans, plaintiffs argue that BLM erroneously found that the dredging activity and channel diversion would not significantly restrict subsistence uses within the meaning of Section 810.

On October 17, 1989, Judge Holland granted in part plaintiffs' motion for partial summary judgment on their NEPA and ANILCA claims. He found that BLM's conclusion not to prepare an EIS or to comply with the full ANILCA section 810 procedures was not reasonable, due to a failure to analyze fully the downstream impacts of the mining operation; but instead of ordering an EIS or compliance with Section 810, he remanded the matter to BLM to analyze those impacts and decide whether to prepare an EIS or comply with the Section 810 procedures. At the same time, he granted defendants' motion for

partial summary judgment as to the remaining counts, which seems to have in effect uphe BLM's permit on the merits. Plaintiffs moved to amend the judgment to vacate th decision in favor of defendants, which the Court denied on January 9, 1989. Plaintiffs have filed an appeal of the grant of summary judgment to defendants in the Ninth Circuit; defendants have moved to dismiss for lack of jurisdiction.

20. *Western Alaska Salmon Coalition v. Baldrige*, A85-536 Civ. (D. Alaska) (Kleinfeld)

This suit was brought by a coalition of Yupik commercial and subsistence salmon fishermen challenging the incidental take of salmon by Japanese and U.S. - Japanese joint venture ground fisheries operations in the American 200 mile Fisheries Conservation zone. Plaintiff argued that the Magnuson Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 *et seq.*, prohibits salmon take by foreign or joint venture fishermen regardless of whether the take is incidental or targeted. Therefore, plaintiff argued there can be no ground fishery unless it can be done with no incidental take of salmon. The government takes the position that salmon may not be a targeted species and that any incidental take must be returned. However, the government believes that nothing in the Magnuson Act requires the prohibition of the ground fishery because of the incidental take. The government also takes the position that the American component of joint ventures should not be treated as a foreign fisher.

The government moved to dismiss the case on a number of procedural grounds, including estoppel, failure to exhaust administrative remedies, and more significantly, the 30-day statute of limitations in the Magnuson Act. Judge Kleinfeld heard oral arguments on the motions in 1987, and re-arguments on May 31, 1988. The case was dismissed following the re-arguments. The Court found that the Magnuson Act did not require prohibition of the ground fishery because of the incidental take of salmon. The decision was not appealed.



ENCLOSURE 6

Development and Implementation of  
Tier II Hunting Regulations  
1985

A Report to the Joint Boards of  
Fisheries and Game  
November 1985

Alaska Department of Fish and Game

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## Introduction

At its June, 1985 emergency meeting the Game Board adopted regulations (5 AAC 92.054, 92.056, 92.058, 92.060) for implementing the "Tier II" provisions of the state's subsistence statute. The board requested a report on the effects of the Tier II regulations for this meeting. This report has three parts. The first reviews the factors the board considered in developing the Tier II regulation, and the associated application form. The second part describes the Department of Fish and Game's administration of this fall's Tier II hunts, and offers recommendations for improving the Tier II process if it is to be used in the future. The third part of the report describes the results of the Tier II system in allocation of permits.

## Game Board's Development of the Tier II Regulation

### Overview

During the June emergency Game Board meeting, a number of hunts were identified as being at "tier II." The board spent several days determining how to apply the three criteria in AS 16.05.251(a) and AS 16.05.255(b) and explored various options for interpreting and weighting the criteria. The board was assisted by a report prepared by the Department of Fish and Game which listed some possible factors which might correlate to the three criteria. Other factors emerged during the board discussion. In determining which factors to use, the board was hampered by lack of public testimony (because of the emergency nature of the meeting), and the short time until the fall hunting seasons.

In evaluating possible factors to employ, the board had to balance several competing values. Because of the short time period, and because of a desire not to unduly burden the public, the board felt that the application should be kept as simple as possible. On the other hand, the factors chosen needed to actually correlate to the criteria being measured, and the board could not make the regulations too simplistic without sacrificing that correlation. For example, the board initially considered income level as a fairly simple measure of alternative non-wild resources. However, because of complexities such as differences in cost of living, and the unknown variables such as an applicant's other financial assets and liabilities, the board determined that this seemingly straight-forward option was not useful.

A similar tension arose between having questions which were verifiable and questions which were meaningful in light of the three criteria. Location of residency, under the local residency criteria, was an objective and verifiable factor. This contrasts with an applicant's own assessment of whether his or her financial circumstances are adequate to purchase non-wild resources as a reasonable alternative to the taking of game. That correlates well with the alternative resources criteria -- as opposed to using income level, but it is not particularly verifiable.

The board also had to decide whether to craft one set of factors to

measure the three criteria which would be used on a statewide basis, or whether instead to have a number of different ways of measuring, tailored to the circumstances of each hunt. Partly because of the time constraints before the fall hunts, the board chose a statewide approach. The board eventually adopted regulations implementing "Tier II". 5 AAC 92.054, 056, 058, and 060; attachment A. An application for "tier II" hunts was developed, based on those regulations. Attachment B.

The following sections outline some of the options the Game Board considered in developing the tier II regulations, and summarize the factors ultimately chosen. The Board of Game recognized that these emergency regulations would not be the final word on the subject, and anticipated that if the statutory framework remains unchanged the regulations governing tier II hunts would be modified over time.

"Customary and direct dependence upon the resource  
as the mainstay of one's livelihood."

This criterion appears to relate to the degree to which people have relied on specific fish stocks or game populations in particular geographic areas in the past, and how important this resource has been to their livelihood.

This criterion therefore seems to require at least two sets of standards, one to measure how consistently people have depended on the resource over time, and another to measure how important the resource has been relative to other aspects of their economic situation. Some of the possible indicators considered by the board included:

1. Percentage of diet from wild fish and game, as a general indication of dependence.
2. A history of hunting only in the area where the resource is in short supply as one indication that a person has customary and direct dependence on the resources of that area.
3. Size of the community the applicant resides in, since in larger communities there appears to be relatively less dependency on fish and wildlife than in smaller places.
4. Whether applicant has ever hunted or used the resource in the area.
5. Number of years the applicant has hunted or used the resource, a longer history of use indicating a greater degree of dependence.
6. Amounts of the resource ever harvested or used by the applicant or members of the applicant's household, larger amounts indicating a more consistent customary and direct dependence.

The board ultimately chose two measures, one more verifiable than the

other, for customary and direct dependence. 5 AAC 92.056(a); attachment A. Applicants were given one point for each year they had harvested an animal from the population, up to a maximum of 10 points. Further, applicants could receive up to 20 points for direct dependence on the noncommercial harvest of that population for the principle means of support (primary food source), with the applicant placing himself in the category of great, moderate, slight, or no dependence, and receiving 20, 15, 10, and 0 points respectively.

Because some game populations have only been hunted on a permit drawing system, the board determined that for those hunts no individual could be more dependent than any other individual, and awarded all applicants 30 points for this criterion for those hunts. 5 AAC 92.056(b); attachment A.

One of the problems the board discussed in connection with this criterion was that people could have been directly dependent upon a game population by virtue of harvest accomplished by another member of the individual's family. Thus, the dependent individual would never have actually harvested that population. It proved very difficult to craft an objective, verifiable factor to measure this criterion.

#### "Local Residency"

Distance greatly affects Alaskans' uses of fish and wildlife. People who live closest to a fish stock or game population are most likely to rely most consistently on that resource. With the criterion of "local residency," the legislature apparently intended that if a resource is in short supply in one area, then all other things being equal, people who live closest to it should have a preference over those who live further away.

The board considered several possible ways of identifying "local residency," including:

1. Distance of each applicant's residence from the resource in miles.
2. Travel costs for the applicant to harvest the resource.
3. Basing the definition on a series of zones defined by increasing distance from the resource; discussed as possibilities were the range of the resource, game management units, and the regions which the joint boards adopted as the basis of the six regional council jurisdictions.

One problem that the board encountered in dealing with the seemingly straight-forward local residency criterion involved how to measure the distance from the resource. Straight line distance was the simplest in some ways, but did not take into account mountain ranges and other physical barriers, nor distance along travel routes, such as rivers and highways. It would also have been very difficult to administer.

The board eventually decided to use a zone approach and to award up to 30 points depending on the applicant's residency zone. 5 AAC 92.058 (a); attachment A. The first zone consisted of the area in which the relevant hunt occurred; the second zone was outside of that area but within the game management unit or units containing the hunting area; the third zone was game management units adjacent to the unit or units containing the hunting area; the fourth zone was any other game management unit. 5 AAC 92.058(b); attachment A.

The board realized that these standardized measures might not always be appropriate, and built into the regulation an ability to modify the boundaries if the standard zones would either treat a specific concentration of similarly located individuals differently, or would be inappropriate due to the range and distribution of the resource. 5 AAC 92.058(c); attachment A. Since public testimony was not taken at the emergency Game Board meeting, the board realized it may not have identified all of the instances where boundary modifications might have been appropriate, but it was anticipated that corrections could be made as problems were discovered in the future.

#### "Availability of Alternative Resources"

The board discussed two different ways of viewing "availability of alternative resources." The first dealt with whether other fish or game resources are available to offset dependence on the resource in short supply. This could either mean other types of resources available in the same geographic area, or similar resources actually available in other geographic areas. These alternative resources are likely to be differentially available to people, due to differences in transportation, for example.

Timing can also influence availability of alternative resources. If the resource in short supply is customarily harvested in the spring, a resource which can be harvested only in the fall may or may not be an "available alternative."

A second way of viewing "alternative resources" discussed was to consider not just wild resources, but all alternative foods. From this perspective, people with access to fewer stores and foodstuffs, or who must pay higher prices for food, would have fewer alternative resources, and therefore should rank higher on this criterion.

Because of the great range of possible interpretations and approaches to this criterion, it was difficult for the board to develop a simple approach. The following possible indicators were considered:

1. A history of frequent use of fish and wildlife resources in other geographic areas as indicating a greater availability of alternative resources.

2. The use of aircraft to harvest resources as an indicator that a person has other alternatives available, since he or she could choose to hunt in many different areas of the state.
3. Living in a place with relatively few stores and substantially higher relative prices of food as an indicator of fewer alternatives.
4. Whether other fish and game resources are nearby, accessible, and useful as substitutes for the resource in short supply.
5. Whether the applicant's financial circumstances are adequate to allow purchase of alternative resources.

The board ultimately adopted two measures for this criterion. 5 AAC 92.060; attachment A. One was designed to correlate to the availability of fish and game resources and the other to measure the availability of non-wild resources. An applicant could receive up to 15 points depending on the availability of fish and game resources in the hunting area or other area reasonably accessible to the applicant. Additionally, 15 points were awarded to an applicant whose financial circumstance was not adequate to purchase non-wild resources as a reasonable alternative to the taking of game.

The first question is subjective to some extent. The board determined that availability of wild resources was in some degree dependent on an individual's circumstances, such as ownership of a car, an airplane, or a boat. The question on financial circumstances is necessarily subjective, since the board determined that other more objective and seemingly simple factors such as income level alone, or size of community, did not necessarily correlate to the availability of those non-wild resources to the applicant.

#### Summary

The Board of Game found it very difficult to develop standard measures to apply the three statutory criteria on a statewide basis. Time constraints and lack of public input made the board's task harder, but they were not the only factors. It was difficult to identify measures that would both correlate to fish and wildlife use and be verifiable. Any attempt to distinguish among individuals based on three criteria will involve the same fundamental problem of correlation and verification faced by the board at its June meeting.



### Implementation

As occurs with all permit hunt processes adopted by the Board of Game, The Division of Game was responsible for implementing the Tier I and Tier II hunts adopted in the June 1985 emergency board meeting. Prior to the June meeting, the Board of Game held its annual spring (March-April) regulatory meeting and confirmed the 1985-86 hunting regulations, including the normal registration and permit drawing hunts. Immediately after the spring board meeting ended (April 8), Game Division staff produced the drawing hunt supplements and the registration hunt supplements, and began drafting the hunting and trapping regulation booklets. Both the drawing hunt supplements and registration hunt supplements were produced in record time and were made available to the public beginning April 16. The public was given 45 days (until May 31) to apply for fall drawing hunts, with results to be available on July 13 or shortly thereafter. There were 45,366 applicants for the 117 fall drawing hunts; \$275,670 in application fees were received.

The establishment of Tier I and Tier II hunts necessitated major changes in the administrative procedures of permit information and issuance. For the most part, Tier I and II hunts were developed from the previously mentioned permit drawing (lottery) hunts and registration hunts. A total of 54 Tier II hunts were authorized (See Attachment C).

### Scheduling

New applications and newsprint supplements had to be quickly designed and produced for public distribution. In view of certain changes and limitations to permit hunts available to nonresidents, it was assumed that fewer hunters would participate in the Tier II permit hunt application process as did under the drawing system. In scheduling events and redirecting staff time to administer the Tier II hunt application process, we assumed a "worst case situation" and planned for receipt of up to 30,000 applications. Also, being aware that sheep seasons must start earlier than other hunts or essentially not at all, a separate schedule of events was designed for sheep which resulted in the creation and distribution of a separate supplement for this species.

For all other species, and based upon the "worst case" assumption, it was apparent that many of the seasons would need to have delayed opening dates. The following schedule of events were developed in late June:

### Sheep

|                                                                                    |              |
|------------------------------------------------------------------------------------|--------------|
| Hunt supplement ready for printing                                                 | July 5       |
| News release on sheep hunts                                                        | July 8       |
| 5,000 supplements (4 pages each) ready for mailing                                 | July 10      |
| Mail/deliver to all ADF&G offices and selected vendors                             | July 20      |
| Available to public - 9 days                                                       | July 29      |
| Deadline for receipt by ADF&G                                                      | August 5     |
| Additional time to score applications                                              | August 6     |
| Select winners                                                                     | August 7-8   |
| List of permit winners sent to Fairbanks, Tok, Glennallen, Delta, Palmer, Soldotna | August 8     |
| Mail permits                                                                       | August 9     |
| Hunters receive permits                                                            | August 12-19 |

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Season opens - August 20

### All Other Species

|                                                             |           |
|-------------------------------------------------------------|-----------|
| Tier I and II newspaper and applications ready for printing | July 9    |
| 50,000 papers, 110,000 applications ready for mailing       | July 15   |
| Mail/deliver to all vendors and ADF&G offices               | July 24   |
| Available to public - 10 days                               | August 5  |
| Deadline for receipt by ADF&G                               | August 12 |
| Additional time to sort and process                         | August 17 |
| Additional time to score                                    | August 22 |
| Select winners                                              | August 26 |
| Print permits and mail                                      | Sept. 5   |
| Hunters should receive permits no later than                | Sept. 15  |

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### Information and Application Distribution

The original permit hunt supplements were withdrawn and two new supplements produced. One contained information on the "nonsubsistence" drawing hunts for the 1986 spring season. The second subsistence hunt supplement contained three types of hunts: (1) general registration hunts where any hunter including nonresidents could apply; (2) a subsistence registration hunt where only Alaskans (or some hunts where only individuals residing in specific geographic areas) could apply; and (3) a Tier II subsistence application where only those with highest application scores were given permits, or a drawing was held among those with the lowest tie-scores if only a limited number of permits were left.

The new hunt supplements and applications went out to the public on schedule. However, given the requirement of a short deadline for the application period, potential applicants had at best about two weeks to obtain the forms, complete them, and return them to the department or have them postmarked by August 5. Within the limited schedule, distribution of the applications to remote areas was particularly burdensome. In some cases, due to mail flight schedules and delays, applications were available to local residents only a few days before the deadline.

The hunting regulation booklet was significantly modified and reorganized into subsistence and general hunting sections. There were delays in printing and the books were not available at regional offices until September 3; 6-8 weeks later than normal and three weeks after some seasons had already begun.

#### Processing and Scoring

A total of only 9,382 applications were received. Of these, 595 were deemed invalid and rejected for the following reasons:

| <u>Reason</u>                                                                                         | <u>Number</u> |
|-------------------------------------------------------------------------------------------------------|---------------|
| Duplicate or 2 in household                                                                           | 80            |
| Failure to certify that the application<br>was the only one (or two for caribou) for<br>the household | 85            |
| Domicile blank or invalid                                                                             | 71            |
| Hunt number blank or invalid                                                                          | 125           |
| Late application or cancelled hunt                                                                    | 5             |
| Failure to submit application fee                                                                     | 195           |
| Failure to certify that applicant was an<br>Alaskan resident 12 years or older                        | 15            |
| Failure to sign application                                                                           | 22            |
|                                                                                                       | <u>595</u>    |

Since the number of applications was substantially less than originally anticipated, the overall processing time was shortened considerably and resulted in the Tier II permits being mailed out earlier than expected. This year it took an average of 4 minutes to score each application by hand. Computer processing (software was not available this year for Tier II applications) could reduce scoring time by 50 to 75% per application. If in future years, we received the same number of Tier II applications as was normally received on permit drawing hunts (approximately 50,000), an estimated 245 person days would be required to process the applications.

As noted above, applications were scored manually using a template score sheet. Scores were assigned in accordance with the point system established by the Board of Game. We have reviewed all applications and determined that we had a scoring error rate of 1.7%.

### General Problems

Because of the emergency situation in which Tier II hunts were established and Tier II applications developed, instructions for answering the questionnaires did not precisely match the permit supplement (newspaper) instructions. This caused considerable confusion among staff and the public. For example, Question No. 9 in the permit supplement paper spoke to the degree of availability of alternative resources (including big game and salmon) which are at least as accessible as the Tier II animal for which one applied. It did not specify "in your usual hunt area" as did the application. Therefore, a person could have ignored alternative resources such as salmon and caribou that were readily accessible when applying for a Tok sheep permit, since he/she may have viewed "usual hunt area" as the actual Tok Management Area. If he/she viewed the "usual hunt area" as Zone 1, then all Zone 1 residents should have scored the same, as the same meat resources were available to all.

The application format and many of the questions confused many people and resulted in several thousand inquiries to staff via phone calls, letters, and visits to the various regional and area offices. Although scoring of the "point system" was explained in the regulation book, no explanation of terms in the application was provided to the public (except by staff) when they were completing their applications. The intent of not providing this information was to receive objective answers from the applicants, but the public soon recognized which answers would receive higher scores.

The short application period created significant problems for both the public and the department. Applicants at best had about two weeks to obtain the forms, complete them, and return them to the department or get them postmarked before August 5.

The process was particularly burdensome in remote areas. In some cases, due to mail flight schedules and delays, applications were available in communities for only a few days before the deadline.

Overall there was a tremendous negative reaction by the public to the establishment of Tier II hunts. Departmental staff, particularly Game Division staff in regional and area offices, were targets for verbal and written frustration and anger expressed by a confused and disenchanted hunting public. Hundreds of staff hours were spent trying to explain the reasons for the changes, how to participate in the new system, and generally trying to reestablish credibility with a public that was very unhappy.

Monetary costs to the department were high. About \$265,000 in application fees for the original 1985 permit hunts were refunded. We are currently determining extra costs expended in personnel and operating funds to administer the emergency Tier II hunts.

## Recommendations

The permit system established under the emergency regulations worked in that Tier II hunts were held. However, there were numerous administrative difficulties that should be minimized or eliminated if the existing Tier II system is used in future years. It is also important that appropriate revisions be made so that: (1) confusion by the public can be minimized to the greatest extent possible; and (2) the system is not easily abused. Modifications to the present Tier II system would, of course, have to be made in a manner which results in correlation of the measured factors to the 3 statutory criteria. Specific recommendations are listed below.

### Tier II Application

1. The current application form should have the following major revisions, if they can be made in a manner which results in correlation of the measured factors with the three statutory criteria:
  - a. all questions should be verifiable and quantified if at all possible (presently questions 8, 9, and 10 are not verifiable but carry large point values);
  - b. all ambiguous terms (e.g., "greatly dependent") should be defined on the form;
  - c. questions should be simplified and reduced to two possible answers (e.g., yes or no) where possible;
  - d. the applications should have a clause which states that the information provided on the application is not confidential and subject to public disclosure;
  - e. question 5 should be deleted (we received numerous erroneous application requests for hunts that did not exist);
  - f. if question 9 remains, the board should predetermine how available alternative resources are in the hunt area;
  - g. questions 11, 12, and 13 should be deleted and replaced with statements of fact (e.g., "to apply for a Tier II hunt, you must be at least 12 years old and a resident of Alaska"); and
  - h. the point value of each question should be shown on the form (this would save hundreds of staff hours answering calls regarding scores).
2. Standard procedures for scoring and rejecting applications for all hunts should be established and reviewed by the board prior to the application process and made available to the public.

3. Unlike lottery permits in the past, the Tier II permits are on the basis of household rather than an individual. The board needs to determine whether or not a permit can be transferred between members of the same household.
4. If at all possible, the application period should be a minimum of one month duration.
5. A more comprehensive public information program should be conducted regarding future Tier II hunts, schedules, and procedures.
6. As harvest returns become available, all hunts and corresponding numbers of permits should be analyzed and adjusted where necessary to meet management objectives.

### The Allocation Effects of the Tier II System

The purpose of this section is to describe the performance of the Tier II system in allocating permits. The section has two parts. First, general characteristics of all Tier II hunts statewide are described, including number of hunts, location of hunts, number of applicants, number of winners, cut-off scores for winners, and other characteristics. Second, the allocation of permits among applicants is described by comparing the Tier II system in 1985 with the previous allocation systems in 1984 for particular hunts. Several questions are answered by these comparisons:

1. Who applied for the permits?
2. What were the criteria that mattered for obtaining permits?
3. What changes occurred in allocations compared to previous years?

### General Characteristics of the Tier II System

#### Number of Tier II Hunts

There were 54 authorized Tier II hunts in 1985 (53 hunts were held) offering a total of 4,856 hunting permits for five types of game animals (see Table 1). Moose (26 hunts) and sheep (12 hunts) accounted for the largest number of hunts, while caribou (2,690 permits) and moose (1,611 permits) accounted for the largest number of permit opportunities.

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Table 1  
Tier II Hunts and Applicants

| <u>Species</u> | <u>No. of<br/>Tier II<br/>Hunts</u> | <u>Available<br/>Permits</u> | <u>Valid<br/>Applicants</u> | <u>Permits<br/>Awarded</u> | <u>Award<br/>Rate</u> |
|----------------|-------------------------------------|------------------------------|-----------------------------|----------------------------|-----------------------|
| Bison          | 4                                   | 107                          | 826                         | 107                        | 13%                   |
| Caribou        | 5                                   | 2,690                        | 3,528                       | 2,504                      | 71%                   |
| Moose          | 26                                  | 1,611                        | 3,567                       | 1,484                      | 42%                   |
| Mt. Goat       | 6                                   | 36                           | 93                          | 36                         | 39%                   |
| Sheep          | <u>12</u>                           | <u>412</u>                   | <u>662</u>                  | <u>404</u>                 | 61%                   |
| Totals         | 53                                  | 4,856                        | 8,676                       | 4,535                      | 52%                   |



### Location of Tier II Hunts

Most Tier II hunts were located near the large population centers of Anchorage, the Matanuska Valley, Fairbanks, and Juneau in road-accessible areas (see Figure 1). The three GMUs surrounding Anchorage (GMUs 7, 14, and 15) accounted for 30 of the 53 hunts. The relatively easy access created by roads in these areas accounts for the high levels of participation and demand which resulted in these hunts being designated as Tier II. Only 10 hunts were designated in areas not connected by roads to large population centers.

As discussed below, the location of hunts accounts for the origin of most applicants. The great majority of applicants came from the large population centers.

### Applicants and Winners

As shown in Table 1, there were 8,676 valid applicants for the 53 Tier II hunts, of which 4,535 (or 53%) were awarded permits. Award rates varied considerably between species and hunts (Table 1, Appendix Tables 1-6). The lowest award rate was for bison (13%) and the highest for caribou (71%). For certain caribou, moose, and sheep hunts, all applicants received permits (321 permits were not awarded because of undersubscription, see Appendix Tables 1 - 6).

Over 40 percent of permit winners came from the Anchorage-Matsu area due to the location of the hunts and the large population concentrations in these areas. As shown in Table 2, of all permits awarded, Anchorage residents won 24.3 percent and Matsu residents 20.4 percent.

Table 2  
Permit Winners by Residency

| <u>Residency</u> | <u>Bison</u>  | <u>Caribou</u>  | <u>Moose</u>  | <u>Mt. Goat</u> | <u>Sheep</u>  | <u>Total</u>    |
|------------------|---------------|-----------------|---------------|-----------------|---------------|-----------------|
| Anchorage Area   | 2<br>(1.9)    | 573<br>(22.9)   | 383<br>(25.7) | 5<br>(13.9)     | 138<br>(34.2) | 1,101<br>(24.3) |
| Mat-Su Area      | 0<br>(0.0)    | 503<br>(20.1)   | 395<br>(26.5) | 1<br>(2.8)      | 27<br>(6.7)   | 926<br>(20.4)   |
| Kenai Peninsula  | 1<br>(0.9)    | 171<br>(6.8)    | 58<br>(3.9)   | 8<br>(22.2)     | 4<br>(1.0)    | 242<br>(5.3)    |
| Juneau Area      | 0<br>(0.0)    | 4<br>(0.2)      | 53<br>(3.6)   | 0<br>(0.0)      | 2<br>(0.5)    | 59<br>(1.3)     |
| Fairbanks Area   | 1<br>(0.9)    | 128<br>(5.1)    | 20<br>(1.3)   | 0<br>(0.0)      | 75<br>(18.6)  | 224<br>(4.9)    |
| Other            | 103<br>(96.3) | 1,124<br>(44.9) | 582<br>(39.0) | 22<br>(61.1)    | 158<br>(39.1) | 1,989<br>(43.8) |
| Total            | 107           | 2,503           | 1,491         | 36              | 404           | 4,539           |



### Cut-off Scores of Winners

The cut-off scores between winners and non-winners varied considerably between hunts (Appendix Table 2-6). The lowest winning score ranged from only 5 points (Yakutat Forelands Moose Hunt 0961, GMU 5A) up to 90 points, the highest possible (Tanana Bison Hunts 0403, 0404, GMU 20D). In general, the larger the number of applicants relative to available permits, the higher the cut-off score. It can be expected that cut-off scores will increase in the future if the applicant pool size increases.

### Performance of the System in Allocating Permits

How did the Tier II system allocate hunting opportunities in comparison with previous years? The answer is that it depended upon the particular hunt. To illustrate the performance of the survey in allocating hunting opportunities, five cases are discussed below. They suggest three major conclusions:

1. Shifts occurred in the allocation of permits between hunters residing in different areas for particular hunts. For the hunts described below, the changes were not large in comparison with the previous year's allocation system.
2. Which questions were most important in determining who received permits varied between hunts. For some hunts, "residency" was the question most highly related to a hunter receiving a permit; for other hunts, "residency" made no difference, or was of secondary influence in comparison with other factors like "income" or "dependency." Similarly, for some hunts, the "income" question was most highly related to a hunter receiving a permit, while it was of no or secondary influence in other hunts. Whether a question mattered in receiving a permit was greatly affected by the size and location of the applicant pool relative to the number of permits and location of the hunt.
3. For hunts which previously were on random draw (see Case 5 below), the Tier II system changed the basis of allocation away from chance to a selection procedure based on the individual characteristics of a hunter in comparison with all other applicants. For hunts which previously were permit registration (see Case 1 below) or permit award based on residency and dependency criteria (see Case 2 below), the Tier II system increased the applicant pool but did not substantially alter the basis of allocation.

## Case 1. Hunt 0985: GMU 20B Moose (Minto Flats)

### Area

The 20B Minto Flats Management Area is located about 60 miles west of Fairbanks. The community of Minto (population 178 people) is located in the management area. Residents of Minto, Nenana, and Fairbanks have hunted in this area in the recent past.

### Former Allocation System

Seasons and bag limits were substantially decreased in the Minto Management area beginning about 1976. In 1984-85, 30 registration permits were available for a 5-day fall moose hunt, and 50 permits for a 45-day January-February moose hunt, issued in Minto. An additional 20 fall permits were available, 10 issued in Anchorage and 10 in Fairbanks (see Table 3). The harvest quotas were seven fall bull moose and eight winter bull moose.

### The Tier II Allocation System

The 1985 Tier II system provided for 60 permits issued to the top scoring applicants. In 1985, there were 68 applications received by mail within the deadline. Thus, almost all applicants were awarded permits (60 of 68; 88 percent successful). Of successful applicants, 31 were from Minto, 3 from Nenana, and 20 from Fairbanks-North Pole, with 6 winners from other places. Half the applicants had never killed a moose in this hunt previously; 31 percent had killed a moose 10 or more years.

### Performance

The 1985 Tier II system resulted in a reallocation of permits (Table 3). Minto residents' permits decreased from 30 fall and 50 winter permits in 1984 to 31 permits in 1985. Fairbanks residents' permits increased from 10 fall permits to 20 permits. Nenana residents' permits decreased from 10 fall permits to 3 permits. Thus, a greater percentage of permits went to persons outside the hunt zone in 1985 than the previous year. The reallocation resulted primarily from the low number of hunter applicants from Minto and Nenana. There were numerous problems making applications available in the hunt zone: local vendors received permits only 2 days before the mailing deadline, and many residents were dispersed to fishcamps away from the community at that time. These problems resulted in the low application rate.

TABLE 3 MINTO FLATS MANAGEMENT AREA, PERMIT AND HARVEST SUMMARY, 1979-1985.<sup>1</sup>

| Regulatory<br>Year | Number<br>Permits Allocated |       |        | Number<br>Issued |                 |        | Harvest |       |        |          |         |
|--------------------|-----------------------------|-------|--------|------------------|-----------------|--------|---------|-------|--------|----------|---------|
|                    | Fbks.                       | Minto | Nenana | Fbks.            | Minto           | Nenana | Fbks.   | Minto | Nenana | Non-Res. | Unknown |
| 1979-80            | --                          | --    | --     | 113              | 65 <sup>2</sup> | 10     | 4       | 2     | 0      |          |         |
| 1980-81            | 25                          | 50    | 25     | 25               | 28              | 25     | 2       | 0     | 0      |          | 3       |
| 1981-82            | 25                          | 50    | 25     | 25               | 34              | 25     | 5       | 2     | 0      |          |         |
| 1982-83            | 25                          | 50    | 25     | 25               | 41              | 25     | 4       | 2     | 0      | 1        |         |
| 1983-84            | 25                          | 50    | 25     | 25               | 50              | 25     | 8       | 7     | 1      |          |         |
| 1984-85            | fall<br>winter              | 10    | 30     | 10               | 29              | 10     | 4       | 6     | 1      |          |         |
|                    |                             |       | 50     | 10               | 30              | 10     |         | 1     |        |          |         |
| 1985-85            | 60 Total                    |       |        | 20               | 31              | 3      | 6 other |       |        |          |         |

<sup>1</sup> This information is derived from the Big Game Data Index Files, Alaska Department of Fish and Game, 1979-1985.

<sup>2</sup> 48 listed Minto as their residence.

## Case 2. Hunt 515: GMU 13 Caribou (Nelchina herd)

### Area

The range of the Nelchina and Mentasta caribou herds lies within the Copper Basin, a 29,520 square mile area about 180 miles east of Anchorage. The area is accessible by road to population centers in Anchorage, the Mat-Su Valley, and Fairbanks. There are about 3,310 people living in the "hunt zone" of the Copper Basin, in 1,057 households, and 22 communities or areas.

### Former Allocation System

Hunting permits for the Nelchina caribou herd have been issued by random drawing since 1977. From 1981 through 1984, a separate subsistence permit drawing was held for qualified residents of a specified zone, most recently GMUs 11, 13, and a portion of GMU 12 along the Nabesna Road (see Table 4). Permits not awarded during the subsistence drawing were available by registration beginning December 1. As shown in Table 4, the number of applicants for subsistence permits rose steadily until demand exceeded supply by 218 in 1984.

### The Tier II Allocation System

For the 1985 Tier II hunt, there were 2,718 valid applications, 711 (26 percent) from the Copper Basin and 2,007 (74 percent) from outside the basin. Of the 1,800 permits awarded, Copper Basin residents received 677 (38 percent) and non-basin residents received 1,123 (62 percent). Sixty-six percent of all applicants received permits. There were 34 unsuccessful Copper Basin applicants, including 20 from Glennallen and 9 from Copper Center. Fifty-one percent of the Anchorage applicants (351 of 690) and 55 percent of Eagle River applicants (92 of 168) received permits.

### Performance

The 1985 Tier II system resulted in a reallocation of permits to residents of the Copper Basin in comparison with 1984. In 1984, 738 Copper Basin applicants received 500 permits, whereas in 1985 711 Copper Basin applicants received 677 permits. Non-basin applicants outside the hunt zone were the majority of winners in 1985 (1,123 permits) as in 1984, so the overall reallocation was small. The survey questions most highly correlated with receiving permits were household income and dependency. Only one percent of persons answering "no" to the income question received a permit; and only 12 percent answering "slight or no" dependence received a permit.

Table 4  
Nelchina Caribou (GMU 13) Permit Applications

| <u>Year</u>          | <u>General Hunt</u> |                   | <u>Subsistence Hunt</u> |                   |                     | <u>Total</u>   |                   |
|----------------------|---------------------|-------------------|-------------------------|-------------------|---------------------|----------------|-------------------|
|                      | <u>Permits</u>      | <u>Applicants</u> | <u>Permits</u>          | <u>Applicants</u> | <u>Registration</u> | <u>Permits</u> | <u>Applicants</u> |
| 1981-82              | 1,546               | 6,764             | 150                     | 55                | ---                 | 1,696          | 6,819             |
| 1982-83              | 1,300               | 8,877             | 450                     | 233               | 217                 | 1,750          | 9,110             |
| 1983-84              | 1,300               | 9,265             | 450                     | 438               | 17                  | 1,750          | 9,703             |
| 1984-85              | 1,400               | 11,798            | 500                     | 718               | 0                   | 1,900          | 12,516            |
| 1985-86<br>(Tier II) | ---                 | ---               | 1,800                   | 2,718             | ---                 | 1,800          | 2,718             |

### Case 3. 913W: Unit 13 Moose (Copper Basin)

#### Area

The area of the Copper Basin is described in Case 2 above.

#### Former Allocation System

Most of GMU 13 has been open to general moose hunting, with a one-bull moose limit with an antler spread of 36 inches. To increase hunting opportunities for subsistence use, since 1983 an additional 100 subsistence permits were available by drawing for GMU residents. In 1983, 230 people applied; in 1984, 372 people applied.

#### Tier II Allocation System

In 1985, the Tier II system provided 200 antlerless moose permits available to all Alaskan residents. There were 506 valid applications. Of these, 391 (77 percent) were GMU 13 residents. Of the 200 permits awarded in 1985, 182 (91 percent) went to Copper Basin residents.

#### Performance

The Tier II system resulted in an extra 100 permits being made available for antlerless moose in 1985 over 1984 due to an increase in the allowed harvest. Almost all these additional permits were allocated to hunt zone residents of the Copper Basin by the scoring system, primarily because of the residency question. Because there were more hunt zone applicants than available permits, the questions on income and dependency also were important in determining permit winners.

### Case 4. Hunt 510: GMU 11 Caribou (Mentasta Herd)

#### Area

The Mentasta Caribou herd ranges in the Mentasta and Wrangell Mountains in the eastern part of the Copper River Basin. Unlike the Nelchina Caribou Herd (Case 2), the Mentasta herd is not easily accessible by road from population centers.

#### Former Allocation System

Hunting permits for the Mentasta caribou herd have been issued by random draw since 1977. Until 1985, there were no subsistence permits issued. As shown in Table 5, the number of applicants has grown since 1977, leveling off in 1983 and 1984.



### Tier II Allocation System

The 1985 Tier II hunt offered 350 permits to the top scoring applicants. However, only 170 people applied, leaving 180 permits unissued. Consequently, all applicants received permits. Fifty-five applicants (32%) were from the Copper Basin (Chitina 2; Chistochina 1; Copper Center 10; Gakona 7; Glennallen 14; Nabesna 4; Tazlina 1; Slana 15); while 115 were from outside the basin. Thirty-five applicants were from Anchorage, 36 from Valdez, and 3 from Fairbanks.

### Performance

That more people did not apply for this hunt can be explained in part as a response to the announced change in season to September 21- September 30. August 10 - September 30 had been the season in 1984. As evidenced by advisory committee comments, many people felt that caribou taken at the end of September would be in rut and the meat would not be useable. Also, the later season meant that due to herd movements, the caribou would not be in accessible locations. In contrast, the Nelchina caribou GMU 13 hunt is open January - March. The season for Unit 11 caribou was finally altered to September 10 - 30, but this was well after the deadline for submitting permit applications.

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Table 5  
Number of Applicants, Mentasta Caribou Herd

| <u>Year</u>       | <u>Applicants</u> | <u>Permits</u> | <u>Residency of Winners</u> |                         |
|-------------------|-------------------|----------------|-----------------------------|-------------------------|
|                   |                   |                | <u>Copper Basin</u>         | <u>Non-Copper Basin</u> |
| 1977              | 277               | 150            | ---                         | ---                     |
| 1978              | 363               | 350            | ---                         | ---                     |
| 1979              | 408               | 350            | ---                         | ---                     |
| 1980              | 421               | 350            | ---                         | ---                     |
| 1981              | 619               | 350            | 148 (43%)                   | 202 (57%)               |
| 1982              | 732               | 350            | 128 (37%)                   | 220 (63%)               |
| 1983              | 757               | 350            | ---                         | ---                     |
| 1984              | 731               | 350            | ---                         | ---                     |
| 1985<br>(Tier II) | 170               | 350            | 55 (32%)                    | 115 (68%)               |

## Case 5. Hunt 919: Unit 14A (East) Antlerless Moose

### Area

This hunt takes place in the eastern Matanuska Valley. The area is road-accessible to large population centers. In 1984, there were 29,836 residents of the Mat-Su Valley area.

### Former Allocation System

In 1984, the antlerless moose hunt was based on a random draw system. Anyone was permitted to apply for a drawing permit to take cow moose. There was also a bull moose season in 14A (East) with no permit requirement.

### Tier II Allocation System

The Tier II system offered 200 antlerless moose permits in 14A (East). There were 658 applications for the 200 Tier II permits. Of these, 495 applicants (75 percent) lived in the hunt area, GMU 14A, mostly Palmer (300) and Wasilla (151); 163 applicants were from outside GMU 14A, mostly Anchorage (102) and Eagle River (37). Of the 200 permits issued, 194 (97 percent) went to Unit 14A residents. Anchorage residents received 3 permits, Eagle River 2, and Peters Creek 1. Of residents of the hunt area, 320 applicants (61 percent) did not receive a permit. All applicant scores of 71 or better received permits. Ten of 46 applicants with a score of 70 were selected randomly and issued permits.

### Performance

The Tier II system appears to have resulted in a different way to allocate a relatively small number of hunting permits among a large number of potential hunters. Instead of random draw, residency of individual applicants was the more important first-cut criteria. Besides place of residence, the question that appears to have had the most effect on applicant success was sufficiency of income. Of the 200 permit winners, 194 responded "no" to whether they had adequate income to purchase substitutes for moose. Of the 458 unsuccessful applicants, 84 (18 percent) reported insufficient income.

## Conclusions

As shown by the five cases discussed above, the performance of the Tier II system varied considerably between hunts. Changes did occur in the allocation of permits between hunters residing in different areas for certain hunts. In some instances, relatively more permits were allocated to hunters outside the hunt zone (the Minto Flats moose case); in other instances relatively more permits were allocated to persons in the hunt zone (the Nelchina caribou case); and in other instances some permits were left unallocated (the Mentasta caribou case). Overall, these changes were not large in magnitude in comparison with the 1984 hunts.

A second conclusion is that the relative importance of particular survey questions in awarding permits varied between hunts. For undersubscribed hunts, point scores were irrelevant (the Mentasta caribou case). In hunts with a large number of applicants with equivalent residency scores (the Nelchina caribou, Copper Basin moose, and 14A (East) moose), survey questions other than residency became important, such as income and dependency.

A third conclusion is that for previous random draw hunts (Cases 2, 3, 4, 5), the Tier II system changed the basis of allocation away from chance to selection based on individual characteristics of the applicant in comparison with other applicants. For hunts previously under permit registration (Case 1) or permit award based on residency and dependency criteria (Cases 2, 3), the Tier II system tended to increase the applicant pool with persons residing away from the registration and hunt zones; however, the Tier II system did not substantially alter the basis of allocation.

Finally, it can be expected that the performance of the survey will change in subsequent years if a Tier II system is continued. In particular, changes in the size and location of the applicant pool relative to the hunt can be expected to affect future permit allocations.

## STATEWIDE INFORMATION

**5 AAC 92.054. PRIORITY FOR SUBSISTENCE HUNTING.** (a) When the board has eliminated nonsubsistence uses of game, and the board finds that it must further restrict the taking of game to assure that the game population is maintained and managed on a sustained yield basis, or to assure the continuation of subsistence uses of a game population, tier II hunting permits will be allocated to people who receive the highest number of points according to the following criteria:

(1) customary and direct dependence upon the game resource as the mainstay of the person's livelihood, as indicated by past participation and the extent that the person depends on that game resource;

(2) local residency, as indicated by the location of the person's domicile and distance from there to the hunting area; and

(3) availability of alternative resources, as indicated by the presence of other fish and game resources authorized and available for harvest in the hunting area, or in another area reasonably accessible to the individual, and by the person's financial circumstance.

(b) The board will establish a point system for ranking a tier II hunting permit applicant based on each criterion set out in (a) of this section. A tier II hunting permit will be issued to each highest ranking applicant until all permits authorized for each hunt have been issued. If, at the cutoff point, the number of applicants with equal scores exceeds the remaining permits available, permittees shall be selected by random drawing among those applicants.

(c) Each applicant for a tier II hunting permit must be a resident at least 12 years old.

(d) Only one person in a household may apply for each tier II hunt, except that two people in a household may apply for each tier II caribou hunt.

**5 AAC 92.056. POINT SYSTEM FOR CUSTOMARY AND DIRECT DEPENDENCE.** (a) Except as provided in (b) of this section, a maximum of 30 points will be given an applicant for past participation in a hunt and degree of dependence based on the following schedule:

(1) 1 point for each year the applicant harvested an animal from the population; a maximum of 10 points will be given;

(2) up to 20 points for degree of direct dependence on the noncommercial harvest of the population for the principal means of support (primary food source) of the applicant:

- (A) great dependence, 20 points;
- (B) moderate dependence, 15 points;
- (C) slight dependence, 10 points;
- (D) no dependence, 0 points.

(b) For a hunt on a game population that has only been hunted under a permit drawing system, each applicant will be given 30 points for customary and direct dependence on the resource as the mainstay of the applicant's livelihood, because the board finds that as a consequence of the random nature of the distribution of hunting opportunity under the system no person has been able to develop customary and direct dependence on that game population that is different in degree from any other person.

## STATEWIDE INFORMATION

**5 AAC 92.055. POINT SYSTEM FOR LOCAL RESIDENCY.** (a) A maximum of 30 points will be given, based on the location of an applicant's domicile according to the following schedule:

- (1) residency zone 1: 30 points;
- (2) residency zone 2: 20 points;
- (3) residency zone 3: 10 points;
- (4) residency zone 4: 0 points.

(b) Except as provided in (c) of this section:

- (1) residency zone 1 means the hunting area;
- (2) residency zone 2 means outside the hunting area, but within the game management unit or units containing the hunting area;
- (3) residency zone 3 means in game management units adjacent to the game management unit or units containing the hunting area;
- (4) residency zone 4 means in another game management unit.

(c) If the board determines that the zones in (b) would treat a specific concentration of similarly located individuals differently, or would be inappropriate due to the range and distribution of the resource, the board will, by regulation, modify the boundaries of the zones.

**5 AAC 92.060. POINT SYSTEM FOR AVAILABILITY OF ALTERNATIVE RESOURCES.** A maximum of 30 points will be given to an applicant for availability of alternative resources based on the following schedule:

(1) availability of fish and game resources in the hunting area, or other area reasonably accessible to the applicant:

- (A) greatly available: 0 points;
- (B) moderately available: 5 points;
- (C) slightly available: 10 points;
- (D) not available: 15 points;

(2) 15 points will be given if the applicant's financial circumstance is not adequate to purchase non-wild resources as a reasonable alternative to taking the game.

ALASKA DEPARTMENT OF FISH AND GAME  
SUBSISTENCE HUNTING PERMIT (TIER II) APPLICATION AND CERTIFICATION  
[A SEPARATE FORM MUST BE FILLED OUT FOR EACH SUBSISTENCE HUNT]

1. NAME: \_\_\_\_\_  
                    First                                      Middle Initial                                      Last

2. MAILING ADDRESS: \_\_\_\_\_  
                            P.O. Box/Street  
  
                            \_\_\_\_\_  
                            City/Town                                      State                                      Zip

3. ADDRESS WHERE YOU LIVE (Primary Residence/Domicile\*)  
  
                            \_\_\_\_\_  
                            Street or Property Description  
  
                            \_\_\_\_\_  
                            City/Town or Closest Community

(\* See 5 AAC 92.990)

4. LIST THE HUNT NUMBER FROM THE EMERGENCY SUBSISTENCE PERMIT (TIER II) HUNT SUPPLEMENT FOR THE HUNT YOU WISH TO APPLY FOR: [LIST ONLY ONE] HUNT NUMBER: \_\_\_\_\_

OR

5. IF YOU ARE UNABLE TO PROVIDE THE HUNT NUMBER, PLEASE LIST THE TYPE OF ANIMAL YOU WISH TO HUNT (caribou, moose, etc.) AND THE GAME MANAGEMENT UNIT, SUBUNIT, AND AREA DESCRIBED IN THE CURRENT GAME REGULATIONS:

| <u>Animal</u> | <u>Game Management Unit, Subunit, and Area</u> |
|---------------|------------------------------------------------|
|---------------|------------------------------------------------|

|       |       |
|-------|-------|
| _____ | _____ |
|-------|-------|

6. WHICH OF THE FOLLOWING DESCRIBES WHERE YOUR PRIMARY RESIDENCE/ DOMICILE IS LOCATED (see instructions)? [CHECK ONLY ONE]

|                                                                                                                              |       |
|------------------------------------------------------------------------------------------------------------------------------|-------|
| a. I live within the hunt area.                                                                                              | _____ |
| b. I live within the same game management unit(s) as the hunt for which I am applying, but do not live within the hunt area. | _____ |
| c. I live in a game management unit immediately adjacent to the game management unit in which the hunt is held.              | _____ |
| d. I live in an area not described in a, b, or c.                                                                            | _____ |

7. You may be given one point for each year you legally killed an animal(s) in this hunt (same species of animal in the same area as the hunt you are now applying for). A maximum of 10 points may be claimed.

PLEASE LIST THE YEARS IN WHICH YOU LEGALLY KILLED AN ANIMAL(S) IN THIS HUNT.

19\_\_ 19\_\_

19\_\_ 19\_\_ 19\_\_

Attachment B

1985 TIER II HUNTS

| Species  | Hunt No. | Permits Avail. | Hunt Description                                                        |
|----------|----------|----------------|-------------------------------------------------------------------------|
| Bison    | 406      | 12             | Either sex, Chitina Herd                                                |
| Bison    | 451      | 40             | Either sex, Farewell Herd                                               |
| Bison    | 403      | 15             | Bulls, Delta area                                                       |
| Bison    | 404      | 40             | Cows, Delta area                                                        |
| Caribou  | 50       | 200            | Either sex, Kenai Mountains                                             |
| Caribou  | 510      | 350            | Either sex, Wrangell Mountains                                          |
| Caribou  | 515      | 1800           | Either sex, early season, Nelchina<br>Antlerless, late season, Nelchina |
| Caribou  | 530      | 140            | Bulls, Macomb Plateau                                                   |
| Caribou  | 570      | 200            | Either sex, Delta Herd                                                  |
| Mt. Goat | 831      | 2              | Resurrection Creek, west, Kenai Peninsula                               |
| Mt. Goat | 834      | 4              | Mills Creek, Kenai Peninsula                                            |
| Mt. Goat | 835      | 4              | Placer River, west, Kenai Peninsula                                     |

Attachment C

| Species  | Hunt | Permits  | Hunt Description                      |
|----------|------|----------|---------------------------------------|
|          | No.  | Avail.   |                                       |
| Mt. Goat | 843  | 2        | Andy Simons Mountain, Kenai Peninsula |
| Mt. Goat | 855  | 4        | Twin Lakes, Kenai Peninsula           |
| Mt. Goat | 872  | 20       | Crown Mountain, Kodiak                |
| -----    |      |          |                                       |
| Moose    | 901  | 15       | Either sex, Berners Bay               |
| Moose    | 959  | 45       | Bulls, Upper Lynn Canal               |
| Moose    | 961  | 200      | Bulls, Yakutat Forelands              |
| Moose    | 967  | 20       | Bulls, west Copper River Delta        |
| Moose    | 968  | 20       | Cows, west Copper River Delta         |
| Moose    | 910  | 20       | Antlerless, Portage area              |
| Moose    | 911  | 40       | Antlered, Portage area                |
| Moose    | 913W | 200      | Bulls, Nelchina except part of 13(A)  |
| Moose    | 919  | 200      | Antlerless, Matanuska Valley, east    |
| Moose    | 920  | 200      | Antlerless, Matanuska Valley, west    |
| Moose    | 923  | up to 50 | Late winter, Fort Richardson          |
| Moose    | 925  | 15       | Antlerless, Knik River/Hunter Creek   |

| Species | Hunt | Permits  | Hunt Description                                                        |
|---------|------|----------|-------------------------------------------------------------------------|
|         | No.  | Avail.   |                                                                         |
| Moose   | 927  | 20       | Antlerless, Ship Creek                                                  |
| Moose   | 928  | 15       | Antlerless, Peters Creek                                                |
| Moose   | 974  | 75       | Either sex with bulls having spike/fork, Eagle River archery            |
| Moose   | 975  | 125      | Either sex with bulls having spike/fork, Eklutna archery                |
| Moose   | 978  | up to 30 | Either sex with bulls having spike/fork, Anchorage archery, late winter |
| Moose   | 929  | Closed   | Antlerless, 15(A) part                                                  |
| Moose   | 931  | 14       | 50" antlered, 15(B) south of Skilak Lake                                |
| Moose   | 933  | 6        | 50" antlered, 15(B) Funny and Killey Rivers                             |
| Moose   | 935  | 12       | 50" antlered, 15(B) Timberline Lake                                     |
| Moose   | 937  | 8        | 50" antlered, 15(B) southwest of Funny River                            |
| Moose   | 939  | 10       | 50" antlered, 15(B) Indian Creek                                        |
| Moose   | 981  | up to 75 | Either sex, 16(B) north, late winter                                    |
| Moose   | 982  | up to 75 | Either sex, 16(B) south, late winter                                    |
| Moose   | 985  | 60       | Bulls, Minto Flats, split-early/late seasons                            |
| Moose   | 994  | 60       | Bulls, portion of 25(D)                                                 |



| Species    | Hunt | Permits | Hunt Description                                                           |
|------------|------|---------|----------------------------------------------------------------------------|
|            | No.  | Avail.  |                                                                            |
| Dall Sheep | 1102 | 120     | Full curl ram, Tok area                                                    |
| Dall Sheep | 1103 | 150     | Full curl ram, Delta area                                                  |
| Dall Sheep | 1110 | 10      | Ewe, 14(A) Matanuska Valley                                                |
| Dall Sheep | 1130 | 26      | 7/8 curl ram, 14(C) Eklutna area, early hunt                               |
| Dall Sheep | 1131 | 26      | 7/8 curl ram, 14(C) Eklutna area, late hunt                                |
| Dall Sheep | 1132 | 18      | 7/8 curl ram, 14(C) north side of Eagle River and Peters Creek, early hunt |
| Dall Sheep | 1133 | 18      | 7/8 curl ram, 14(C) north side of Eagle River and Peters Creek, late hunt  |
| Dall Sheep | 1134 | 16      | 7/8 curl ram, 14(C) south side of Eagle River, early hunt                  |
| Dall Sheep | 1135 | 16      | 7/8 curl ram, 14(C) south side of Eagle River, late hunt                   |
| Dall Sheep | 1106 | 4       | Full curl ram, 20(D) & (E), Mt. Harper area                                |
| Dall Sheep | 1107 | 4       | Full curl ram, 20(E), Seventy-mile River area                              |
| Dall Sheep | 1108 | 4       | Full curl ram, 20(E), Upper Charley River area                             |

APPENDIX

APPENDIX TABLE 1

TIER II PERMIT HUNTS

| HUNT  | PERMITS<br>AVAILABLE | PERMITS<br>AWARDED | THRU<br>SCORE: | RANDOM<br>DRAW<br>SCORE | RANDOM<br>NUMBERS<br>GENERATED | RANDOM<br>WINNERS | PERMITS<br>UNISSUED | VALID<br>APPLICANTS | REJECTS | TOTAL<br>APPLICANTS |
|-------|----------------------|--------------------|----------------|-------------------------|--------------------------------|-------------------|---------------------|---------------------|---------|---------------------|
| 0403  | 15                   | 15                 | 90             | 85                      | 29                             | 6                 | 0                   | 248                 | 11      | 259                 |
| 0404  | 40                   | 40                 | 90             | 85                      | 40                             | 31                | 0                   | 417                 | 20      | 437                 |
| 0406  | 12                   | 12                 | 70             | 65                      | 6                              | 4                 | 0                   | 45                  | 4       | 49                  |
| 0451  | 40                   | 40                 | 55             | 50                      | 9                              | 5                 | 0                   | 116                 | 12      | 128                 |
| 0501  | 200                  | 200                | 31             | 30                      | 12                             | 4                 | 0                   | 239                 | 5       | 244                 |
| 0510  | 350                  | 170                | 10             |                         |                                |                   | 104                 | 171                 | 9       | 180                 |
| 0515  | 1800                 | 1800               | 47             | 46                      | 58                             | 29                | 0                   | 2718                | 92      | 2810                |
| 0530  | 140                  | 134                | 15             |                         |                                |                   | 6                   | 134                 | 8       | 142                 |
| 0570  | 200                  | 200                | 41             |                         |                                |                   | 0                   | 266                 | 14      | 280                 |
| 0831  | 2                    | 2                  | 75             |                         |                                |                   | 0                   | 10                  | 0       | 10                  |
| 0834  | 4                    | 4                  | 60             | 55                      | 4                              | 3                 | 0                   | 14                  | 0       | 14                  |
| 0835  | 4                    | 4                  | 30             |                         |                                |                   | 0                   | 6                   | 0       | 6                   |
| 0843  | 2                    | 2                  | 65             |                         |                                |                   | 0                   | 19                  | 0       | 19                  |
| 0855  | 4                    | 4                  | 57             |                         |                                |                   | 0                   | 14                  | 1       | 15                  |
| 0872  | 20                   | 20                 | 60             | 55                      | 10                             | 9                 | 0                   | 30                  | 2       | 32                  |
| 0901  | 15                   | 15                 | 70             |                         |                                |                   | 0                   | 158                 | 12      | 170                 |
| 0910  | 20                   | 20                 | 66             |                         |                                |                   | 0                   | 87                  | 4       | 91                  |
| 0911  | 40                   | 40                 | 66             | 65                      | 21                             | 10                | 0                   | 209                 | 10      | 219                 |
| 0913W | 200                  | 200                | 71             | 70                      | 57                             | 11                | 0                   | 506                 | 16      | 522                 |
| 0919  | 200                  | 200                | 71             | 70                      | 46                             | 10                | 0                   | 658                 | 26      | 684                 |
| 0920  | 200                  | 200                | 71             | 70                      | 56                             | 22                | 0                   | 637                 | 29      | 666                 |
| 0923  | 50                   | 50                 | 80             | 75                      | 24                             | 23                | 0                   | 110                 | 6       | 116                 |
| 0925  | 15                   | 15                 | 66             |                         |                                |                   | 0                   | 35                  | 3       | 38                  |
| 0927  | 20                   | 20                 | 60             |                         |                                |                   | 0                   | 42                  | 2       | 44                  |
| 0928  | 15                   | 15                 | 80             | 75                      | 4                              | 2                 | 0                   | 51                  | 2       | 53                  |

APPENDIX TABLE 1 (Cont.)

TIER II PERMIT HUNTS

| HUNT | PERMITS<br>AVAILABLE | PERMITS<br>AWARDED | THRU<br>SCORE | RANDOM<br>DRAW<br>SCORE | RANDOM<br>NUMBERS<br>GENERATED | RANDOM<br>WINNERS | PERMITS<br>UNISSUED | VALID<br>APPLICANTS | REJECTS | TOTAL<br>APPLICANTS |
|------|----------------------|--------------------|---------------|-------------------------|--------------------------------|-------------------|---------------------|---------------------|---------|---------------------|
| 0931 | 14                   | 14                 | 66            |                         |                                |                   | 0                   | 61                  | 2       | 63                  |
| 0933 | 6                    | 6                  | 61            |                         |                                |                   | 0                   | 21                  | 5       | 26                  |
| 0935 | 12                   | 12                 | 61            | 60                      | 5                              | 3                 | 0                   | 54                  | 6       | 60                  |
| 0937 | 8                    | 8                  | 70            | 65                      | 11                             | 2                 | 0                   | 42                  | 3       | 45                  |
| 0939 | 10                   | 10                 | 66            |                         |                                |                   | 0                   | 65                  | 5       | 70                  |
| 0959 | 45                   | 45                 | 66            | 65                      | 4                              | 1                 | 0                   | 69                  | 12      | 81                  |
| 0961 | 200                  | 173                | 5             |                         |                                |                   | 27                  | 173                 | 25      | 198                 |
| 0967 | 20                   | 20                 | 71            | 70                      | 5                              | 1                 | 0                   | 74                  | 7       | 81                  |
| 0968 | 21                   | 21                 | 75            |                         |                                |                   | 0                   | 95                  | 11      | 106                 |
| 0974 | 75                   | 59                 | 10            |                         |                                |                   | 16                  | 59                  | 3       | 62                  |
| 0975 | 125                  | 92                 | 25            |                         |                                |                   | 33                  | 92                  | 7       | 99                  |
| 0978 | 30                   | 30                 | 50            | 50                      | 8                              | ALTS              | 0                   | 41                  | 3       | 44                  |
| 0981 | 75                   | 56                 | 10            |                         |                                |                   | 12                  | 57                  | 5       | 62                  |
| 0982 | 75                   | 43                 | 20            |                         |                                |                   | 34                  | 43                  | 5       | 48                  |
| 0985 | 60                   | 60                 | 42            | 40                      | 2                              | 1                 | 0                   | 68                  | 3       | 71                  |
| 0994 | 60                   | 60                 | 30            |                         |                                |                   | 0                   | 60                  | 26      | 86                  |
| 1102 | 120                  | 120                | 36            | 35                      | 12                             | 2                 | 0                   | 155                 | 9       | 164                 |
| 1103 | 150                  | 150                | ALL           |                         |                                |                   | 0                   | 150                 | 5       | 155                 |
| 1106 | 4                    | 3                  | ALL           |                         |                                |                   | 1                   | 3                   | 0       | 3                   |
| 1107 | 4                    | 0                  |               |                         |                                |                   | 4                   | 0                   | 0       | 0                   |
| 1108 | 4                    | 1                  | ALL           |                         |                                |                   | 3                   | 1                   | 0       | 1                   |
| 1110 | 10                   | 10                 | 76            | 75                      | 3                              | 1                 | 0                   | 43                  | 1       | 44                  |
| 1130 | 26                   | 26                 | 66            |                         |                                |                   | 0                   | 92                  | 1       | 93                  |
| 1131 | 26                   | 26                 | 46            | 45                      | 6                              | 3                 | 0                   | 35                  | 0       | 35                  |
| 1132 | 18                   | 18                 | 56            | 55                      | 10                             | 3                 | 0                   | 53                  | 1       | 54                  |

APPENDIX TABLE 1 (Cont.)

TIER II PERMIT HUNTS

| HUNT          | PERMITS<br>AVAILABLE | PERMITS<br>AWARDED | THRU<br>SCORE: | RANDOM<br>DRAW<br>SCORE | RANDOM<br>NUMBERS<br>GENERATED | RANDOM<br>WINNERS | PERMITS<br>UNISSUED | VALID<br>APPLICANTS | REJECTS | TOTAL<br>APPLICANTS |
|---------------|----------------------|--------------------|----------------|-------------------------|--------------------------------|-------------------|---------------------|---------------------|---------|---------------------|
| 1133          | 18                   | 10                 | 56             | 55                      | 8                              | 2                 | 0                   | 37                  | 2       | 39                  |
| 1134          | 16                   | 16                 | 75             |                         |                                |                   | 0                   | 59                  | 0       | 59                  |
| 1135          | 16                   | 16                 | 56             |                         |                                |                   | 0                   | 34                  | 2       | 36                  |
| 8888          | 0                    | 0                  |                |                         |                                |                   | 0                   | 0                   | 158     | 158                 |
| *** Total *** | 4856                 | 4535               |                |                         |                                |                   | 320                 | 8676                | 595     | 9271                |

## APPENDIX TABLE 2

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## B I S O N

## TIER II PERMIT HUNTS

| HUNT          | PERMITS<br>AVAILABLE | PERMITS<br>AWARDED | THRU<br>SCORE: | RANDOM<br>DRAW<br>SCORE | RANDOM<br>NUMBERS<br>GENERATED | RANDOM<br>WINNERS | PERMITS<br>UNISSUED | VALID<br>APPLICANTS | REJECTS | TOTAL<br>APPLICANTS |
|---------------|----------------------|--------------------|----------------|-------------------------|--------------------------------|-------------------|---------------------|---------------------|---------|---------------------|
| 0403          | 15                   | 15                 | 90             | 85                      | 29                             | 6                 | 0                   | 248                 | 11      | 259                 |
| 0404          | 40                   | 40                 | 90             | 85                      | 40                             | 31                | 0                   | 417                 | 20      | 437                 |
| 0406          | 12                   | 12                 | 70             | 65                      | 6                              | 4                 | 0                   | 45                  | 4       | 49                  |
| 0451          | 40                   | 40                 | 55             | 50                      | 9                              | 5                 | 0                   | 116                 | 12      | 128                 |
| *** Total *** | 107                  | 107                |                |                         |                                |                   | 0                   | 826                 | 47      | 873                 |

# APPENDIX TABLE 3

## C A R I B O U

### TIER II PERMIT HUNTS

| HUNT          | PERMITS<br>AVAILABLE | PERMITS<br>AWARDED | THRU<br>SCORE: | RANDOM<br>DRAW<br>SCORE | RANDOM<br>NUMBERS<br>GENERATED | RANDOM<br>WINNERS | PERMITS<br>UNISSUED | VALID<br>APPLICANTS | REJECTS | TOTAL<br>APPLICANTS |
|---------------|----------------------|--------------------|----------------|-------------------------|--------------------------------|-------------------|---------------------|---------------------|---------|---------------------|
| 0501          | 200                  | 200                | 31             | 30                      | 12                             | 4                 | 0                   | 239                 | 5       | 244                 |
| 0510          | 350                  | 170                | 10             |                         |                                |                   | 184                 | 171                 | 9       | 180                 |
| 0515          | 1800                 | 1800               | 47             | 46                      | 58                             | 29                | 0                   | 2718                | 92      | 2810                |
| 0530          | 140                  | 134                | 15             |                         |                                |                   | 6                   | 134                 | 8       | 142                 |
| 0570          | 200                  | 200                | 41             |                         |                                |                   | 0                   | 266                 | 14      | 280                 |
| *** Total *** |                      |                    |                |                         |                                |                   |                     |                     |         |                     |
|               | 2690                 | 2504               |                |                         |                                |                   | 190                 | 3528                | 128     | 3656                |

# APPENDIX TABLE 4

M T. G O A T

## TIER II PERMIT HUNTS

| HUNT          | PERMITS<br>AVAILABLE | PERMITS<br>AWARDED | THRU<br>SCORE | RANDOM<br>DRAW<br>SCORE | RANDOM<br>NUMBERS<br>GENERATED | RANDOM<br>WINNERS | PERMITS<br>UNISSUED | VALID<br>APPLICANTS | REJECTS | TOTAL<br>APPLICANTS |
|---------------|----------------------|--------------------|---------------|-------------------------|--------------------------------|-------------------|---------------------|---------------------|---------|---------------------|
| 0831          | 2                    | 2                  | 75            |                         |                                |                   | 0                   | 10                  | 0       | 10                  |
| 0834          | 4                    | 4                  | 60            | 55                      | 4                              | 3                 | 0                   | 14                  | 0       | 14                  |
| 0835          | 4                    | 4                  | 30            |                         |                                |                   | 0                   | 6                   | 0       | 6                   |
| 0843          | 2                    | 2                  | 65            |                         |                                |                   | 0                   | 19                  | 0       | 19                  |
| 0855          | 4                    | 4                  | 57            |                         |                                |                   | 0                   | 14                  | 1       | 15                  |
| 0872          | 20                   | 20                 | 60            | 55                      | 10                             | 9                 | 0                   | 30                  | 2       | 32                  |
| *** Total *** | 36                   | 36                 |               |                         |                                |                   | 0                   | 93                  | 3       | 96                  |



APPENDIX TABLE 5  
M O O S E

TIER II PERMIT HUNTS

| HUNT  | PERMITS<br>AVAILABLE | PERMITS<br>AWARDED | THRU<br>SCORE | RANDOM<br>DRAW<br>SCORE | RANDOM<br>NUMBERS<br>GENERATED | RANDOM<br>WINNERS | PERMITS<br>UNISSUED | VALID<br>APPLICANTS | REJECTS | TOTAL<br>APPLICANTS |
|-------|----------------------|--------------------|---------------|-------------------------|--------------------------------|-------------------|---------------------|---------------------|---------|---------------------|
| 0901  | 15                   | 15                 | 70            |                         |                                |                   | 0                   | 158                 | 12      | 170                 |
| 0910  | 20                   | 20                 | 66            |                         |                                |                   | 0                   | 87                  | 4       | 91                  |
| 0911  | 40                   | 40                 | 66            | 65                      | 21                             | 10                | 0                   | 209                 | 10      | 219                 |
| 0913W | 200                  | 200                | 71            | 70                      | 57                             | 11                | 0                   | 506                 | 16      | 522                 |
| 0919  | 200                  | 200                | 71            | 70                      | 46                             | 10                | 0                   | 658                 | 26      | 684                 |
| 0920  | 200                  | 200                | 71            | 70                      | 56                             | 22                | 0                   | 637                 | 29      | 666                 |
| 0923  | 50                   | 50                 | 80            | 75                      | 24                             | 23                | 0                   | 110                 | 6       | 116                 |
| 0925  | 15                   | 15                 | 66            |                         |                                |                   | 0                   | 35                  | 3       | 38                  |
| 0927  | 20                   | 20                 | 60            |                         |                                |                   | 0                   | 42                  | 2       | 44                  |
| 0928  | 15                   | 15                 | 80            | 75                      | 4                              | 2                 | 0                   | 51                  | 2       | 53                  |
| 0931  | 14                   | 14                 | 66            |                         |                                |                   | 0                   | 61                  | 2       | 63                  |
| 0933  | 6                    | 6                  | 61            |                         |                                |                   | 0                   | 21                  | 5       | 26                  |
| 0935  | 12                   | 12                 | 61            | 60                      | 5                              | 3                 | 0                   | 54                  | 6       | 60                  |
| 0937  | 8                    | 8                  | 70            | 65                      | 11                             | 2                 | 0                   | 42                  | 3       | 45                  |
| 0939  | 10                   | 10                 | 66            |                         |                                |                   | 0                   | 65                  | 5       | 70                  |
| 0959  | 45                   | 45                 | 66            | 65                      | 4                              | 1                 | 0                   | 69                  | 12      | 81                  |
| 0961  | 200                  | 173                | 5             |                         |                                |                   | 27                  | 173                 | 25      | 198                 |
| 0967  | 20                   | 20                 | 71            | 70                      | 5                              | 1                 | 0                   | 74                  | 7       | 81                  |
| 0968  | 21                   | 21                 | 75            |                         |                                |                   | 0                   | 95                  | 11      | 106                 |
| 0974  | 75                   | 59                 | 10            |                         |                                |                   | 16                  | 59                  | 3       | 62                  |
| 0975  | 125                  | 92                 | 25            |                         |                                |                   | 33                  | 92                  | 7       | 99                  |
| 0978  | 30                   | 30                 | 50            | 50                      | 8                              | ALTS              | 0                   | 41                  | 3       | 44                  |
| 0981  | 75                   | 56                 | 10            |                         |                                |                   | 12                  | 57                  | 5       | 62                  |
| 0982  | 75                   | 43                 | 20            |                         |                                |                   | 34                  | 43                  | 5       | 48                  |
| 0985  | 60                   | 60                 | 42            | 40                      | 2                              | 1                 | 0                   | 68                  | 3       | 71                  |

## APPENDIX TABLE 5 (Cont.)

## M O O S E

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10/30/85

## TIER II PERMIT HUNTS

| HUNT          | PERMITS<br>AVAILABLE | PERMITS<br>AWARDED | TIRU<br>SCORE: | RANDOM<br>DRAW<br>SCORE | RANDOM<br>NUMBERS<br>GENERATED | RANDOM<br>WINNERS | PERMITS<br>UNISSUED | VALID<br>APPLICANTS | REJECTS | TOTAL<br>APPLICANTS |
|---------------|----------------------|--------------------|----------------|-------------------------|--------------------------------|-------------------|---------------------|---------------------|---------|---------------------|
| 0994          | 60                   | 60                 | 30             |                         |                                |                   | 0                   | 60                  | 26      | 86                  |
| *** Total *** | 1611                 | 1484               |                |                         |                                |                   | 122                 | 3567                | 238     | 3805                |

# APPENDIX TABLE 6

## S H E E P

### TIER II PERMIT HUNTS

| HUNT          | PERMITS<br>AVAILABLE | PERMITS<br>AWARDED | THRU<br>SCORE: | RANDOM<br>DRAW<br>SCORE | RANDOM<br>NUMBERS<br>GENERATED | RANDOM<br>WINNERS | PERMITS<br>UNISSUED | VALID<br>APPLICANTS | REJECTS | TOTAL<br>APPLICANTS |
|---------------|----------------------|--------------------|----------------|-------------------------|--------------------------------|-------------------|---------------------|---------------------|---------|---------------------|
| 1102          | 120                  | 120                | 36             | 35                      | 12                             | 2                 | 0                   | 155                 | 9       | 164                 |
| 1103          | 150                  | 150                | ALL            |                         |                                |                   | 0                   | 150                 | 5       | 155                 |
| 1106          | 4                    | 3                  | ALL            |                         |                                |                   | 1                   | 3                   | 0       | 3                   |
| 1107          | 4                    | 0                  |                |                         |                                |                   | 4                   | 0                   | 0       | 0                   |
| 1108          | 4                    | 1                  | ALL            |                         |                                |                   | 3                   | 1                   | 0       | 1                   |
| 1110          | 10                   | 10                 | 76             | 75                      | 3                              | 1                 | 0                   | 43                  | 1       | 44                  |
| 1130          | 26                   | 26                 | 66             |                         |                                |                   | 0                   | 92                  | 1       | 93                  |
| 1131          | 26                   | 26                 | 46             | 45                      | 6                              | 3                 | 0                   | 35                  | 0       | 35                  |
| 1132          | 18                   | 18                 | 56             | 55                      | 10                             | 3                 | 0                   | 53                  | 1       | 54                  |
| 1133          | 18                   | 18                 | 56             | 55                      | 8                              | 2                 | 0                   | 37                  | 2       | 39                  |
| 1134          | 16                   | 16                 | 75             |                         |                                |                   | 0                   | 59                  | 0       | 59                  |
| 1135          | 16                   | 16                 | 56             |                         |                                |                   | 0                   | 34                  | 2       | 36                  |
| *** Total *** | 412                  | 404                |                |                         |                                |                   | 8                   | 662                 | 21      | 683                 |

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

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March 28, 1990

The Honorable Bettye Fahrenkamp  
Alaska State Senator  
P. O. Box V  
Juneau, AK 99811

Re: Subsistence questions

Dear Senator Fahrenkamp:

Attorney General Baily has asked me to respond to your March 15, 1990, letter posing several questions about subsistence. This issue is back before the legislature in part because the Alaska Supreme Court in McDowell v. State, 785 P.2d 1 (Alaska 1989), ruled that the rural limitation in the state subsistence definition violates the Alaska Constitution. Still pending is whether the mandate and priority for subsistence uses in the state law now apply to uses by all Alaskans, or whether they cannot be severed from the rural limitation, and thus are ineffective as well.

One important part of the background of this decision is the federal subsistence law, the Alaska National Interest Lands Conservation Act, title VIII ("ANILCA"). That law provides for federal management of subsistence uses on federal lands in Alaska, unless the state provides the same definition of subsistence uses, including a rural limitation, and the same priority for those uses as is found in ANILCA.

You first inquire what legal issues relating to subsistence would not be resolved if the adoption of the rural constitutional amendment returned subsistence to the pre-McDowell status. The main such issue, which you mention as your first example, is the one raised in the Kenaitze case: what is the meaning of "rural" in ANILCA? This question arises because in Kenaitze Indian Tribe v. Alaska, 860 F.2d 312 (9th Cir. 1988), the ninth circuit held that the state statutory definition of "rural area" in AS 16.05.940(25), focusing on the role of noncommercial fish and game use in an area or community's economy, is not consistent with ANILCA. However, the appeals court did not specify another definition. Rather, the ninth circuit assumed as a basic

The Honorable Bettye Fahrenkamp  
Alaska State Senator

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premise that the use of the word "rural" in ANILCA relates in some way to population levels, without more clarification.

Thus, if a constitutional amendment returned the state to the pre-McDowell status, we would have a statutory definition of "rural area" which is not invalid, but which also is not consistent with ANILCA. Consistency could be regained either by amending ANILCA to insert the state's definition of "rural area" as a part of the federal law, or by repealing the state's definition and replacing it with a definition consistent with the ninth circuit decision. That latter option is somewhat problematic at this point, until more guidance is received from the federal district court on what would be an acceptable approach in light of the ninth circuit's interpretation. Enclosed is a March 22, 1990, memorandum from our office to Norman Cohen, Deputy Commissioner of Fish and Game, summarizing the possibilities regarding the meaning of "rural" presented in the Kenaitze case in federal district court. That memorandum lists a number of possible starting points for agency (or legislative) action in formulating an approach to identifying rural areas. As noted there, we have asked the judge for a decision as soon as possible clarifying which factors would be appropriate ones for further pursuit in seeking an approach consistent with ANILCA.

There are a number of other lawsuits raising subsistence issues which do not challenge the state statutes, as the Kenaitze lawsuit did. These other lawsuits, in general, challenge Board of Fisheries or Board of Game regulations, usually on one of two general grounds. One type of challenge asserts that the boards, in particular instances, incorrectly determined there were no customary and traditional uses of particular resources by particular rural communities or areas; the Skwentna, Sitka, and Sumner Straits lawsuits are examples of this. The second type of challenge asserts that the regulations providing for subsistence hunting and fishing opportunities do not provide adequate opportunity; the Dot Lake, Lime Village, and Batzulnetas cases are examples of this category.

You also inquired about a possible continuation of the McDowell lawsuit on federal constitutional grounds, if the Alaska Constitution were amended to authorize the 1986 law. The United States Constitution does not have a natural resources article equivalent to the Alaska Constitution's article VIII under which the Alaska Supreme Court ruled the 1986 law's rural limitation invalid. If an equal protection argument were made against the state subsistence law, based on the U.S. Constitution, the standard applied by the court would be less stringent than that applied under the Alaska Constitution's test. Thus, although one of the concurring opinions in McDowell did hinge on an analysis of Alaska's equal protection guarantees, and found the rural limi-

tation lacking, that analysis and conclusion does not necessarily foreshadow the outcome under the federal analysis.

You also asked for a list of actions which would be necessary to carry out the options which our office provided to the Senate Resources Committee earlier this year. That list has grown from 9 to 11 since its initial presentation. Enclosed is a March 7, 1990, position paper prepared by the Alaska Department of Fish and Game and the Alaska Department of Law, which explores those options, their feasibility, and their ramifications, in some detail. Below are listed the actions which would be required to trigger each option, but the position paper should be referred to for the advantages and disadvantages of each:

1. Ask the Alaska Supreme Court to reconsider its decision in McDowell: This has already occurred, and the petitions for rehearing filed by the state and the Alaska Federation of Natives have been denied.

2. Amend the Alaska Constitution to authorize a subsistence priority for rural residents: This has already been initiated, by the introduction of the governor's proposed constitutional amendment.

3. Amend the Alaska Constitution to authorize a subsistence priority for Alaska Natives: This has already been initiated, by the introduction of Representative Wallis' proposed constitutional amendment.

4. Amend ANILCA to eliminate the federal subsistence priority for rural residents: Action by the Alaska delegation would be necessary to initiate this option.

5. Amend ANILCA to preempt state law as necessary to grant rural residents a subsistence priority statewide: Action by the Alaska delegation would be necessary to initiate this option.

6. Amend ANILCA to preempt state law as necessary to grant a subsistence priority to Alaska Natives: Action by the Alaska delegation would be necessary to initiate this option.

7. 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: Before such a course was embarked upon, the governor would have to determine that it was an appropriate policy choice, and it would probably be advantageous for the Secretaries of Interior and Agriculture to agree with the approach.

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Alaska State Senator

March 28, 1990  
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8. 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: The administration would initiate discussions with the Secretaries of Interior and Agriculture about such cooperative agreements.

9. Amend state law to provide a subsistence priority to state residents most dependent on fish and wildlife, and then amend ANILCA to conform to the state law: Legislation establishing such a system would have to be introduced in both the Alaska Legislature and Congress.

10. 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: The Boards of Fisheries and Game would have to adopt regulations based on this policy.

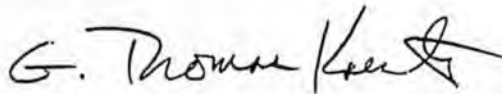
11. Challenge the ANILCA subsistence priority for rural residents and/or Congress' power to require such a priority on constitutional grounds: A lawsuit would have to be filed against the federal government by Alaska.

I hope this information has been of some assistance to you. I would be happy to meet with you at your convenience to discuss any of these matters in greater detail.

Sincerely yours,

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By:



G. Thomas Koester  
Assistant Attorney General

GTK:LIS:tg

cc: Don Collinsworth, Commissioner  
Norman Cohen, Deputy Commissioner  
Molly McCammon, Special Assistant  
Steve Behnke, Director  
Subsistence Division  
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Denby Lloyd, Special Staff Assistant  
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John Katz, Special Counsel

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Jim Torgerson, Special Staff Assistant  
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Department of Law



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

Since the ruling, the administration has received comments from a wide range of interested and concerned 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 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 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

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. While some have questioned 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.

# MEMORANDUM

State of Alaska  
Department of Law

TO Norman Cohen  
Deputy Commissioner  
Department of Fish and Game

DATE March 22, 1990  
FILE NO 221-87-0046  
TEL NO 465-3600  
SUBJECT Kenaitze rural arguments

LIS

FROM Larri Irene Spengler  
Assistant Attorney General  
Natural Resources Section  
Juneau

You asked me to summarize the "rural" arguments presented to District Court Judge Holland on March 14, 1990, in the Kenaitze case. The position taken by Alaska Legal Services, representing the Kenaitze, is that the ninth circuit decision held that the entire Kenai Peninsula is rural, and that the district court need look no further. The second stage of the Kenaitze's argument was that even if the ninth circuit had not determined that the Kenai was rural, the district court should do so. In response to a question from Judge Holland on what rural means after the ninth circuit decision, the Alaska Legal Services attorney avoided proposing any definition, and rather asserted again that the ninth circuit had decided that the Kenai Peninsula in its entirety is rural.

In contrast, the state argued that the ninth circuit had held that the existing state statutory definition of "rural area," focusing on the role of the use of non-commercial fish and game in the economy of a community or area, is not consistent with the use of the term "rural" by Congress in ANILCA. We contended that the ninth circuit did not decide whether or not the entire Kenai Peninsula, or parts of it, are rural. We also argued that the district court should not be in the business of deciding which parts of the Kenai Peninsula are rural, because that would involve applying the law to the facts, which is an agency function. The results of such agency action can be reviewed by a court for consistency with a statute and reasonableness.

However, the state did urge Judge Holland to issue a decision as soon as possible offering further guidance about what the ninth circuit had indicated was an appropriate use of the term "rural" in ANILCA. We pointed out that the Alaska legislature, and possibly eventually the Alaska people, will be considering amending the state constitution in such a way that would allow the state to enact a statute consistent with ANILCA, and that an essential element to that debate--what "rural" in ANILCA means--is missing.

The premise underlying the ninth circuit assessment of the use of the term "rural" in ANILCA is that it is:

a standard word in the English language commonly understood to refer to areas of the country that are sparsely populated, where the economy centers on agriculture or ranching . . . . More broadly, rural is the antonym of urban and includes all areas in between cities and towns of a particular size.

Kenaitze Indian Tribe v. State of Alaska, 860 F.2d 312, 316-17 (9th Cir. 1988) (emphasis added). We noted to Judge Holland that this description does not supply the answer to the question of what "particular size" is relevant, nor how that population level should be used.

We described to the court several possible routes an agency (federal or state) could take to fleshing out the meaning of "rural" in ANILCA, in developing an approach which would ultimately be applied to all of Alaska, not only the Kenai. The first of those focuses on the examples of population levels used by the ninth circuit in demonstrating what it considered the "conventional" use of the word. In one of the examples given by the court, used for purposes of computing social security payments to hospitals, all of Alaska except Anchorage would be rural. For purposes of applying the Housing Act of 1949, rural area is defined "as any open country, or any place, town, village, or city which is not part of or associated with an urban area" and where the population does not exceed certain limits. Thus, under this approach, even if a community was lower than the relevant population level, if it was "associated with" a larger place, it would not be rural.

The same is true with the often quoted Census Bureau definition of rural of 2,500, another example given by the court. In fact, the Census Bureau definition is apparently not straightforward either, and depends on whether or not a smaller place is closely associated with a larger place, in which case it is not rural. The Census Bureau also provides for certain circumstances when communities with populations of higher than 2,500 are still considered rural, because of unique circumstances. In conjunction with discussing the Census Bureau's definition, we suggested that Judge Holland might want to ask the federal government to file a friend of the court brief with him, describing what it believes "rural" to mean, because we understand that when the federal agencies were planning to take over management in Alaska in 1985-86, they were at that time intending to use the Census Bureau definition, or at least the population level from that definition.

Another definition that we described to the court as possibly being relevant or useful to the appropriate administrative agency was the state's 1982 regulatory definition which was part of its initial packet submitted to the Department of the Interior and certified as being consistent with ANILCA. (It is noteworthy that even the ninth circuit admitted in Kenaitze that that initial certification by the Secretary was due deference by the courts.) That definition was later repealed on the advice of the Department of Law, because of potential equal protection problems based on what the state and the federal government at the time believed was the focus of "rural" in ANILCA--differences in fish and game use patterns in different parts of the state. Before that repeal it had provided that rural areas were those areas "outside the road connected area of a borough, municipality, or other community with a population of 7,000 or more." 5 AAC 99.020 (1982). (It is not clear from the face of the definition whether the term "road connected" referred to connected to a major road system, or connected within the borough itself. However, since the definition presumably was intended to exclude both Juneau and of Ketchikan, two of the named nonrural examples in ANILCA's legislative history, it is probably safe to assume that the requirement would have treated the Alaska Marine Highway as a road.

Another set of factors we pointed out to the court that an agency might look at are the population levels of the five rural examples named in ANILCA's legislative history, as those communities looked in 1980. The breakdown was as follows: Dillingham, 1,563; Kotzebue, 2,054; Barrow, 2,267; Nome, 2,544; and Bethel 3,576.

Another criteria which has been mentioned in several contexts as possibly being relevant to the appropriate definition of "rural" is the concept of density. However, in discussing density, one has to consider what land area is to be compared to what population level, and there are several different approaches possible. For example, city limits could be used, but that can result in very high densities in bush communities, which most people would think of as rural. Another possibility would be to use the area harvested by people living in the community compared with the number of people in the community. One possible difficulty with that is that the geographic range of harvests by Anchorage and Fairbanks residents may be rather large, which could result in lower than expected densities for those places. Another possible combination that has been suggested is the fish and game habitat area adjacent to or contiguous with the community in question.

Norman Cohen, Deputy Commissioner  
Department of Fish and Game  
AGO File 221-87-0046

March 22, 1990  
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A final factor which has been suggested by the Kenaitze, and which we mentioned to the judge, is the "rural character" of a place, regardless of its size. In considering the use of such a factor, it would be necessary to be very careful about what was included in that concept. At first blush it might seem fairly similar to the state's statutory definition, which the ninth circuit had already ruled is not consistent with the use of the word "rural" in ANILCA.

After the argument, Judge Holland said he was not very persuaded by the Kenaitze's argument that the ninth circuit had already decided that the Kenai Peninsula was rural, but that he was also had "serious misgivings" about whether it was appropriate for him to provide the guidance that the state had asked for, or whether he even had the power to do so. He took the matter under advisement.

LIS:tg

cc: Don Collinsworth, Commissioner  
Molly McCammon, Special Assistant  
Steve Behnke, Director  
Division of Subsistence  
Department of Fish and Game

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John Katz  
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# Alaska State Legislature

## Senate Resources Committee

Senator Bettye Fahrenkamp, Chairman  
Senator Jay Kertula, Vice Chairman  
Senator Dick Ellason  
Senator Steve Frank  
Senator Rick Hallford  
Senator Arliss Sturgulewski  
Senator Fred Zharoff



P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4907

March 15, 1990

The Honorable Don Collinsworth  
Commissioner of Fish and Game  
P.O. Box 3-2000  
Juneau, AK 99802

Dear Commissioner Collinsworth:

As you know, the Senate Resources Committee is currently exploring possible solutions to the subsistence issue. I have held several hearings in order to brief members on what options the administration has pursued and to provide an historical perspective in regard to subsistence at both the state and federal levels.

In order to more fully understand the issue, it would be useful if you could illustrate for the committee the current level of subsistence use and what you envision as potential conflicts between subsistence use and sport or commercial use. In that regard it would be helpful if you could provide an enumeration of each subsistence hunt or fishery in the state, and the rationale the board used to determine the need for the subsistence use. Has the subsistence priority has ever been invoked, and if so, when? For example, are resident sport hunters or other classes of hunters precluded from some hunts as a result of the state's subsistence law? To what extent do you anticipate the enlarged class of subsistence users under McDowell to impact hunting and fishing? What specific restrictions, if any, apply to subsistence users under methods and means? For example, are subsistence users restricted from using aircraft or motorized vehicles while subsistence hunting or fishing?

I would like your suggestions for a definition of "rural" that, if placed in state statute or federal law, would resolve some or all of the legal issues in reference to litigation such as the Kenaitze case, the Sitka suit, and McDowell's continuation of his suit challenging federal constitutionality of the subsistence law.

The administration has provided the Senate Resources Committee with a list of nine subsistence options. It would be helpful to us to have a list of actions that would be necessary to carry out each option.

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March 15, 1990

I believe that in order to find solutions to the subsistence issue it is necessary for the legislature to understand the level of subsistence, actions that the board has taken to date, and what potential problems you anticipate occurring. I appreciate your attention to this matter.

Sincerely,

*Betty Fahrenkamp*  
Betty Fahrenkamp  
Chairman

BF:res/np

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802-2000  
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March 29, 1990

The Honorable Bettye Fahrenkamp  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Senator Fahrenkamp:

Your March 15 letter requests information about how the subsistence law was working before the McDowell decision and what management problems we expect as a result of that decision. This letter responds to that request. We are consolidating our response to your other questions in a separate letter from the Department of Law.

Before the Alaska Supreme Court decision in McDowell, state law required that subsistence uses by rural Alaskans be authorized and protected, as long as sustained yield allowed a harvest. The court ruled that the rural limitation in the law violated the Alaska Constitution; still pending is whether the mandate and priority for subsistence have also fallen because they were not severable, or whether they remain in place but apply to all Alaskans.

The decision that Alaska's rural limitation is unconstitutional may result in loss of state management of subsistence fish and game on federal land in Alaska. This problem arises because the federal subsistence law, Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), provides that subsistence uses by "rural Alaska residents" have a priority on federal land in Alaska.

Under ANILCA, those subsistence protections are to be administered by the Secretaries of Interior and Agriculture unless the state has laws of general applicability providing the rural limitation and the priority. As a result of the McDowell decision, the state no longer has the option of defining subsistence uses in a way consistent with federal law, absent a change in the state constitution.



How the process worked before McDowell

In assessing how the subsistence law worked before the McDowell decision, it seems useful to begin by describing the procedures used by the Boards of Fisheries and Game to implement the law. The boards followed a three-step process in making subsistence regulations:

1. The Joint Boards of Fisheries and Game decided which communities and areas were "rural." In state law, "rural" is defined as communities and areas in which customary and traditional, noncommercial uses of fish and game are a principal characteristic of the local economy. The board adopted a regulation listing thirteen criteria as a guide in determining rural (5 AAC 99.012). Federal law does not define rural.
2. Each board decided which rural communities or areas had "customary and traditional" uses of particular fish stocks and game populations. The boards adopted a regulation with eight criteria to guide these stock specific decisions (5 AAC 99.010(b)6). Only residents of those rural communities or areas showing a customary and traditional pattern of use of a particular fish stock or game population could participate in subsistence hunting or fishing for that particular resource.
3. Each board adopted regulations providing for subsistence uses by the residents of qualifying communities. AS 16.05.258 requires each board to adopt regulations giving a reasonable opportunity for customary and traditional uses for each game population and fish stock for which a harvestable surplus exists, with a priority over nonsubsistence uses, if necessary. This was done on a case-by-case basis, in response to proposals submitted by the public, fish and game advisory committees, and other groups.

If a fish stock or game population was in such short supply that only some subsistence users could be allowed to harvest it, the boards used three criteria to select among subsistence users. This has been called a "Tier 2" situation, in contrast with "Tier 1," where all subsistence uses could be accommodated. The three criteria for determining who can harvest at Tier 2 are (1) customary and direct dependence on the fish stock or game population as the mainstay of livelihood, (2) local residency, and (3) availability of alternative resources (AS 16.05.258). All nonsubsistence uses must be eliminated before "Tier 2" can be implemented.

Once the boards provided for customary and traditional subsistence uses, they could allocate any additional harvest surplus to other user groups. The 1986 law recognized personal use fisheries as a way to ensure that all Alaskans had an opportunity to harvest salmon and other fish by efficient means, primarily by net, dip net, and fishwheel (AS 16.05.251(d)). It also created a resident preference for taking moose, caribou, elk, and deer (AS 16.05.255).

#### Results of implementing the subsistence law

By 1989 the joint boards had designated 225 Alaskan communities as rural, encompassing about 110,000 people, approximately 20 percent of the state's population. Enclosure 1 lists which communities in the state were initially identified as rural. The boards had not fully completed refining the identification of rural areas at the time of the McDowell decision.

The separate boards had also largely completed a first cut at deciding which fish stocks and game populations were subject to subsistence uses. Rural residents did not automatically qualify for subsistence uses. In some remote areas, the boards concluded that most fish and game were customarily and traditionally used. In other areas, where people had more recently settled, they concluded that subsistence uses did not occur. For example, in some rural areas, they decided that sheep populations were not subject to subsistence uses. Enclosure 2 lists the game populations and fish stocks which the boards concluded were customarily and traditionally used, and the communities and areas which qualified for those uses.

In many cases the Board of Game decided that existing general hunting regulations provided sufficient opportunity for subsistence. In these cases they adopted parallel subsistence hunting regulations. In some areas where demand for wildlife was high, longer seasons, larger bag limits, or other changes in regulations were provided for subsistence use of selected species. Most of these advantages were in caribou, dall sheep, and moose regulations. Enclosure 3 lists hunts where subsistence regulations differ from general hunting regulations.

Review of this list shows that subsistence and resident hunting regulations are identical in more than half the game management units in the state. In 1989 there were only two game populations in the state limited to subsistence hunting only. These were the GMU 1D moose hunt, near Haines in southeast Alaska, and the moose hunt in the Minto Management area, a portion of GMU 20(B), near Fairbanks. In both cases, very small moose populations can support only a very limited harvest.

Longer seasons for subsistence provided advantages in some hunts. Subsistence regulations provided 8,635 potential hunting days for caribou statewide (the total of all the open hunting seasons in all the game management units). Resident regulations provided 7,550 hunting days, or 13 percent fewer. Resident moose hunts had 25 percent fewer hunting days compared with subsistence hunts.

Subsistence regulations provided other advantages in some game management subunits. These included less restrictive regulations about horn and antler size, for example. In other subunits, the bag limit was higher for subsistence. In some subunits, a combination of regulations provided multiple advantages, such as a longer season and less restrictive antler limits.

Caribou seasons are open in 50 of Alaska's 69 game management subunits. In 31 of the hunts, there is no difference between resident and subsistence regulations. Of those where subsistence has an advantage, five have longer seasons, five have less restrictive regulations, and two have higher bag limits. Seven hunts have multiple advantages.

Moose hunting is open in 62 of the 69 subunits. In 34 there is no difference in regulations. Fifteen have longer seasons, four have higher limits, and eight have multiple advantages for subsistence.

For example, the moose season in GMU 9B, in the northern Bristol Bay watershed, opens five days earlier in September for subsistence than for the general hunt. Other regulations are identical for subsistence and other resident hunters. A December season is open to both subsistence and resident hunters.

The situation is slightly different for subsistence fisheries, which frequently have shorter seasons than sport fisheries but allow more efficient gear and more liberal bag limits. Personal use fisheries, which are open to all Alaska residents, allow the same efficient gear but typically have shorter seasons and smaller bag limits than subsistence fisheries.

One example of a situation where all uses are accommodated while protecting subsistence is the Kuskokwim River, where subsistence fishing is extremely important to local residents. Any Alaska resident may fish for salmon with nets under personal use regulations, but because of high demand and competition for kings, the personal use fishermen may only fish after July 1 and cannot use king gear.

A very low percentage of the harvestable surplus of fish and wildlife in Alaska goes to subsistence--less than 4 percent of the total fish and wildlife by weight (enclosure 4). This is an extremely important contribution to the economy of rural villages,

providing 35 to 45 million pounds of high quality, nutritious food, that would otherwise have to be purchased with the limited cash typically available in these areas of the state.

The relatively small, clearly specified set of people who qualify for subsistence uses has created predictability for management and enforcement purposes, as well as for other user groups. For this reason, implementation of subsistence regulations has created few real conflicts with sport and commercial uses.

A number of controversies and court cases have resulted from the boards' ongoing efforts to implement the subsistence law. Enclosure 5 summarizes the status of current court cases involving subsistence.

What happens to alaskan's hunting and fishing opportunities and to fish and game management after July 1?

Attorneys still disagree about many of the legal and management implications of the McDowell decision. However, they seem to agree that there will be major changes in the way fish and game is managed and allocated in Alaska. Two of the largest problems appear to be "Tier 2" management and the division of fish and wildlife management jurisdiction between state and federal agencies.

One area of legal uncertainty is whether the McDowell decision means that only the rural limitation in the state subsistence law is unconstitutional, or whether the entire statute is unconstitutional. This hinges on whether or not the rural limitation is severable. If it is not severable, then in addition to the rural limitation, the definitions and priority for subsistence fall. This would mean that the boards could still authorize subsistence fisheries at their discretion that would be open to all Alaskans, but would not have a priority over other uses. If it is severable, then all Alaskans qualify for subsistence uses, and subsistence still has a priority.

We will not know the answer to these questions until the state superior court takes further action in the McDowell case.

Tier 2 disruptions

If the rural limitation is severable from the remainder of the subsistence law and all Alaskans qualify for subsistence uses, we face the same type of management chaos and harvest disruptions for the 1990 hunting seasons that we experienced after the Madison

court decision in 1985. Any subsistence hunts or fisheries on state lands where participation must be limited in order to protect the resource would have to be managed under the Tier 2 procedures described above.

The department has conducted a preliminary assessment of which hunts and fisheries may have to be limited to Tier 2 if all Alaskans qualify for subsistence. This assessment, enclosure 6, indicates that more than 30 hunts would have to be limited to Alaskans who qualify under Tier 2 criteria. These include some of the most popular hunts in the state, including the Nelchina caribou hunt.

Tier 2 hunts would substantially reallocate game and disrupt normal hunting opportunity because permit drawings could no longer be used to decide who participates in these hunts. Instead, the Tier 2 statutory criteria would have to be applied to create a point system to rank applicants and to decide who could hunt.

Because the McDowell decision appears to mean that one of the Tier 2 criteria (local residency) is invalid, the boards and department would have to rely on the other two criteria, "direct dependence on the resource" and "availability of alternative resources" in allocating permits. Nonresidents would have to be excluded from these hunts.

Tier 2, as the department learned from its experience in 1985, is time consuming and expensive to administer. It affects big-game guiding because of the nonresident exclusions. It also results in loss of revenues to the state from nonresident licenses and tag fees. It may be necessary for the Division of Wildlife Conservation to seek supplemental funds to operate these hunts in 1990. Enclosure 7 is a paper prepared by the department describing the effects of the 1985 Tier 2 hunts.

#### Federal management takeover

If the state cannot provide a rural preference for subsistence, ANILCA Title VIII requires federal agencies to provide a subsistence preference on federal lands. Federal agencies are currently planning for subsistence management on federal lands beginning July 1, unless the state is able to extend the stay granted by the Alaska Supreme Court after McDowell.

Although discussions between the state and the Department of Interior are underway, the scope of federal subsistence management is still unclear. Federal land managers are just beginning to draft a federal subsistence management plan. Until it is completed and released, we can only provide a broad overview of the possible effects of federal management.

The specific effects of federal subsistence management will depend to a large extent on the position the federal government takes, or is required by the courts to take, on three major issues. These are: (1) what lands and resources they will exert jurisdiction over, (2) what communities and areas the federal agencies will define as "rural", and (3) what process they will use for adopting subsistence regulations for federal areas. Their decisions on these questions will significantly affect all Alaskans who use fish and wildlife. In addition, Alaskans may have little say in these decisions.

### "Jurisdiction"

About 60 percent of Alaska is federal land. Many popular and important hunting and fishing areas in Alaska are on or adjacent to federal lands.

The federal government's jurisdiction over hunting and fishing in these areas is unclear and subject to a number of untested legal theories. At one extreme, the federal government may have very broad authority to reach out and control fish and wildlife far from federal land if necessary to protect subsistence uses on federal lands. At the other extreme, their authority may be very narrow, limited only to closing federal areas to access. It seems clear that federal agencies will regulate hunting on federal lands. For fishing, the issue is much more complicated. The federal government might initially claim relatively narrow jurisdiction and authority, and then face court challenges to determine whether ANILCA requires a broader interpretation.

Even a narrow interpretation of ANILCA, however, is likely to mean serious fish and game management problems and disruptions to users. The interlocking nature of federal, state, and private lands and waters, together with conflicting management goals, are likely to result in serious difficulty in coordinating state and federal management.

For example, the state boards may not be able to adopt regulations and authorize harvests until they know what regulations will apply on federal lands or waters. They might also have to reassess state regulations in light of each regulatory change by federal agencies. Otherwise, the state runs the risk of allowing an overharvest, which would be prohibited by the state constitution's sustained yield mandate. This problem would be exacerbated by emergency circumstances, which call for quick and effective action. This could result in the loss of harvest opportunities for Alaskans.



Alaskan hunting and fishing regulations are already complicated. Different regulations adopted by different agencies for adjacent lands are likely to seriously increase regulatory complexity. This will not only be frustrating for hunters and fishermen, but will also increase enforcement problems. In most areas of the state it is very difficult to determine where state lands end and federal lands begin. People cited for hunting or fishing violations may claim as a defense that they were confused as to what regulations apply at any given location.

Alaskans' hunting and fishing opportunities could be reduced by a federal takeover. This could occur because federal management would be less precise than state management has been, if the federal government does not adequately fund management on federal lands. This could force federal managers to be more conservative in authorizing harvests. If they do authorize harvests without adequate data, they could run the risk of overharvest.

Another potential reason for reductions in harvest opportunities are the management philosophies of the federal agencies. For example, the National Park Service (NPS) has attempted to minimize hunting and fishing, even in national preserves where those uses were authorized by Congress, by narrowly interpreting access provisions. NPS regulations closing subsistence and commercial fishing in the waters of Glacier Bay National Monument are another recent example with serious implications for both subsistence and commercial users. Other federal agencies have also demonstrated a disregard for Alaskan's uses of fish and wildlife.

Moreover, even if they initially choose to interpret ANILCA narrowly, over time the federal agencies are likely to exert jurisdiction over fish and game management on state lands and waters in cases where these resources are important for subsistence. ANILCA and its legislative history indicate Congress's intent to protect subsistence uses broadly. Together with other legal precedents, this may cause federal agencies, either through choice or court direction, to exert wider jurisdiction over fish and game. It seems safe to predict that Alaskans will be in court for many more years in order to establish the respective jurisdictions of the state and federal government over fish and wildlife, if federal agencies take over subsistence management under ANILCA.

#### "Rural"

During their 1985-86 contingency planning, federal agencies indicated that they would define "rural" as places smaller than 2500 in population. This straightforward population definition would be administratively convenient, but it would eliminate some places that many Alaskans and Congress agreed should have

subsistence uses, such as Bethel (4000), Barrow (3000), Nome (3100), and Kotzebue (2600). It might also include, as rural, places like Sterling (population 1700), which is only a few miles from Soldotna (population 3800) and Kenai (population 6500), and which is closely connected to those larger towns.

If federal agencies take a very narrow view of rural, they may cut out places that many agree should have subsistence uses. If they take a broad view and include more places as rural, urban Alaskan's hunting and fishing opportunities on federal lands may be more restricted.

### "Federal Process"

Probably the most critical issue is who will make the decisions about hunting and fishing on federal lands, and what role the Alaskan public will have in making those decisions. As they planned to do in 1985-86, the federal agencies will probably create some type of federal subsistence board, with representation from the four major federal landowners. Federal land management policies can therefore be expected to be major forces in deciding hunting and fishing regulations.

A federal takeover is likely to accelerate the trend toward increased influence from national organizations in determining how fish and wildlife are used and managed on federal lands. Federal land managers may face greater pressure from national anti-hunting and trapping interests than the boards did in deciding hunting and fishing regulations.

We expect the federal government to initially adopt as much of the state's hunting and fishing regulations as they can. However, in areas of controversy over limited resources, they may act more conservatively by closing areas or reducing seasons or bag limits for nonsubsistence uses. We expect this to occur particularly in areas managed by the NPS, such as national preserves.

One suggestion has been for the state to contract or work out cooperative agreements with the federal government to allow the state to continue a major role in management on federal lands. While this is still being examined, it is possible that the state could contract for studies and information gathering for the federal agencies. However, it is unlikely that the state could make management decisions, in part because the federal agencies may not be able to delegate away the final decisions.

Another suggestion is that over time we will be able to develop a greater role for Alaskans and to resume state fish and game management on federal lands. One option for doing this would be



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amending ANILCA. However, the state's experience with federal statutes concerning the division of wildlife management responsibilities is not encouraging.

It is clear that under federal management Alaskans would have less say in how fish and game are managed and who gets how much. Federal regulations would be adopted under federal procedures, and would be ultimately signed off on in Washington, D.C. Alaskans would have less access to this regulatory process, compared with the state's board system, with its open public participation.

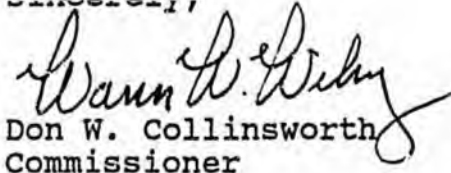
#### Summary

In summary, Alaska is faced with an extremely serious situation after July 1. In the short run, we face disruptions to Alaskans hunting and fishing opportunities. In the long run, we risk damage to highly valued resources, as well as even greater disruptions for users. On state lands, if all Alaskans qualify for subsistence, we will have to implement expensive and onerous Tier 2 hunts to determine which Alaskans are allowed to participate. On federal lands, federal agencies will be determining which hunts and fisheries are open, how many animals can be taken, and who gets to participate. Perhaps the greatest danger, however, is that for the first time since statehood, Alaskans will be letting the federal bureaucracy make these decisions for us.

As indicated throughout this analysis, there is tremendous uncertainty concerning the effects of the McDowell decision on fish and game management and Alaskans' uses of these resources. Because of the wide range of variables, including the fact that the federal plan is still being developed, this description of implications may be far from complete.

Please feel free to contact us for more detail on specific areas of concern.

Sincerely,



Don W. Collinsworth  
Commissioner

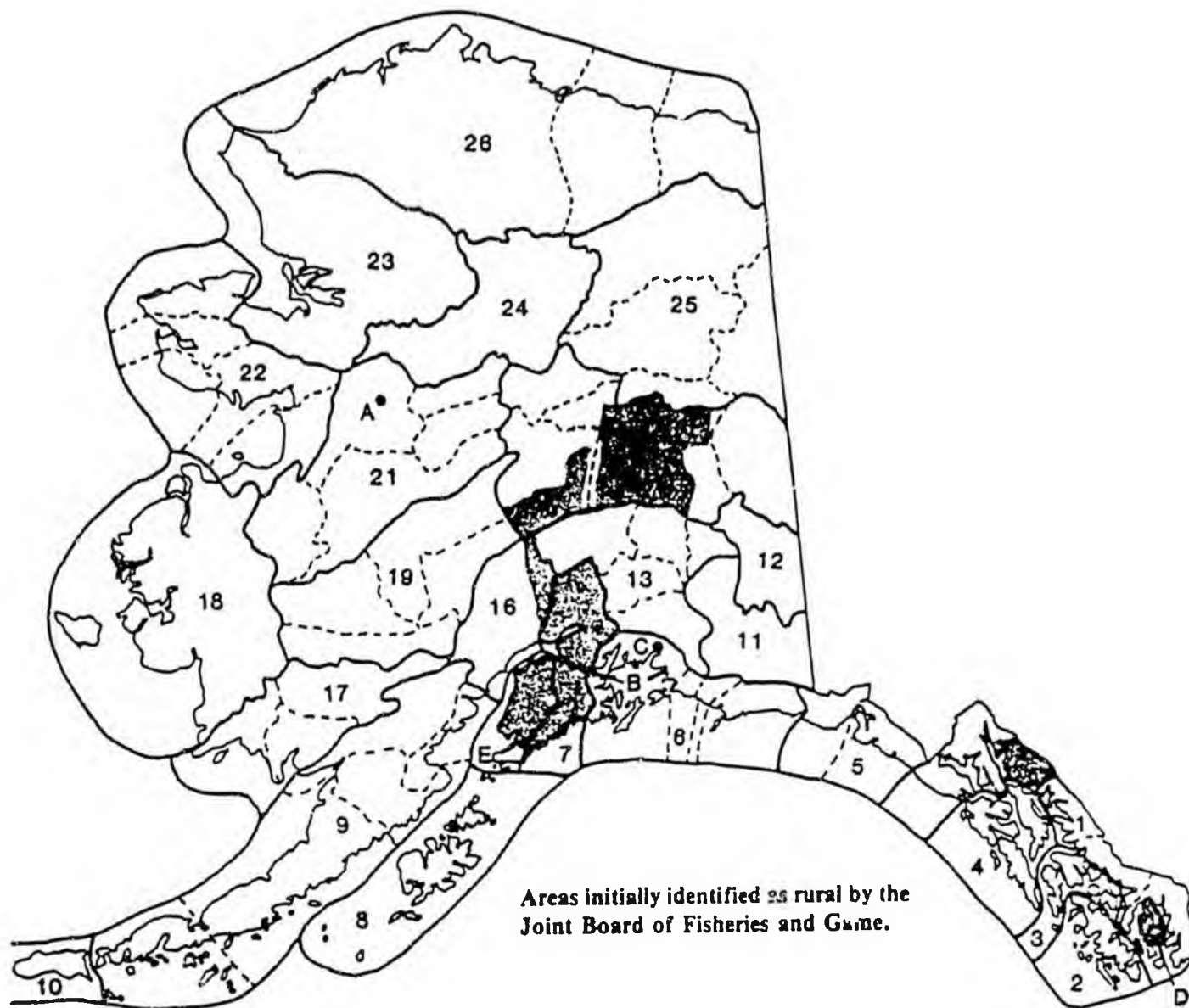
Enclosures

Senator Fahrenkamp

-11-

March 29, 1990

cc: Senate Resources Committee members  
House Resource Committee members  
Department of Law  
Denby Lloyd, Governor's Office  
Mike Irwin, Governor's Office  
Glenn Elison, FWS



■ Non-Rural

A - Galena Airforce Station within the Galena dike

B - Whittier city limits

C - Valdez city limits

□ Rural

D - Saxman city limits

E - Unit 15(C) west of a line from the northern most point of Rocky Bay to the head of Tutka Bay on the Kenai Peninsula

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDemog.WK1)

| COMMUNITY                                      | SOURCE | POPULATION<br>YEAR | COMMUNITY<br>REGION | SUBREGION         | GMU         | RURAL<br>STATUS |
|------------------------------------------------|--------|--------------------|---------------------|-------------------|-------------|-----------------|
| Balance of Eielson Reservation Census Sub-Area | ADOL   | 85                 | 132 Interior        | Fairbanks Area    | 20B         | Nonrural        |
| Balance of Fairbanks-Northstar Census Sub-Area | ADOL   | 85                 | 29634 Interior      | Fairbanks Area    | 20A,20B,20F | Nonrural        |
| Balance of Southeast Fairbanks Census area     | ADOL   | 85                 | 1933 Interior       | Fairbanks Area    | 20,12       | Nonrural        |
| Big Delta                                      | ADOL   | 85                 | 388 Interior        | Fairbanks Area    | 200         | Nonrural        |
| College                                        | ADOL   | 85                 | 6646 Interior       | Fairbanks Area    | 20B         | Nonrural        |
| Delta Junction                                 | ADOL   | 85                 | 1299 Interior       | Fairbanks Area    | 200         | Nonrural        |
| Eielson Air Force Base                         | ADOL   | 85                 | 4932 Interior       | Fairbanks Area    | 20B         | Nonrural        |
| Ester                                          | ADOL   | 85                 | 285 Interior        | Fairbanks Area    | 20B         | Nonrural        |
| Fairbanks                                      | ADOL   | 85                 | 27099 Interior      | Fairbanks Area    | 20B         | Nonrural        |
| Fort Greely                                    | ADOL   | 85                 | 1672 Interior       | Fairbanks Area    | 200         | Nonrural        |
| Fox                                            | ADOL   | 85                 | 189 Interior        | Fairbanks Area    | 20B         | Nonrural        |
| Harding Lake Census Designated Place           | ADOL   | 85                 | 58 Interior         | Fairbanks Area    | 20B         | Nonrural        |
| Moose Creek Census Designated Place            | ADOL   | 85                 | 803 Interior        | Fairbanks Area    | 20B         | Nonrural        |
| North Pole                                     | ADOL   | 85                 | 1640 Interior       | Fairbanks Area    | 20B         | Nonrural        |
| Salcha                                         | ADOL   | 85                 | 533 Interior        | Fairbanks Area    | 20B         | Nonrural        |
| Two Rivers                                     | ADOL   | 85                 | 523 Interior        | Fairbanks Area    | 20B         | Nonrural        |
| Anchorage                                      | ADOL   | 85                 | 235269 Southcentral | Anchorage         | 14C         | Nonrural        |
| Balance of Matanuska-Susitna Census area       | ADOL   | 85                 | 26378 Southcentral  | Matanuska-Susitna | 13,14,16    | Nonrural        |
| Big Lake                                       | ADOL   | 85                 | 610 Southcentral    | Matanuska-Susitna | 14A         | Nonrural        |
| Bodenburg Butte Census Designated Place        | ADOL   | 85                 | 1232 Southcentral   | Matanuska-Susitna | 14A         | Nonrural        |
| CHICKALOON                                     | ADFG   |                    | Southcentral        | Matanuska-Susitna | 14A         | Nonrural        |
| Houston                                        | ADOL   | 85                 | 725 Southcentral    | Matanuska-Susitna | 14A         | Nonrural        |
| Montana Census Designated Place                | ADOL   | 85                 | 103 Southcentral    | Matanuska-Susitna | 14B         | Nonrural        |
| Palmer                                         | ADOL   | 85                 | 3016 Southcentral   | Matanuska-Susitna | 14A         | Nonrural        |
| PETERSVILLE                                    | ADFG   |                    | Southcentral        | Matanuska-Susitna | 16A         | Nonrural        |
| Sutton                                         | ADOL   | 85                 | 340 Southcentral    | Matanuska-Susitna | 14A         | Nonrural        |
| Talkeetna                                      | ADOL   | 85                 | 269 Southcentral    | Matanuska-Susitna | 14B         | Nonrural        |
| TRAPPER CREEK                                  | ADFG   |                    | Southcentral        | Matanuska-Susitna | 16A         | Nonrural        |
| Wasilla                                        | ADOL   | 85                 | 3666 Southcentral   | Matanuska-Susitna | 14A         | Nonrural        |
| Willow                                         | ADOL   | 85                 | 494 Southcentral    | Matanuska-Susitna | 14A         | Nonrural        |

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDemog.WK1)

| COMMUNITY                                   | POPULATION |      |                      | REGION       | SUBREGION             | GMU       | RURAL STATUS |
|---------------------------------------------|------------|------|----------------------|--------------|-----------------------|-----------|--------------|
|                                             | SOURCE     | YEAR | COMMUNITY POPULATION |              |                       |           |              |
| Valdez                                      | ADOL       | 85   | 3271                 | Southcentral | Prince William Sound  | 60        | Nonrural     |
| Whittier                                    | ADOL       | 85   | 344                  | Southcentral | Prince William Sound  | 60        | Nonrural     |
| Anchor Point                                | ADOL       | 85   | 327                  | Southcentral | Upper Kenai Peninsula | 15C       | Nonrural     |
| Balance of Kenai-Cook Inlet Census Sub-Area | ADOL       | 85   | 12821                | Southcentral | Upper Kenai Peninsula | 15,168,9A | Nonrural     |
| Balance of Seward Census Sub-Area           | ADOL       | 85   | 303                  | Southcentral | Upper Kenai Peninsula | 7         | Nonrural     |
| Clam Gulch                                  | ADOL       | 85   | 160                  | Southcentral | Upper Kenai Peninsula | 15C       | Nonrural     |
| Cooper Landing                              | ADOL       | 85   | 386                  | Southcentral | Upper Kenai Peninsula | 7         | Nonrural     |
| Fritz Creek Census Designated Place         | ADOL       | 85   | 1610                 | Southcentral | Upper Kenai Peninsula | 15C       | Nonrural     |
| Halibut Cove                                | ADOL       | 85   | 52                   | Southcentral | Upper Kenai Peninsula | 15C       | Nonrural     |
| Homer                                       | ADOL       | 85   | 3632                 | Southcentral | Upper Kenai Peninsula | 15C       | Nonrural     |
| Hope                                        | ADOL       | 85   | 224                  | Southcentral | Upper Kenai Peninsula | 7         | Nonrural     |
| Jakolof Bay Census Designated Place         | ADOL       | 85   | 81                   | Southcentral | Upper Kenai Peninsula | 15C       | Nonrural     |
| Kachemak City                               | ADOL       | 85   | 338                  | Southcentral | Upper Kenai Peninsula | 15C       | Nonrural     |
| Kalifornsky Census Designated Place         | ADOL       | 85   | 332                  | Southcentral | Upper Kenai Peninsula | 15B       | Nonrural     |
| Kasilof                                     | ADOL       | 85   | 643                  | Southcentral | Upper Kenai Peninsula | 15B       | Nonrural     |
| Kenai                                       | ADOL       | 85   | 6518                 | Southcentral | Upper Kenai Peninsula | 15A       | Nonrural     |
| Moose Pass                                  | ADOL       | 85   | 145                  | Southcentral | Upper Kenai Peninsula | 7         | Nonrural     |
| Nikishka                                    | ADOL       | 85   | 1630                 | Southcentral | Upper Kenai Peninsula | 15A       | Nonrural     |
| Ninilchik                                   | ADOL       | 85   | 451                  | Southcentral | Upper Kenai Peninsula | 15C       | Nonrural     |
| Salamatof Census Designated Place           | ADOL       | 85   | 737                  | Southcentral | Upper Kenai Peninsula | 15A       | Nonrural     |
| Seward                                      | ADOL       | 85   | 2152                 | Southcentral | Upper Kenai Peninsula | 7         | Nonrural     |
| Soldotna                                    | ADOL       | 85   | 3818                 | Southcentral | Upper Kenai Peninsula | 15A       | Nonrural     |
| Sterling                                    | ADOL       | 85   | 1732                 | Southcentral | Upper Kenai Peninsula | 15A       | Nonrural     |
| Juneau                                      | ADOL       | 85   | 26270                | Southeast    | Juneau                | 1C        | Nonrural     |
| Balance of Ketchikan Census Area            | ADOL       | 85   | 351                  | Southeast    | Ketchikan             | 1A        | Nonrural     |
| Clover Pass                                 | ADOL       | 85   | 547                  | Southeast    | Ketchikan             | 1A        | Nonrural     |
| Herring Cove                                | ADOL       | 85   | 120                  | Southeast    | Ketchikan             | 1A        | Nonrural     |
| Ketchikan                                   | ADOL       | 85   | 7311                 | Southeast    | Ketchikan             | 1A        | Nonrural     |

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDENOG.WK1)

| COMMUNITY             | POPULATION COMMUNITY |      |                   | SUBREGION | GHU | RURAL STATUS |
|-----------------------|----------------------|------|-------------------|-----------|-----|--------------|
|                       | SOURCE               | YEAR | POPULATION REGION |           |     |              |
| Ketchikan East        | ADOL                 | 85   | 469 Southeast     | Ketchikan | 1A  | Nonrural     |
| Mountain Point        | ADOL                 | 85   | 480 Southeast     | Ketchikan | 1A  | Nonrural     |
| North Tongass Highway | ADOL                 | 85   | 2089 Southeast    | Ketchikan | 1A  | Nonrural     |
| Pennock Island        | ADOL                 | 85   | 109 Southeast     | Ketchikan | 1A  | Nonrural     |

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDemog.WK1)

| COMMUNITY                                       | SOURCE | POPULATION<br>YEAR | COMMUNITY<br>POPULATION | REGION | SUBREGION     | GMU     | RURAL<br>STATUS |
|-------------------------------------------------|--------|--------------------|-------------------------|--------|---------------|---------|-----------------|
| Anaktuvuk Pass                                  | ADOL   | 85                 | 238                     | Arctic | North Slope   | 24      | Rural           |
| Atkasuk                                         | ADOL   | 85                 | 190                     | Arctic | North Slope   | 26A     | Rural           |
| Balance of Barrow-Point Hope Census Sub-Area    | ADOL   | 85                 | 19                      | Arctic | North Slope   | 23,26   | Rural           |
| Balance of Prudhoe Bay-Kaktovik Census Sub-Area | ADOL   | 85                 | 101                     | Arctic | North Slope   | 26B,26C | Rural           |
| Barrow                                          | ADOL   | 85                 | 3075                    | Arctic | North Slope   | 26A     | Rural           |
| Cape Lisburne                                   | ADOL   | 85                 | 11                      | Arctic | North Slope   | 23,26A  | Rural           |
| Deadhorse                                       | ADOL   | 85                 | 65                      | Arctic | North Slope   | 26B     | Rural           |
| Kaktovik                                        | ADOL   | 85                 | 209                     | Arctic | North Slope   | 26C     | Rural           |
| Nulqut                                          | ADOL   | 85                 | 337                     | Arctic | North Slope   | 26A     | Rural           |
| Point Hope                                      | ADOL   | 85                 | 597                     | Arctic | North Slope   | 23      | Rural           |
| Point Lay                                       | ADOL   | 85                 | 104                     | Arctic | North Slope   | 26A     | Rural           |
| Prudhoe Bay                                     | ADOL   | 85                 | 56                      | Arctic | North Slope   | 26B     | Rural           |
| Wainwright                                      | ADOL   | 85                 | 508                     | Arctic | North Slope   | 26A     | Rural           |
| Ambler                                          | ADOL   | 85                 | 255                     | Arctic | Northwest     | 23      | Rural           |
| Balance of Kobuk Census Area                    | ADOL   | 85                 | 85                      | Arctic | Northwest     | 23      | Rural           |
| Buckland                                        | ADOL   | 85                 | 248                     | Arctic | Northwest     | 23      | Rural           |
| Deering                                         | ADOL   | 85                 | 153                     | Arctic | Northwest     | 23      | Rural           |
| Kiana                                           | ADOL   | 85                 | 392                     | Arctic | Northwest     | 23      | Rural           |
| Kivalina                                        | ADOL   | 85                 | 285                     | Arctic | Northwest     | 23      | Rural           |
| Kobuk                                           | ADOL   | 85                 | 65                      | Arctic | Northwest     | 23      | Rural           |
| Kotzebue                                        | ADOL   | 85                 | 2633                    | Arctic | Northwest     | 23      | Rural           |
| Noatak                                          | ADOL   | 85                 | 330                     | Arctic | Northwest     | 23      | Rural           |
| Noorvik                                         | ADOL   | 85                 | 529                     | Arctic | Northwest     | 23      | Rural           |
| Selawik                                         | ADOL   | 85                 | 589                     | Arctic | Northwest     | 23      | Rural           |
| Shungnak                                        | ADOL   | 85                 | 226                     | Arctic | Northwest     | 23      | Rural           |
| Balance of Nome Census area                     | ADOL   | 85                 | 122                     | Arctic | Seward-Norton | 22      | Rural           |
| Brevig Mission                                  | ADOL   | 85                 | 165                     | Arctic | Seward-Norton | 22D     | Rural           |
| Diomedes                                        | ADOL   | 85                 | 158                     | Arctic | Seward-Norton | 22E     | Rural           |
| Elim                                            | ADOL   | 85                 | 237                     | Arctic | Seward-Norton | 22B     | Rural           |
| Gambell                                         | ADOL   | 85                 | 494                     | Arctic | Seward-Norton | 22D     | Rural           |

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDHMOG.WK1)

| COMMUNITY                                     | POPULATION COMMUNITY |      |                   | SUBREGION       | GMU   | RURAL STATUS |
|-----------------------------------------------|----------------------|------|-------------------|-----------------|-------|--------------|
|                                               | SOURCE               | YEAR | POPULATION REGION |                 |       |              |
| Golovin                                       | ADOL                 | 85   | 131 Arctic        | Seward-Norton   | 22B   | Rural        |
| Koyuk                                         | ADOL                 | 85   | 202 Arctic        | Seward-Norton   | 22B   | Rural        |
| Nome                                          | ADOL                 | 85   | 3191 Arctic       | Seward-Norton   | 22C   | Rural        |
| Perkinsville Census Designated Place          | ADOL                 | 85   | 45 Arctic         | Seward-Norton   | 22C   | Rural        |
| Port Clarence                                 | ADOL                 | 85   | 39 Arctic         | Seward-Norton   | 22D   | Rural        |
| Saint Michael                                 | ADOL                 | 85   | 287 Arctic        | Seward-Norton   | 22A   | Rural        |
| Savoonga                                      | ADOL                 | 85   | 487 Arctic        | Seward-Norton   | 22D   | Rural        |
| Shaktolik                                     | ADOL                 | 85   | 163 Arctic        | Seward-Norton   | 22A   | Rural        |
| Shishmaref                                    | ADOL                 | 85   | 410 Arctic        | Seward-Norton   | 22E   | Rural        |
| Stebbins                                      | ADOL                 | 85   | 372 Arctic        | Seward-Norton   | 22A   | Rural        |
| Teller                                        | ADOL                 | 85   | 247 Arctic        | Seward-Norton   | 22D   | Rural        |
| Unalakleet                                    | ADOL                 | 85   | 759 Arctic        | Seward-Norton   | 22A   | Rural        |
| Wales                                         | ADOL                 | 85   | 143 Arctic        | Seward-Norton   | 22E   | Rural        |
| White Mountain                                | ADOL                 | 85   | 164 Arctic        | Seward-Norton   | 22B   | Rural        |
| Anderson                                      | ADOL                 | 85   | 566 Interior      | Parks Highway   | 20A   | Rural        |
| Healy                                         | ADOL                 | 85   | 414 Interior      | Parks Highway   | 20C   | Rural        |
| McKinley Park Village                         | ADOL                 | 85   | 65 Interior       | Parks Highway   | 20C   | Rural        |
| Usibelli Mine                                 | ADOL                 | 85   | 6 Interior        | Parks Highway   | 20A   | Rural        |
| Centwell                                      | ADOL                 | 85   | 91 Southcentral   | Parks Highway   | 13E   | Rural        |
| CHASE-GOLD CREEK                              | ADFG                 | 87   | 78 Southcentral   | Parks Highway   | 13E   | Rural        |
| Balance of McGrath-Holy Cross Census Sub-Area | ADOL                 | 85   | 102 Interior      | Upper Kuskokwim | 19,21 | Rural        |
| LAKE MINCHUMINA                               | ADFG                 |      | Interior          | Upper Kuskokwim | 20C   | Rural        |
| McGrath                                       | ADOL                 | 85   | 509 Interior      | Upper Kuskokwim | 19D   | Rural        |
| MEDFRA                                        | ADFG                 |      | Interior          | Upper Kuskokwim | 19D   | Rural        |
| Nikolai                                       | ADOL                 | 85   | 122 Interior      | Upper Kuskokwim | 19D   | Rural        |
| Takotna                                       | ADOL                 | 85   | 54 Interior       | Upper Kuskokwim | 19D   | Rural        |
| Tatalina Station Census Designated Place      | ADOL                 | 85   | 13 Interior       | Upper Kuskokwim | 19    | Rural        |
| Telida                                        | ADOL                 | 85   | 38 Interior       | Upper Kuskokwim | 19D   | Rural        |
| CHISANA                                       | ADFG                 | 87   | 13 Interior       | Upper Tanana    | 11    | Rural        |



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TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDEMOG.WK1)

| COMMUNITY                                    | POPULATION |      |                   | SUBREGION                        | GMU      | RURAL STATUS |
|----------------------------------------------|------------|------|-------------------|----------------------------------|----------|--------------|
|                                              | SOURCE     | YEAR | POPULATION REGION |                                  |          |              |
| Doj Lake                                     | ADOL       | 85   | 77 Interior       | Upper Tanana                     | 200      | Rural        |
| Healy Lake                                   | ADOL       | 85   | 37 Interior       | Upper Tanana                     | 200      | Rural        |
| NORTH WRANGELL MOUNTAINS                     | ADFG       |      | Interior          | Upper Tanana                     | 12       | Rural        |
| Northway                                     | ADOL       | 85   | 239 Interior      | Upper Tanana                     | 12       | Rural        |
| Tanacrossa                                   | ADOL       | 85   | 149 Interior      | Upper Tanana                     | 12       | Rural        |
| Tetlin                                       | ADOL       | 85   | 89 Interior       | Upper Tanana                     | 12       | Rural        |
| Tok                                          | ADOL       | 85   | 692 Interior      | Upper Tanana                     | 12       | Rural        |
| ALATNA                                       | ADFG       | 85   | Interior          | Upper Yukon-Koyukuk-Lower Tanana | 24       | Rural        |
| Allakaket                                    | ADOL       | 85   | 188 Interior      | Upper Yukon-Koyukuk-Lower Tanana | 24       | Rural        |
| Arvik                                        | ADOL       | 85   | 83 Interior       | Upper Yukon-Koyukuk-Lower Tanana | 21E      | Rural        |
| Arctic Village                               | ADOL       | 85   | 132 Interior      | Upper Yukon-Koyukuk-Lower Tanana | 25A      | Rural        |
| Balance of Koyukuk-Mid Yukon Census Sub-Area | ADOL       | 85   | 924 Interior      | Upper Yukon-Koyukuk-Lower Tanana | 20,24,21 | Rural        |
| Balance of Yukon Flats Census Sub-Area       | ADOL       | 85   | 41 Interior       | Upper Yukon-Koyukuk-Lower Tanana | 25       | Rural        |
| Beaver                                       | ADOL       | 85   | 80 Interior       | Upper Yukon-Koyukuk-Lower Tanana | 25D      | Rural        |
| Bettles                                      | ADOL       | 85   | 86 Interior       | Upper Yukon-Koyukuk-Lower Tanana | 24       | Rural        |
| Birch Creek                                  | ADOL       | 85   | 29 Interior       | Upper Yukon-Koyukuk-Lower Tanana | 25       | Rural        |
| Campion Station                              | ADOL       | 85   | 12 Interior       | Upper Yukon-Koyukuk-Lower Tanana | 21D      | Rural        |
| Central                                      | ADOL       | 85   | 42 Interior       | Upper Yukon-Koyukuk-Lower Tanana | 25C      | Rural        |
| Chalkyitsik                                  | ADOL       | 85   | 94 Interior       | Upper Yukon-Koyukuk-Lower Tanana | 25D      | Rural        |
| Chicken                                      | ADOL       | 85   | 48 Interior       | Upper Yukon-Koyukuk-Lower Tanana | 20E      | Rural        |
| Circle                                       | ADOL       | 85   | 94 Interior       | Upper Yukon-Koyukuk-Lower Tanana | 25D      | Rural        |
| Eagle                                        | ADOL       | 85   | 273 Interior      | Upper Yukon-Koyukuk-Lower Tanana | 20E      | Rural        |
| Fort Yukon                                   | ADOL       | 85   | 678 Interior      | Upper Yukon-Koyukuk-Lower Tanana | 25D      | Rural        |
| Galena                                       | ADOL       | 85   | 947 Interior      | Upper Yukon-Koyukuk-Lower Tanana | 21D      | Rural        |
| Grayling                                     | ADOL       | 85   | 225 Interior      | Upper Yukon-Koyukuk-Lower Tanana | 21E      | Rural        |
| Holy Cross                                   | ADOL       | 85   | 238 Interior      | Upper Yukon-Koyukuk-Lower Tanana | 21E      | Rural        |
| Hughes                                       | ADOL       | 85   | 92 Interior       | Upper Yukon-Koyukuk-Lower Tanana | 24       | Rural        |
| Huslia                                       | ADOL       | 85   | 272 Interior      | Upper Yukon-Koyukuk-Lower Tanana | 24       | Rural        |
| Indian Mountain Census Designated Place      | ADOL       | 85   | 13 Interior       | Upper Yukon-Koyukuk-Lower Tanana | 24       | Rural        |
| Kaltag                                       | ADOL       | 85   | 278 Interior      | Upper Yukon-Koyukuk-Lower Tanana | 21D      | Rural        |
| Koyukuk                                      | ADOL       | 85   | 143 Interior      | Upper Yukon-Koyukuk-Lower Tanana | 21D      | Rural        |

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TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDEMOG.WK1)

| COMMUNITY                | POPULATION COMMUNITY |      |            |              | GMU                                  | RURAL STATUS |
|--------------------------|----------------------|------|------------|--------------|--------------------------------------|--------------|
|                          | SOURCE               | YEAR | POPULATION | REGION       | SUBREGION                            |              |
| Manley Hot Springs       | ADOL                 | 85   | 88         | Interior     | Upper Yukon-Koyukuk-Lower Tanana 20B | Rural        |
| Minto                    | ADOL                 | 85   | 209        | Interior     | Upper Yukon-Koyukuk-Lower Tanana 20C | Rural        |
| Menana                   | ADOL                 | 85   | 544        | Interior     | Upper Yukon-Koyukuk-Lower Tanana 20A | Rural        |
| Mulato                   | ADOL                 | 85   | 368        | Interior     | Upper Yukon-Koyukuk-Lower Tanana 21D | Rural        |
| Rampart                  | ADOL                 | 85   | 59         | Interior     | Upper Yukon-Koyukuk-Lower Tanana 18  | Rural        |
| Ruby                     | ADOL                 | 85   | 241        | Interior     | Upper Yukon-Koyukuk-Lower Tanana 21B | Rural        |
| Shageluk                 | ADOL                 | 85   | 144        | Interior     | Upper Yukon-Koyukuk-Lower Tanana 21E | Rural        |
| Stevens Village          | ADOL                 | 85   | 97         | Interior     | Upper Yukon-Koyukuk-Lower Tanana 25D | Rural        |
| Tanana                   | ADOL                 | 85   | 425        | Interior     | Upper Yukon-Koyukuk-Lower Tanana 20F | Rural        |
| Venetie                  | ADOL                 | 85   | 237        | Interior     | Upper Yukon-Koyukuk-Lower Tanana 25D | Rural        |
| WISEMAN                  | ADFG                 |      |            | Interior     | Upper Yukon-Koyukuk-Lower Tanana 24  | Rural        |
| Chiatochina              | ADFG                 | 87   | 79         | Southcentral | Copper River Basin 11                | Rural        |
| Chitina                  | ADFG                 | 87   | 35         | Southcentral | Copper River Basin 130               | Rural        |
| Copper Center            | ADFG                 | 87   | 493        | Southcentral | Copper River Basin 130               | Rural        |
| EAST GLENN HIGHWAY       | ADFG                 | 87   | 217        | Southcentral | Copper River Basin 13A, 130          | Rural        |
| Gakona                   | ADFG                 | 87   | 209        | Southcentral | Copper River Basin 13B               | Rural        |
| Glennallen               | ADFG                 | 87   | 469        | Southcentral | Copper River Basin 13A, 130          | Rural        |
| Gulkana                  | ADFG                 | 87   | 67         | Southcentral | Copper River Basin 13B               | Rural        |
| KENNY LAKE               | ADFG                 | 87   | 321        | Southcentral | Copper River Basin 130               | Rural        |
| LAKE LOUISE              | ADFG                 | 87   | 39         | Southcentral | Copper River Basin 13A               | Rural        |
| MCCARTHY ROAD            | ADFG                 | 87   | 38         | Southcentral | Copper River Basin 11                | Rural        |
| MENTASTA LAKE            | ADFG                 | 87   | 77         | Southcentral | Copper River Basin 13C               | Rural        |
| MENTASTA PASS            | ADFG                 | 87   | 26         | Southcentral | Copper River Basin 13C               | Rural        |
| NABESNA ROAD             | ADFG                 | 87   | 37         | Southcentral | Copper River Basin 11, 12            | Rural        |
| NORTH SLANA HOMESTEAD    | ADFG                 | 87   | 61         | Southcentral | Copper River Basin 13C               | Rural        |
| Paxon-Sourdough          | ADFG                 | 87   | 65         | Southcentral | Copper River Basin 13B               | Rural        |
| Slana                    | ADFG                 | 87   | 57         | Southcentral | Copper River Basin 13C               | Rural        |
| SOUTH SLANA HOMESTEAD    | ADFG                 | 87   | 186        | Southcentral | Copper River Basin 11                | Rural        |
| SOUTH WRANGELL MOUNTAINS | ADFG                 | 87   | 48         | Southcentral | Copper River Basin 11                | Rural        |
| Tazlina                  | ADFG                 | 87   | 365        | Southcentral | Copper River Basin 130               | Rural        |
| Tongass                  | ADFG                 | 87   | 297        | Southcentral | Copper River Basin 130               | Rural        |

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDMOG.WK1)

| COMMUNITY                                       | SOURCE | POPULATION<br>YEAR | COMMUNITY<br>REGION | SUBREGION                         | GHU     | RURAL<br>STATUS |
|-------------------------------------------------|--------|--------------------|---------------------|-----------------------------------|---------|-----------------|
| WEST GLENN HIGHWAY                              | ADFG   | 87                 | 281 Southcentral    | Copper River Basin                | 130,13A | Rural           |
| English Bay                                     | ADOL   | 85                 | 192 Southcentral    | Lower Kenai Peninsula             | 15C     | Rural           |
| Port Graham                                     | ADOL   | 85                 | 188 Southcentral    | Lower Kenai Peninsula             | 15C     | Rural           |
| Seldovia                                        | ADOL   | 85                 | 403 Southcentral    | Lower Kenai Peninsula             | 15C     | Rural           |
| Balance of Cordova Census Sub-Area              | ADOL   | 85                 | 362 Southcentral    | Prince William Sound              | 6       | Rural           |
| Balance of Prince William Sound Census Sub-Area | ADOL   | 85                 | 47 Southcentral     | Prince William Sound              | 60      | Rural           |
| Chenega Bay                                     | ADOL   | 85                 | 60 Southcentral     | Prince William Sound              | 60      | Rural           |
| Cordova                                         | ADOL   | 85                 | 1901 Southcentral   | Prince William Sound              | 6C      | Rural           |
| Eyak                                            | ADOL   | 85                 | 44 Southcentral     | Prince William Sound              | 6C      | Rural           |
| SAN JUAN BAY                                    | ADFG   |                    |                     | Southcentral Prince William Sound | 60      | Rural           |
| Tatitlek                                        | ADOL   | 85                 | 112 Southcentral    | Prince William Sound              | 60      | Rural           |
| ALEXANDER CREEK                                 | ADFG   |                    |                     | Southcentral Upper Cook Inlet     | 168     | Rural           |
| SKWENTNA                                        | ADFG   |                    |                     | Southcentral Upper Cook Inlet     | 168     | Rural           |
| Tyonek                                          | ADOL   | 85                 | 269 Southcentral    | Upper Cook Inlet                  | 168     | Rural           |
| Angoon                                          | ADOL   | 85                 | 588 Southeast       | Southeast                         | 4       | Rural           |
| Annette                                         | ADOL   | 85                 | 158 Southeast       | Southeast                         | 1A      | Rural           |
| Balance of Angoon Census Sub-Area               | ADOL   | 85                 | 64 Southeast        | Southeast                         | 4       | Rural           |
| Balance of Haines Census Area                   | ADOL   | 85                 | 840 Southeast       | Southeast                         | 1D      | Rural           |
| Balance of Moonah-Yakutat Census Sub-Area       | ADOL   | 85                 | 226 Southeast       | Southeast                         | 4       | Rural           |
| Balance of Outer Ketchikan Census Sub-Area      | ADOL   | 85                 | 8 Southeast         | Southeast                         | 2       | Rural           |
| Balance of Petersburg Census Sub-Area           | ADOL   | 85                 | 318 Southeast       | Southeast                         | 3       | Rural           |
| Balance of Prince of Wales Census Sub-Area      | ADOL   | 85                 | 451 Southeast       | Southeast                         | 2       | Rural           |
| Balance of Skagway Census Sub-Area              | ADOL   | 85                 | 27 Southeast        | Southeast                         | 1D      | Rural           |
| Balance of Wrangell Census Sub-Area             | ADOL   | 85                 | 193 Southeast       | Southeast                         | 18,3    | Rural           |
| Cape Pole                                       | ADOL   | 85                 | 50 Southeast        | Southeast                         | 2       | Rural           |
| Coffman Cove                                    | ADOL   | 85                 | 272 Southeast       | Southeast                         | 2       | Rural           |
| Craig                                           | ADOL   | 85                 | 924 Southeast       | Southeast                         | 2       | Rural           |
| EDNA BAY                                        | ADFG   |                    |                     | Southeast                         | 2       | Rural           |

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (VFDEMOG.WK1)

| COMMUNITY                   | POPULATION |      |            | COMMUNITY | SUBREGION        | GMU | RURAL<br>STATUS |
|-----------------------------|------------|------|------------|-----------|------------------|-----|-----------------|
|                             | SOURCE     | YEAR | POPULATION | REGION    |                  |     |                 |
| Elfin Cove                  | ADOL       | 85   | 47         | Southeast | Southeast        | 4   | Rural           |
| Gustavus                    | ADOL       | 85   | 217        | Southeast | Southeast        | 1C  | Rural           |
| Haines                      | ADOL       | 85   | 1151       | Southeast | Southeast        | 1D  | Rural           |
| HOLLIS                      | ADFG       |      |            | Southeast | Southeast        | 2   | Rural           |
| Hoonah                      | ADOL       | 85   | 917        | Southeast | Southeast        | 4   | Rural           |
| Hydaburg                    | ADOL       | 85   | 463        | Southeast | Southeast        | 2   | Rural           |
| Hyder                       | ADOL       | 85   | 73         | Southeast | Southeast        | 1A  | Rural           |
| Kake                        | ADOL       | 85   | 634        | Southeast | Southeast        | 3   | Rural           |
| Kasaan                      | ADOL       | 85   | 83         | Southeast | Southeast        | 2   | Rural           |
| Klawock                     | ADOL       | 85   | 613        | Southeast | Southeast        | 2   | Rural           |
| Klukwan                     | ADOL       | 85   | 153        | Southeast | Southeast        | 1D  | Rural           |
| Kupreanof                   | ADOL       | 85   | 41         | Southeast | Southeast        | 3   | Rural           |
| Metlakatla                  | ADOL       | 85   | 1270       | Southeast | Southeast        | 1A  | Rural           |
| Meyers Chuck                | ADOL       | 85   | 53         | Southeast | Southeast        | 1A  | Rural           |
| Pelican                     | ADOL       | 85   | 234        | Southeast | Southeast        | 4   | Rural           |
| Petersburg                  | ADOL       | 85   | 3145       | Southeast | Southeast        | 3   | Rural           |
| Point Baker/Port Protection | ADOL       | 85   | 108        | Southeast | Southeast        | 2   | Rural           |
| Port Alexander              | ADOL       | 85   | 131        | Southeast | Southeast        | 4   | Rural           |
| Saxman                      | ADOL       | 85   | 772        | Southeast | Southeast        | 1A  | Rural           |
| Sitka                       | ADOL       | 85   | 8160       | Southeast | Southeast        | 4   | Rural           |
| Skagway                     | ADOL       | 85   | 610        | Southeast | Southeast        | 1D  | Rural           |
| Tenakee Springs             | ADOL       | 85   | 142        | Southeast | Southeast        | 4   | Rural           |
| Thorne Bay                  | ADOL       | 85   | 412        | Southeast | Southeast        | 2   | Rural           |
| Whale Pass                  | ADOL       | 85   | 83         | Southeast | Southeast        | 2   | Rural           |
| Wrangell                    | ADOL       | 85   | 2387       | Southeast | Southeast        | 1B  | Rural           |
| Yakutat                     | ADOL       | 85   | 456        | Southeast | Southeast        | 5A  | Rural           |
| Chignik Bay                 | ADOL       | 85   | 129        | Southwest | Alaska Peninsula | 9E  | Rural           |
| Chignik Lagoon              | ADOL       | 85   | 40         | Southwest | Alaska Peninsula | 9E  | Rural           |
| Chignik Lake                | ADOL       | 85   | 164        | Southwest | Alaska Peninsula | 9E  | Rural           |
| Cold Bay                    | ADOL       | 85   | 157        | Southwest | Alaska Peninsula | 9D  | Rural           |
| Egegik                      | ADOL       | 85   | 112        | Southwest | Alaska Peninsula | 9E  | Rural           |

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDEMOG.WK1)

| COMMUNITY                              | SOURCE | POPULATION<br>YEAR | COMMUNITY<br>POPULATION REGION | SUBREGION         | GMU | RURAL<br>STATUS |
|----------------------------------------|--------|--------------------|--------------------------------|-------------------|-----|-----------------|
| Ivanof Bay                             | ADOL   | 85                 | 49 Southwest                   | Alaska Peninsula  | 9E  | Rural           |
| King Cove                              | ADOL   | 85                 | 547 Southwest                  | Alaska Peninsula  | 9D  | Rural           |
| King Salmon                            | ADOL   | 85                 | 648 Southwest                  | Alaska Peninsula  | 9C  | Rural           |
| Naknek                                 | ADOL   | 85                 | 382 Southwest                  | Alaska Peninsula  | 9C  | Rural           |
| Nelson Lagoon                          | ADOL   | 85                 | 44 Southwest                   | Alaska Peninsula  | 9D  | Rural           |
| Perryville                             | ADOL   | 85                 | 137 Southwest                  | Alaska Peninsula  | 9E  | Rural           |
| Pilot Point                            | ADOL   | 85                 | 79 Southwest                   | Alaska Peninsula  | 9E  | Rural           |
| Port Heiden                            | ADOL   | 85                 | 108 Southwest                  | Alaska Peninsula  | 9E  | Rural           |
| PORT MOLLER                            | ADFG   |                    | Southwest                      | Alaska Peninsula  | 9E  | Rural           |
| Sand Point                             | ADOL   | 85                 | 671 Southwest                  | Alaska Peninsula  | 9D  | Rural           |
| South Naknek                           | ADOL   | 85                 | 195 Southwest                  | Alaska Peninsula  | 9C  | Rural           |
| UGASHIK                                | ADFG   |                    | Southwest                      | Alaska Peninsula  | 9E  | Rural           |
| Atka                                   | ADOL   | 85                 | 93 Southwest                   | Aleutian-Pribilof | 14C | Rural           |
| Nikolski                               | ADOL   | 85                 | 46 Southwest                   | Aleutian-Pribilof | 10  | Rural           |
| Adak Station                           | ADOL   | 85                 | 4665 Southwest                 | Aleutian-Pribilof | 10  | Rural           |
| Saint George                           | ADOL   | 85                 | 191 Southwest                  | Aleutian-Pribilof | 10  | Rural           |
| Attu                                   | ADOL   | 85                 | 31 Southwest                   | Aleutian-Pribilof | 10  | Rural           |
| Saint Paul                             | ADOL   | 85                 | 466 Southwest                  | Aleutian-Pribilof | 10  | Rural           |
| DUTCH HARBOR                           | ADFG   |                    | Southwest                      | Aleutian-Pribilof | 10  | Rural           |
| Shemya Station Census Designated Place | ADOL   | 85                 | 613 Southwest                  | Aleutian-Pribilof | 10  | Rural           |
| Akutan                                 | ADOL   | 85                 | 80 Southwest                   | Aleutian-Pribilof | 10  | Rural           |
| False Pass                             | ADOL   | 85                 | 77 Southwest                   | Aleutian-Pribilof | 10  | Rural           |
| Balance of Aleutian Island Census Area | ADOL   | 85                 | 49 Southwest                   | Aleutian-Pribilof | 10  | Rural           |
| Unalaska                               | ADOL   | 85                 | 1331 Southwest                 | Aleutian-Pribilof | 10  | Rural           |
| New Stuyahok                           | ADOL   | 85                 | 339 Southwest                  | Bristol Bay       | 17C | Rural           |
| Pedro Bay                              | ADOL   | 85                 | 70 Southwest                   | Bristol Bay       | 9B  | Rural           |
| PORT ALSWORTH                          | ADFG   |                    | Southwest                      | Bristol Bay       | 9B  | Rural           |
| Balance of Bristol Bay Census Area     | ADOL   | 85                 | 101 Southwest                  | Bristol Bay       | 9C  | Rural           |
| Portage Creek                          | ADOL   | 85                 | 35 Southwest                   | Bristol Bay       | 17C | Rural           |
| Clark's Point                          | ADOL   | 85                 | 79 Southwest                   | Bristol Bay       | 17C | Rural           |

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDMOG.WK1)

| COMMUNITY                                | POPULATION COMMUNITY |      |                   | SUBREGION          | GMU    | RURAL STATUS |
|------------------------------------------|----------------------|------|-------------------|--------------------|--------|--------------|
|                                          | SOURCE               | YEAR | POPULATION REGION |                    |        |              |
| Togiak                                   | ADOL                 | 85   | 556 Southwest     | Bristol Bay        | 17A    | Rural        |
| Ekwok                                    | ADOL                 | 85   | 107 Southwest     | Bristol Bay        | 17C    | Rural        |
| Twin Hills                               | ADOL                 | 85   | 44 Southwest      | Bristol Bay        | 17A    | Rural        |
| Iliamna                                  | ADOL                 | 85   | 126 Southwest     | Bristol Bay        | 98     | Rural        |
| Aleknagik                                | ADOL                 | 85   | 180 Southwest     | Bristol Bay        | 17C    | Rural        |
| Balance of Dillingham Census Area        | ADOL                 | 85   | 128 Southwest     | Bristol Bay        | 9,17   | Rural        |
| Levelock                                 | ADOL                 | 85   | 109 Southwest     | Bristol Bay        | 98     | Rural        |
| Dillingham                               | ADOL                 | 85   | 2141 Southwest    | Bristol Bay        | 17C    | Rural        |
| Neshalem                                 | ADOL                 | 85   | 165 Southwest     | Bristol Bay        | 98     | Rural        |
| Igiugig                                  | ADOL                 | 85   | 38 Southwest      | Bristol Bay        | 98     | Rural        |
| Koliganek                                | ADOL                 | 85   | 161 Southwest     | Bristol Bay        | 17B    | Rural        |
| Hondalton                                | ADOL                 | 85   | 234 Southwest     | Bristol Bay        | 98     | Rural        |
| Manokotak                                | ADOL                 | 85   | 309 Southwest     | Bristol Bay        | 17C    | Rural        |
| Kokhanok                                 | ADOL                 | 85   | 68 Southwest      | Bristol Bay        | 98     | Rural        |
|                                          |                      |      |                   |                    |        |              |
| Akhiok                                   | ADOL                 | 85   | 109 Southwest     | Kodiak Island      | 8      | Rural        |
| Balance of Kodiak Island Census Sub-Area | ADOL                 | 85   | 3727 Southwest    | Kodiak Island      | 8      | Rural        |
| Karluk                                   | ADOL                 | 85   | 114 Southwest     | Kodiak Island      | 8      | Rural        |
| Kodiak City                              | ADOL                 | 85   | 6173 Southwest    | Kodiak Island      | 8      | Rural        |
| Kodiak Coast Guard Station               | ADOL                 | 85   | 1731 Southwest    | Kodiak Island      | 8      | Rural        |
| Larsen Bay                               | ADOL                 | 85   | 217 Southwest     | Kodiak Island      | 8      | Rural        |
| Old Harbor                               | ADOL                 | 85   | 344 Southwest     | Kodiak Island      | 8      | Rural        |
| Ouzinkie                                 | ADOL                 | 85   | 235 Southwest     | Kodiak Island      | 8      | Rural        |
| Port Lions                               | ADOL                 | 85   | 302 Southwest     | Kodiak Island      | 8      | Rural        |
|                                          |                      |      |                   |                    |        |              |
| Cape Newenham Census Designated Place    | ADOL                 | 85   | 9 Western         | Central Bering Sea | 18,17A | Rural        |
| Chefornak                                | ADOL                 | 85   | 277 Western       | Central Bering Sea | 18     | Rural        |
| Goodnews Bay                             | ADOL                 | 85   | 241 Western       | Central Bering Sea | 18     | Rural        |
| Kipruk                                   | ADOL                 | 85   | 408 Western       | Central Bering Sea | 18     | Rural        |
| Kongiganak                               | ADOL                 | 85   | 291 Western       | Central Bering Sea | 18     | Rural        |
| Kwigillingok                             | ADOL                 | 85   | 244 Western       | Central Bering Sea | 18     | Rural        |
| Mekoryuk                                 | ADOL                 | 85   | 152 Western       | Central Bering Sea | 18     | Rural        |

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDEMOG.WK1)

| COMMUNITY                                  | SOURCE | POPULATION<br>YEAR | COMMUNITY<br>POPULATION | REGION  | SUBREGION          | GMU | RURAL<br>STATUS |
|--------------------------------------------|--------|--------------------|-------------------------|---------|--------------------|-----|-----------------|
| Newtok                                     | ADOL   | 85                 | 207                     | Western | Central Bering Sea | 18  | Rural           |
| Nightmute                                  | ADOL   | 85                 | 153                     | Western | Central Bering Sea | 18  | Rural           |
| Platinum                                   | ADOL   | 85                 | 65                      | Western | Central Bering Sea | 18  | Rural           |
| Quinhagak                                  | ADOL   | 85                 | 453                     | Western | Central Bering Sea | 18  | Rural           |
| Toksook Bay                                | ADOL   | 85                 | 362                     | Western | Central Bering Sea | 18  | Rural           |
| Tununak                                    | ADOL   | 85                 | 318                     | Western | Central Bering Sea | 18  | Rural           |
| Akiachak                                   | ADOL   | 85                 | 459                     | Western | Lower Kuskokwim    | 18  | Rural           |
| Akiak                                      | ADOL   | 85                 | 289                     | Western | Lower Kuskokwim    | 18  | Rural           |
| Atmautluak                                 | ADOL   | 85                 | 234                     | Western | Lower Kuskokwim    | 18  | Rural           |
| Balance of Lower Kuskokwim Census Sub-Area | ADOL   | 85                 | 338                     | Western | Lower Kuskokwim    | 18  | Rural           |
| Bethel                                     | ADOL   | 85                 | 4006                    | Western | Lower Kuskokwim    | 18  | Rural           |
| Eek                                        | ADOL   | 85                 | 257                     | Western | Lower Kuskokwim    | 18  | Rural           |
| Kasigluk                                   | ADOL   | 85                 | 405                     | Western | Lower Kuskokwim    | 18  | Rural           |
| Kwethluk                                   | ADOL   | 85                 | 546                     | Western | Lower Kuskokwim    | 18  | Rural           |
| Napakiaik                                  | ADOL   | 85                 | 299                     | Western | Lower Kuskokwim    | 18  | Rural           |
| Napaskiak                                  | ADOL   | 85                 | 303                     | Western | Lower Kuskokwim    | 18  | Rural           |
| Munapitchuk                                | ADOL   | 85                 | 356                     | Western | Lower Kuskokwim    | 18  | Rural           |
| Oscarville                                 | ADOL   | 85                 | 63                      | Western | Lower Kuskokwim    | 18  | Rural           |
| Tuluksak                                   | ADOL   | 85                 | 321                     | Western | Lower Kuskokwim    | 18  | Rural           |
| Tuntutuliak                                | ADOL   | 85                 | 293                     | Western | Lower Kuskokwim    | 18  | Rural           |
| Alakanuk                                   | ADOL   | 85                 | 556                     | Western | Lower Yukon        | 18  | Rural           |
| Chevak                                     | ADOL   | 85                 | 532                     | Western | Lower Yukon        | 18  | Rural           |
| Emmonak                                    | ADOL   | 85                 | 613                     | Western | Lower Yukon        | 18  | Rural           |
| Hooper Bay                                 | ADOL   | 85                 | 686                     | Western | Lower Yukon        | 18  | Rural           |
| Kotlik                                     | ADOL   | 85                 | 409                     | Western | Lower Yukon        | 18  | Rural           |
| Marshall (Fortuna Ledge)                   | ADOL   | 85                 | 281                     | Western | Lower Yukon        | 18  | Rural           |
| Mountain Village                           | ADOL   | 85                 | 682                     | Western | Lower Yukon        | 18  | Rural           |
| Pilot Station                              | ADOL   | 85                 | 425                     | Western | Lower Yukon        | 18  | Rural           |
| Pitka's Point                              | ADOL   | 85                 | 106                     | Western | Lower Yukon        | 18  | Rural           |
| Russian Mission                            | ADOL   | 85                 | 231                     | Western | Lower Yukon        | 18  | Rural           |

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDENOG.WK1)

| COMMUNITY                               | POPULATION |      | COMMUNITY REGION | SUBREGION        | GMU | RURAL STATUS |
|-----------------------------------------|------------|------|------------------|------------------|-----|--------------|
|                                         | SOURCE     | YEAR |                  |                  |     |              |
| Saint Marys (Andreafsky)                | ADOL       | 85   | 458 Western      | Lower Yukon      | 18  | Rural        |
| Scammon Bay                             | ADOL       | 85   | 304 Western      | Lower Yukon      | 18  | Rural        |
| Sheldon Point                           | ADOL       | 85   | 124 Western      | Lower Yukon      | 18  | Rural        |
| Aniak                                   | ADOL       | 85   | 481 Western      | Middle Kuskokwim | 19A | Rural        |
| Balance of Aniak Census Sub-Area        | ADOL       | 85   | 64 Western       | Middle Kuskokwim | 19  | Rural        |
| Balance of Wade Hampton Census Sub-Area | ADOL       | 85   | 184 Western      | Middle Kuskokwim | 18  | Rural        |
| Chuathbaluk                             | ADOL       | 85   | 124 Western      | Middle Kuskokwim | 19D | Rural        |
| Crooked Creek                           | ADOL       | 85   | 126 Western      | Middle Kuskokwim | 19A | Rural        |
| GEORGETOWN                              | ADFG       |      | Western          | Middle Kuskokwim | 19A | Rural        |
| Lima Village                            | ADOL       | 85   | 48 Western       | Middle Kuskokwim | 19A | Rural        |
| Lower Kalakag                           | ADOL       | 85   | 281 Western      | Middle Kuskokwim | 19A | Rural        |
| NAPAIMUTE                               | ADFG       |      | Western          | Middle Kuskokwim | 19A | Rural        |
| Red Devil                               | ADOL       | 85   | 42 Western       | Middle Kuskokwim | 19A | Rural        |
| Sleetmute                               | ADOL       | 85   | 130 Western      | Middle Kuskokwim | 19A | Rural        |
| Sparrevohn Air Force Base               | ADOL       | 85   | 15 Western       | Middle Kuskokwim | 19B | Rural        |
| Stony River                             | ADOL       | 85   | 92 Western       | Middle Kuskokwim | 19A | Rural        |
| Upper Kalakag                           | ADOL       | 85   | 154 Western      | Middle Kuskokwim | 19A | Rural        |



## Attachment 1

Species/Areas Where Subsistence  
Is Currently Limited

The following listing is based on the table presented in  
5 AAC 99.025.

| SPECIES/AREA                                                                                                                                                                                                                                                                                                                                                       | COMMUNITY OR UNIT RESIDENCY                                                                           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| <u>BLACK BEAR</u>                                                                                                                                                                                                                                                                                                                                                  |                                                                                                       |
| Unit 1(C)                                                                                                                                                                                                                                                                                                                                                          | Haines, Gustavus, Klukwan and Hoonah,<br>and, except as provided in 5 AAC<br>99.014(1)(B), Unit 1(C). |
| Unit 6(A)                                                                                                                                                                                                                                                                                                                                                          | Yakutat.                                                                                              |
| Units 6(B) and 6(C)                                                                                                                                                                                                                                                                                                                                                | Units 6(B) and 6(C) except Cordova.                                                                   |
| Unit 6(D)                                                                                                                                                                                                                                                                                                                                                          | Chenega Bay, Tatitlek.                                                                                |
| <u>BROWN BEAR</u>                                                                                                                                                                                                                                                                                                                                                  |                                                                                                       |
| Unit 4                                                                                                                                                                                                                                                                                                                                                             | Unit 4 and Kake.                                                                                      |
| Unit 5                                                                                                                                                                                                                                                                                                                                                             | Yakutat.                                                                                              |
| Unit 9(B)                                                                                                                                                                                                                                                                                                                                                          | Unit 9(B).                                                                                            |
| Unit 9(E)                                                                                                                                                                                                                                                                                                                                                          | Chignik Lake, Ivanof Bay, and Perry-<br>ville.                                                        |
| Unit 17(A)                                                                                                                                                                                                                                                                                                                                                         | Unit 17, Goodnews Bay, and Platinum.                                                                  |
| Those portions of<br>Units 17(A) and 17(B)<br>north and west of a<br>line beginning from<br>the GMU 18 boundary<br>at the northwest end<br>of Nenevok Lake, to<br>the southern point<br>of Upper Togiak Lake,<br>and northeast to the<br>northern point of Nuyakuk<br>Lake, northeast to the<br>point where the GMU 17<br>boundary intersects the<br>Shotgun Hills | Kwethluk.                                                                                             |
| Units 17(B) and 17(C)                                                                                                                                                                                                                                                                                                                                              | Unit 17.                                                                                              |

| SPECIES/AREA                                                                                                                                                                                                                                                                                                                                                     | COMMUNITY OR UNIT RESIDENCY                                                                                                                                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Units 13 and 14(B)<br>(Nelchina herd)                                                                                                                                                                                                                                                                                                                            | Unit 11, Unit 12 along the Nabesna Road, and Unit 13.                                                                                                           |
| Unit 17                                                                                                                                                                                                                                                                                                                                                          | Unit 9(B), Unit 17, Lime Village, and Stony River.                                                                                                              |
| Those portions of<br>Units 17(A) and 17(B)<br>north and west of a line<br>beginning from the<br>GMU 18 boundary at the<br>northwest end of Nenevok<br>Lake, to the southern<br>point of Upper Togiak<br>Lake and northeast to<br>the northern point of<br>Nuyakuk Lake, northeast<br>to the point where the<br>GMU 17 boundary inter-<br>sects the Shotgun Hills | Kwethluk.                                                                                                                                                       |
| Unit 18                                                                                                                                                                                                                                                                                                                                                          | Kwethluk.                                                                                                                                                       |
| Units 19(A) and 19(B)                                                                                                                                                                                                                                                                                                                                            | Fall:<br>Units 19(A) and 19(B), and Kwethluk.<br><br>Winter:<br>Unit 18 in the Kuskokwim drainage and<br>Kuskokwim Bay, Units 19(A) and 19(B),<br>and Kwethluk. |
| Unit 19(C)                                                                                                                                                                                                                                                                                                                                                       | Unit 19(C), Lime Village, McGrath,<br>Nikolai, and Telida.                                                                                                      |
| Unit 19(D)                                                                                                                                                                                                                                                                                                                                                       | Unit 19(D), Lime Village, Sleetmute,<br>and Stony River.                                                                                                        |
| Unit 20(D)<br>(40-Mile herd)                                                                                                                                                                                                                                                                                                                                     | Unit 12 north of the Wrangell-St.<br>Elias National Park and Preserve,<br>Unit 20(D) except as provided in<br>5 AAC 99.014(1)(E), Unit 20(E), and<br>Dot Lake.  |
| Macomb herd                                                                                                                                                                                                                                                                                                                                                      | Dot Lake.                                                                                                                                                       |
| Unit 20 (E)<br>(40-Mile herd)                                                                                                                                                                                                                                                                                                                                    | Unit 12 north of the Wrangell-St. Elias<br>National Park and Preserve, Unit 20(D)<br>except as provided in 5 AAC 99.014<br>(1)(E), and Unit 20(E).              |
| Units 21(A) and 21(E)                                                                                                                                                                                                                                                                                                                                            | Unit 21(A), Aniak, Chuathbaluk, Crooked                                                                                                                         |

**SPECIES/AREA****COMMUNITY OR UNIT RESIDENCY**

from the northernmost point of Rocky Bay to the head of Tutka Bay and east of a line from Point Pogibshi to the point of land between Rocky Bay and Windy Bay

**MOOSE**

Unit 1(B), Stikine Drainage

Wrangell.

Unit 1(D)

Unit 1(D).

Unit 5

Yakutat.

Units 9(A), 9(B), 9(C), and 9(E)

Units 9(A), 9(B), 9(C), and 9(F).

Unit 11

Unit 11, Unit 12 along the Nabesna Road and Units 13(A)-(D).

Unit 12 East, that portion lying east of the Nabesna River and south of the winter trail running southeast from Pickeral Lake and the Canadian border

Unit 12.

Unit 12 South, that portion south of a line from Noyes Mountain southeast to the confluence of Tatschunda Creek and the Nabesna River

Unit 11 north of the 62nd parallel and excluding BLM parcels of north and south Slana; Unit 12, Units 13(A)-(D), and Dot Lake.

Unit 12 North, the remainder of the unit not described above

Unit 12, Dot Lake, and Mentasta Lake.

Unit 13

Unit 13.

Unit 15(C), that portion southwest of a line from Point Pogibshi to the point of land between Rocky Bay and Windy Bay

English Bay and Port Graham.

**SPECIES/AREA****COMMUNITY OR UNIT RESIDENCY**

|                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                             |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                        | 99.014(1)(E), and Tanacross.                                                                                |
| Unit 20(F)                                                                                                                                                                                                                                                                                                                                                                                                                             | Unit 20(F), Manley, Minto, and Stevens Village.                                                             |
| Unit 21(A)                                                                                                                                                                                                                                                                                                                                                                                                                             | Units 21(A) and 21(E) except as provided in 5 AAC 99.014(1)(F), Takotna, McGrath, Aniak, and Crooked Creek. |
| Units 21(B) and 21(C)                                                                                                                                                                                                                                                                                                                                                                                                                  | Units 21(B) and 21(C) except as provided in 5 AAC 99.014(1)(F), and Russian Mission.                        |
| Unit 22                                                                                                                                                                                                                                                                                                                                                                                                                                | Unit 22.                                                                                                    |
| Unit 23                                                                                                                                                                                                                                                                                                                                                                                                                                | Unit 23.                                                                                                    |
| Unit 24                                                                                                                                                                                                                                                                                                                                                                                                                                | Unit 24, Anaktuvuk Pass, Koyukuk, and Galena.                                                               |
| Unit 25(A)                                                                                                                                                                                                                                                                                                                                                                                                                             | Unit 25(A) and Venetie.                                                                                     |
| Unit 25(D) west of a line from the Unit 25(D) boundary at Preacher Creek, downstream along Preacher Creek, Birch Creek, and Lower Mouth Birch Creek to the Yukon River; then downstream along the north bank of the Yukon River (including islands) to the mouth of Hadweenzik River to its confluence with Forty and One-Half Mile Creek, then upstream along Forty and One-Half Creek, to Nelson Mountain on the Unit 25(D) boundary | Beaver, Birch Creek, and Stevens Village.                                                                   |
| Remainder of Unit 25(D)                                                                                                                                                                                                                                                                                                                                                                                                                | Residents of the remainder of Unit 25(D).                                                                   |
| Unit 26                                                                                                                                                                                                                                                                                                                                                                                                                                | Unit 26(except the Prudhoe Bay-Deadhorse Industrial Complex), Point Hope, and Anaktuvuk Pass.               |

**SPECIES/AREA**

**COMMUNITY OR RESIDENCY**

Units 11, 13, 15, 16  
20(D), 22, and 23

Units 11, 13, 15 (except as provided  
in 5 AAC 99.014(1)(D)), Units 16 and  
20(D) (except as provided in 5 AAC  
99.014(1)(E)), and Units 22, and 23.

**PTARMIGAN**

Units 11, 13, 15, 16  
20(D), 22, and 23

Units 11, 13, 15, (except as provided  
in 5 AAC 99.014(1)(D)), Units 16 and  
20(D) (except as provided in 5 AAC  
99.014(1)(E)), and Units 22, and 23.

# MEMORANDUM

State of Alaska

TO: Norman Cohen  
Deputy Commissioner  
Juneau

DATE: March 1, 1990

FILE NO:

TELEPHONE NO: 267-2231

THRU:

SUBJECT: Review of Subsistence  
Regulations

SUBSISTENCE SECTION

RECEIVED

MAR 02 1990

DEPARTMENT OF FISH & GAME

FROM:   
Lew Pamplin  
Director  
Division of Wildlife Conservation  
Department of Fish and Game  
Anchorage

This is in response to your February 5 request on subsistence hunting regulations. As usual, our staff has done an excellent job in a short timeframe of compiling and analyzing pertinent information.

Those species and areas in which subsistence eligibility is currently limited are listed in Attachment I. The information on subsistence eligibility comes from 5AAC 99.025. At the end of this listing, we have included subsistence eligibility determinations which were passed in November 1989 by the Board of Game and were scheduled to become effective on July 1, 1990.

For your requests 2-6, we compiled the information on tabular format by region. Footnotes are used to provide clarification where necessary.

If you have questions on this material, please contact either me or the appropriate regional supervisor.

## Attachments

cc: Steve Behnke  
Steve Peterson  
Wayne Regelin  
Regional Supervisors, Division of Wildlife Conservation

Subsistence Hunting Regulations  
Regulatory Year 1989-90  
Region I

| Hunt Seasons and Bag Limits <sup>1</sup> | Current Eligibility <sup>2</sup> | Expanded Eligibility <sup>3</sup> | Would Tier II Result? <sup>4</sup> | Would Increased Harvest be of Biological Concern? <sup>5</sup> | % of Harvest on Federal Lands? |
|------------------------------------------|----------------------------------|-----------------------------------|------------------------------------|----------------------------------------------------------------|--------------------------------|
|------------------------------------------|----------------------------------|-----------------------------------|------------------------------------|----------------------------------------------------------------|--------------------------------|

Deer 5 AAC 85.030 (3)

|                                                                                                                     |                  |                  |                  |                  |     |
|---------------------------------------------------------------------------------------------------------------------|------------------|------------------|------------------|------------------|-----|
| ■ Unit 4, that portion north of Tenakee Inlet and East of Port Frederick, including all drainages of Tenakee Inlet. | 370 <sup>4</sup> | 390 <sup>5</sup> | Yes <sup>6</sup> | Yes <sup>6</sup> | 90% |
|---------------------------------------------------------------------------------------------------------------------|------------------|------------------|------------------|------------------|-----|

SUBSISTENCE HUNTERS: Aug. 1-  
Jan. 31

Six deer, antlerless deer may be taken after Sept. 15

OTHER HUNTERS: Aug. 1-  
Jan. 31

Three deer, antlerless deer may be taken after Sept. 15

Moose 5 AAC 85.045 (1)

|             |                  |                  |     |     |    |
|-------------|------------------|------------------|-----|-----|----|
| ■ Unit 1(D) | 210 <sup>7</sup> | 525 <sup>8</sup> | Yes | Yes | 0% |
|-------------|------------------|------------------|-----|-----|----|

SUBSISTENCE HUNTERS: Sep. 1-  
Sep. 10

One bull by registration permit;  
15 bulls may be taken.

Subsistence Hunting Regulations  
Regulatory Year 1989-90  
Region II  
BROWN BEAR

| Hunt Seasons and Bag Limits <sup>1</sup>                   | Current Eligibility <sup>2</sup>      | Expanded Eligibility <sup>3</sup> | Would Tier II Result? | Would Increased Harvest be of Biological Concern? | % of Harvest on Federal Lands? |
|------------------------------------------------------------|---------------------------------------|-----------------------------------|-----------------------|---------------------------------------------------|--------------------------------|
| <hr/>                                                      |                                       |                                   |                       |                                                   |                                |
| 5 AAC 85.020(15) Brown Bear<br>Units 17(A) and 17(C)       |                                       |                                   |                       |                                                   |                                |
| SUBSISTENCE HUNTERS: Sept. 10-Oct. 10<br>April 10 - May 25 |                                       | 10-15                             | 50-100 <sup>4</sup>   | YES <sup>5</sup>                                  | YES <sup>5</sup> 25%           |
| One bear every four regulatory years.                      |                                       |                                   |                       |                                                   |                                |
| OTHER HUNTERS:                                             |                                       |                                   |                       |                                                   |                                |
|                                                            | Sept. 10 - Oct. 10<br>May 10 - May 25 |                                   |                       |                                                   |                                |
| One bear every four regulatory years.                      |                                       |                                   |                       |                                                   |                                |

- 
1. Subsistence hunts which are currently different from general hunts.
  2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
  3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
  4. An April and early May season would be attractive to residents and guide-outfitters.
  5. If season dates were not changed.



Subsistence Hunting Regulations  
Regulatory Year 1989-90  
Region II  
CARIBOU

| Hunt Seasons and Bag Limits <sup>1</sup>     | Current Eligibility <sup>2</sup> | Expanded Eligibility <sup>3</sup> | Would Tier II Result? | Would Increased Harvest be of Biological Concern? | % Harvest on Federal Lands? |
|----------------------------------------------|----------------------------------|-----------------------------------|-----------------------|---------------------------------------------------|-----------------------------|
| <hr/>                                        |                                  |                                   |                       |                                                   |                             |
| 5 AAC 85.025(4) Caribou                      |                                  |                                   |                       |                                                   |                             |
| Unit 9(D) and Unit 10,<br>Unimak Island only |                                  |                                   |                       |                                                   |                             |
| SUBSISTENCE HUNTERS:                         |                                  |                                   |                       |                                                   |                             |
| Sept. 1 - Mar. 31                            |                                  |                                   |                       |                                                   |                             |
| Two caribou                                  | 175-225                          | 50-100 <sup>4</sup>               | YES                   | YES <sup>5</sup>                                  | 80%                         |
| OTHER HUNTERS:                               |                                  |                                   |                       |                                                   |                             |
| Sept. 1 - Oct. 31                            |                                  |                                   |                       |                                                   |                             |
| One caribou                                  |                                  |                                   |                       |                                                   |                             |

- 
1. Subsistence hunts which are currently different from general hunts.
  2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
  3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
  4. Most of the increase in hunting effort would be along the Cold Bay road system when the caribou frequent that area after mid November.
  5. Staff is proposing to limit the bag limit in 1990-91 to 1 bull for all hunters because of the decreasing size of this herd.

Subsistence Hunting Regulations  
Regulatory year 1989-90  
Region II  
CARIBOU

| Hunt Seasons and Bag Limits <sup>1</sup> | Current Eligibility <sup>2</sup> | Expanded Eligibility <sup>3</sup>                                                               | Would Tier II Result? | Would Increased Harvest be of Biological Concern | % of Harvest on Federal Lands? |
|------------------------------------------|----------------------------------|-------------------------------------------------------------------------------------------------|-----------------------|--------------------------------------------------|--------------------------------|
| 5AAC85.025(7) Caribou                    | 152 <sup>4</sup>                 | 2000+ due to proximity to large population and relatively good access during the winter season. | Yes                   | Yes                                              | 40%                            |

Unit 12, residents of Tetlin and Northway only:

1 caribou by registration permit only.

Season will be opened by Emergency Order when Nelchina caribou are present and Mentasta caribou are absent; season will be closed by emergency order after 80 Nelchina caribou have been taken.

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5ACC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. Based on number of permits issued 1986-89.

Subsistence Hunting Regulations  
Regulatory Year 1989-90  
Region II  
MOUNTAIN GOAT

| Hunt Seasons and Bag Limits <sup>1</sup> | Current Eligibility <sup>2</sup> | Expanded Eligibility <sup>3</sup> | Would Tier II Result? | Would Increased Harvest be of Biological Concern? | % Harvest on Federal Lands? |
|------------------------------------------|----------------------------------|-----------------------------------|-----------------------|---------------------------------------------------|-----------------------------|
| <hr/>                                    |                                  |                                   |                       |                                                   |                             |
| 5 AAC 85.040(2) Goat                     |                                  |                                   |                       |                                                   |                             |
| Remainder of Unit 6                      |                                  |                                   |                       |                                                   |                             |
| SUBSISTENCE HUNTERS:                     | 30-40 <sup>4</sup>               | up to 100                         | Possibly <sup>5</sup> | NO <sup>6</sup>                                   | 50-60%                      |
| Aug. 1 - Jan. 31                         |                                  |                                   |                       |                                                   |                             |
| One goat by registration permit.         |                                  |                                   |                       |                                                   |                             |
| OTHER HUNTERS:                           |                                  |                                   |                       |                                                   |                             |
| Sept. 1 - Nov. 30                        |                                  |                                   |                       |                                                   |                             |
| One goat by registration permit.         |                                  |                                   |                       |                                                   |                             |

- 
1. Subsistence hunts which are currently different from general hunts.
  2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
  3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
  4. Based on the number of permits issued. Harvest is usually 1-2 goats/year by subsistence users.
  5. Tier II should be considered for Tatitlek and Chenega hunt areas due to relatively low allowable harvests.
  6. Under the current management system specific hunts are closed by Emergency Order when allowable harvest limits are reached. It is anticipated that this would continue regardless of subsistence regulations.

Subsistence Hunting Regulations  
Regulatory Year 1989-90  
Region II  
MOUNTAIN GOAT

| Hunt Seasons and Bag Limits <sup>1</sup>                                                                                                                  | Current Eligibility <sup>2</sup> | Expanded Eligibility <sup>3</sup> | Would Tier II Result? | Would Increased Harvest be of Biological Concern? | % Harvest on Federal Lands? |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|-----------------------------------|-----------------------|---------------------------------------------------|-----------------------------|
| 5AAC 85.040(3) Goat<br>Unit 15(C), the English Bay<br>hunt sub-area<br>SUBSISTENCE HUNTERS:<br>Aug. 10 - Oct. 31<br>One goat by registration permit only. |                                  |                                   |                       |                                                   |                             |
|                                                                                                                                                           | <5                               | 50-150 <sup>4</sup>               | YES <sup>4</sup>      | NO <sup>5</sup>                                   | 0%                          |
| OTHER HUNTERS:<br>No open season                                                                                                                          |                                  |                                   |                       |                                                   |                             |

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. If this area was open as drawing hunt we would anticipate up to 150 applicants; an open registration hunt would result in at least 50 applicants and we would not wish to administer on a registration permit basis.
5. Harvest would be controlled by Emergency Orders.

Subsistence Hunting Regulations  
Regulatory Year 1989-90  
Region II  
MOOSE

| Hunt Seasons and Bag Limits <sup>1</sup>                                            | Current Eligibility <sup>2</sup> | Expanded Eligibility <sup>3</sup> | Would Tier II Result? | Would Increased Harvest be of Biological Concern? | % Harvest on Federal Lands? |
|-------------------------------------------------------------------------------------|----------------------------------|-----------------------------------|-----------------------|---------------------------------------------------|-----------------------------|
| 5 AAC 85.045(8) Moose<br>Unit 9(B), that portion<br>draining Lake Clark             |                                  |                                   |                       |                                                   |                             |
| SUBSISTENCE HUNTERS:                                                                |                                  |                                   |                       |                                                   |                             |
| Sept. 5 - Sept. 20                                                                  |                                  |                                   |                       |                                                   |                             |
| Dec. 1 - Dec. 31                                                                    | 50-100                           | 20-50 <sup>4</sup>                | NO                    | NO <sup>5</sup>                                   | 20-25%                      |
| One moose; however, antlerless<br>moose may be taken only from<br>Dec. 16 - Dec. 31 |                                  |                                   |                       |                                                   |                             |
| RESIDENT HUNTERS:                                                                   |                                  |                                   |                       |                                                   |                             |
| Sept. 10 - Sept. 20                                                                 |                                  |                                   |                       |                                                   |                             |
| Dec. 1 - Dec. 31                                                                    |                                  |                                   |                       |                                                   |                             |
| One moose; however, antlerless<br>moose may be taken only from<br>Dec. 16 - Dec. 31 |                                  |                                   |                       |                                                   |                             |
| NONRESIDENT HUNTERS:                                                                |                                  |                                   |                       |                                                   |                             |
| Sept. 10 - Sept. 20                                                                 |                                  |                                   |                       |                                                   |                             |
| One bull                                                                            |                                  |                                   |                       |                                                   |                             |

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
3. Estimated increase in hunter numbers if subsistence eligibility is expanded to include all Alaskans.
4. The current subsistence priority consists of a 5 day earlier season. If this applied to all hunters there may be increased competition, but no large increase in the number of moose killed.
5. Staff is proposing to delete the antlerless season in 1990-91, for biological reasons; therefore the antlerless season would not be considered under a change in subsistence eligibility.

Subsistence Hunting Regulations  
Regulatory Year 1989-90  
Region II  
MOOSE

| Hunt Seasons and Bag Limits <sup>1</sup>                                            | Current Eligibility <sup>2</sup> | Expanded Eligibility <sup>3</sup> | Would Tier II Result? | Would Increased Harvest be of Biological Concern? | % Harvest on Federal Lands? |
|-------------------------------------------------------------------------------------|----------------------------------|-----------------------------------|-----------------------|---------------------------------------------------|-----------------------------|
| 5 AAC 85.045(8) Moose<br>Unit 9(C), that portion<br>draining the Naknek River       |                                  |                                   |                       |                                                   |                             |
| SUBSISTENCE HUNTERS:                                                                |                                  |                                   |                       |                                                   |                             |
| Sept. 5 - Sept. 20 ---->                                                            | 50-100                           | 10-20                             | NO                    | NO                                                | 10-20%                      |
| Dec. 1 - Dec. 31----->                                                              | 60-100                           | 20-50                             | NO                    | YES <sup>4</sup>                                  | 10-20%                      |
| One moose; however antlerless<br>moose may be taken by<br>registration permit only. |                                  |                                   |                       |                                                   |                             |
| OTHER HUNTERS:                                                                      |                                  |                                   |                       |                                                   |                             |
| Sept. 10 - Sept. 20                                                                 |                                  |                                   |                       |                                                   |                             |
| One moose.                                                                          |                                  |                                   |                       |                                                   |                             |

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. The current antlerless quota is about 10 cows; there are usually 7-10 moose killed without an Emergency Order closure.

Subsistence Hunting Regulations  
Regulatory Year 1989-90  
Region II  
MOOSE

| Hunt Seasons and Bag Limits <sup>1</sup>                                           | Current Eligibility <sup>2</sup>        | Expanded Eligibility <sup>3</sup> | Would Tier II Result? | Would Increased Harvest be of Biological Concern? | % Harvest on Federal Lands? |
|------------------------------------------------------------------------------------|-----------------------------------------|-----------------------------------|-----------------------|---------------------------------------------------|-----------------------------|
| 5 AAC 85.045(8) Moose                                                              |                                         |                                   |                       |                                                   |                             |
| Unit 9(E)                                                                          |                                         |                                   |                       |                                                   |                             |
| SUBSISTENCE HUNTERS:                                                               |                                         |                                   |                       |                                                   |                             |
| Sept. 10 - Sept. 20----->                                                          | fall season is the same for all hunters |                                   |                       |                                                   |                             |
| Dec. 1 - Dec. 15----->                                                             | 50                                      | 20-30                             | NO                    | possible <sup>5</sup>                             | 50-70%                      |
| One bull; however, moose taken from Sept. 10 - Sept. 20 must have 50 inch antlers. |                                         |                                   |                       |                                                   |                             |
| OTHER HUNTERS:                                                                     |                                         |                                   |                       |                                                   |                             |
| Sept. 10 - Sept. 20                                                                |                                         |                                   |                       |                                                   |                             |
| One bull with 50 inch antlers                                                      |                                         |                                   |                       |                                                   |                             |

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. The current subsistence priority consists of a 5 day earlier season. Season was shortened for all hunters several years ago because of declining bull:cow ratios.
5. The maximum sustainable number of bulls is currently being harvested.

Subsistence Hunting Regulations  
Regulatory year 1989-90  
Region II  
MOOSE

| Hunt Seasons and Bag Limits <sup>1</sup> | Current Eligibility <sup>2</sup> | Expanded Eligibility <sup>3</sup>                                                                        | Would Tier II Result? | Would Increased Harvest be of Biological Concern | % of Harvest on Federal Lands? |
|------------------------------------------|----------------------------------|----------------------------------------------------------------------------------------------------------|-----------------------|--------------------------------------------------|--------------------------------|
| 5AAC85.045(11) Moose                     | 550-800 <sup>4</sup>             | 4000+ due to good road system access, well developed trail systems, and high demand for moose in Unit 13 | Yes <sup>5</sup>      | Yes <sup>6</sup>                                 | 60%                            |

Remainder of Unit 13  
SUBSISTENCE HUNTERS: Aug. 25-Sept. 20  
1 moose; however, bulls may be taken by registration permit only; only 1 permit will be issued per household. Antlerless moose may be taken only in Unit 13(E), by drawing permit only; up to 25 permits will be issued; no person may take a cow accompanied by a calf.

RESIDENT AND NONRESIDENT HUNTERS: Sept. 1-Sept. 20  
1 moose; however, bulls must have 36-inch antlers. Antlerless moose may be taken only in Unit 13(E), by drawing permit only; up to 25 permits will be issued to Alaska residents only; no person may take a cow accompanied by a calf.

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5ACC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. Based on number of permits issued 1986-89.
5. Tier II would be required for subsistence antlerless drawing permit hunt, but no permits will be issued in 1990 due to biological concerns.
6. Harvest quota/registration permit hunt would need to be established, or a more restrictive antler size bag limit established if a general open season was continued.



Subsistence Hunting Regulations  
Regulatory year 1989-90  
Region II  
MOOSE

| Hunt Seasons and Bag Limits <sup>1</sup> | Current Eligibility <sup>2</sup> | Expanded Eligibility <sup>3</sup>                                                               | Would Tier II Result? | Would Increased Harvest be of Biological Concern | % of Harvest on Federal Lands? |
|------------------------------------------|----------------------------------|-------------------------------------------------------------------------------------------------|-----------------------|--------------------------------------------------|--------------------------------|
| 5AAC85.045 (14) Moose                    | 130 <sup>4</sup>                 | 1000+ due to proximity to large population and relatively good access during the winter season. | Yes <sup>5</sup>      | Yes                                              | 0%                             |

Remainder of Unit 16(B)

SUBSISTENCE HUNTERS: Sept. 1-Sept. 30  
Dec. 1-Feb. 28

1 moose; however, antlerless moose may be taken only from Sept. 25-Sept. 30, and during the period Dec. 1-Feb. 28, within which a two-week season for moose by registration permit only will be announced by Emergency Order

RESIDENT AND NONRESIDENT HUNTERS: Sept. 1-Sept. 30  
1 bull

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5ACC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. Based on number of registration permits issued 1986-89.
5. A registration hunt with a limited allowable harvest would not be feasible with the expanded eligibility.

Subsistence Hunting Regulations  
Regulatory Year 1989-90  
Region II  
MOOSE

| Hunt Seasons and Bag Limits <sup>1</sup>                                            | Current Eligibility <sup>2</sup> | Expanded Eligibility <sup>3</sup> | Would Tier II Result? | Would Increased Harvest be of Biological Concern? | % Harvest on Federal Lands? |
|-------------------------------------------------------------------------------------|----------------------------------|-----------------------------------|-----------------------|---------------------------------------------------|-----------------------------|
| 5 AAC 85.045(15) Moose                                                              |                                  |                                   |                       |                                                   |                             |
| <i>Unit 17(C), that portion including the Iowithla drainage and Sunshine Valley</i> |                                  |                                   |                       |                                                   |                             |
| SUBSISTENCE HUNTERS:                                                                |                                  |                                   |                       |                                                   |                             |
| Aug. 20 - Sept. 15                                                                  |                                  |                                   |                       |                                                   |                             |
| One bull                                                                            | 250-300                          | 100-200                           | Possibly              | YES (long term)                                   | 0%                          |
| RESIDENT HUNTERS:                                                                   |                                  |                                   |                       |                                                   |                             |
| Sept. 1 - Sept. 15                                                                  |                                  |                                   |                       |                                                   |                             |
| One bull                                                                            |                                  |                                   |                       |                                                   |                             |
| NONRESIDENT HUNTERS:                                                                |                                  |                                   |                       |                                                   |                             |
| Sept. 5 - Sept. 15                                                                  |                                  |                                   |                       |                                                   |                             |
| One bull                                                                            |                                  |                                   |                       |                                                   |                             |

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.

Subsistence Hunting Regulations  
Regulatory year 1989-90  
Region 11  
DALL. SHEEP

| Hunt Seasons and Bag Limits <sup>1</sup> | Current Eligibility <sup>2</sup> | Expanded Eligibility <sup>3</sup> | Would Tier II Result? | Would Increased Harvest be of Biological Concern | % of Harvest on Federal Lands? |
|------------------------------------------|----------------------------------|-----------------------------------|-----------------------|--------------------------------------------------|--------------------------------|
| 5AAC85.055(4) Dall Sheep                 | 200-250                          | 400-600                           | No                    | No                                               | 30%                            |

Units 6 and 9, remainder of Unit 13, and Units 14(B), 16, 17, and 19.

SUBSISTENCE HUNTERS: Aug. 10-Sept. 20  
1 ram with 7/8 curl horn or larger.

RESIDENT AND  
NONRESIDENT HUNTERS: Aug. 10-Sept. 20  
1 ram with full-curl horn or larger.

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5ACC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.

Subsistence Hunting Regulations  
Regulatory Year 1988-89  
Region III -- Interior

| Hunt Seasons<br>and Bag Limits <sup>1</sup>                                                                         |          | Current<br>Eligibility <sup>2</sup> | Expanded<br>Eligibility <sup>3</sup> | Would Tier II<br>Result? | Would Increased<br>Harvest be of<br>Biological Concern? | % of Harvest on<br>Federal Lands? |
|---------------------------------------------------------------------------------------------------------------------|----------|-------------------------------------|--------------------------------------|--------------------------|---------------------------------------------------------|-----------------------------------|
| <b>GRIZZLY BEAR</b>                                                                                                 |          |                                     |                                      |                          |                                                         |                                   |
| Unit 24 that portion of<br>the Koyukuk River drainage<br>upstream from, and including,<br>the Alutna River drainage |          |                                     |                                      |                          |                                                         |                                   |
| SUBSISTENCE HUNTERS:                                                                                                | Sept. 1- | 30                                  | 30                                   | No                       | No                                                      | 100%                              |
| Residents of Anaktuvuk                                                                                              | Oct. 31  |                                     |                                      |                          |                                                         |                                   |
| Penn: One bear every<br>regulatory year.                                                                            | Apr. 1-  | 30                                  | 30                                   | No                       | No                                                      | 100%                              |
|                                                                                                                     | May 31   |                                     |                                      |                          |                                                         |                                   |
| ALL OTHER SUBSISTENCE                                                                                               | Sept. 1- | 100                                 | 10                                   | No                       | No                                                      | 50%                               |
| HUNTERS: One bear every                                                                                             | Oct. 31  |                                     |                                      |                          |                                                         |                                   |
| four regulatory years                                                                                               |          |                                     |                                      |                          |                                                         |                                   |
| by registration permit;                                                                                             | May 10-  | 100                                 | 10                                   | No                       | No                                                      | 50%                               |
| 15 bears may be taken.                                                                                              | May 31   |                                     |                                      |                          |                                                         |                                   |
| registration permit;                                                                                                |          |                                     |                                      |                          |                                                         |                                   |
| RESIDENT/NONRESIDENT                                                                                                | Sept. 1- | 50                                  | 100                                  | No                       | No                                                      | 50%                               |
| HUNTERS: One bear every                                                                                             | Oct. 31  |                                     |                                      |                          |                                                         |                                   |
| four regulatory years                                                                                               |          |                                     |                                      |                          |                                                         |                                   |
| by registration permit;                                                                                             | May 10-  | 50                                  | 100                                  | No                       | No                                                      | 50%                               |
| 15 bears may be taken.                                                                                              | May 31   |                                     |                                      |                          |                                                         |                                   |
| registration permit;                                                                                                |          |                                     |                                      |                          |                                                         |                                   |

| Hunt Seasons<br>and Bag Limits <sup>1</sup>                                                                                                                                              | Current<br>Eligibility <sup>2</sup>                                                           | Expanded<br>Eligibility <sup>3</sup> | Would Tier II<br>Result? | Would Increased<br>Harvest be of<br>Biological Concern? | % of Harvest on<br>Federal Lands? |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|--------------------------------------|--------------------------|---------------------------------------------------------|-----------------------------------|
| Unit 19, residents<br>domiciled in Lima<br>Village only: No bag<br>limit, provided that no<br>more than 100 caribou<br>are taken. Cows and<br>calves may not be<br>taken April 1-Aug. 9. | 35-40                                                                                         | 3500-4000                            | Yes                      | Yes                                                     | 75%                               |
| SUBSISTENCE HUNTERS: July 1-<br>June 30                                                                                                                                                  |                                                                                               |                                      |                          |                                                         |                                   |
| Unit 20(D) south of the<br>Alaska Highway                                                                                                                                                | 2-4 Subsistence<br>40-80 Permittees                                                           | 500+                                 | Yes                      | Yes                                                     | 0%                                |
| SUBSISTENCE HUNTERS: Aug. 10-<br>One bull. Sept. 30                                                                                                                                      |                                                                                               |                                      |                          |                                                         |                                   |
| RESIDENT/NONRESIDENT<br>HUNTERS: One bull by<br>drawing permit only.<br>150 permits will be<br>issued.                                                                                   | Aug. 10-<br>Sept. 30                                                                          |                                      |                          |                                                         |                                   |
| Unit 20(D) north of the<br>Alaska Highway.                                                                                                                                               | 20*                                                                                           | 250                                  | No                       | No                                                      | 0%                                |
|                                                                                                                                                                                          | (*These numbers are included in data for GFW 12 & 20(D) north of the Alaska Hwy listed above) |                                      |                          |                                                         |                                   |
| SUBSISTENCE HUNTERS: Aug. 10-<br>One caribou. Sept. 30                                                                                                                                   |                                                                                               |                                      |                          |                                                         |                                   |
|                                                                                                                                                                                          | Dec. 1-<br>Feb. 28                                                                            |                                      |                          |                                                         |                                   |

| Hunt Seasons<br>and Bag Limits <sup>1</sup>                                                                                          |                      | Current<br>Eligibility <sup>2</sup> | Expanded<br>Eligibility <sup>3</sup> | Would Tier II<br>Result? | Would Increased<br>Harvest be of<br>Biological Concern? | % of Harvest on<br>Federal Lands?                      |
|--------------------------------------------------------------------------------------------------------------------------------------|----------------------|-------------------------------------|--------------------------------------|--------------------------|---------------------------------------------------------|--------------------------------------------------------|
| Forty-mile River upstream<br>from and including<br>Ketchumstuck Creek.                                                               |                      |                                     |                                      |                          |                                                         |                                                        |
| SUBSISTENCE HUNTERS:<br>One caribou                                                                                                  | Aug. 10-<br>Sept. 30 | 5-25                                | 100-200 - Area<br>is remote.         | No                       | No                                                      | 75% including BLM<br>managed native<br>selections.     |
|                                                                                                                                      | Dec. 1-<br>Feb. 28   | 5-25                                | 100-200 - Area<br>is remote.         | No                       | No                                                      | 75% including BLM<br>BLM managed native<br>selections. |
| RESIDENT/NONRESIDENT<br>HUNTERS: One bull                                                                                            | Aug. 10-<br>Sept. 20 |                                     |                                      |                          |                                                         |                                                        |
| Remainder of Unit 20(E)<br>(accessible by the Taylor<br>Highway and associated<br>trails)                                            |                      |                                     |                                      |                          |                                                         |                                                        |
| SUBSISTENCE HUNTERS:<br>One caribou by<br>registration permit only.<br>Season will be closed<br>when 325 caribou<br>have been taken. | Aug. 10-<br>Sept. 30 | 400-500                             | 2000-3000 *                          | Yes                      | Yes                                                     | 75% including BLM<br>managed native<br>selections.     |
|                                                                                                                                      | Dec. 1-<br>Feb. 28   | 400-500                             | 2000-3000 *                          | Yes                      | Yes                                                     | 75% including BLM<br>managed native<br>selections.     |

\* If all Alaskans were  
considered eligible for  
subsistence, most would  
hunt under the subsistence  
regulations, and not in  
this hunt.

| Hunt Seasons<br>and Bag Limits <sup>1</sup> | Current<br>Eligibility <sup>2</sup> | Expanded<br>Eligibility <sup>3</sup> | Would Tier II<br>Result? | Would Increased<br>Harvest be of<br>Biological Concern? | % of Harvest on<br>Federal Lands? |
|---------------------------------------------|-------------------------------------|--------------------------------------|--------------------------|---------------------------------------------------------|-----------------------------------|
|---------------------------------------------|-------------------------------------|--------------------------------------|--------------------------|---------------------------------------------------------|-----------------------------------|

Units 24, and 26(A),  
those portions within the  
Gates of the Arctic  
National Park. Three  
sheep.

|                      |                    |    |    |    |    |     |
|----------------------|--------------------|----|----|----|----|-----|
| SUBSISTENCE HUNTERS: | Aug. 1-<br>Apr. 30 | 30 | 30 | No | No | 100 |
|----------------------|--------------------|----|----|----|----|-----|

|                                  |                |
|----------------------------------|----------------|
| RESIDENT/NONRESIDENT<br>HUNTERS: | No Open Season |
|----------------------------------|----------------|

#### MOOSE

Unit 12, that portion  
drained by the Tanana, Nebeane  
and Chisana Rivers east of  
the Tetlin Reservation  
boundary and north of the  
winter trail from  
Pickeral Lake to the  
Canadian border. One bull.

|                      |                      |        |         |    |    |                 |
|----------------------|----------------------|--------|---------|----|----|-----------------|
| SUBSISTENCE HUNTERS: | Sept. 1-<br>Sept. 20 | 75-100 | 100-150 | No | No | 60%; Tetlin MWR |
|----------------------|----------------------|--------|---------|----|----|-----------------|

|                                  |                       |
|----------------------------------|-----------------------|
| RESIDENT/NONRESIDENT<br>HUNTERS: | Sept. 10-<br>Sept. 15 |
|----------------------------------|-----------------------|

| Hunt Seasons<br>and Bag Limits <sup>1</sup>                                                                                                                          | Current<br>Eligibility <sup>2</sup> | Expendable<br>Eligibility <sup>3</sup> | Would Tier II<br>Result?                                                                 | Would Increased<br>Harvest be of<br>Biological Concern? | % of Harvest on<br>Federal Lands? |      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|----------------------------------------|------------------------------------------------------------------------------------------|---------------------------------------------------------|-----------------------------------|------|
| RESIDENT/NONRESIDENT<br>HUNTERS:                                                                                                                                     | Sept. 1-<br>Sept. 20                | 25-30                                  | 50                                                                                       | No                                                      | Yes                               | 50%  |
| Unit 19(D), remainder of the<br>Upper Kuskokwim Controlled<br>Use Area. One bull.                                                                                    |                                     |                                        |                                                                                          |                                                         |                                   |      |
| SUBSISTENCE HUNTERS:                                                                                                                                                 | Sept. 1-<br>Sept. 30                | 200                                    | 300                                                                                      | Yes                                                     | Yes                               | 50%  |
|                                                                                                                                                                      | Dec. 1-<br>Feb. 28                  | 20                                     | 200                                                                                      | Yes                                                     | Yes                               | 75%  |
| RESIDENT/NONRESIDENT<br>HUNTERS:                                                                                                                                     | Sept. 1-<br>Sept. 30                | 200                                    | 200                                                                                      | No                                                      | No                                | 50%  |
| Unit 20(B), that portion<br>within the Minto Management<br>Area. One bull by registration<br>permit only. Season will be<br>closed when 15 bulls have been<br>taken. |                                     |                                        |                                                                                          |                                                         |                                   |      |
|                                                                                                                                                                      |                                     | 75-100 <sup>4</sup>                    | Over 500 due to<br>proximity to Fairbanks,<br>good access, and high<br>demand for moose. | Yes                                                     | Yes                               | None |
| SUBSISTENCE HUNTERS:                                                                                                                                                 | Sept. 1-<br>Sept. 20                |                                        |                                                                                          |                                                         |                                   |      |
|                                                                                                                                                                      | Jan. 10-<br>Feb. 28                 |                                        |                                                                                          |                                                         |                                   |      |
| RESIDENT/NONRESIDENT<br>HUNTERS:                                                                                                                                     | No Open Season                      |                                        |                                                                                          |                                                         |                                   |      |



| Hunt Seasons<br>and Bag Limits <sup>1</sup> |          | Current<br>Eligibility <sup>2</sup> | Expanded<br>Eligibility <sup>3</sup> | Would Tier II<br>Result? | Would Increased<br>Harvest be of<br>Biological Concern? | % of Harvest on<br>Federal Lands? |
|---------------------------------------------|----------|-------------------------------------|--------------------------------------|--------------------------|---------------------------------------------------------|-----------------------------------|
| Unit 20(F). One bull.                       |          | 15-30                               | 100                                  |                          |                                                         | 30%                               |
|                                             |          | Based on                            | Based on AK                          |                          |                                                         | (BLM)                             |
| SUBSISTENCE HUNTERS:                        | Sept. 1- | reported                            | resident                             | Yes, for                 | Yes, for                                                |                                   |
|                                             | Sept. 15 | subsistence                         | participation                        | the Dec.                 | the Dec.                                                |                                   |
|                                             |          | participation 1988.                 |                                      | portion of               | portion of                                              |                                   |
|                                             | Dec. 1-  | I did not include                   |                                      | the season.              | the season.                                             |                                   |
|                                             | Dec. 10  | Minto permit holders                |                                      | 1988.                    |                                                         |                                   |
|                                             |          | as eligible because in              |                                      |                          |                                                         |                                   |
| RESIDENT/NONRESIDENT                        | Sept. 1- | practice few Minto                  |                                      |                          |                                                         |                                   |
| HUNTERS:                                    | Sept. 15 | hunters would travel                |                                      |                          |                                                         |                                   |
|                                             |          | to 20F although                     |                                      |                          |                                                         |                                   |
|                                             |          | eligible.                           |                                      |                          |                                                         |                                   |
| Unit 21(D)                                  |          |                                     |                                      |                          |                                                         |                                   |
| SUBSISTENCE HUNTERS:                        | Sept. 5- | 200                                 | 600                                  | Yes                      | Yes                                                     | 80%                               |
| One moose; antlerless                       | Sept. 25 |                                     |                                      |                          |                                                         |                                   |
| moose may be taken                          |          |                                     |                                      |                          |                                                         |                                   |
| only from Sept. 21-                         | Feb. 1-  | 200                                 | 500                                  | Yes                      | Yes                                                     | 80%                               |
| Sept. 25 and Feb. 1-                        | Feb. 5   |                                     |                                      |                          |                                                         |                                   |
| Feb. 5. Moose may not be                    |          |                                     |                                      |                          |                                                         |                                   |
| taken within 1/2 mile of                    |          |                                     |                                      |                          |                                                         |                                   |
| the Yukon River during                      |          |                                     |                                      |                          |                                                         |                                   |
| the February season.                        |          |                                     |                                      |                          |                                                         |                                   |
| RESIDENT/NONRESIDENT                        | Sept. 5- | 400                                 | 400                                  | No                       | No                                                      | 80%                               |
| HUNTERS: One bull.                          | Sept. 25 |                                     |                                      |                          |                                                         |                                   |

| Hunt Seasons<br>and Bag Limits <sup>1</sup>         | Current<br>Eligibility <sup>2</sup>                                                                 | Expanded<br>Eligibility <sup>3</sup> | Would Tier II<br>Result? | Would Increased<br>Harvest be of<br>Biological Concern? | % of Harvest on<br>Federal Lands? |
|-----------------------------------------------------|-----------------------------------------------------------------------------------------------------|--------------------------------------|--------------------------|---------------------------------------------------------|-----------------------------------|
| <b>SUBSISTENCE HUNTERS:</b>                         |                                                                                                     |                                      |                          |                                                         |                                   |
| Sept. 10-<br>Sept. 30                               |                                                                                                     |                                      |                          |                                                         |                                   |
| Dec. 1-<br>Dec. 10                                  |                                                                                                     |                                      |                          |                                                         |                                   |
| Feb. 18-<br>Feb. 28                                 |                                                                                                     |                                      |                          |                                                         |                                   |
| <b>Remainder of Unit 25(D)</b>                      |                                                                                                     |                                      |                          |                                                         |                                   |
| <b>One bull</b>                                     |                                                                                                     |                                      |                          |                                                         |                                   |
| <b>SUBSISTENCE HUNTERS:</b>                         |                                                                                                     |                                      |                          |                                                         |                                   |
| Sept. 10-<br>Sept. 30                               | 280-310<br>Based on<br>area biologist's<br>est.                                                     | 330-380                              | No                       | No                                                      | 100%                              |
| Dec. 1-<br>Dec. 10                                  |                                                                                                     |                                      |                          |                                                         |                                   |
| <b>RESIDENT/NONRESIDENT<br/>HUNTERS:</b>            |                                                                                                     |                                      |                          |                                                         |                                   |
| Sept. 10-<br>Sept. 20                               | 31<br>(1989 hunters)                                                                                |                                      |                          |                                                         |                                   |
| <b>Remainder of Units 26(B),<br/>and Unit 26(C)</b> |                                                                                                     |                                      |                          |                                                         |                                   |
| <b>SUBSISTENCE HUNTERS:</b>                         |                                                                                                     |                                      |                          |                                                         |                                   |
| Aug. 1-<br>Dec. 31                                  | 50-60 Based<br>on 1988<br>Subsistence<br>Division est.<br>of hunters in<br>Kaktovik and<br>Nuiqsut. | 150-175                              | Yes                      | Yes                                                     | 50%                               |
| One moose.                                          |                                                                                                     |                                      |                          |                                                         |                                   |

Subsistence Hunting Regulations  
Regulatory Year 1989-90  
Region V -- Northwest

| Hunt Seasons<br>and Bag Limits <sup>1</sup>     | Current<br>Eligibility <sup>2</sup> | Expanded<br>Eligibility <sup>3</sup>    | Would<br>Tier II<br>Result? | Would Increased<br>Harvest be of<br>Biological Concern? | % of Harvest<br>on Federal<br>Lands? |
|-------------------------------------------------|-------------------------------------|-----------------------------------------|-----------------------------|---------------------------------------------------------|--------------------------------------|
| <u>Unit 18 (B/G Bear)</u>                       |                                     |                                         |                             |                                                         |                                      |
| SUBSISTENCE HUNTERS:<br>(Domiciled in Kwethluk) | 12-16                               | 20-40, mostly<br>residents of<br>Bethel | Yes                         | Yes                                                     | 100                                  |
| Sept. 10-Oct. 10<br>Apr. 10-May 25              |                                     |                                         |                             |                                                         |                                      |
| One bear every regulatory year                  |                                     |                                         |                             |                                                         |                                      |
| ALL OTHER HUNTERS:                              |                                     |                                         |                             |                                                         |                                      |
| Sept. 10-Oct 10<br>Apr. 10-May 25               |                                     |                                         |                             |                                                         |                                      |
| One bear every 4 regulatory years               |                                     |                                         |                             |                                                         |                                      |

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibilty be expanded to include all Alaskans.

Subsistence Hunting Regulations  
Regulatory Year 1989-90  
Region V - Northwest

| Hunt Seasons<br>and Bag Limits <sup>1</sup> | Current<br>Eligibility <sup>2</sup> | Expanded<br>Eligibility <sup>3</sup> | Would<br>Tier II<br>Result? | Would Increased<br>Harvest be of<br>Biological Concern? | % of Harvest<br>on Federal<br>Lands? |
|---------------------------------------------|-------------------------------------|--------------------------------------|-----------------------------|---------------------------------------------------------|--------------------------------------|
|---------------------------------------------|-------------------------------------|--------------------------------------|-----------------------------|---------------------------------------------------------|--------------------------------------|

Unit 26A (Moose)

|                      |       |                     |     |                  |    |
|----------------------|-------|---------------------|-----|------------------|----|
| SUBSISTENCE HUNTERS: | 20-40 | 80-100 <sup>5</sup> | Yes | Yes <sup>4</sup> | 10 |
|----------------------|-------|---------------------|-----|------------------|----|

Aug. 1-Dec. 31

One moose. The taking of  
cows accompanied by calves  
is prohibited.

ALL HUNTERS:

Sept. 1 - Dec. 31

One moose. The taking of  
cows accompanied by calves  
is prohibited.

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. Overharvest can be prevented and Tier II would not be necessary if aircraft use is allowed only from Sept. 1 - Dec. 31.
5. Additional hunters would mostly come from the Fairbanks area.

# MEMORANDUM

State of Alaska

TO Norm Cohen  
Deputy Commissioner  
Department of Fish and Game

DATE February 21, 1990

FILE NO

TELEPHONE NO

FROM *St. Ger*  
David Cahtillon  
Deputy Director  
Division of Commercial Fisheries

SUBJECT Response to  
Subsistence  
Questions Your Memo  
of 02/05/90

The responses to the six questions you posed are organized by region with the various management areas lumped into each response. Due to the short time frame, some small details may have been overlooked.

## REGION I

1. By board action in the spring of 1989, the residents domiciled in the communities of Yakutat, Klukwan, Haines, Hoonah, Angoon, Sitka, Kake, Saxman, Kasaan, Klawock, Craig and Hydaburg have a priority for a variety of fishery resources within specific described areas (5 AAC 01.665, 01.715 and 02.107). Additionally, 5 AAC 01.730(d) limits subsistence coho fishing in Mitchell Bay to residents of Angoon.
2. The subsistence halibut fishery is open year around while personal use fishing is open from 2/1 through 12/31. 5 AAC 77.624(1) and 77.676(1)

For herring roe on kelp in Yakutat a permit is required for personal use but not for subsistence. 5 AAC 77.620(4)

In Yakutat and Southeast, bottomfish may be taken by all gear types for subsistence, but personal use fishermen can only use longlines or hand held lines. 5 AAC 77.622(2). Additionally, in Southeast there are personal use rockfish limits in areas adjacent to Ketchikan and Sitka that do not apply to subsistence fishermen. 5 AAC 77.622(3)

In Yakutat, annual salmon bag limits are specified for personal use fishermen as well as no directed fishing for chinook. Personal use fishermen are restricted to taking salmon to the 7/1-9/30 period and can only fish in areas open to commercial fishing. 5 AAC 77.628(c&j)

In Southeast, a personal use open season, gear restrictions, seasonal bag limits, and open fishing area is provided for the Taku River and no such restrictions apply to subsistence fishing. 5 AAC 77.682(f)

COMMISSIONER'S OFFICE  
**RECEIVED**  
FEB 23 1990

In Southeast, personal use regulations provide for the use of set nets in Shiply Bay. No such provision is in the subsistence regulations. 5 AAC 77.682(g)(2)(C)

In Southeast, personal use regulations close the waters of Si:koh Bay in order to provide a subsistence priority for Sitka and Angoon. 5 AAC 77.682(i)(1)

3. When the board established Southeast Alaska and Yakutat personal use fisheries, the intent was to allow individuals to continue to harvest resources, for their own personal consumption, in the same manner as was occurring before the customary and traditional findings. I do not anticipate any significant increases in demand or harvest resulting from the differences in personal use and subsistence regulations outlined in #2. Over time, if everyone in the region remained eligible for subsistence some increases could occur. If Juneau residents were eligible for subsistence, larger harvests of sockeye could be expected from the Taku River.
4. We do not anticipate the immediate development of any Tier II situations resulting from all Southeast Alaska residents becoming eligible for subsistence fishing.
5. The primary conservation situations involving subsistence and personal use fishing are already occurring. Rockfish populations near Ketchikan and Sitka and some small sockeye systems are of concern. Most of the rockfish are being harvested under sport licenses and little change to subsistence would occur if everyone was eligible. The small sockeye systems are already heavily utilized and the user level would probably stay about the same as has occurred in recent years.
6. This is a difficult question. Most of the actual harvest occurs in marine waters. A large portion of the salmon resource originates from streams that lie on federal lands.

## REGION II

### BRISTOL BAY - 5 AAC 01.335

1. Only those residents domiciled in the Nushagak District may take salmon in the Nushagak District and drainage.
2. Only Togiak drainage residents and residents of Manokotak may subsistence fish in Togiak.
3. Only Naknek and Kvichak drainage residents may subsistence fish in the Naknek drainage.
4. Only residents in the Iliamna and Lake Clark drainages may

subsistence fish in that drainage.

5. Only residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clarks Point and Ekuk may take subsistence herring and herring roe on kelp at Togiak. 5 AAC 27.805(a)

COOK INLET - 5 AAC 01.565(a&b)

1. Only Pt. Graham and English Bay residents may fish in the Pt. Graham and Dogfish Bay subdistricts.
2. Only Tyonek residents may fish in the Tyonek subdistrict.

PRINCE WILLIAM SOUND - 5 AAC 01.648

1. Only residents of the southwest district may subsistence fish in the Southwest District and Green Island.
2. Only residents of Tatitlek and Ellamar may fish in the area described in the Tatitlek area.

COPPER RIVER - 5 AAC 01.630(a)

1. Only those residents domiciled in Game management units 11, 13A, 13B, 13C, 13D as described in 5 AAC 88.005 may subsistence fish in the Upper Copper River.

QUESTION #2 & 3

In general, the Bristol Bay subsistence fisheries and personal use fisheries are different. The personal use fisheries on the Nushagak are only in the commercial fishing district and are limited 70 salmon per individual during the month of July. The PU fishery on the Naknek starts after the escapement goal has been reached (900,000) and dip net as well as gillnets can be used. It is doubtful there would be additional participation from what is correctly taking place with the exception of the Naknek River which has a large and growing sport fishery. If this fishery were made into a subsistence fishery this catch would increase to some unknown extent.

There are several PU fisheries in Cook Inlet, but all are managed on a quota system. Even if they were made into subsistence fisheries it is doubtful the harvest would increase substantially. The Tyonek subsistence fishery was opened to all residents in 1985 following the MADISON case. The number of permits increased to 176 from a average of 70. Tyonek was issued 73, 82 went to Anchorage area residents and 21 were issued to Kenai Peninsula residents. Only 17 percent of the total harvest was taken by non-Tyonek fishermen (326 kings).

It is doubtful if any changes could be projected for PWS at this

time since the subsistence regulations are so new and there doesn't appear to be much interest in a subsistence fishery in PWS from residents outside of the remote villages earlier mentioned.

The PU fishery in the Upper Copper River is another story, the current PU fishery issues approximately 4500 permits per year with bag limits of 15-30 fish. Subsistence bag limits are 30-50 with 200-500 per individual or family permitted. If the guideline harvest rates in the Copper River management plan were not used, the harvest could be expected to go up to at least the 120,000 fish that were documented in 1983 before the current plan was adopted. If the current guideline were maintained the harvest should remain stable at about 85,000.

It does not appear that Tier II would apply to any Region II salmon subsistence.

### REGION III

1. Four finfish fisheries in the Kuskokwim Area are limited in subsistence eligibility. These are the salmon, halibut, Pacific cod and herring and herring roe fisheries. 5 AAC 01.285(a)(b)(c)(d)

Subsistence eligibility in the Yukon drainage is currently limited to residents of rural areas, as determined by the board for Yukon Area salmon and freshwater fish species including sheefish, char, whitefish, lamprey, burbot, sucker, grayling, pike and blackfish. Cape Roma' of herring also have limited access. 5 AAC 01.235(a)(b)(c)(d)

2. In the Kuskokwim Area, only the salmon fishery has regulations for personal use fishing that are different from those for subsistence fishing. Personal use fishermen must have a permit, cannot take king salmon and can only fish from 7/1-9/30. 5 AAC 77.?

In the Yukon there are no provisions for personal use fishing for freshwater finfish other than salmon. Permits are required for personal use salmon fishing, but are only required for select areas for subsistence salmon fishing - 5 AAC 01.230. Salmon taken for personal use may not be used for dog food.

3. In the Kuskokwim, no increase in effort is expected as the result of expanded eligibility.

In the Yukon, the main expansion would be from residents of the Fairbanks area who were formally limited to personal use fishing. These people could take subsistence fish for dog food which they could not do under personal use regulations. The Tanana River and the area in District 5 near the Haul Road



bridge are the locations increased effort is anticipated.

4. No Tier II situation is anticipated during the 1990 season. In the Yukon, participation in areas near Fairbanks may rise over time to levels that will require some limitation on effort.
5. No biological concern exists for the Kuskokwim as harvests are not expected to increase. In the Yukon, some concern exists for stocks in the Tanana drainage where effort increases can be anticipated. Management actions in the commercial and subsistence fisheries should be able to compensate for these increases, but fall chums are still considered rebuilding and weak returns may be impacted.
6. Again, this is a tough question. Considering that the state has jurisdiction in navigable waters, almost all the harvest occurs off federal lands.

#### REGION IV

1. In the Kodiak Area, the subsistence taking of king crab (5 AAC 02.465) and salmon (5 AAC 01.535) is limited to Kodiak Borough residents, excluding those persons residing on the Coast Guard base. These restrictions do not apply to the Mainland District.

In the Aleutians Islands Area, only those persons domiciled in the area and the Pribilof Islands may take halibut in the area and around the Pribilof Islands 5 AAC 01.365.

In the Alaska Peninsula Area, only the residents of the area, including those of the communities of Ivanof Bay and Perryville may take halibut in the area 5 AAC 01.415.

Only residents of the Chignik Area may take halibut for subsistence in the area 5 AAC 01.465.

2. There is only one personal use salmon fishery provided for in the region. This occurs in the Adak District in the waters around Adak and Kagalaska Islands 5 AAC 77.318.

For shellfish, the personal use, and subsistence regulations mirror each other.

3. Small increases in salmon subsistence participation would occur as a result of the participation of Coast Guard base personnel in Kodiak and by fishermen in the region that reside in other areas of the state. The increase in permits issued could range from 10-20 percent and the harvest increase would not exceed this amount.

No increase in shellfish subsistence participation or harvest is anticipated.

4. No Tier II situations are expected to develop in this region.
5. No biological concerns for fish stocks in this region have been identified.
6. In the Kodiak Area, a significant portion of the salmon harvest occurs in rivers or lagoons located in the Kodiak National Wildlife Refuge. A rough estimate of 40 percent of the Kodiak Area subsistence salmon catch falls into this category and additional salmon are harvested in marine waters adjacent to this refuge. In the other management areas of the region, almost all of the catch occurs on state or native lands or adjacent marine waters.

ADF&G, Division of Subsistence  
Southeast Regional Office  
Box 20  
Douglas, Alaska 99824

## **Southeast Alaska Subsistence Fishing and Hunting Update November 1989**

Subsistence fishing and hunting are important parts of the culture and economy of many southeast Alaska communities. Subsistence is a social issue with a long history. Major changes have been occurring in state subsistence regulations that effect southeast villages. Many residents have not heard of them. This report is a current update of recent events effecting subsistence in southeast Alaska.

### **Background**

Since 1979, the state has had a state law protecting subsistence fishing and hunting. The law requires that subsistence fishing or hunting be allowed where it traditionally occurs. The law requires that subsistence be given priority over commercial fishing and sport fishing and hunting. This means that in times of shortages of wild fish stocks and game populations, where it becomes necessary to restrict harvests, the state must cut back on sport and commercial uses before subsistence uses are cut back. Since 1981, the federal government also has had a federal law protecting subsistence (in ANILCA). It is almost identical to the state law. In both laws, subsistence is defined as the "customary and traditional use" of wild resources in "rural areas".

The subsistence laws are implemented by the Alaska Board of Fishery and Alaska Board of Game. These are two state boards made of seven citizens, appointed by the governor. They meet at least twice a year to make fishing and hunting regulations for the state.

The Board of Fisheries and Board of Game have just recently started to implement the subsistence law in the southeast region. This means they are in the process of creating regulations that will affect subsistence fishing and hunting for years to come in southeast Alaska.

### **Recent Decisions Affecting Southeast Alaska**

The Boards of Fisheries and Game decide which communities in southeast qualify for subsistence. That is, the boards decide who may fish and hunt under subsistence regulations. Deciding who qualifies is a two step process.

In the first step, the Boards of Fisheries and Game decide which communities are "rural communities" in southeast. By law, subsistence occurs only in "rural communities or areas". Over the past four years, the Boards have decided that all communities in southeast (including Saxman) are "rural", except for the Juneau Borough and the Ketchikan area, which are "non-rural." This means that residents of Juneau or Ketchikan (except Saxman) cannot fish or hunt under subsistence regulations, but can only fish or hunt under general, sport, commercial, or personal use regulations.

In the second step, the Board of Fisheries and the Board of Game decide which rural southeast communities have "customary and traditional uses" of fish or game. By law, subsistence is defined as "customary and traditional uses." Over the past two years, the Board of Game has decided that all rural communities in southeast have customary and traditional uses of deer. They have decided that only residents of Chichagof and Baranof islands and residents of Kake have customary and traditional use of brown bear. The Board of Game has not completed their decisions about other game animals.

In their January-March 1989 meetings, the Board of Fisheries decided that the following southeast rural communities have customary and traditional uses of all types of salmon: Yakutat, Klukwan, Haines, Kake, Hoonah, Angoon, Hydaburg, Kasaan, Saxman, Klawock, and Craig. These communities qualify for subsistence salmon fishing. The Board decided that residents of Sitka had customary and traditional uses of sockeye salmon only.

The Board decided that these rural communities do not have customary and traditional uses of salmon: Skagway, Gustavus, Elfin Cove, Pelican, Tenakee Springs, Petersburg, Wrangell, Point Baker, Port Protection, Port Alexander, Thorne Bay, Coffman Cove, North Whale Pass, Hollis, Edna Bay, Meyers Chuck, and Hyder. These communities do not qualify for subsistence salmon fishing. The Board of Fisheries did provide "personal-use" fishing regulations for these communities. Personal use is a new fishing category for southeast. It allows salmon to be taken with nets for home use, under the terms of permits issued by ADF&G, but this type of fishing does not carry the subsistence priority.

The Board of Fisheries also decided about shellfish and bottomfish. In general, the same communities that qualified for subsistence salmon also qualified for subsistence shellfish (except king crab) and subsistence bottom fish. The same communities that did not qualify for subsistence salmon did not qualify for subsistence shellfish and bottom fish.

The Board of Fisheries determined that subsistence king and coho salmon may only be taken incidentally to sockeye, pink, and chum salmon fishing, except for kings and coho in Yakutat, and coho in Angoon.

#### Discussion of Recent Southeast Subsistence Decisions

These recent decisions are important ones, for they affect the ability of residents to subsistence fish and hunt for years to come. The decisions by the Board of Fisheries are particularly important. The Board of Fisheries has eliminated from subsistence fishing a major portion of the rural residents in southeast, including residents of two major communities (Wrangell and Petersburg) and seventeen small communities. This includes both the Native groups and non-Native residents of these communities.

The system for establishing Alaska's fish and game regulations provides for citizen input in formulating and changing these regulations. The Boards have kept all upcoming agendas open for considering proposed revisions to subsistence regulations. Proposals submitted to the Board of Game by mid-December will be considered at the spring, 1990 meeting. Proposals submitted to the Board of Fisheries by April 1 will be considered at the fall, 1990 meeting.

Decisions by the Boards may also be challenged by legal suits. On June 30, 1989, a lawsuit was filed by Herman Kitka, Mark Jacobs, Jr., and John Dapcevich, on behalf of themselves and residents of the City and Borough of Sitka. They are suing the State of Alaska, Alaska Department of Fish and Game, and the Board of Fisheries over the recent decisions in Sitka that recognize Sitka's customary and traditional uses of some food species but not others.

#### Statewide Subsistence Issue: The Kenaitze Case

Another major subsistence issue is the lawsuit by the Kenaitze Indian Tribe on the Kenai Peninsula against the State of Alaska. It is a complicated suit, but in general, the Kenaitze Tribe is suing for an opportunity to subsistence salmon fish on the Kenai Peninsula. Recently, a California federal court found in favor of the Kenaitze on part of their suit. The federal court found that the state's current definition of "rural" did not match a "common" definition, and was not in compliance with ANILCA (the federal subsistence law).

This court decision throws the state's approach toward defining "rural" into confusion. The state has not wanted to define "rural" with a simple population size (the usual standard is 2,500 people), because

1

this would eliminate places like Barrow, Bethel, Nome, and Kotzebue from subsistence fishing and hunting. Clearly, these communities rely on subsistence. Instead, the state has defined "rural" in terms of the overall socioeconomic pattern in an area: "rural" was defined as places where "customary and traditional fishing and hunting was a principal component of the economy of the community or area". By this definition, most areas of the state qualified as rural, except Anchorage, Fairbanks, Juneau, Ketchikan, the Matsu Borough, the Kenai Peninsula, and a few communities like Valdez, Seward, and Big Delta. It is this approach that the court struck down.

The state's Governor's office and Washington legislators attempted to solve this problem by submitting an amendment to ANILCA, which would have defined "rural" in ANILCA by using the state's definition. This proposed amendment was blocked, primarily by an outcry of several Native organizations in the state, who were not consulted prior to the state taking this approach.

Currently, there has been no solution to these problems of how to define "rural" and how to allow the Kenaitze the opportunity to fish. Discussion is occurring between state agencies, the Kenaitze tribe, other Alaska Native groups, and other resource user groups on ways to try to solve them. There are no clear answers in sight. If the federal court steps in to decide these issues, the 2,500 population level is one possible definition the court would impose. This definition would eliminate as rural many places in Alaska which currently have rural status and subsistence opportunities.

# *Key events in recent history of subsistence*

The following are key events in the recent history of subsistence in Alaska:

- Under the terms of the Alaska Native Claims Settlement Act of 1971, Natives gave up claims to aboriginal hunting and fishing rights in exchange for roughly \$1 billion and 44 million acres of land.

- Responding to the plummeting population of the Western Arctic Caribou Herd, the Alaska Board of Game for the first time in 1975 limited eligibility for hunting permits to local residents of the area most dependant on the herd.

- The Tanana Valley Sportsmen's Association filed suit in 1975 in Fairbanks to prevent the Board of Game from implementing the permit regulations. The case reached the Alaska Supreme Court in 1978, by which time the regulations were out of date and no policy issues were settled.

- The Alaska Legislature authorized, but did not compel the Board of Game to establish subsistence hunting areas in 1975. In 1976 the Legislature divided fish and game management between the newly created Board of Game and the Board of Fisheries.

- The 10th Alaska Legislature passed in 1978 the first comprehensive subsistence law. Urban residents and sportsmen protested, calling the new law unfair. They predicted the destruction of game resources by the growing rural population.

- In a case between the Kenai Peninsula Fisherman's Cooperative Association and the state in 1981, it was ruled that Section 15, Article VIII of the Alaska Constitution does not prohibit differential treatment of sport, commercial and subsistence fishermen.

- Ballot Measure 7, an attempt to repeal the 1978 subsistence law, failed in 1982 in a statewide election.

- Four men, two of them Anchorage residents, filed a lawsuit in 1983 challenging the constitutionality of the 1978 subsistence law.

- The Alaska Supreme Court struck

down in 1985 the 1978 subsistence law in the Madison case, stating that all Alaskans should be able to use subsistence, and only when resources are extremely scarce should preferences be allowed.

- The Alaska Legislature in 1985 adopted a letter of intent leading to the development of the 1986 subsistence law.

- The U.S. government informed the state in 1986 that the Madison decision contradicted the Alaska National Interest Lands Conservation Act, and threatened to take over the management of all federal land in Alaska unless a new subsistence law was created to meet ANILCA specifications.

- The Alaska Legislature created in 1986 a new law defining eligibility for participation in subsistence practices. The new guidelines were based on residency, with a 10-point criteria system deciding what areas qualified. The lawsuit filed in 1983 was modified to challenge the new law.

- A U.S. judge ruled in 1987 against the Kenaitze Indian Tribe, stating that the 1986 subsistence law agrees with ANILCA provisions.

- The 9th U.S. Circuit Court of Appeals in 1988 reversed the 1987 Kenaitze decision, telling the state that a better definition of "rural" was needed.

- An attempt by the state in 1989 to get federal legislation to match the federal definition of rural to that of the state, thus bypassing the 9th Circuit Court decision by changing the laws it was based upon, was thwarted by Native groups.

- The state and Kenaitzes agreed in 1989 to a one-year fishery solution until a permanent agreement is decided upon.

- The Alaska Supreme Court struck subsistence law as unconstitutional in December 1989.

STEVE COWPER  
GOVERNOR



MAR 21 1990

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

March 20, 1990

The Honorable Bettye Fahrenkamp  
Alaska State Senator  
P.O. Box V  
Juneau, AK 99811

Dear Bettye,

As you know, Alaska faces a real dilemma following the recent Alaska Supreme Court decision in McDowell v. State. In that case, the Court found that the subsistence priority for rural residents, which has been State policy for more than ten years, is unconstitutional. This is an unfortunate ruling because it interferes with good, workable policy. Additionally, it makes it impossible for us to enact a State law which is consistent with demands of federal law.

It is not the threat of federal takeover of fish and game management, under authority of the Alaska National Interest Lands Conservation Act (ANILCA), that compels me to seek a constitutional amendment. In 1978 the Legislature enacted a subsistence law which authorizes a subsistence priority for rural residents. In 1982 Alaskans overwhelmingly voted to preserve the law and the priority. In 1986 the Legislature reaffirmed the rural preference.

To maintain the present law, I have proposed an amendment to the Alaska State Constitution that would allow such a rural priority. The amendment would validate the current State subsistence law by returning us to the status quo before the McDowell decision.

This proposal was not developed in a vacuum. I have had many discussions, with a wide variety of interests, on this issue over the past two months. Although I had initially hoped that a solution via individual permits could be developed through a simple statutory amendment, I have concluded that the resulting system would be extremely burdensome, costly, and unwieldy. Moreover, I believe that

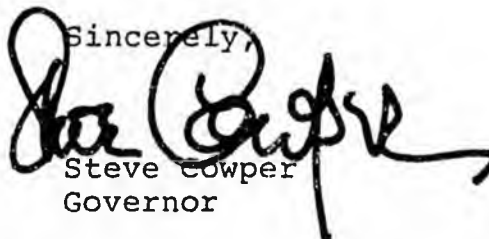
March 20, 1990

a statutory permit system would be unduly intrusive into the lives of individual Alaskans and probably would not meet federal requirements under ANILCA.

I am convinced that the constitutional amendment is the cleanest and most effective way to assure fishing and hunting opportunities to those people who most rely on fish and wildlife as a mainstay of their livelihood. It is also the most effective way to preserve the State's authority to manage those resources, not just for subsistence users but for commercial and recreational users as well.

Enclosed is a discussion paper that explains our rationale supporting the need for a constitutional amendment. It also outlines the several options my administration considered before coming to this conclusion. I solicit your support for the amendment, as the only way to preserve the integrity of our management system as well as unique Alaskan lifestyles.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the typed name and title.

Steve Cowper  
Governor

Enclosure



STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

*Handwritten:* PWC

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,

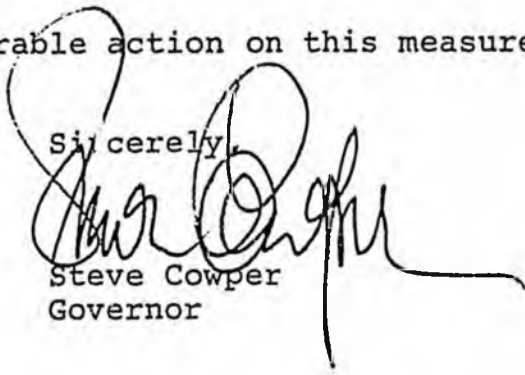
and customary and direct dependence on a fish or game population as a mainstay of livelihood. This would give the legislature clear constitutional authority to enact laws that are consistent with the subsistence provisions of ANILCA.

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

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

IN THE HOUSE

HOUSE JOINT RESOLUTION NO.

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,

1 and the election laws of the state.

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Member  
Finance Committee

# Alaska State Legislature

REPRESENTATIVE DICK SHULTZ

P.O. Box V  
Juneau, Alaska 99801  
(907) 465-4940  
Home: P.O. Box 487  
Tok, Alaska 99780

## MEMORANDUM

TO: ALL LEGISLATORS  
FROM: REP. SHULTZ   
DATE: APRIL 6, 1990  
RE: SUBSISTENCE PRECEDENTS

\*\*\*\*\*

There are two recent court decisions that if left unresolved will make any resolution of the subsistence issue impossible.

Both the Kenaitze and Kwethluk decisions beg two important questions.

1. Who is considered rural by the Federal Government?
2. Will the federal law continue to threaten our sustained yield principle of game management?

Before we know the answers to these critical questions it will be remiss to feel comfortable in conforming our constitution to allow the implementation of federal subsistence law on state lands.

My constituents are already considered urban under several state programs because they are road connected. I need to know what to tell them about any change in our constitution and how it might affect them. In light of these two court decisions it is becoming obvious to me the federal government is insensitive in using the sweeping fish and game allocation powers granted to them under ANILCA.

As the information I receive arrives from the Department of Fish and Game I will be happy to share it with you. I for one want to know why we keep losing these battles to protect our fish and game management in Alaska. Without this knowledge I can not begin to support allowing federal policy to be put in place on our state lands.



Member  
Finance Committee

# Alaska State Legislature

REPRESENTATIVE DICK SHULTZ

P.O. Box V  
Juneau, Alaska 99801  
(907) 465-4940  
Home: P.O. Box 487  
Tok, Alaska 99780

April 6, 1990

Commissioner Collinsworth  
Dept. Of Fish and Game  
Juneau, Alaska 99802

Dear Commissioner;

Please send to my office all communications by your Department both internal and otherwise on the Kenaitze decision and the Kwethluk decision.

Since both of these decisions involve a public resource namely fish and game and also involve the issue of subsistence I am most interested in what the Department has in mind for a solution to these cases.

I want to know what data was available to the Boards and what was actually presented to the Boards either voluntarily or as requested. The same holds true for the court. This includes subsistence studies done in the area and in the case of Kwethluk the commercial fishing catch numbers for this season.

I would also like to see any information presented on these matters by the local biologists and the Directors of Wildlife Conservation, Commercial Fisheries, Subsistence, and Sport Fish to the court, board, or their superiors. Please note accordingly.

It is my intent to review this information to determine what impacts may occur in my District as a result of the disturbing precedents being established in the handling of these matters by the Department and courts.

Sincerely,

A handwritten signature in cursive script that reads "Dick Shultz".

Dick Shultz

cc: Senator Stevens, and Murkowski,  
Congressman Young, Governor Cowper  
Boards of Fish and Game, All Regional Council Chairmen  
All Advisory Chairmen

APR 11 1990

STATE OF ALASKA  
CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS  
250 Cushman Street, Suite 4H  
Fairbanks, Alaska 99701  
(907) 456-2012

TO: Commission Members  
FROM: Staff  
DATE: April 9, 1990  
RE: Written comments on subsistence

Enclosed please find written comments from the public on subsistence received by Commission staff as of this date. The first document in the packet is the one forwarded to staff by Rep. Goll after the Commission meeting of March 31st.

As a reminder, teleconference sites in Anchorage, Fairbanks, Juneau, Ketchikan, Kodiak, Kotzebue and Wasilla will be on line for the Commission's discussion of subsistence April 17th at 5:00 p.m. The teleconference sites are located in the Legislative Information Offices for the respective communities with the exception of the one in Juneau which will be located in the House Judiciary Committee Room in the Capital Building.

Following are some general thoughts for your preparation of a statement. Naturally, the final language will await the conference in Anchorage during the second week of April.

DRAFT      DRAFT

The Citizens Advisory Commission on Federal Areas:

1. Supports state action to prevent federal intervention into fish and game management;
2. Supports protection of uses by the citizens of Alaska of fish and game for subsistence purposes;
3. Recognizes the particular importance of subsistence to rural communities.
4. Believes that given the geographical and other limitations on residents of rural areas, that subsistence activities by area residents must receive priority protection in rural areas of our state;
5. Endorses a constitutional amendment which will protect subsistence, permit legislation granting a preference for subsistence uses by area residents in rural areas of Alaska, and must provide for allocation among subsistence users when resources must be limited;
6. Supports language for this amendment which will permit statutory consistency with ANILCA.





## Native Village of Fort Yukon

P.O. Box 126  
Fort Yukon, Alaska 99740  
(907) 662-2581

April 3, 1990

Citizen Advisory Commission  
on Federal Areas  
Mr. Lew Williams Jr., Chairman  
250 Cushman Street, Suite 4-H  
Fairbanks, Alaska 99740

Dear Mr. Williams:

Please accept our most sincere apology for interrupting your March 30, 1990 audio-conference hearing on subsistence.

As I understand from those present, there was profanity used in the room (located in Fort Yukon) which the hearing was held and that it was broadcasted to the statewide audience.

I would like to explain what transpired during this time. I am told that there was a co-employee conflict which got picked up on the audio-conference microphones. In no way were these words directed towards members of the commission.

On behalf of this organization, I would like to state that I am sorry for this incident and assure you that this will not happen again in the future. We appreciate the opportunity this community is given to participate in statewide forums and we do not condone the abuse of this opportunity, nor the disrespect shown to others.

Respectfully yours,

*Barry Wallis*  
Barry Wallis,  
Administrator

cc: Council

P. O. Box 1410  
Petersburg, Alaska 99833

March 6, 1990

Dear \_\_\_\_\_

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.

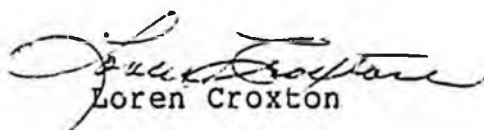
The Federal Government erred in not recognizing that the Alaskan Natives forfeited any aboriginal rights they may have had under terms of ANCSA. This should be challenged in the highest court of the land, and our congressional delegation must begin immediately working toward a revisions of that flawed 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

addendum:

Another legitimate method of handling this problem would be for the state, on July 1, to defy the Federal Government to take over management of our fish and game resources. It is questionable, given the circumstances, that the Federal Government has the authority to "take over", but should we say no, they do not have the authority to enforce their threatening action. The management of marine mammals they took from us in 1972 should be included in this action.

The state would then have sufficient time to craft a program which would be protective of the resource and equitable to all based upon individual need.

Testimony by: H. C. "Bud" Wiese  
1426 2nd Avenue  
Fairbanks, Alaska 99701

March 31, 1990

To: State of Alaska Citizens' advisory Commission  
on Federal Areas  
250 Cushman St., Suite 4H  
Fairbanks, Ak 99701

To the Commission:

I am 69 years old - 49 years in Alaska-- 2 children - 5 grandchildren,  
all born in Alaska.

Am a conservationist and have worked with Sportsmens 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 exception 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 (two) 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 process it  
ourselves with as little waste as reasonably possible. These resources are  
in most cases shared by our group that now number 17 to 21, this includes  
the kids of our group.

"continued"

My wife and I live in the City limits of Fairbanks, the others of our group live within approximately 15 miles of us.

Our harvest of these resources have not been restricted to the Fairbanks area as we usually combine vacations and recreation with the harvest. Speaking for those of our group and all being Alaskans and U. S. Citizens, we recommend and hope these resource be managed for maximun yield and that we be allowed access and use of these resources on all public lands on an equal base.

Attached is a copy of a letter that should be considered in any recommendations your commission make.

*Erud Wise*

The words "subsistence", "customary and traditional", "rural" and "urban" are ambiguous and mean different things to different people. Any legislation on this issue must be clear and precise as to the meaning of these idealisms.

If this is not done:

1. A political appointed board or some department of government will make up some kind of a determination of how these idealisms would apply.
2. Until these determinations were made, no one in Alaska would be able to understand the legislation, and/or how it would effect them.
3. To give a preference by made-up meanings to these idealisms will be right back in the courts - and it could be that a judge(s) would make the determination.

I for one, would prefer that I have a vote on the meanings of these idealisms and how they are applied. Contact your legislators at once and let them know you do not want ambiguous words used in any legislation they pass.

Don Szepanski  
PO Box 3382  
Juneau, Ak 99803  
March 26, 1990

The Citizens' Advisory Commission  
On Federal Areas  
250 Cushman St. Suite 4H  
Fairbanks, AK 99701

It is becoming increasingly common that subsistence hunting in Alaska is being abused by rural residents and mismanaged by Federal officials. Eskimo hunters have killed many walruses for ivory only leaving carcasses that have washed up on Russian beaches as reported in the media. This is an embarrassment for all the people of Alaska who care about Alaskan wildlife!

In the Fall of 1987 a few Eskimo young men from Barter Island used snow machines over a one week period to kill 78 Dall Sheep Rams in the Jago River/Achillik River Basins. This was mentioned to me by Kurt Lepping, a registered guide of Alaska, and was verified by four of us in our visit to Kaktovik in August 1988. We counted 250 sheep in this area but not even one Adult Ram! The large area was wiped out of mature rams. Seemingly subsistence hunting should not allow a game resource to be wiped out by irresponsible people. Residents of Kaktovik said this was done by young males to show their "Manhood". The Federal game official in Kaktovik was notified of this matter but said his hands were tied in subsistence hunting issues.

Seemingly all of us are responsible to leave some wildlife for our children.

Sincerely,

*Don Szepanski*



Sen. J. H.  
Commissioner Staff  
Portland

3-21-90

Concerning the legislative proposals  
on subsistence I offer the following  
comments:

All state and government land in  
Alaska is for common public use.

I oppose special privileges to  
anyone, regardless of person.

People should be managed, not  
wildlife, to control over-hunting  
or to protect an area with  
low game population. (Common sense - not)  
This should include all areas currently  
open to the taking of game, or fish.  
Restrictions if necessary should  
include all people who might  
otherwise be utilizing those resources.  
(whether from Arch - or Ruby).  
FHI - or TOK.

Subsistence is the right of all people,  
it should not be made a privilege  
of only a part, or few.

Thank you -

Sharon Roberts  
Gen. Del. at call

**Statement of Robert Willard, President  
Southeast Native Subsistence Commission before the  
Citizens Advisory Commission on Federal Areas  
Teleconference - March 31, 1990**

All communities that we represent in the Southeast are located within the Tongass National Forest and other federal designated areas. There are a host of conflicts between the lifestyles and the management by both the State and federal agencies.

Permit me to be specific, and not in order of any importance:

- o The Southeast Native Subsistence Commission supports access into the Glacier Bay National Park by the Tlingits of Hoonah for subsistence opportunity that is founded upon any definition of customary and traditional, long established and important uses; and related to economy and culture. More than that, the Tlingit people of Hoonah have used and occupied the Glacier Bay for thousands of years; indeed, before the first Europeans arrived on the shores of Alaska.

The use of Glacier Bay includes commercial fishing that antedate the taking of the Glacier Bay in creating the then Glacier Bay National Monument.

If there are any people that can truly cherish the good old days, as you say, it is the people of Hoonah. Many of the Elders Council of Hoonah were born and raised in the Glacier Bay and would love to teach their grandchildren the proper use of the Glacier Bay and to exercise their cultural duty to leave something behind for their offspring. We ask the Citizens Commission to recommend to the proper authorities to permit the Hoonah people to exercise their inherent right to subsist and for their future generations.

- o Another matter is that of protections of the marine life that are of importance for subsistence use purposes. We object to the commercializing of such marine life as sea cucumbers,

kelp, herring, herring eggs in great quantities, scallops and sea urchins. We object to commercializing particularly to the sea cucumber prior to any biological data necessary to make sound management judgment on the so-called sustained yield. We would ask the Citizens Commission to request the cessation to commercial harvest until such time as the propagation level is at least determined and as is contained in Section 810 of the Title VIII of ANILCA.

o Of major concern is that of the forested areas where habitat areas must be protected in accordance with Title VIII provisions. Our view is that the U.S. Forest Service must upgrade its assessment of areas important to subsistence uses, as plans for logging are developed. There are areas that are important to the deer in particular, wild berry picking areas. There are thousands of bays, coves, inlets, portages, canals, channels, passages and navigational waterway systems that are important to salmon, halibut, black cod, trout, herring, hooligans, seals and other marine life. Somehow, the U.S. Forest Service must take into serious account these vital resources.

In the Southeast, the home of approximately 16,000 Alaska Natives. If you were to sum up the problems of the Southeast Alaska Natives relative to subsistence, you could say that:

1. It is a problem of the opportunity to even subsist. Alaska law denies 12,100 Tlingits and Haidas their inherent right to subsist. Of the 19 Southeast communities that we represent, only ten are determined to be eligible; that means three-fourths of the Tlingits and Haidas are ineligible.

2. It is a problem of access. Our Tlingits are denied access into the Glacier Bay to exercise their inherent right to subsist. There are areas that access is a problem -- we can be more specific in writing.

3. It is a problem of over harvest of certain species important for subsistence.

All of this carries with it the destruction of the cultures of my people being denied subsistence opportunity and would continue under the status quo or HJR 88; on a statewide basis,

40,000 Alaska Natives are being denied subsistence opportunity and would continue under the status quo. Even a federal takeover would not resolve the problem of the urban Natives who stand the most at risk of losing their culture on account of being denied subsistence opportunity - thereby thwarting cultural activity. Let me give you one of many examples. When a death occurs among the Tlingits, the Clan Leader is placed in charge of all proceedings to arrange for a dinner to be served those that worked on the last rites. If the decedent's favorite food was deer meat, a boiled king salmon and potatoes, the Clan Leader orders you to go out to get enough deer and salmon to feed those to be fed. Now, in our culture, the order of the Clan Leader is inviolate. It is our custom to carry out his order. Except the State law says no. It is against the law to carry out our cultural activity. Thus, what we have is a conflict between our culture and your laws that govern subsistence.

All of this is compounded by the fact that diabetes mellitus is increasing in dramatic numbers and all on account of a law that forbids us the opportunity to subsist. U.S. Public Health officials are encouraging our people to revert back to the subsistence lifestyle and consume our subsistence foods as a means of counteracting the increase of incidences of diabetes among the Tlingits, Haidas and Aleuts in particular. Now, there is no problem of the availability of the resources -- only access.

For these reasons, the Southeast Native Subsistence Commission supports and urges passage of House Joint Resolution No. 90 which would establish a Native priority for subsistence opportunity. This is not to the exclusion of all others in rural areas. I might explain that in the Southeast, there would be no priority because the salmon runs are strong. Last year, 49 million returned into the region. Of that number, 29 million were taken by commercial; 5 million by sports and 40,000 million by subsistence users. That means less than one percent of the salmon is taken by subsistence users. We fail to see the importance people have placed on subsistence. A priority would only go into effect when resources are low -- and I don't foresee

a situation where a priority would take effect in the Southeast. All HJR 90 would do is to provide an opportunity to subsist in the urban areas.

Perhaps if rural Alaska were to be governed in accordance with ANILCA and an allocation plan devised for all residents in urban Alaska, we might go along with that. But, that is for you to recommend and, again, I appreciate the opportunity to appear before this auspicious panel.

Thank you.

*Sanich East*

Subsistence Summit Conference  
Alaska Federation of Natives  
Resolution 90-  
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 it is resolved, that the Alaska Federation of Natives herein assembled at the Subsistence Summit Conference adopts 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. 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 every action to involve affected Native organizations directly and fully in the development, promulgation and implementation of any federal subsistence management regime developed for federal lands in the event State management is terminated.
- .. 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 voter 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.

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

TCC  
AUCP

TCC PROPOSALS TO AMEND RESOLUTION

AMENDMENT A

amend the third clause of the resolve section of the resolution after the second sentence to add the following:

"This review shall seek to establish a definition of "rural" which includes as many Alaska Native people as possible."

AMENDMENT B

amend the first resolve section to add the following clause after the sixth clause as follows:

" -Act to support tribal contracting of federal functions under Title VIII of ANILCA in the event of a federal takeover of fish and wildlife management and oppose any such contracting by the State of Alaska."



MOTION by Association of Village Council Presidents to amend Resolution 90-\_\_\_\_\_, Alaska Native Subsistence Rights: An Affirmation and Strategy.

Amend the third paragraph under the NOW THEREFORE BE IT RESOLVED section to read:

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. 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.

Amend the fourth paragraph under the NOW THEREFORE BE IT RESOLVED section to read:

Act immediately to request and to take every action to involve affected Native organizations directly and fully in the 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 federal agencies to contract with the State for any role in managing federal lands for subsistence uses. Tribal contracting for management of federal lands for subsistence uses will be strongly supported.

SUBSISTENCE SUMMIT CONFERENCE  
Alaska Federation of Natives  
Resolution 90-\_\_\_\_\_

Entitled: Alaska Native Subsistence Rights: A priority for Alaska Native Tribal Members, submitted by the Association of Village Council Presidents.

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 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.

DATED this 11th day of April, 1990.

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary



## Citizens' Advisory Commission on Federal Areas

April 23, 1990

250 Cushman St.  
Suite 4H  
Fairbanks, Alaska 99701  
(907) 456-2012  
Fax: 456-2039

APR 26 1990

Honorable Tim Kelly  
President  
Alaska Senate  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Kelly:

For the past eight years, the Citizens' Advisory Commission on Federal Areas has been engaged in the task of determining the impacts of the Alaska National Interest Lands Conservation Act (ANILCA) on the people of our state and making recommendations to both state and federal agencies in order to minimize conflicts. One of the most important, and unfortunately most contentious, provisions of this federal statute has been Title VIII-Subsistence Management and Use. ANILCA Title VIII requires the state to provide for a subsistence preference for rural residents in order to retain fish and wildlife management authority on federal lands. In December 1989 the Alaska Supreme Court ruled in the McDowell decision that the state's subsistence law violated the Alaska Constitution. Consequently, the Secretary of the Interior may in the near future revoke the state's authority to manage fish and wildlife resources on federal lands because Alaska law is no longer consistent with ANILCA Title VIII.

A number of proposals have been made which would either amend ANILCA or the Alaska Constitution in order to resolve this dilemma. On March 31, 1990, this Commission held a meeting in Anchorage which was teleconferenced to 20 Alaska communities in order to provide the public with an opportunity to be heard on the various alternatives. Since that meeting, the Commission has studied the proposals and the public testimony and has decided on a recommended course of action which we hereby convey to you for consideration.

Enclosed with this letter is a proposed amendment to the Alaska Constitution. The proposed amendment grants, or perhaps more accurately restores, to the Alaska Legislature, the authority to formulate a subsistence statute consistent with ANILCA. In addition to the proposed amendment, we offer the following thoughts which should be considered now and in subsequent legislative sessions.

THE STATE OF ALASKA MUST TAKE IMMEDIATE ACTION TO PREVENT FEDERAL INTERVENTION IN FISH AND WILDLIFE MANAGEMENT ON FEDERAL LANDS. We believe that if the federal government revokes the state's authority to manage fish and wildlife on federal lands that all Alaskans will suffer but none more so than those people whom ANILCA Title VIII was intended to protect. Imposition of a subsistence management

scheme fashioned by Washington can only be inferior to a locally derived solution utilizing the democratic processes governed by the Alaska Constitution. We must emphasize that if, because of McDowell, the federal government assumes fish and wildlife authority on federal lands, the issues raised by Kenaitze will remain a problem. We believe the people of Alaska, Native and non-Native, "rural" or "urban" have a greater wisdom to achieve a resolution of those issues than do the federal agencies and courts. We believe that the Secretary of Interior recognizes this and will not impose a federal subsistence management regime if the Legislature acts on our proposal.

PROTECTION OF SUBSISTENCE USES FOR ALASKA'S CITIZENS IS AN ACHIEVABLE GOAL. Whether they live in an "urban" area or in a "rural" area, all of Alaska's people have a stake in subsistence. Both federal and state courts have repeatedly affirmed this important point which is being overlooked in the scramble to achieve that which ANILCA, unfortunately, failed to define. We are confident that Alaskans are capable of understanding each other's needs and acting responsibly to meet those needs. Granting the Legislature broad authority to consider appropriate criteria, including geographic factors, i.e. "rurality", if you will, is a necessary first step. The Legislature must respond with positive leadership now and in the future to ensure retention of local authority to resolve this issue.

WE RECOGNIZE THE SPECIAL IMPORTANCE OF SUBSISTENCE ACTIVITIES IN THOSE GEOGRAPHIC AREAS OF THE STATE REMOVED FROM THE CENTERS OF COMMERCE. WE BELIEVE THAT GEOGRAPHIC, SOCIOECONOMIC AND CULTURAL CONSIDERATIONS ARE THE BASIS FOR THE SPECIAL IMPORTANCE OF SUBSISTENCE TO PEOPLE IN SO-CALLED RURAL AREAS OF ALASKA. Recognizing the importance of subsistence to those Alaskans who do not have easy access to jobs, markets and services does not have to be as painful as we have been making it. Nor should an individual's choice of where to live preclude the opportunity to harvest fish and wildlife resources for personal and family consumption. Again, it is a matter of coming to understand each other's needs. The Alaskan people demonstrated affirmatively in 1982 that they were capable of such understanding. Putting aside the vagaries of both state and federal court decisions regarding subsistence, Alaska has had a reasonably workable subsistence management system. It is not perfect and may never be, but it is workable and can be made better, but only if federal intervention in our affairs beyond what has already occurred is prevented.

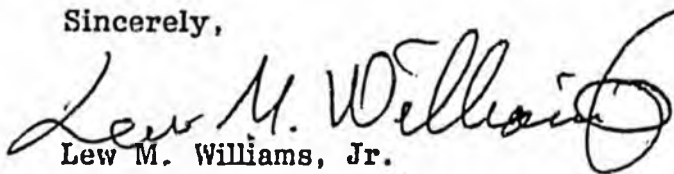
WE PROPOSE AMENDING THE ALASKA CONSTITUTION IN SUCH A WAY AS TO EMPOWER OUR ELECTED OFFICIALS TO ACT RESPONSIBLY. ONCE THE CONSTITUTION IS AMENDED, WE URGE THE LEGISLATURE TO PROVIDE, BY STATUTE, A PREFERENCE IN THE USE OF LOCAL RESOURCES BY LOCAL PEOPLE IN THOSE GEOGRAPHIC AREAS OF ALASKA WHERE SUBSISTENCE HAS SPECIAL IMPORTANCE. When resource uses must be limited to preserve the biological integrity of fish and wildlife populations, the Alaska Statutes should provide for an allocative decision making process which protects the needs of those people for whom subsistence has special importance. Opportunities for all Alaskans to enjoy

Senator Tim Kelly  
April 23, 1990  
page 3

use of our fish and wildlife resources can be maintained and enhanced. Active management of our resources and understanding each other's needs are all that is necessary to assure those opportunities. These are not mutually exclusive goals; we do not have to remain a divided family.

The issue of subsistence is of the utmost importance to the Alaskan people. We ask that you give your most careful consideration to the points we have raised and use your influence to advance our proposal. We remain committed to assisting in any way possible a successful resolution of this and other land and resource management problems on federal lands in Alaska.

Sincerely,



Lew M. Williams, Jr.  
Chairman

cc: Alaska Senate  
Alaska House of Representatives

Citizens' Advisory Commission on Federal Areas  
April 23, 1990

IN THE SENATE

SENATE JOINT RESOLUTION NO.--  
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 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. 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.

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.

April 21, 1990

Honorable Steve Cowper (Tim Kelly/Sam Cotton)  
Governor (President of the Senate/Speaker of the House)  
State of Alaska  
P.O. Box A  
Juneau, Alaska 99811

DRAFT

Dear Governor Cowper:

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DRAFT



DRAFT

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DRAFT



Governor Steve Cowper  
April 21, 1990  
page 3

**DRAFT**

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Sincerely,

Lew M. Williams  
Chairman

cc: Alaska Senate  
Alaska House of Representatives

**DRAFT**

STATE OF ALASKA  
CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS  
250 Cushman Street, Suite 4H  
Fairbanks, Alaska 99701  
(907) 456-2012

TC: Commission Members  
FROM: Staff  
DATE: April 19, 1990  
RE: Commission recommendation on Constitutional Amendment

Enclosed please find the Commission's proposal for a constitutional amendment to resolve the issues posed by the McDowell decision, passed at the teleconference meeting on April 17th. We have put the recommendation in the form of a "House (Senate) Joint Resolution", as it would appear to members the Legislature who will give it their consideration.

Also enclosed is a letter of transmittal, written at the direction of the Commission, incorporating the six points raised by Rep. Goll and discussed at our last two meetings. Staff has composed the letter in a manner we hope retains the spiritual integrity of the points raised by Rep. Goll, albeit it is not a verbatim transcript of what he wrote after the March 31st meeting and staff distributed prior to Tuesday's teleconference. If this approach is not satisfactory, please advise staff of your concerns. We have tried to use an affirmative tone throughout the letter; an appeal to statesmanship, if you will.

The letter is addressed to and will be sent separately to Governor Cowper, Senate President Kelly and House Speaker Cotton with Commission approval. The letter is dated April 21, 1990. Staff will cc: to each member of both houses the proposed amendment and the letter with your concurrence.

Finally, Chairman Williams has asked staff to convey his apologies to those members of the Commission he failed to recognize during the teleconference. He was unaware of your delayed arrival and did not mean to infringe upon your right to participate fully.

\*\*\*\*\*  
F A X T R A N S M I T T A L M E M O  
TO: SEN. BETHE FAHRENKAMP  
DEPT: \_\_\_\_\_ FAX #: 586-6246  
FROM: S. LECHART PHONE: 456-2012  
CO: CALFA FAX #: 456-2039  
Post-It brand fax transmittal memo 7671

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Citizens' Advisory Commission on Federal Areas  
April 21, 1990

DRAFT

IN THE HOUSE

HOUSE JOINT RESOLUTION NO.--  
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 resources.

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

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.

DRAFT

May 3, 1990  
P.O. Box 762  
Dillingham, AK 99576

VIA FAX

Senator Bettye Farenkamp  
Senate Resources Committee  
Alaska State Legislature  
Juneau, AK 99811

Re: Subsistence

Dear Sen. Farenkamp:

In today's Daily News you are quoted as saying that you were trying to "find something that works" on subsistence.

For months all the experts on federal Indian law in Alaska have been grappling with this issue and have concluded that the only legally viable option is a constitutional amendment. Either the Cowper or Hoffman proposals would work, but Hoffman's has the advantage of leaving the door open for a future compromise amendment to ANILCA.

Anything else, or doing nothing, will result in a federal takeover. That effectively defers the issue to Congress should it choose to act. Do you really want that? There would still be no consensus "Alaska" position in Congress.

A state statutory change won't fix the problem. And challenging the federal law in court is doomed. ANILCA is federal Indian legislation and immune from constitutional attack. Although Mr. McDowell and a few urban divorce lawyers have urged that tactic, not one of them is expert in Indian law and none seem to realize that the key issues have already been decided by the U.S. Supreme Court.

The McDowell decision was badly reasoned. Failing to amend our constitution would put Alaska in the same doomed, anti-minority, "states rights" position that Washington took against tribal rights in the '60s and '70s and that Arkansas took over desegregation in the '50s. It would be a black mark on Alaska history, and grossly irresponsible.

What's ironic is that anyone who has really thought out the implications of a dual management system realizes that urban people will lose more than anyone else. Sooner or later the "urban" constituency will figure that out. Please put an amendment on the ballot!

Sincerely,

*Bruce Baltar*

Bruce Baltar  
Attorney at Law

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

VIA FAX

May 2, 1990

Senator Bettye Fahrenkamp  
Chairman  
Senate Resources Committee  
Alaska State Legislature  
Juneau, AK 99576

Re: Subsistence

Dear Sen. Fahrenkamp:

We urge the immediate passage of the constitutional amendment proposed by Rep. Lyman Hoffman. The adverse consequences of failing to amend the constitution would be enormous. Not only would all user groups suffer but the health of our wildlife populations would be endangered under a splintered management system.

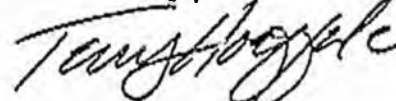
We believe the issue will become less divisive as Alaskans come to understand it better. Urban hunters and fishermen actually have the most to lose under a federal takeover since long term their hunting and fishing activities would tend to be forced onto the 25% of the state that is not federal or Native land.

Unfortunately, a relative handful of anti-subsistence extremists continue to spread distorted information. There is no possibility, for example, of successfully challenging Title VIII of ANILCA in the federal courts. Congress insulated ANILCA from constitutional attack by expressly invoking its plenary authority over Indian affairs. The U.S. Supreme Court has already confirmed that it was passed under that Congressional authority.

"Standing up" to the federal government over a law designed to help Alaska Natives would inevitably fail and would be a black mark on Alaska history. It would follow the same doomed course as Washington's defiance of the federal courts over Indian treaty rights.

We feel this is an issue all Alaskans should decide. Please get it on the ballot.

Sincerely,



Terry Hoeffler  
Executive Director

ALASKA NATIVE BROTHERHOOD &  
ALASKA NATIVE SISTERHOOD  
CAMP 14  
P.O.BOX 6295  
KETCHIKAN, ALASKA 99901

APRIL 18, 1990

Senator Bettye M. Fahrenkamp, Chair  
Representative Cliff Davidson, Co-Chair  
Representative Curt Menard, Co-Chair  
Senate/House Joint Resource Committee  
Alaska State Legislature  
P.O. Box V (MS 3100)  
Juneau, Alaska 99811

Dear Resource Committee,

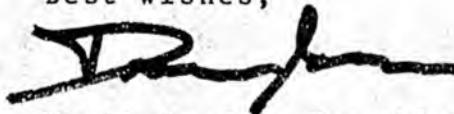
We attended and testified on behalf of the Alaska Native Brotherhood and Sisterhood Camp 14, Ketchikan, April 10, 11, 1990 at Egan Center, Anchorage. Alaska Federation of Native's Subsistence Summit.

We have a major concern that Ketchikan classification as Urban community. Mr. Don Hoff, Jr. testified that we object and we should have the same subsistence rights as villages.

We have written evidence that proves that Ketchikan is and still a village with a large number of Indian that reside in Ketchikan. It is the goal of ANB/ANS Camp 14 to protect our inherent rights to subsist in our area. This evidence will go along with Mr. Hoff's Testimony for your review.

We know you folks have a difficult road ahead of you, but we are willing to work with you to find a resolve. Thank-you.

Best wishes,

A handwritten signature in black ink, appearing to read 'David Jensen', with a long horizontal flourish extending to the right.

David Jensen, President  
ANB Camp 14

ALASKA NATIVE BROTHERHOOD &  
ALASKA NATIVE SISTERHOOD  
CAMP 14  
P.O.BOX 6295  
KETCHIKAN, ALASKA 99901

Ms. Julie E. Kitka, President  
Alaska Federation of Natives, Inc.  
411 W.4th Ave. Suite 301  
Anchorage, Alaska 99501

April 10, 1990

Dear Julie and Boardmembers,

Alaska Native Brotherhood and Sisterhood Camp 14 Ketchikan want to go on record with this position statement. SUBSISTENCE .

Ketchikan Native population is two thousand that are enrolled at Ketchikan Indian Corporation (Non-Profit). We are very concerned that Ketchikan will not be able to subsist for our native foods. Ketchikan is a traditional Village the Natives call it "Kichxaan". Presently, Ketchikan is considered Urban Community which leaves us without the right to Subsist, the State of Alaska say we have the right for Personal use. we object because it is excluding Tribes.

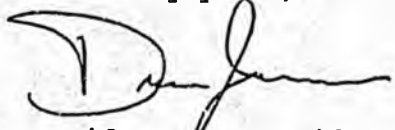
We are a coastal people that depend on the use of the Sea and Land for our Tribes livelihood and our social economy.

Alaska Native Brotherhood and Sisterhood supports the concept of the States version House Joint Resolution 90, introduced by Rep. Kay Wallis.

Ketchikan ANB/ANS Camp 14 wants to tell AFN that we want to be included and to make sure that our inherent rights are protected. We can not comprehend the idea that we can be left out subsistence. How we go back to our grandfathers, grandmothers and uncles, say we can no longer get our indian foods?

We are wondering how anybody or person can decide weither or not we can subsist or not? We do not come up here and try to sell your land or fish, what right do you have to sell our rights? Ketchikan alot of History that we will submit to your office if you request it. Thank-you.

Sincerely yours,



David Jensen, President  
ANB



Donald F. Hoff, Jr.  
Recording Secretary  
ANB



ALASKA NATIVE BROTHERHOOD &  
ALASKA NATIVE SISTERHOOD  
CAMP 14  
P.O. BOX 6295  
KETCHIKAN, ALASKA 99901

APRIL 13, 1990

To: ANB/ANS Camp 14

From: Don Hoff, Jr.

Travel Report: AFN Subsistence Summit  
April 10 & 11, 1990  
Egan Center-Anchorage

First of all, I want thank the ANB/ANS Camp 14 Officers and Members for allowing me to represent Ketchikan in Anchorage Subsistence Summit Conference.

ANB/ANS Camp 14 was the only representation that Ketchikan sent up to speak on Subsistence Rights of Ketchikan Indian Tribes. If it wasn't the foresight of our local Camp to send a representative, Ketchikan might have been left out again. I will make recommendations for the Camp 14 at the end of my observations in Anchorage.

I arrived in Anchorage, 4/9/90 with many of our S.E. Native Leadership representing Corporations, Village Corporations and I.R.A.'s. Meetings started on time because of the full and informative agenda.

It was apparent to me that I was going to have to testify on our behalf. I gave testimony to AFN Panel stating Ketchikan position on Subsistence and that our Inherent Rights of Indians have to be protected because of our concerns that we live in a urban community and subjected to "Personal Use" title thought up by the State of Alaska. I also stated that we objected to that title and that we were very concerned about the AFN position for Rural Preference. Rural Preference would leave Ketchikan out of Subsistence Rights. I also stated that I will use the Tlingit Name "Kichxaan" instead of the whiteman's version Ketchikan. I told them Kichxaan Indian population was two thousand verified by Ketchikan Indian Corporation enrollment. As Tribes in Kichxaan cannot be excluded because of the defination of Rural. I summitted a position statement to AFN President Ms. Julie Kitka on behalf of Camp 14. I was very well recieved by the floor of the convention and every one knew where Kichxaan was there after.

I also testified in front of Joint House/Senate Resources Committee. It started at 5:45 PM, 4/11/90. I didn't get to speak until 9:45 PM and was only allowed three minutes. I hit almost all the major points I outlined in earlier testimony. But we have to send up to the committee documents supporting Kichxaan claims to subsist.

Senator Ted Stevens stated on video tape, that "Indian Preference" will be hard to pass the State Senate and House.



He made some key points: subsistence should be protected for all subsistence users, we need 27 votes from the House and 15 votes from the Senate. He said we don't have the votes. The Bush Caucus in Alaska will try to get the votes need to pass the Indian Preference. We have to lobby our area representatives for a positive vote.

Mr. Manuel Lujan, Secretary of Interior testified that he will start the process of taking over management of fish and wildlife if the State of Alaska does not comply with Federal laws in regards to ANILCA by July 1, 1990. He said that they really didn't want to take over management and hopes that we can solve our own problems.

The floor of this Subsistence Summit was emotional. People from all over Alaska testified on how they depend on Subsistence for their livelihood, it was all the same no matter which part of the State they were from. Rural Preference was amended that "All Alaskan Natives" be included because of the Inherit Rights had to protected by Alaska Federation of Natives, Inc. The Alaskan Native Leadership had no choice but to support all Alaskan Natives and sent a strong message to State of Alaska.

All our Southeast Leadership did a excellent job representing Southeast Alaskans: Southeast Native Subsistence Commission, Tlingit and Haida Central Council, Grand Camp and all villages that sent representatives.

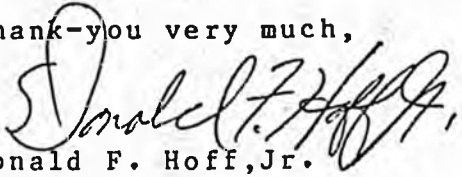
There were Three amended resolutions passed on the floor. AFN office will send us the finished resolutions.

Recommendations: We Lobby our local representatives.  
Ketchikan Indian Corporation send a  
representative to these important meetings.

It is not going to be easy to pass a positive vote, if it goes on Alaska General Election Ballot but it goes to show how Non-Native people and private enterprize feels towards Alaskan Natives. We have to continue to justify our stand and keep on going together in one direction to protect our Rights as Natives.

Respectfully submitted.

Thank-you very much,

  
Donald F. Hoff, Jr.  
Recording Secretary  
ANB Camp 14

TONGASS TRIBE  
P.O.BOX 3258  
KETCHIKAN, ALASKA 99901

APRIL 4, 1990

To whom it may concern,

The Tongass 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 Tongass Tribe number approximatedly 300. They live for the most part in urban locations with a large concentration in the Ketchikan area.

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 properous village that flourished near the mouth of a creek. This creek (Ketchikan 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 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 eith 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 natives called the village "Kichxaan". Many transalations 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.

In 1890, natives outnumbered the non-natives 26 to 9. As the Indian population in Ketchikan grew in the 1890's, they were displaced, the village became informally known as "Indian Town".

Among the Tlingit decent was claimed through Matrilineal moieties (one of two fundamental divisions of the Tlingit Tribe) of Raven or Eagle/Wolf. When a child was born she/he automatically became a member of the mother's clan and grew up to marry the opposite moieties.

According to Tlingit Genealogy, Notes and Information (Shotridge, Louis 1915-1926) clan houses (Hit) of the Taantakwan in Ketchikan on May 8, 1916 include:

RAVEN

EAGLE/WOLF

Gaanaxa a'di Clan

Teikweidei' Clan

(Raven) Yei'l Hit

(Moose) Xaas Hit

(Over the Isthmus) X'agoon Hit

(Golden Eagle) Gidjook Hit

(Ground Squirrel or Marmot)

S'aax Hit

(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 Moieties have only one known house group apiece. The Gaanax a'di Clan have only the Yie'l Hit and the Teikweidei have the only the Kaats Hit. 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.

Tongass Tribal members are learning the Arts, Songs, Dance, Legends and Language that neared extinction. The few remaining Elders, who grew up in homes where traditions were practiced, are unselfishly contributing great time and effort to teach young tribal members.

This research was done by Richard H. Jackson, Teikweidei' Clan-Kaats' Hit of the Tongass Tribe.

The Tongass Tribe depends on the subsistence for survival of the Tribe. Our Elders and Uncles are teaching us how to subsist for our Traditional foods and we need to continue this process as did our forefathers since time began.

Sincerely yours,



Donald F. Hoff, Jr.  
Gaanax a'di Clan  
Yei'l Hit  
Tongass Tribe

4-12-90

To: Senator Betty Fahrenkamp  
Chairperson House-Senate  
Committee on Resources

APR 18 1990

From: Timothy Shine  
P.O.B. 874895  
Wasilla, Ak. 99687

Re: Testimony - Anchorage Hearing

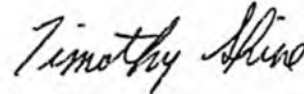
Senator Fahrenkamp,

Enclosed is a copy of the letter which was to comprise my complete testimony at the Anchorage hearing of 4-11-90. Since you asked me to be brief I limited myself to the last two sentences at that time.

Please enter the complete letter into your records if you will, and give copies to the other members of your committee, especially to Mr. Menard who has seen it once but did not recall it when I questioned him about his written response to me.

I believe I speak for a significant number of Alaskans when I say that our constitution should not be amended to legalize the discriminatory aspect of rural or native preference in the taking of any public resource.

Sincerely,

A handwritten signature in cursive script that reads "Timothy Shine".

Timothy Shine

11-21-89

To: Alaska Game Law policy makers, enforcers

From: Timothy Shine  
PO Box 874895  
Wasilla, Ak. 99687

Fellow Alaskan,

I want to register the strongest possible protest against the recent regulation changes which create restrictions on the taking of certain game species in many of our management units. Manipulation of the harvest through restrictions on the size or sex of animals which may be legally taken by one group of Alaskans, while another group enjoys fewer or no restrictions is morally wrong and should be as illegal as bank robbery.

I am a long time resident Alaskan, who like many others endures the considerable negatives of life here that I might pursue my positive passion for hunting and the lifestyle which attends it. I happen to live near a major population center. This is not by choice, but in response to the compelling reality of economic survival. I spend a significant amount of time and effort each year endeavoring to get afield and supplement my store bought foodstocks with the wild game meats which I prefer. But I find myself increasingly hampered in these efforts. With Caribou it is "Bulls Only" (Taylor Highway Area) for those hunters in my classification. For Sheep it is "Full Curl or Larger", for Moose "36 inches or Larger", etc. Simultaneously I see the restrictions relaxed or abolished altogether for the other classification of Alaskans. And when I see them in the field, as well or better equipped than myself, taking full advantage of their good fortune under this system of game management, I cannot escape the conclusion that it is at my own expense. This blatantly unfair situation instills in me the profoundest sense of outrage.

This year I came away empty handed from my considerable time spent in various hunting endeavors. Opportunities for taking prime specimens of sheep and caribou had to be passed up because of the restrictions recently imposed, while individuals I know personally to be better off financially than myself were allowed to fill their freezers with the cherished game meat. These individuals are either the fortunate ones who are able to earn their living and consequently reside in remote areas, or the irresponsible ones whose consciences will allow them to enjoy the bush life by accepting society's dole. In both cases they are enjoying the benefits of rural life to which I so earnestly aspire. Why must my own misfortune be compounded by unfair regulations which negate or severely limit the only tangible return on my own investment in the bush economy?

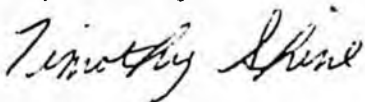
Urban residents who are content with their lot tend to view the bush lifestyle simply as harsh, they tend to overlook the values which hold most

bush residents where they are. The so called advantages of urban living are only perceived as such by those who do not seek a bush lifestyle. No allowance is made for this in the present system of subsistence preference. Bush life for most is a matter of choice and fortunate circumstance. The few who can earn a living while pursuing it are doubly blessed. They should have the right to take fish and game for their personal use, but by no means should they be given rights which their less fortunate urban counterparts are cut off from. Just as they are free to seek employment in more urbanized areas to supplement their incomes, so should the urban dweller have equal rights under the law to supplement his foodstocks with a public resource which may not originate in his exact geographic location.

I can accept the need for setting seasons and limits in the taking of game. But in my view the function of the Department of Fish and Game should be limited to just that. It should not be extended to the management of people. The so called mandate from the Federal Government to give preference to subsistence users can and should be satisfied with a definition of the term, for state enforcement purposes, which includes any resident of this state who takes the resource for personal consumptive use. The urban and rural dichotomy promoted by the current system is very wrong. It is a divisive force among Alaskans which can only make lawbreakers out of normally decent people who are finally fed up with the erosion of their rights and destruction of their dreams by a system which wrongfully divides the people of our state into priveleged and non priveleged "classes".

The too frequent assertion; "Our hands are tied....", given by many of our officials and policy makers with reference to the Federal position on subsistence, should be abandoned completely in favor of an aggressive stance on the equality of rights due to Alaska's citizens under our own constitution. Quality of life is measured by many of us in such terms. And it is quality of life that holds us here...

Respectfully,



Timothy Shine

|             |              |
|-------------|--------------|
| cc. Kertula | Lentfer      |
| Semanski    | Nageak       |
| Larson      | Springer     |
| Menard      | Collinsworth |
| Loyd        | Pamplin      |
| Bennett     | Randall      |
| Castle      | Timm         |
| Huntington  | Kellyhouse   |
| Jackson     |              |



MAY 2 1990

# ALASKA FEDERATION OF NATIVES, INC.

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



April 30, 1990

Senator Bettye Fahrenkamp  
Alaska State Legislature  
Post Office Box V  
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

I am writing to you and your colleagues in the Sixteenth Legislature to urge your prompt action prior to the May 7 adjournment.

All of us in Alaska are now confronted by a profound challenge: how to protect our subsistence lifestyle and our control of fish and game management from the consequences of the recent Supreme Court decision in McDowell v. State. In this effort, we 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 may know, AFN sponsored a statewide conference on subsistence in Anchorage three weeks ago. Out of that gathering, a broad policy consensus emerged. The 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. 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 two-thirds of both houses before adjournment and by a majority of the voters on November 6. There are several bills currently before the Legislature which effectively accomplish this end. After careful legal review, we have recommended, in testimony before House Resources, the language suggested by Representative Lyman Hoffman (presently CS HJR 74).

Integrity • Pride in Heritage • Progress

Regardless of which language is chosen, the central issue must be faced: (1) whether the Legislature will adopt any constitutional language to keep fish and game in Alaskan hands, or (2) turn its back on the issue and go home. A third alternative, of course, is that the Legislature might adopt statutory language which, while satisfying the State Constitution, would still be out of compliance with Federal law. I urge you to see that either of the last two options represents a tragic political failure and will precipitate a long-term crisis of fish and game management which, in my opinion, we shall all come to regret.

There may be, on the part of some legislators, an 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 to get rid of the subsistence priority.

I think it is highly unlikely that the United States Congress will open ANILCA. But if it does, we must all assume that 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, amending 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 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 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 has to be dealt with here in Alaska.

I cannot overstate the importance of acting quickly. Adjournment is imminent. Seventeen days ago the United States Fish and Wildlife Service published in the Federal Register its formal notice of "Intention to Propose Interim Rules



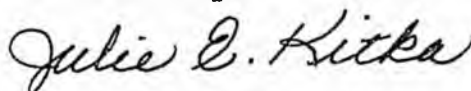
Implementing Title VIII of the Alaska National Interest Lands Conservation Act." As Interior Secretary Lujan has repeatedly stated, the United States does not wish to come into Alaska and take over fish and game on Federal lands. But it will do so if there is no solution at the state level by July 1. Interior is now gearing up to do 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, Interior Department officials in Alaska have been at work for more than two months, through a special task force, drawing up a plan for a Federal management takeover. Because the Native community is not a party to that process, I cannot 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.

In closing, I want to emphasize that, for Alaska Natives, subsistence represents everything. What is being considered in this Legislature is nothing less than our economic survival, our cultural identity and our physical and psychological health. We strongly urge you 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.

Sincerely,

A handwritten signature in cursive script that reads "Julie E. Kitka".

Julie E. Kitka  
President

# Myths

## *What Have You Heard?*

by Robert Wolfe

*What have you heard about subsistence in Alaska? I have heard so many misconceptions about subsistence in casual conversation that I've begun to call them myths. I have heard people say, "Subsistence is for Natives only." "Subsistence takes most of the fish and game." "Subsistence is just welfare." "Subsistence is bad for wildlife conservation." "Subsistence is disappearing." In fact, the subsistence we know is very different. Here is a short quiz about subsistence in Alaska. See if what you have heard is fact or fancy.*



*Is subsistence for Natives only?*

No. Both Alaska Natives and non-Natives may hunt and fish for subsistence if they live in rural areas. Currently, more than half of the people who qualify for subsistence are non-Natives. In 1985, about 110,075 Alaskans lived in rural areas. Of these about 50,084 (45.5 percent) were Alaska Native and 59,991 (54.5 percent) were non-Natives.

Subsistence has been legally defined to include the customary and traditional uses of fish and game in all of Alaska's rural areas. If a person moves into a rural area and adopts that way of living for their own, then that person, whether Alaska Native or non-Native, may legally fish and hunt for subsistence.

Of course, there is always an exception. Marine mammal hunting is regulated by international treaty and the Marine Mammal Protection Act. Only Alaska Natives may hunt marine mammals, such as seals, whales, polar bears, and sea otters.

*Does "subsistence" mean hunting and fishing for food?*

Certainly food is one of the most important subsistence uses of wild resources. The current rural subsistence harvest is 354 pounds of food per person per year. That is more than the U.S. average consumption of 255 pounds of domestic fish, and poultry per year. (The average American uses about 1,371 pounds of all foods a year.) However, there are many important uses of subsistence products, such as:

- Clothing: Wild furs and hides are still the best material for parkas (wind guards), mitts, parkas, kuspiks, clothes and mukluks (winter boots) in many regions.
- Fuel: Wood is a major source of energy in rural homes and is used for smoking and preserving fish and meat.
- Transportation: Fish, seals, and other products are used to feed dog teams.
- Construction: Spruce, birch, hemlock, willow, and cedar are used for building houses, boats, and other structures.

Alaska 1985



JIM MAGDANZ

wood are used for house logs, sleds, fish racks, and innumerable other items.

- Home goods: Hides are used as sleeping mats. Seal skins are used as pokes to store food. Wild grasses are made into baskets and mats.
- Sharing: Fish and wildlife are widely given out to support neighbors who cannot harvest for themselves because of age, disability, or other circumstances.
- Customary trade: Specialized products like seal oil are bartered and exchanged in traditional trade networks between communities. Furs sold to outside markets provide an important source of income to many rural areas.
- Ceremony: Traditional products are used in funerals, potlatches, marriages, Native dances, and other ceremonial occasions.
- Art and Crafts: Ivory, grass, wood, skins, and furs are crafted into beautiful items for use and sale.

November—December 1989

All these uses of wild resources are recognized and protected in law. Subsistence is a rich pattern of living, of which food is but one important part.

*Is big game (like moose or caribou) the main subsistence food?*

As a general rule, no. The main subsistence food is fish. About 65 percent of the state's subsistence harvest by weight is fish, including salmon, halibut, herring, whitefish, cod, and Arctic char-Dolly Varden, among others. Land mammals are only about 18.5 percent of the state's subsistence catch. Marine mammals are 9.7 percent of the catch, and "other resources" are 6.4 percent (mostly clams, crabs, birds, berries, and plants).

Of course, the types of foods people eat vary from place to place. Fish is a smaller item in the extreme coastal arctic areas, where caribou, seal, whale, and walrus are major subsistence resources.

### *Does subsistence take most of the fish and game?*

Again, as a general rule, no. Commercial fishing outstrips subsistence many times. In Alaska in 1985, commercial fisheries harvested about 908,500,000 lbs. of salmon, halibut, herring, and shellfish (there was an additional commercial groundfish harvest of 2,995,200,000 lbs.). This compares with a harvest of 40,305,449 lbs. of subsistence foods and 7,072,046 of sport-caught fish and game. Thus, commercial fish took 95 percent, subsistence took four percent, and sport took one percent of the total statewide harvest (excluding commercial groundfish).

Of course, these 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.

### *Does subsistence involve money?*

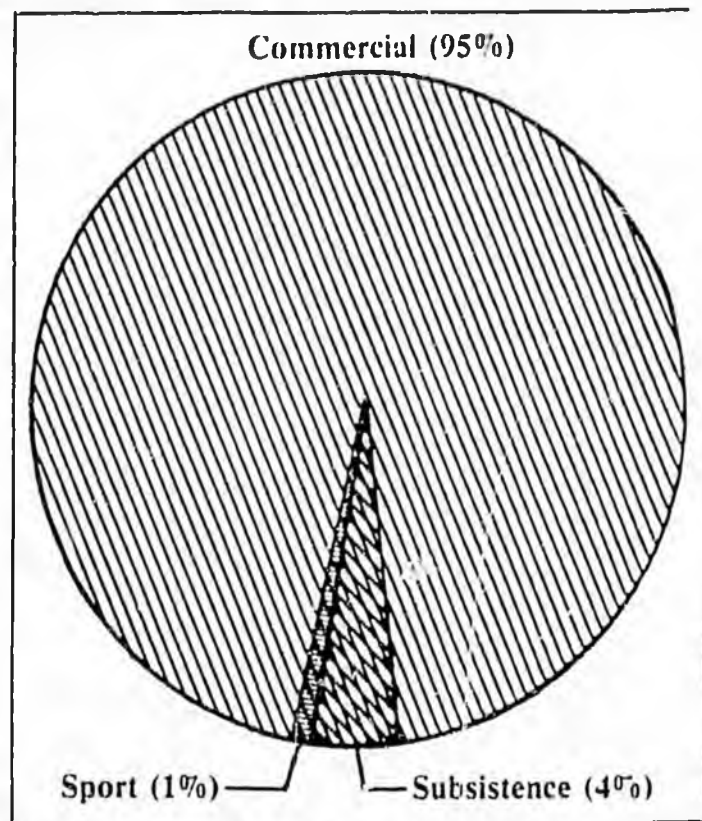
Yes. Rural families use money in order to purchase basic goods and services: fuel oil and electricity for heat, light, and power; family goods like clothing and shelter; subsistence equipment like guns, ammunition, fishing nets, power motors, gasoline, rain gear, and so forth. Money is used to invest in the tools for hunting, fishing, and gathering.

It is a common misconception that there is no money in traditional subsistence economies. However, trade and commerce have always been part of subsistence systems. Goods have been traded for thousands of years in Alaska. The commercial fur trade with European markets began about 300 years ago, bringing European currencies and goods into Alaska. So commercial enterprise and money have been part of traditional subsistence economies for a long time.

Rural Alaska's economies do operate differently from urban economies, however. In Alaska today, the rural economies are "mixed economies," where families and communities live by combining wild resource harvests with commercial-wage employment. Monetary jobs tend to be few and unstable. Monetary incomes tend to be small and insecure. Economic activity tends to occur in family groups, rather than business firms. Economic ventures tend to be small scale. Economic goals tend to be for the benefit of family groups, rather than monetary profits for business firms. These are major differences. Because of this, Alaska is a pluralistic society, with "mixed subsistence-cash economies" existing side-by-side with the "industrial capital economy" of the large population centers of Anchorage and Fairbanks.

### *Is subsistence compatible with wildlife conservation?*

Rural communities depend on the land for subsistence. It is to their advantage to maintain undamaged land and ecosystems, so wildlife are abundant. Most subsistence communities have customary rules for treating the land and the ecosystem. These rules have been passed on through the generations: "Do not waste," "Take only what is needed," "Treat



### *Who uses the most fish and game in Alaska?*

the animals with respect," "Do not damage the land without cause," among others. It is believed that if the rules are followed, then the land will continue to provide. Subsistence peoples are the original conservationists, although they may not use that word, because their very lives depend on it.

This is not to say there is perfect compliance with customary rules, as with any group of people. However, today most people still comply with the traditional rules and practices. They comply, even when there are additional government rules and regulations governing land and resource uses. In fact, rural areas commonly must obey two sets of laws — those from the state-federal administration, and those handed down from their forefathers as customary law.

Federal law recognizes the compatibility of subsistence and wilderness values. The law protects subsistence uses in the new parklands, national refuges, and wilderness areas. Subsistence peoples and traditional uses are part of the natural ecosystem and have helped to maintain it for generations.

### *Is subsistence compatible with wilderness?*

Yes. Most areas designated as "wilderness" today are the traditional homelands of subsistence peoples. Alaskans have been living in and using these areas for thousands of years, and continue to do so. These areas would not appear pristine and undamaged today — so they could be classified as wilderness — if rural Alaskans had not treated the lands and wildlife well. The lands are wilderness now, because subsistence is compatible with wilderness.



### *Is subsistence a type of welfare for families with low incomes?*

No. Subsistence is not a welfare system for people with low incomes. In fact, households with the highest incomes in rural communities usually produce the most subsistence foods. Households with the lowest incomes usually produce less subsistence foods.

This makes sense if subsistence is seen as a family enterprise. Households with the lowest incomes in a community are commonly the very elderly, single mothers with young dependent children, and young single persons or young couples who are just getting started. These households also very likely cannot subsistence fish and hunt very well. They often lack the time, the labor, and the equipment to harvest effectively. They usually eat subsistence foods produced by other households in the community.

The households who produce the most subsistence foods in a community are usually households with large, mature labor

forces which have equipment for hunting and fishing. Usually, these are households with mature parents and several mature children. They have the labor and the equipment to harvest wild foods. They typically produce extra subsistence food to share with elderly relatives, the less fortunate, and young adults. The mature households also usually have greater monetary incomes because there may be several household members with jobs.

Because of this, rural communities would suffer extreme hardships if subsistence hunting and fishing were limited to only households with low incomes. This would cut out the most productive households in the community.

### *Why don't subsistence hunters use bows and arrows?*

Subsistence requires equipment that works, is safe, and is sustainable with ecological and economic conditions over the long term. Most people stopped using bows and arrows over a century ago in Alaska. Rural Alaska has been using guns for hunting longer than America has been using automobiles for transportation, since the 1860s in most areas.

Subsistence equipment is usually small scale, appropriate technology. It is efficient and modern. Equipment commonly includes fish nets, fish wheels, aluminum skiffs with small outboards, snowmachines, binoculars, and citizens band radios. These may be used alongside dog teams, skin boats, smoke houses, and fish traps, depending upon the area and conditions.

### *Is subsistence disappearing?*

Subsistence is constantly changing, but as a whole, there is little evidence that it is disappearing as a way of life in Alaska. In rural Alaska, subsistence activities are among the most highly valued parts of the culture. Subsistence harvests still are essential parts of the rural economy. In most rural places, children continue to learn how to capture wild foods and prepare them for use by the family and community.

Nevertheless, some things do threaten subsistence. Roads into rural areas usually result in declines in the subsistence way of living. Roads bring about ecological change, increased competition for wild resources, and in-migration of cultural groups that do not hunt and fish for subsistence. Unregulated commercial harvesting that depletes stocks and game populations have resulted in declines in subsistence in certain areas in Alaska. Examples of this include commercial whaling and commercial walrus hunting in the arctic, and commercial salmon traps in southeast Alaska. Unreasonably restrictive rules which limit access to traditional harvest areas or species may threaten subsistence over time. The new state and federal subsistence laws were intended to help bring about regulations beneficial to the subsistence way of life. In general, any change that depletes wild resources, reduces access to wild areas and resources, or increases competition between user groups can create problems for subsistence.

*Robert Wolfe serves as Research Director for ADP&G's Division of Subsistence in Juneau.*



Rural families use money to purchase tools and supplies.

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THE SUPREME COURT OF THE STATE OF ALASKA

SAM E. McDOWELL, DALE E.  
BONDURANT, RONALD MAHLE and  
HAROLD EASTWOOD,

Appellants,

v.

STATE OF ALASKA, ALASKA  
DEPARTMENT OF FISH AND GAME,  
ALASKA BOARD OF FISHERIES,  
ALASKA BOARD OF GAME and  
DON W. COLLINSWORTH,  
Commissioner of Fish and Game,

Appellees,

THE ALASKA FEDERATION OF  
NATIVES, PROTECTORS OF THE  
LAND d/b/a NUMAN KITLUTSISTI,  
TONY VASKA and WALTER CHARLEY,  
on behalf of himself and all  
other persons similarly  
situated,

Intervenors/  
Appellees.

Supreme Court File  
No. S-2732

Trial Court File  
No. 3AN-83-1592 Civil

O P I N I O N

[No. 3540 - December 22, 1989]

Appeal from the Superior Court of the State  
of Alaska, Third Judicial District, Anchorage,  
Douglas J. Serdahely, Judge.

Appearances: Cheri C. Jacobus, Ross,  
Gingras, Bailey & Miner, P.C., Anchorage, for  
Appellants. Larri Irene Spengler, Assistant  
Attorney General, Grace Berg Schaible,  
Attorney General, Juneau, for Appellees.  
Donald Craig Mitchell, Anchorage, for  
Intervenors/Appellees.

Before: Matthews, Chief Justice, Rabinowitz,  
Burke, Compton, and Moore, Justices.

MATTHEWS, Chief Justice.  
COMPTON, Justice, concurring.  
MOORE, Justice, concurring.  
RABINOWITZ, Justice, dissenting.

### INTRODUCTION

This case challenges chapter 52 SLA 1986 which grants a preference to rural residents to take fish and game for subsistence purposes. The only requirement to be met by a subsistence fisherman or hunter is residency in a rural area of the state.

The rural preference is challenged under several provisions of the Alaska Constitution: the common use clause, article VIII, section 3; the no exclusive right of fishery clause, article VIII, section 15; the uniform application clause, article VIII, section 17; the equal rights clause, article I, section 1; and the due process clause, article I, section 7. In addition, violation of the equal protection and due process clauses of the United States Constitution is claimed. For the reasons that follow, we hold that the rural preference violates article VIII, sections 3, 15 and 17 of the Alaska Constitution.

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### FACTUAL AND PROCEDURAL SETTING

The 1986 act<sup>1</sup> defines subsistence fishing and hunting as activities which can be undertaken only "by a resident domiciled in a rural area of the state . . . ." Subsistence uses are also defined in terms of residency in rural areas:

"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, and for the customary trade, barter, or sharing for personal or family consumption.

AS 16.05.940(30). A "rural area" is defined 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." AS 16.05.940(25).

Appellants are Alaska residents who have engaged in subsistence hunting and fishing in the past and wish to continue to do so. Under the 1986 act, they are disqualified as subsistence users because they reside in areas classified as non-rural by the joint Boards of Fisheries and Game. Appellants McDowell and Mahle reside in Anchorage, Bondurant resides in

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1. For ease of reference, citations to chapter 52 SLA 1986 in this opinion will be to the appropriate section of the Alaska Statutes where that act is codified.



Cooper Landing, and Eastwood resides in the community of McKinley Park.

The 1986 act requires the Board of Fisheries and the Board of Game to decide what portion of each fish stock and game population can be harvested consistent with the principle of sustained yield. Next the Boards must determine how much of the harvestable portion is needed to satisfy subsistence needs. If the harvestable portion of any stock or population is not sufficient to accommodate all consumptive uses -- sport, personal use, and commercial -- then subsistence uses

shall be accorded a preference over other consumptive uses, and the regulations shall provide a reasonable opportunity to satisfy the subsistence uses. If the 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.

AS 16.05.258(c). If the harvestable portion of a stock or population is insufficient to satisfy all subsistence needs, all non-subsistence uses are barred, and the Boards are required to distinguish among subsistence users by applying three criteria: "(1) customary and direct dependence on the fish stock or game population as the mainstay of livelihood; (2) local residency; and (3) availability of alternative resources." Id.

This case was brought in 1983 as a challenge to the 1978 subsistence statute, chapter 151, section 4 SLA 1978. The 1978 statute established that subsistence hunting and fishing had priority over other uses of fish and game stocks. Like the 1986

statute, it provided for two tiers of subsistence users. In the first tier were those who could take fish or game for subsistence purposes when populations were adequate to satisfy all subsistence needs. The second tier was limited to those who could take fish and game for subsistence purposes when populations were inadequate to supply all subsistence needs. The 1978 statute distinguished the second tier of subsistence users from the first tier on the basis of the same three factors utilized in the 1986 statute, namely, customary and direct dependence, local residency, and availability of alternative resources. Id. However, unlike the 1986 statute, the 1978 statute did not impose a rural residency requirement as a condition to becoming a first-tier subsistence user.

The appellants' initial complaint challenged the second-tier subsistence priority of the 1978 statute. The complaint was amended several times to expand on the original theory and add challenges to various regulations. All parties submitted motions for summary judgment. The superior court granted some of these motions and deferred others on October 24, 1984. Before the deferred motions could be ruled on, this court decided Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985), which struck down, as inconsistent with the 1978 statute, subsistence fishing regulations which imposed a rural residency requirement on first-tier subsistence users. Id. at 178.

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The next event of significance was the passage in 1986 of chapter 52 SLA 1986, which, as noted, provides that only rural residents can be first- or second-tier subsistence users. Following passage of this act, the appellants again amended their complaint, challenging the rural preference on constitutional grounds. Both the appellants and the state moved for summary judgment. The superior court granted the motion of the state and denied the motion of the appellants. Judgment was entered on the basis of this ruling.

The setting of this case would not be complete without mention of the Alaska National Interest Lands Conservation Act (ANILCA), enacted by Congress in 1980.<sup>2</sup> Section 3114 of this act requires that on federal public lands in Alaska, subsistence uses are to be given priority over the taking of fish and wildlife for other purposes. Under ANILCA, only rural Alaska residents are entitled to a subsistence priority.<sup>3</sup> ANILCA requires federal

2. 16 U.S.C.A. §§ 3101-3233 (West 1985).

3. ANILCA § 804, 16 U.S.C.A. § 3114, states:

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

management of public lands in Alaska in order to ensure the subsistence priority.<sup>4</sup> However, federal management may be supplanted by the state so long as the state enacts and implements subsistence laws "which are consistent with, and which provide for the definition, preference, and participation specified in" ANILCA.<sup>5</sup>

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(Footnote Continued)

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.

(Emphasis added).

ANILCA § 803, 16 U.S.C.A. § 3113, defines the term "subsistence uses" as used in ANILCA to mean

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; for barter, or sharing for personal or family consumption; and for customary trade.

(Emphasis added.)

4. 16 U.S.C.A. § 3115(c).

5. 16 U.S.C.A. § 3115(d).

After this court's Madison decision, the Secretary of the Interior notified the state that state law was no longer consistent with ANILCA and that federal management would begin unless consistency was achieved by June 1, 1986. Kenaitze Indian Tribe v. State of Alaska, 860 F.2d 312, 314 (9th Cir. 1988), cert. denied, 105 L. Ed. 2d 695 (1989). With the passage of the 1986 act, the Interior Department has stated that Alaska is once again in compliance with ANILCA. Id.

After final judgment was entered by the superior court, the 9th Circuit Court of Appeals ruled that the definition of "rural" in the 1986 act does not comply with § 3113 of ANILCA. Id. at 318. "Rural," in ANILCA, according to the court, refers to "sparsely populated" areas; "rural is the antonym of urban and includes all areas in between cities and towns of a particular size." Id. at 316-17. The court referred to Census Bureau standards under which "the urban population consists of people living in communities of 2,500 or more, while the rural population comprises everyone else." Id. at 317. Thus, the 1986 act's subsistence-oriented definition was held inconsistent with ANILCA.

Bondurant and Eastwood both reside in rural areas as Kenaitze has interpreted ANILCA's use of that term. They are thus probably entitled to injunctive relief under ANILCA, 16

U.S.C.A. § 3117(a).<sup>6</sup> However, the Kenaitze decision does not change the issues presented in this appeal because the 1986 statute remains fully applicable to all non-federal lands.

Background and Purpose of the 1986 Statute

Prior to 1978, urban residents could engage in subsistence hunting and fishing. However, there was no statutory preference given to subsistence over sport or commercial fishing or sport hunting. With the enactment of chapter 151 SLA 1978, subsistence hunting and fishing was given such a priority. Madison, 696 P.2d at 174 n.12. The 1978 statute did not bar urban residents from eligibility as first-tier subsistence users. Madison, 696 P.2d at 176. However, a regulation adopted by the Board of Fish and Game did exclude urban residents. 5 AAC 01.597. Madison held that this regulation violated the 1978 statute. Id.

In 1985 the Alaska House of Representatives adopted a letter of intent which accompanied the bill that became the 1986 subsistence act. 1985 House Journal 1246. The letter explained the rural preference of the 1986 act as follows:

This limitation of the definition of "subsistence uses" recognizes that Alaska is unique, and unlike any of the other forty-nine states, the economy of many rural communities in rural areas in Alaska is significantly dependent upon participation by the residents of these communities in the

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6. Such relief has not been requested in this case, and the question whether the § 3117(a) remedy is available only in federal courts has not been briefed.

taking of fish stocks and game populations for personal and family consumption. Further, the legislature finds that the general health and welfare of these citizens is significantly tied to their participation in these activities.

Id. at 1229-30. In making this determination, the legislature sounded a theme that was also expressed by Congress in enacting ANILCA. The House Committee on Interior and Insular Affairs determined that:

After consideration of the testimony at the subcommittee's hearings and town meetings throughout Alaska and review of studies done by a variety of federal, state, academic, and other agencies and groups, the Committee has no doubt about the importance of subsistence uses to the rural people of Alaska. Reliable evidence was given to the Committee demonstrating that fifty percent of the food for three-quarters of the Native families in Alaska's small and medium villages is acquired through subsistence uses, and 40 percent of such families spend an average of 6 to 7 months of the year in subsistence activities . . . .

H.R. Rep. No. 1045, 95th Cong., 2d Sess., at 181 (1978). The intervenors in this appeal similarly expressed the purpose of the rural preference as follows:

If village access to fish and game is overwhelmed by competition from the tens of thousands of sportsmen who Alaska's fortuitous oil wealth has drawn to the urban centers, the effect on the rural village economy would be adverse, and the effect on the health and welfare of rural residents would be even more so.

An additional purpose of the 1986 subsistence law is to retain state management of fish and game on federal lands by meeting the requirements of ANILCA.<sup>7</sup>

#### Urban-Rural Subsistence Patterns

Appellants' basic objection to the 1986 act is that by excluding from eligibility as subsistence users all urban dwellers and by including all rural dwellers, the act unfairly excludes some urban residents who have lived a subsistence lifestyle and desire to continue to do so, while needlessly including numerous rural residents who have not engaged in subsistence hunting and fishing. Appellants claim, in other words, that the urban/rural criterion is both unfairly under-inclusive, because it excludes deserving urban residents, and over-inclusive, because it includes undeserving rural residents. Appellants instead suggest that the right to subsistence should depend upon individual needs and traditions, not on one's place of residence.

The record supports the appellants' claim that there are substantial numbers of urban subsistence users. A state

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7. Senator Fisher, a member of the Senate Resource Committee, noted in the Senate floor debate: "[T]his legislation will provide the boards the tools to solve the problems in harvest disruption that followed Madison, and will assure the state will retain management of fish and game throughout Alaska by meeting the requirements of the federal subsistence law."



study of subsistence use patterns<sup>8</sup> found that of some 255 holders of subsistence salmon permits for the 1980 Tanana River fishery, approximately 20% exhibited the attributes commonly associated with a traditional subsistence lifestyle, even though they all resided in the urban Fairbanks area. The report states:

Despite their residence in or near populated areas of the Fairbanks North Star Borough, these households generally participated in the wage economy on a seasonal basis and had longer histories of participation in the fishery, lower cash incomes, and somewhat larger household sizes than the majority of users. Some of these households have long-standing cultural ties to the subsistence fishery. For these more intensive users, fishing in sub-district Y-6C was less a recreational outing than an integral component of their way of life in Interior Alaska. Their residence in an area which is currently defined by regulation as urban, coupled with escalating demands upon the resource base, however, raise questions about whether these more intensive uses can continue in the future.

Study at 12. Similarly, in the city of Homer, an urban area under the regulations,<sup>9</sup> the study reports that 38.2% of the city residents obtained at least one-half of their meat and fish supply from personal hunting and fishing activities. Id. at 162.

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8. R.J. Wolfe and L.J. Ellanna Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities, Technical Paper Number 61, Alaska Department of Fish and Game, Division of Subsistence, Juneau, March, 1983 (hereinafter "Study").

9. 5 AAC 99.014.

Likewise, the study documents the fact that numerous Alaskans who live in areas classified by the regulations as rural do not engage in subsistence activities. For example, in the City of Sitka, which is classified as rural, although it has a population of 7,803, some 26% of the households sampled did no hunting and 7% did no fishing. Id. at 235. Similarly, in the City of Nome, population 3,249, which is also rural under the regulations, id. at 93, some 5% of all households use no locally taken fish or game. Id. at 111.

The study also amply supports the critical importance of subsistence hunting and fishing to residents of the numerous small and remote villages of our state. For example, in the Wade Hampton census area of Western Alaska, the average annual per capita cash income was only \$2,737 (1979),<sup>10</sup> id. at 30, and the average household harvested 4,597, dressed weight, pounds of fish and game each year. Id. at 42.

#### The Article VIII Clauses - History and Analysis

##### A.

Section 15 of article VIII of the Alaska Constitution provides:

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

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30. 10. The 1979 statewide average was \$11,152. Study at

limit entry into any fishery for the 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.

Section 3 of article VIII provides:

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

Section 17 of article VIII provides:

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

Although the ramifications of these clauses are varied, they share at least one meaning: exclusive or special privileges to take fish and wildlife are prohibited. Section 15 states this explicitly with respect to fisheries. The proceedings of our Constitutional Convention show that the same meaning was intended with respect to sections 3 and 17.

A memorandum of the Constitutional Convention Committee on Resources expresses the view that the common use clause has as one of its purposes a prohibition on exclusive grants or special privileges. The memorandum states: "The expression 'for common use' implies that these resources are not to be subject to exclusive grants or special privileges as was so frequently the case in ancient royal tradition." Alaska Constitutional Convention Papers, Folder 210, Papers Drafted by Committee on Resources, entitled "Terms."

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THE COMMITTEE ON RESOURCES COMMENTARY WITH RESPECT TO  
THE UNIFORM APPLICATION CLAUSE STATES:

This section is intended to exclude any especially privileged status for any person in the use of natural resources subject to the disposition of the state.

6 Proceedings of the Alaska Constitutional Convention 84 (Dec. 16, 1955).

In Owsichuk v. State, 763 P.2d 488 (Alaska 1988), we observed that the article VIII provisions were designed to ensure to the public the broadest possible access to wildlife. We noted that "the common use clause impose(s) upon the state a trust duty to manage the fish, wildlife and water resources of the state for the benefit of all the people." Id. at 495 (emphasis added). "[A] minimum requirement of this duty is a prohibition against any . . . special privileges." Id. at 496. In State v. Ostrosky, 667 P.2d 1184, 1191 (Alaska 1983), we observed that the common use and no exclusive right of fishery clauses reflected "anti-exclusionist values."

Appellants contend that the rural residency requirement amounts to an exclusive or special privilege prohibited explicitly by section 15 and implicitly by sections 3 and 17. They focus on Hynes v. Grimes Packing Co., 337 U.S. 86 (1949), a case which interpreted section 1 of the White Act, former 48 U.S.C. §§ 220-224 (1941), under which Alaska fisheries were regulated before statehood. In Hynes, the Supreme Court held that the White Act prohibited granting a preferential right to fish to Native residents of the Karluk Reservation. Id. at 123.

This case is of precedential importance, they contend, because section 15 was based on section 1 of the White Act.

In response, the state agrees that the first sentence of section 15 is based on section 1 of the White Act. However, the state distinguishes Hynes on the grounds that the exclusive right to fish there was available to "a closed class." In contrast, it argues there is no closed class here because "people may become eligible to participate in subsistence uses by establishing their domicile in a rural area." Further, the state relies on Kenai Peninsula Fishermen's Cooperative Association v. State, 628 P.2d 897, 904 (Alaska 1981) which held that section 15 does not bar differential treatment between commercial, sport, and subsistence fishermen. The intervenors' argument in response relies exclusively on this case.

The parties correctly agree that the no exclusive right of fishery clause is based on section 1 of the White Act. The commentary concerning the exclusive right of fishery clause prepared by the Committee on Resources of the Constitutional Convention states:

This section is intended to serve as a substitute for the provision prohibiting the several right of fisheries in the White Act. Instead of using the terminology of that Act the purposes sought by it are given expression in a prohibition of exclusive right or special privileges of any person to the fisheries of the state.

6 Proceedings of the Alaska Constitutional Convention Proceedings at 87 (Alaska Legislative Council).

The language of the White Act, for which the no exclusive right clause is meant to be a substitute, is as follows:

Provided, that every such regulation made by the Secretary of the Commerce shall be of general application within the particular area to which it applies, and that no exclusive or several right of fishery shall be granted therein, nor shall any citizen of the United States be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of the Commerce.

Act of June 6, 1924, ch. 272, § 1, 43 stat. 464.

The appellants' reliance on Hvnes as an explanation of the meaning of the bar on exclusive rights and special privileges is apt. At issue in Hvnes was a regulation of the Secretary of the Interior<sup>11</sup> prohibiting commercial salmon fishing in all waters within 3,000 feet of the shores of the Karluk Reservation. 337 U.S. at 92. The Secretarial Order made an exception which allowed Natives residing on the Reservation and their licensees to fish in these waters. Id. The Supreme Court held that this exception in favor of the Native residents and their licensees violated section 1 of the White Act. The court stated:

[W]e think it clear that its proviso, "that no exclusive or several right of fishery shall be granted therein," applies to commercial fishing by Natives equally with

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11. Regulatory jurisdiction over the administration of the White Act was transferred from the Department of Commerce to the Department of the Interior, effective July 1, 1939; Hvnes, 337 U.S. at 92 n.4.

fishing companies, nonresidents of Alaska or other American citizens and so applies whether those Natives are or are not residents on a reservation. We find nothing in the White Act that authorizes the Secretary of the Interior to grant reservation occupants the privilege of exclusive commercial fishing rights. . . . "Exclusive," as used in Section 1 of the White Act, forbids not only a grant to a single person or corporation but to any special group or number of people. The legislative history set out above shows this. The offending regulations which brought about the enactment of the proviso in § 1 of the White Act were administered so as to limit fishing to those who had been using the fisheries before the regulations.

337 U.S. at 122.<sup>12</sup>

As noted above, the state seeks to distinguish Hynes on the ground that Hynes involved a closed class of recipients of a special privilege, whereas the 1986 subsistence law does not because anyone who wants to hunt and fish for subsistence purposes can move to a rural area. We find this argument unpersuasive. If it were valid, virtually any discrimination based on residence would be justified - the residents of the disfavored area could simply move. Such a rationale is inconsistent with the prevailing approach in territorial

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12. We do not agree with Justice Rabinowitz's statement in dissent that the limitation struck down in Hynes was predicated solely on the fact that the users were Indians. Infra at 50. Both ethnic status and local residency were required as the regulation in question applied to "natives in possession of [the Karluk] reservation." 337 U.S. at 92. In any case, the quote in the text makes it clear that if the exception had been based solely on residence, rather than on residence and race, it would also have been struck down.

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discrimination cases, which is to subject territorial classifications to scrutiny under the equal protection clause. Gilman v. Martin, 662 P.2d 120, 125 (Alaska 1983); Neuman, Territorial Discrimination, Equal Protection, and Self-Determination, 135 U. Pa. L. Rev. 261, 274-75 (1987).

The state's and the intervenors' reliance on Kenai Peninsula is also off the mark. That case merely affirmed what article VIII, section 4<sup>13</sup> says explicitly - that preferences among beneficial uses of fish and game may be legislatively or administratively established. We stated in Kenai Peninsula:

While section 15 does prohibit granting monopoly fishing rights, that section was not meant to prohibit differential treatment of such diverse user groups as commercial, sport, and subsistence fishermen. To conclude that, because a certain species is made available for sport fishing in a given area, commercial fishing of the same species must also be allowed, would be to go far beyond the purpose of the section.

628 P.2d at 904 (footnote omitted). The state may, indeed must, make allocation decisions between sport, commercial, and

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13. Article VIII, section 4 of the Alaska Constitution provides:

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.



subsistence users. That authority, however, does not imply a power to limit admission to a user group.<sup>14</sup>

Section 1 of the White Act guaranteed equal access to fisheries regardless of residence. The language of the Act and Hynes make this clear.<sup>15</sup> Alaska's constitutional framers were

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14. The foregoing also answers Justice Rabinowitz's contention that our interpretation of the equal access clauses of article VIII is in conflict with article VIII section 4. We have consistently taken the position that limits on admission to user groups are subject to scrutiny under the article VIII equal access clauses. See State v. Ostrosky, 667 P.2d 1184, 1189 (Alaska 1983); Owichek v. State, 763 P.2d 488, 492 (Alaska 1988).

15. The legislative history of the White Act is in accord. Congressional debate at the time the White Act was proposed demonstrated concern that Alaska residents and non-residents alike were being excluded from Alaska fisheries. The debate also demonstrated Congress' desire that Alaska fisheries be equally accessible to everyone:

Mr. Robinson. The Secretary of Commerce sought to give exclusive right to fish in certain Alaskan water, and out of this attempt to give exclusive rights to fish, thus depriving a large number of the people the right to pursue their usual vocation, great complaint arose. This bill, however, denies to the Secretary of Commerce any power to grant an exclusive right to fish and requires him to give everyone equal rights within the areas where fishing is permitted.

. . . .

Mr. Jones of Washington. The bill removes the principal cause of complaint with reference to the exercise of power by the Secretary of Commerce. . . . Within the two reservations [of restricted fishing areas] that were created by Executive Order a year or two ago the Secretary of Commerce has seen

(Footnote Continued)

(Footnote Continued)

fit to make regulations under which outsiders might not go in order to fish. In other words, those who are already located there, if [the Secretary] thought they took all the fish that should be taken, were given the full rights, and nobody else could go in there and take fish.

Mr. King: They were given exclusive rights.

Mr. Jones of Washington. They may be called exclusive rights, but I want to say this in justice to the Secretary of Commerce:

When I came back this fall, and came down here, and we were considering matters of this kind, the Delegate from Alaska and I talked over the matter with reference to those exclusive rights, and I saw the Secretary of Commerce, and the Secretary of Commerce himself said that he would be glad to have that discretion taken away, that certainly he was not in favor of that policy, but those who were on the ground and who had been dealing with the matter especially and who might be considered to be experts had recommended and urged that that policy be pursued. I will say, in justice to him, that he said frankly that he would prefer not to have that absolute power, so I can say for him that he is glad that this provision is put in the bill prohibiting him from granting exclusive rights within the fishing areas up there.

. . . .

Mr. Robinson. I have been unable to find any authority for [the Secretary] to grant exclusive rights of fishery. It was about that alleged abuse of authority that most of the complaints arose; namely, that the Secretary in some instances had created reservations, and in others had granted in certain waters the exclusive right to fish, usually to large corporations or packing concerns, which deprived the fishermen of the

(Footnote Continued)

aware of Hynes.<sup>16</sup> As noted, section 15 of article VIII was meant to be a substitute for section 1 of the White Act and to further

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(Footnote Continued)

opportunity to pursue their occupations; and they desired very much the provision that is in this bill, which secures to every citizen of the United States the right to fish in Alaskan waters upon equal terms and without discrimination. The bill deprives the Secretary of any power . . . to grant exclusive rights to fish in Alaskan waters.

65 Cong. Rec. 9520-21 1924) (emphasis added).

Based in part upon the Congressional debate identified above, Hynes concluded that

[T]he legislative history of the White Act only emphasizes what the statute clearly says, that is, no special privileges in Alaskan fishing preserves.

Hynes, 337 U.S. at 120 (footnote omitted).

16. A memo of the Committee on Resources defining terms states the following under "White Act Provisions" 48 U.S.C.A. 222:"

That every such regulation made by the Secretary shall be of general application within the particular area to which it applies, and that no exclusive or general right of fishery shall be granted therein, nor shall any citizen of the U.S. be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary. . . . The word "exclusive" forbids not only a grant to a single person or corporation, but to any special group or number of people. (Hynes-Grimes Karluk Reservation)

Alaska Constitutional Convention Papers, Folder 210.

its purposes.<sup>17</sup> It follows that section 15 likewise was meant to ensure an equal right to participate in fisheries, regardless of where one resides.

Although section 15 pertains only to fisheries, the prevention of grants of exclusive or special privileges with respect to fish and game is also one purpose of the common use and the uniform application clauses.<sup>18</sup> It follows that the grant of special privileges with respect to game based on one's residence is also prohibited.

We therefore conclude that the requirement contained in the 1986 subsistence statute, that one must reside in a rural area in order to participate in subsistence hunting and fishing, violates sections 3, 15, and 17 of article VIII of the Alaska Constitution.<sup>19</sup>

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17. Commentary on Article on State Lands and Natural Resources, 6 Proceedings of the Alaska Constitutional Convention at 87.

18. See supra pages 14 and 15.

19. Justice Rabinowitz states in his dissenting opinion that he does not interpret the statute to mean that "eligibility to participate in subsistence uses is determined solely with reference to where an individual lives." Infra at 47. That, however, clearly is the case with respect to first-tier subsistence users. Urban resident may not be subsistence users because subsistence uses are by definition limited to rural residents. AS 16.05.940(30), quoted supra at pp.2-3. Yet all rural residents may be first-tier subsistence users without regard to their individual characteristics. The regulation on which Justice Rabinowitz relies, 5 AAC 99.010(b), defines customary and traditional uses but does not state that first-tier subsistence rights can be limited to customary and

(Footnote Continued)

B.

The conclusion we have reached does not mean that everyone can engage in subsistence hunting or fishing. We do not imply that the constitution bars all methods of exclusion where exclusion is required for species protection reasons. We hold only that the residency criterion used in the 1986 act which conclusively excludes all urban residents from subsistence hunting and fishing regardless of their individual characteristics is unconstitutional.

We are not called upon in this case to rule on what selection criteria might be constitutional. It seems appropriate, however, to note that any system which closes participation to some, but not all, applicants will necessarily create a tension with article VIII. In such cases, assuming that the exclusionary criterion is not per se impermissible, our decisions suggest that demanding scrutiny is appropriate.

We alluded to this in State v. Ostrosky, 667 P.2d 1184 (Alaska 1983) in discussing the interplay between the constitutionally allowed limited entry system, which was permitted by

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(Footnote Continued)

traditional users. As we stated in Madison "the phrase 'customary and traditional' modifies the word 'uses' . . . it does not refer to users." 696 P.2d at 174. The state acknowledges that only in the second-tier subsistence context may individual characteristics separate those rural residents who may be second-tier subsistence users from those who are ineligible. Brief of Appellees, p. 8. The state also notes that the need for a second-tier limitation has, to date, not arisen. Id.

amendment to article VIII, section 15, and the common use and no exclusive right of fisheries clauses. We stated:

[S]ince the common use clause of section 3 and the no exclusive right of fishery clause of section 15 remain in the constitution, the premise of the argument is that whatever system of limited entry is imposed must be one which, consistent with a feasible limited entry system, entails the least possible impingement on the common use reservation and on the no exclusive right of fishery clause. The argument concludes that free transferability does not entail the least possible impingement on the anti-exclusionist values which these provisions reflect.

. . . [T]he premise of this argument is logical.

Id. at 1191. We expressed the same theme in Johns v. Commercial Fisheries Entry Commission, 758 P.2d 1256 (Alaska 1988) concerning the obligation of the Commercial Fisheries Entry Commission to establish an optimum number of entry permits. We stated in Johns:

In [Ostroskv], we noted that there is a tension between the limited entry clause of the state constitution and the clauses of the constitution which guarantee open fisheries. We suggested that to be constitutional, a limited entry system should impinge as little as possible on the open fishery clauses consistent with the constitutional purposes of limited entry, namely, prevention of economic distress to fishermen and resource conservation. Ostroskv . . . . The optimum number provision of the Limited Entry Act is the mechanism by which limited entry is meant to be restricted to its constitutional purposes. Without this mechanism, limited entry has the potential to be a system which has the effect of creating an exclusive fishery to ensure the wealth of permit holders and permit values, while exceeding the constitutional purposes of limited entry. Because this risk of unconstitutionality

exists, the [Commercial Fisheries Entry Commission] should not delay in embarking on the optimum number process, except where there is a substantial reason for doing so.

Id., 758 P.2d at 1266 (footnote omitted).

Most recently in Owsichek, we suggested that section 17 of article VIII, the uniform application clause, "may require 'more stringent review' of a statute than does the equal protection clause in cases involving natural resources." Owsichek, 763 P.2d at 498 n.17 (quoting Gilman v. Martin, 662 P.2d 120, 126 (Alaska 1983)). We also cited with approval Justice Rabinowitz's dissent in Ostrosky, 667 P.2d at 1196 which employs a least restrictive alternative approach in view of the "highly important interest running to each person within the state" by virtue of the common use clause. 763 P.2d at 492 n.10.

In reviewing legislation which burdens the equal access clauses of article VIII, the purpose of the burden must be at least important. The means used to accomplish the purpose must be designed for the least possible infringement on article VIII's open access values. Ostrosky, supra at 1191, Johns, supra at 1266.

We employ this method of analysis in the present case as an alternative ground of decision. Using this approach, we conclude that the rural-urban residency criterion is unconstitutional for the reasons that follow.

One purpose of the 1986 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.





protection guaranty, bar the residential discrimination imposed in this case.<sup>21</sup> Lewis v. State, 161 S.W. 154 (Ark. 1913) contains an excellent historical statement:

When it becomes necessary for the propagation and preservation of wild game and fish for the use of the public, the people acting in their sovereign capacity, through their lawmaking power, may pass laws to regulate the right of each individual which he enjoys in common with every other member of the community to use of same. But when

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21. See State v. Brvan, 99 So. 327, 330 (Fla. 1924) (state law levying \$10 and \$50 license tax on state residents who are non-residents of certain counties, as a prerequisite to hunting in those counties, when residents of those counties pay only \$1 or \$1.25, violates equal protection); State v. Barkley, 134 S.E. 454, 455 (N.C. 1926) (state law levying \$3 hunting fee on non-resident hunters in the county, and a \$1 fee on residents of the county, held invalid in that it taxed inhabitants unequally); Harper v. Galloway, 51 So. 226, 229 (Fla. 1910) (state law that required citizens of the state of Florida who were not residents of Marion County to give a previous notice of intention to hunt and to pay a special license tax for the privilege of hunting game in Marion County, while no notice or license tax was required of residents of Marion County, denied equal protection of the laws); Bruce v. Director, Dep't of Chesapeake Bay Affairs, 276 A.2d 200, 208 (Md. 1971) (statutes prohibiting crabber from crabbing in waters of county other than his county of residence and prohibiting oystermen from going to waters of another county invalid); Power, More About Oysters Than You Wanted To Know, 30 Maryland L. Rev. 199, 218 (1970) ("A county non-resident represents no peculiar threat to the fishery but merely the same threat as represented by a county resident.").

But see Commonwealth v. Hilton, 54 N.E. 362, 364 (Mass. 1899) (selectmen of a town may prohibit the digging of clams by nonresidents of the town); State v. Norton, 335 A.2d 607, 615 (Me. 1975) (state had compelled governmental interest in conservation of its clams and its attempt to achieve that purpose by, in part, authorizing municipalities to apply a resident-nonresident standard in licensing shell fisheries did not unconstitutionally discriminate against nonresidents).

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the sovereign undertakes to regulate or restrain the individual in its right as a member of the community to enjoy the right to take and use this common property of all, it must do so upon the same terms to all members of the community alike. The common right, which one individual of the whole community is entitled to enjoy as much as another, cannot be made by law the exclusive privilege of the people of a certain class or section upon terms and conditions that do not apply to the whole people alike. This right which one individual has in common with every other individual in the community to take and use fish and game, *ferae naturae*, is one that has existed from the remotest times, and, although at one time in England after the Norman Conquest the right to take fish and game was claimed as a royal prerogative to the exclusion of the people, it was restored to them by the Barons at Runnymede in 1215, and was declared in the great charter which they wrested from King John. "The rights," says Green, "which the barons claimed for themselves they claimed for the nation at large." Green's History of the English People, vol. 4, pp. 252-254. —

These rights were confirmed and established ever thereafter in England by acts of Parliament, and they have come down to us from the laws of England and may be regarded as a common heritage of the English-speaking people. See Parker v. People, 111 Ill. 581, 53 Am. Rep. 643. Also Geer v. Conn., 161 U.S. 519, 16 Sup. Ct. 600, 40 L. Ed. 793; Martin v. Waddell, 16 Pet. 412, 10 L. Ed. 997. The only justification for a law regulating and restricting the common right of individuals to take wild game and fish is the necessity for protecting the same from extinction, and thus to preserve and perpetuate to the individual members of the community the inalienable rights which they have had from time immemorial. While the state, holding the title to game and fish, so to speak, in trust for every individual member of the community, may pass laws to regulate the rights of each individual in the manner of taking and using the common property, yet, as we have already stated, this must be done, under the

Constitution, upon the same terms to all the people. No special privileges or immunities can be conferred.

Where the necessity for the preservation of the wild game and fish exists in certain territories of the state, that territory may be segregated for the purpose of regulating the right to taking game and fish therein; but the privilege of taking and using same must be extended to the people of the state outside of the territory upon the same terms that are given to those who are residents of the territory embraced in the legislation. Hayes v. Territory, 2 Wash. T. 286, 5 Pac. 927. In the cases of State v. Higgins, 31 S. C. 31, 28 S. E. 15, 38 L. R. A. 561, and Harper v. Galloway, 58 Fla. 255, 31 South. 226, 26 L. R. A. (N.S.) 794, 19 Ann. Cas. 235, the question here involved was considered and determined in accord with the doctrine we have announced.

Id. at 155-156 (footnote omitted, emphasis added).

#### CONCLUSION

Our disposition of this case makes it unnecessary to discuss the other grounds advanced by appellants. For the above reasons, the judgment of the superior court is reversed. This case is remanded to the superior court with instructions to issue a declaratory judgment that the rural preference of ch. 52 SLA 1985 is unconstitutional and to take such further action as may be appropriate.

REVERSED and REMANDED.

COMPTON, Justice, concurring.

I agree with Part A of the opinion, holding that this preferential scheme violates art. VIII, sections 3, 15 and 17 of the Alaska Constitution.

I express no opinion regarding Part B as it is superfluous to the decision.

MOORE, Justice, Concurring.

The court correctly concludes that chapter 52, SLA 1986 ("the Act") violates the Alaska Constitution. I write separately to explain my understanding of the court's holding in part B of the section entitled "The Article VIII Clauses - History and Analysis," which I join, and because I disagree with the court's analysis in part A.

#### Equal Protection

The Act is motivated by a compelling purpose, ensuring that persons who are dependent upon subsistence hunting and fishing have access to wildlife. However, the Act's geographical classification scheme is only loosely related to that purpose. This is an equal protection case, and an easy one at that.

Article I, section 1 of the Alaska Constitution provides that "all persons are . . . entitled to equal rights, opportunities, and protection under the law . . . ." We have decided many cases interpreting this provision, most recently, State v. Enserch Alaska Construction, Inc., \_\_\_ P.2d \_\_\_, Op. No. 3539, (Alaska, December 18, 1989). The Alaska Constitution has a similar clause specifically concerning natural resources. Article VIII, section 17, the uniform application clause, provides that "[l]aws 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."

When applying the equal protection clause of article I, we determine the importance of the individual interest affected by the enactment. The importance of the individual interest determines the level of scrutiny we apply to both the state's interest in the enactment and the nexus between that interest and the enactment. Enserch, Op. No. 3539, at 22-24; Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264, 269-70 (Alaska 1984). Without explicitly acknowledging it, the court's opinion employs the same analysis under the uniform application clause of article VIII. See supra pp. 26-27. Since the principle of equality underlies both clauses, the use of our equal protection analysis in the uniform application context is proper.

I believe that the individual interest impaired by the Act, access to wildlife for subsistence purposes, is a species of the important right to engage in economic endeavor at issue in Enserch, Op. No. 3539, at 25-28. See also Commercial Fisheries Entry Comm'n v. Apokedak, 606 P.2d 1255, 1266 (Alaska 1980). The challenged enactment

therefore should receive close scrutiny.<sup>1</sup> The Act then at least must be closely related to an important state interest. Enserch, Op. No. 3539, at 28.

The state's interest, ensuring that those who must engage in subsistence hunting and fishing are able to do so, is undoubtedly important. Indeed, I believe it is compelling. However, the Act's classification scheme for deciding who is entitled to engage in subsistence hunting and fishing and its implementing regulations are not closely related to the purpose of the Act. As the court's opinion describes, large numbers of residents of areas classified as urban under the Act are dependent upon subsistence hunting and fishing. Conversely, some of the state's larger cities, where many people are not dependent upon subsistence hunting and fishing, are classified as rural. Supra pp. 11-12. There is only a modest correlation between the set of people who reside in areas designated as rural under the Act and the set of people who are dependent upon subsistence hunting and fishing. The fit between the Act and the state's interest does not even approach that required to withstand

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1. Enserch, Op. No. 3539, at 28; Patrick v. Lynden Transp., Inc., 765 P.2d 1375, 1379 (Alaska 1988). It may be that the enactment should receive even greater scrutiny under the uniform application clause; however, the court has not decided that question. Owsichuk v. State, 763 P.2d 488, 498 n.17 (Alaska 1988).

close scrutiny. Therefore, the Act violates the equal protection and uniform application clauses of the Alaska Constitution.

This is not to say that all subsistence preference laws would be unconstitutional. I simply believe that for such a law to pass constitutional muster, it must be closely related to its compelling purpose. A law providing for individual determinations of eligibility would in my view be sufficiently tailored to the state's interest to withstand a constitutional challenge.

#### Common Use and Exclusive Right of Fishery

The court's holding in Part A of the section entitled "The Article VIII Clauses - History and Analysis" is not altogether clear. I agree with the court to the extent that it holds that an intrastate geographical preference for the taking of wildlife violates sections 3 and 15 of article VIII of the Alaska Constitution. I reject any implication that all preferences, especially all subsistence preferences, would violate these sections. I do not believe that the court can find a violation of article VIII, section 17

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without a full equal protection analysis. I do not join part A of the court's opinion, but I concur in its result.<sup>2</sup>

Section 15 of article VIII provides that "[n]o exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State." Alaska Const., art. VIII, § 15 (emphasis added). Section 4 of article VIII provides that the use of resources shall be "subject to preferences among beneficial uses." On the surface, there appears to be some conflict between these provisions. To the greatest extent possible, we must interpret the provisions of Article VIII consistent with each other. See Abrams v. State, 534 P.2d 91, 95 (Alaska 1975).

Section 4 clearly authorizes some preferences based upon uses. The court recognized a parallel exception to section 15 in Kenai Peninsula Fisherman's Cooperative Association, Inc. v. State, 628 P.2d 897 (Alaska 1981), where we wrote that section 15 "was not meant to prohibit differential treatment of such diverse user groups as commercial, sports, and subsistence fishermen." 628 P.2d at 904. The Act distinguishes subsistence uses from commercial and sport uses in name only. As discussed above, its classification

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2. I would not, however, reach this question, because I believe that such geographical preferences violate the equal protection and uniform application clauses of the Alaska Constitution.

is in fact a fairly arbitrary one based upon residence." It is not the type of classification we have previously held permissible under section 15.

We are left with the question whether geographical preferences are permissible under section 15. For the reasons given in the court's opinion, see supra pp. 15-19, I believe that reliance upon Hynes v. Grimes Packing Co., 337 U.S. 86 (1949), which interpreted the federal statute upon which section 15 was based, is appropriate. In Hynes, the Court invalidated regulations prohibiting fishing off the shores of the Karluk Reservation. While I do not believe that Hynes is determinative since it involved an exclusive right to fish in a particular area and not a mere preference, 337 U.S. at 92, section 15 proscribes "special privilege[s]" as well as exclusive rights. Like the court, I do not read Hynes as being based on the fact that the exclusive right was granted to Natives rather than some other group. Nor do I believe that Hynes can be distinguished by the ability of people to move to rural areas and thus qualify under the Act. See supra pp. 18-19 & n.12. For these reasons, I agree with the court that geographical preferences for the taking of fish are not permissible under section 15. The Act thus violates section 15. Although section 15 is facially applicable only to fishing, I would have no difficulty finding a corresponding

prohibition of geographical hunting preferences in the  
common use clause of article VIII, section 3. See supra p.  
23.

RABINOWITZ, Justice, dissenting.

I dissent from the court's holding that ch. 52 SLA 1986 is unconstitutional.<sup>1</sup> In my view Alaska's subsistence laws are not violative of either section 3 ("common use"), section 15 ("no exclusive right of fisheries"), or section 17 ("equal application of laws") of article VIII of the Alaska Constitution.

Article VIII, section 4 explicitly provides for "preferences among beneficial uses." In Kenai Pen. Fisherman's Co-op Ass'n v. State, 628 P.2d 897, 904 (Alaska 1981), we said in part: "[w]hile section 15 does prohibit granting monopoly fishing rights, that section was not meant to prohibit differential treatment of such diverse user groups as commercial, sport, and subsistence fishermen." The subsistence laws at issue here do not exclude individuals from access to wildlife; rather, wildlife resources are allocated on a preferential basis. Nor do these laws create an exclusive right of fishery in any class. Rather, the effect of these laws is to provide for a subsistence preference among beneficial users of the resource. No exclusive, monopolistic, or otherwise closed classes of resource users are established.

I would further hold that ch. 52 SLA 1986 is not violative of the equal protection provisions of the Alaska

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1. Hereinafter state subsistence laws.

Constitution (article I, section 1, article VIII, section 17). In my view adoption of the strict scrutiny and least restrictive alternative standards is inappropriate. Given the nature of the interest at stake I would apply a lesser standard for purposes of equal protection analysis. This subsistence legislation is substantially related to legitimate legislative goals. I conclude that the fit between the legislature's goal of furthering the health and welfare of subsistence users, and the subsistence preference system it devised to carry out this objective, is sufficiently close to withstand scrutiny under Alaska's equal protection provisions.

#### INTRODUCTION.

In response to the impact the state's population growth has had upon subsistence lifestyles, Congress in 1980 enacted the Alaska National Interest Lands Conservation Act (hereinafter ANILCA or federal subsistence law).<sup>2</sup> ANILCA was designed to protect subsistence hunting and fishing by giving such uses priority over commercial and sport uses in rural areas.<sup>3</sup>

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2. Pub. L. No. 96-487, 94 Stat. 2371 (1980); 16 U.S.C. §§ 3101-3123 (West 1985). Congress prefaced Title VIII of ANILCA with a declaration that "the continuation of the opportunity for subsistence uses by rural residents of Alaska . . . is essential to Native physical, economic, traditional, and cultural existence . . . ." 16 U.S.C. § 3111(1).

3. See 16 U.S.C. §§ 3111-3126 (1982 & Supp. IV 1986).

The federal subsistence law specified that subsistence uses must be "customary and traditional uses by rural Alaska residents." ANILCA § 803; 16 U.S.C. § 3113 (emphasis added). Thus, under ANILCA, eligibility for subsistence permits was dependent in part upon one's geographic place of residence. ANILCA § 804; 16 U.S.C. § 3114.<sup>4</sup>

ANILCA authorized the state to continue managing fish and game inhabiting Alaska's federal lands and waters if the state established regulations maintaining the definition of and preference for subsistence uses articulated in the federal subsistence law. ANILCA § 805(d); 16 U.S.C. § 3115(d). The state legislature complied, and thereby retained managerial control over federal lands located within the state—by authorizing the Joint Boards of Fish and Game to promulgate regulations defining "rural" use.

In enacting ch. 52 SLA 1986 the Alaska House of Representatives adopted a letter of intent.<sup>5</sup> The letter articulated the subsistence-rural preference of the act in the following terms:

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4. "Rural" areas are those with sparse populations, and the term "rural" as used in ANILCA is not a term of art. Kenaitze Indian Tribe v. State of Alaska, 860 F.2d 312 (9th Cir. 1988), cert. denied, 105 L. Ed. 2d 695 (1989), (term "rural" is to be given its ordinary significance, meaning "sparsely populated").

5. 1985 House Journal 1246.

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This limitation of the definition of "subsistence uses" recognizes that Alaska is unique, and unlike any of the other forty-nine states, the economy of many rural communities in rural areas in Alaska is significantly dependent upon participation by the residents of the communities in the taking of fish stocks and game populations for personal and family consumption. Further, the legislature finds that the general health and welfare of these citizens is significantly tied to their participation in these activities.6/

The subsistence statutes challenged here define "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." AS 16.05.940(25).

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6. See also the House Committee on Interior and Insular Affairs Report issued in conjunction with the passage of ANILCA.

After consideration of the testimony at the subcommittee's hearings and town meetings throughout Alaska and review of studies done by a variety of federal, state, academic, and other agencies and groups, the Committee has no doubt about the importance of subsistence uses to the rural people of Alaska. Reliable evidence was given to the Committee demonstrating that fifty percent of the food for three-quarters of the Native families in Alaska's small and medium villages is acquired through subsistence uses, and 40% of such families spend an average of 6 to 7 months of the year in subsistence activities. . . .

H.R. Rep. No. 1045, 95th Cong., 2d Sess., at 181 (1978).

Appellants' basic contention here is that "by excluding from eligibility as subsistence users all urban dwellers and by including all rural dwellers, it unfairly excludes some urban residents who have lived a subsistence lifestyle and desire to continue to do so, while needlessly including numerous rural residents who have not engaged in subsistence hunting and fishing." The linchpin of this dispute, then, is whether the challenged subsistence law constitutes an unconstitutionally imperfect attempt to fulfill the legislature's purpose of protecting subsistence uses.

I. DO ALASKA'S SUBSISTENCE LAWS VIOLATE ARTICLE VIII OF THE ALASKA CONSTITUTION?

Appellants challenge the constitutionality of the state subsistence laws under three clauses of article VIII of the Alaska Constitution, sections 3 ("common use"), 15 ("no exclusive right of fisheries"), and 17 ("equal application of laws").<sup>7</sup> The court attributes a "shared meaning" to these three constitutional

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7. Section 3 of article VIII provides:

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

Section 15 of article VIII provides:

No exclusive right or special privilege of fishery shall be created or authorized in the natural

(footnote continued)



provisions: that "exclusive or special privileges to take fish and wildlife are prohibited." The court then concludes that the subsistence statute's preference for rural residents violates each of the aforementioned clauses and offends the shared meaning of article VIII. I disagree.

A. Section Three: The "Common Use" Clause.

Article VIII, section 3 (the "common use" clause) is derived from laws designed to guarantee the common citizen participation in wildlife harvest, and to divest the Crown of exclusive entitlement to those resources.<sup>8</sup> It is said that this

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(footnote continued)

waters of the State. This section does not restrict the power of the State to limit entry into any fishery for the 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.

Section 17 of article VIII provides:

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.

8. In Lewis v. State, 161 S.W. 154 (Ark. 1913), the court described the history of the common use principle in the following terms:

[A]lthough at one time in England after the Norman Conquest the right to take fish and game was claimed as a royal prerogative to the exclu-

(footnote continued)

"public trust" doctrine<sup>9</sup> "impose(s) upon the state a trust duty to manage the fish, wildlife and water resources of the state for the benefit of all the people." Owsichak v. State, 763 P.2d 488, 495 (Alaska 1988) (citations omitted); see also Metlakatla Indian Community, Annette Island Reserve v. Egan, 362 P.2d 901, 905 (Alaska 1961), aff'd, 369 U.S. 45 (1962); Herscher v. State, Dep't of Commerce, 568 P.2d 996, 1003 (Alaska 1977).

In State v. Ostrosky, 667 P.2d 1184 (Alaska 1983), reh'g denied, 468 U.S. 1204 (1984), we accepted the view that the common use clause reflects "anti-exclusionist values." Id. at 1191. Thereafter, in Owsichak v. State, 763 P.2d 488 (Alaska 1988), a case involving an exclusive right to conduct guided hunting in particular areas of wilderness, we reiterated this

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(footnote continued)

sion of the people, it was restored to them by the Barons at Runnymede in 1215, and was declared in the great charter which they wrested from King John.

...  
These rights were confirmed and established ever thereafter in England by acts of Parliament, and they have come down to use from the laws of England and may be regarded as a common heritage of the English-speaking people.

Id. at 155 (citations omitted).

9. The public trust doctrine maintains that government holds untaken wildlife in trust for public use, and that government owes a fiduciary duty to manage such resources for the common good of the public as beneficiary. See Owsichak v. State, 763 P.2d 488, 493-95 (Alaska 1988).

theme stating that section 3 is fundamentally "anti-monopoly" in its thrust. Id. at 493 ("Because an EGA [exclusive guide area] is clearly a type of monopoly . . . [legislative] history strongly suggests that the statutes at issue here are unconstitutional."). Critical to our holding that the guide licensing system at issue in Owsichuk was unconstitutional under the common use clause were the following characteristics of the scheme: it permitted a single guide permanently to exclude all other guides from leading hunts professionally on specific lands; it favored established guides at the expense of new entrants in the guiding market; it created a salable, property-like interest in the license; and it established exclusivity of an unlimited duration. Id. at 496.

In the case at bar the challenged subsistence laws exhibit none of these characteristics. The state subsistence laws establish a subsistence preference, not an exclusive, monopolistic, or otherwise closed class. Anyone may join subsistence users by moving to a sector of the state which has been designated as a "rural area." Further, these laws do not establish subsistence hunting and fishing as an exclusive use, even in rural areas, except during periods of extreme resource scarcity.<sup>10</sup> In regard to this issue I think the court's reliance

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10. Alaska Statute 16.05.258(c) authorizes complete  
(footnote continued)

on Owsichuk and Ostrosky is misplaced. Both Owsichuk and Ostrosky emphasize that the primary thrust of article VIII is anti-exclusionist or anti-monopolistic, not anti-preferential.

I do not read the statutes in question as providing that eligibility to participate in subsistence uses is determined solely with reference to where an individual lives. That is not the case. The subsistence laws at issue here are implemented by multi-factoral regulations which focus not only on place of residence, but also upon particular stocks and populations of fish and game, and particular patterns of subsistence usage.<sup>11</sup> Moreover, individual characteristics are always considered under the state subsistence law during lean periods when it becomes necessary to restrict even certain subsistence uses. In those periods, the determination as to which individuals among those normally eligible for a subsistence permit may continue harvesting is made on the basis of an analysis of individuals' characteristics under the following criteria: (1) customary and

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(footnote continued)

prohibition of non-subsistence uses during periods of famine when the state's total harvest is insufficient to support even normal subsistence uses.

11. Subsistence uses must be "customary and traditional" uses as determined by the separate Boards after evaluation of a particular fish or game stock in light of eight criteria. 5 AAC 99.010(b). These eight criteria include examination of individual populations' patterns of use, methods and efficiency of use, consistency of use, and methods of food storage, as well as the nexus between the asserted subsistence use and the maintenance of individuals' cultural heritage. Id.

direct dependence on the resource as the mainstay of livelihood; (2) local residence; and (3) availability of alternative resources. AS 16.05.258(c).

The court's interpretation of the common use clause would prohibit the legislature from making any differential allocation of natural resources whatsoever, an outcome precluded by our holding in Kenai Peninsula, 628 P.2d 897 (Alaska 1981) and the language of article VIII, section 4, which explicitly provides for "preferences among beneficial uses." In Kenai, we held that "[w]hile section 15 does prohibit granting monopoly fishing rights, that section was not meant to prohibit differential treatment of such diverse user groups as commercial, sport, and subsistence fisherman." 698 P.2d at 904 (emphasis added).

Moreover, it is axiomatic that the provisions of article VIII of the Alaska Constitution should be interpreted so as to avoid internal contradictions. Abrams v. State, 534 P.2d 91, 95 (Alaska 1975) ("It is an undisputed maxim of constitutional construction that the different provisions of the document shall be read so as to avoid conflict whenever possible"); Park v. State, 528 P.2d 785, 786-87 (Alaska 1974) ("It is a well accepted principle of judicial construction that, whenever reasonably possible, every provision of the Constitution should be given meaning and effect, and related provisions should be harmonized."). In my view the court's reading of article VIII, section 3 as prohibiting preferences among beneficial uses

of Alaska's resources plainly conflicts with article VIII, section 4. That section provides, in full:

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.

(Emphasis added.) The intent of section 4 is that persons situated differently can be treated differently and that some users of a resource may legitimately be given preference over others.

In brief, the common use clause constitutionalized the doctrine that wild fish and game are held in trust by the state for the benefit of the public as a whole, rather than by the sovereign in exclusive possession. That principle is consistent with the view that the sovereign state may manage wildlife for the common good, including certain beneficial preferences. Thus I conclude that the challenged subsistence laws do not offend the anti-monopolistic, anti-exclusionist values underpinning the public trust and common use doctrines embodied in section 3 of article VIII of Alaska's constitution.

B. Section 15: the "No Exclusive Right" Clause.

I also disagree with the court's holding that the state subsistence law violates article VIII, section 15 (the "no exclusive right" clause).

The court relies for its interpretation of the no exclusive right clause upon Hynes v. Grimes Packing Co., 337 U.S. 86 (1949), a case in which the United States Supreme Court interpreted the federal legislation which governed Alaska's fisheries before statehood, former 48 U.S.C. §§ 220-224 (1941) (hereinafter "The White Act"). The White Act did include language seemingly prohibitive of the kind of geographic distinction at issue here. Section 1 of the White Act provides, in relevant part:

[N]o exclusive or several right of fishery shall be granted . . . nor shall any citizen of the United States be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of the Commerce.

Act of June 6, 1924, Ch. 272, § 1, 43 stat. 464 (emphasis added). On the other hand, I disagree with the court's view that insofar as the White Act was expressly anti-geographic, section 15 should be given a similar construction. For in my opinion Hynes is distinguishable in several important respects.

First, Hynes did not involve an allocation of fish and game on the basis of residence; rather, the exemption at issue there applied only to fish, and was predicated upon the users' status as Indians, not their place of residence. 337 U.S. at 89-97. Second, Hynes involved an exclusive right of access which had been made available only to a closed class of fishermen. At issue in Hynes was a regulation of the Secretary of the Interior completely prohibiting commercial salmon fishing in all waters.

within 3,000 feet of the shores of the Karluk reservation, but exempting Native fishermen from this otherwise comprehensive ban. Id. Therefore, Hynes, like Owsichuk, is distinguishable from the classification scheme at issue in the present case, since in the case at bar one may become eligible for subsistence permits by moving into a rural area. Finally, as noted previously, both article VIII, section 4 and Kenai Fishermen establish that section 15 cannot be read to prohibit differential treatment of such diverse user groups as commercial, sport, and subsistence users.

C. Section 17: the "Equal Application" Clause.

Although section 17 (the "equal application clause") is a component of article VIII, it is essentially, as the court states, a "'more stringent . . . ' equal protection clause (for) . . . cases involving natural resources." I will address these issues together.



II. DO THE 1986 STATE SUBSISTENCE LAWS VIOLATE ARTICLE VIII, SECTION 17 OR THE EQUAL PROTECTION CLAUSE OF THE ALASKA CONSTITUTION (ARTICLE I, SECTION 1)?

The court holds the state subsistence laws unconstitutional on equal protection grounds.<sup>12</sup>

Although this court has not yet addressed the issue whether equal access to fish and game is a fundamental right, we have held that commercial fishing is not fundamental. Commercial Fisheries Entry Comm'n v. Apokedak, 606 P.2d 1255, 1262 (Alaska 1980). Other courts have concluded that recreational hunting is not a fundamental right. See, e.g., Baldwin v. Montana Fish and Game Comm'n, 436 U.S. 371 (1978) (elk hunting by non-residents not fundamental); Utah Public Employees Ass'n v. State, 610 P.2d 1272 (Utah 1980) (entry in big game permit drawing not fundamental). See also Herscher v. State, Department of Commerce, 568 P.2d 996, 1003, 1006 (Alaska 1977).

In my view, the interest at stake, i.e., the right to participate in subsistence hunting and fishing, is not a fundamental right. Maximum scrutiny is reserved for fundamental

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12. The majority opinion employs article VIII section 17 and the concurring opinion of Justice Moore uses article I section 1. As Justice Moore points out, the method of analysis in either case is the same. Because Alaska's equal protection standards are more stringent than the federal constitutional standard, any statute which passes muster under Alaskan law will also survive the equal protection clause of the United States Constitution. Herrick's Aero-Aqua Repair v. Department of Transportation, 754 P.2d 1111, 1114 (Alaska 1988). Therefore, discussion of the federal standard is omitted.

rights and suspect classifications. Ostrosky, 667 P.2d at 1192. Given what I perceive to be the appropriate characterization of the interest involved, the state must demonstrate the existence of a substantial relationship between the means utilized by the legislation and the legitimate governmental ends sought to be achieved thereby.

Since I am of the view that strict scrutiny is inapplicable, I conclude that the questioned legislation does not violate the Alaska Constitution's equal protection clause. The challenged subsistence laws are fairly and substantially related to the important governmental goal of protecting the health and welfare of the state's subsistence users, a goal admittedly within the state's police powers to pursue.<sup>13</sup>

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13. As mentioned previously, in enacting the state subsistence laws, the Alaska legislature explicitly found that "the general health and welfare of these citizens is significantly tied to their participation in [subsistence] activities." 1985 House Journal 1246. In a similar vein this court said in State v. Tanana Valley Sportsmen's Ass'n, 583 P.2d 854, 859 n.18 (Alaska 1978):

. . . For hundreds of years, many of the Native people of Alaska depended on hunting to obtain the necessities of life. To this day, despite incursions by those of different cultures, many Alaska Eskimos, Indians and Aleuts eke out a livelihood by reliance on fish and game. . . . Not only is the game of prime importance in furnishing the bare necessities of life, but subsistence hunting is at the core of the cultural tradition of many of these people. . . .

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Implicit in my view that this legislation is not violative of equal protection is the further conclusion that the subsistence classification formulated to fulfill this concededly legitimate legislative purpose is not constitutionally infirm. As we said in Apokedak, 606 P.2d at 1267:

[I]ndividual cases will arise in which those barred may be able to show extreme hardship. The legislature in its wisdom could conceivably have better provided for such instances. But equal protection, even under Alaska's stricter standard, does not demand perfection in classification. If it did, there would be few laws establishing classifications that would sustain an equal protection challenge.

The subsistence legislation in question here effectively captures within its ambit the thousands of subsistence users residing in Alaska's numerous rural villages. In short, I would hold that the subsistence laws' fit satisfies the requirements of equal protection under both article I, section 1, and article VIII, section 17 of the Alaska Constitution.

*7-20-80*  
*Appellant*  
*Appellant*  
*1-2-80*  
*12-22-89*  
*Thayer*  
*C. J. [Signature]*

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APR 30 1990

INDIGENOUS RIGHTS, JURISDICTION AND  
COLONIAL INTRUSION IN ALASKA

A Brief Overview

Prepared by: Alaska Rights Consultants Tribal Organization  
of Chickaloon Village  
P.O. Box 1105  
Chickaloon, AK 99674  
(907) 745-0505

INDIGENOUS RIGHTS, JURISDICTION AND  
COLONIAL INTRUSION IN ALASKA:  
A brief historical overview

To begin to understand the rights of Alaska's Indigenous Peoples, the Athabascan, Tlingit, Haida, Aleut, Yupik, Inupiat<sup>1</sup> one must go as far back in history as possible, remembering that for ten's of thousands of years we existed as self-governing Sovereign Nations, living in harmony with the land and sea, upon which we depended for our very existence.

The impact of colonial intrusion began with the Russian occupation of the coastal areas of Alaska, and continued with the Treaties made between the United States and Russia.<sup>2</sup>

A crucial fact about these Treaties is that they were not, first and foremost, land transfer Treaties. Instead, they were mainly barter and trade agreements,<sup>3</sup> which eventually lead to the removal of all Russian occupation of the North American Continent. The Treaties made with Russia over their relinquishment of trading rights along the West coast of North America were first signed in the 1820's. At this time Russia was trading as far south as what is now

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1. Tsimpsian People are not referred to in the information because they are the only Indigenous people of the land that the United States recognizes as having an actual reservation and they came to Alaska around the 1930's.
  2. The treaties of 1824, 1832, 1854, 1867, and 1868 effected Russia trade routes etc. along the West coast of Continental United States.
  3. Ibid. Treaties with Russia compiled in the United States Statutes may be found at the State of Alaska Court House 303 "K" Street Anchorage, Alaska).

known as Mexico under the Russian American Trading Company.<sup>4</sup>

Most of Alaska Indigenous People's major problems began after the 1867 Treaty of Cession was signed by the two countries, giving rise to United States occupation of Alaska.

The Alaska Natives in the Treaty of Cession were referred to as "uncivilized" for the most part. There were some Natives, referred to as "civilized" in the Treaty, who were held as slaves or servants by the Russian American Trading Company mostly around the coastal trading posts <sup>5</sup>.

The Treaty of Cession in reality was the purchase of the right to trade in Alaska by the United States for \$ 7.2 million.<sup>6</sup> The Memorandum Descriptive "Marked AA" (Kostlivtsov Memorandum) of 1867 documents the prior status of Alaska Natives ownership (as Caretakers) of Alaska.<sup>7</sup> The Kostlivtsov Memorandum outlines the limits of the actual land purchased by the U.S., basically consisting of the land occupied by the fort at Sitka and the trading posts of the Russian American Trading Company, totalling approximately 550<sup>8</sup> acres.

At no time did Alaska Natives or any foreign power sign any Treaty and/or agreement giving the United States

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4. Which is alive and well today in bush villages under the name of the Alaska Commercial Company (AC Company).

5. 1950 Report titled "Russian Administration and the Status of Alaska Native" American Trading Company Charter

6. Russian American Company Charter 1844 and Treaty of Cession 1867.

7. This document has been concealed from the Alaska Natives during all the United States occupation of Alaska.

8. This figure was taken from the Kostlivtsov Memorandum. 117600 sq. ft. multiplied by 200 possible trading posts. 44000 sq.ft. equal 1 acre) (117600 / 44000 = 2.67 acres X 200 = 534.54 acres) approximately. total acres in Alaska 365 million

ownership or jurisdiction to the rest of more than three hundred million acres of land in Alaska.

Included in the 1867 Treaty was the obligation, which the United States accepted upon signing, to obtain the consent of the Natives in Alaska in regards to any future interactions with them or any appropriation of their lands.

After 1867, the U.S. claimed Alaska as its "territory", although there existed no legal basis for this claim. Shortly thereafter the U.S. government divided all of Alaska into twelve (12) geographical areas, assigning a different Christian denomination exclusive operating rights in each, in order to convert and colonize the Natives. Railroads and roadways were constructed by the federal government. Land appropriation and resource exploitation by the federal government and American settlers, miners, commercial fishermen, farmers, trappers, timber harvesters, etc. increased. Alaska became a major military base of operations for the U.S., as increasing numbers of military personell were imported.<sup>9</sup>

As a result of the influx of settlers, diseases killed large numbers of Natives (there is documentation that diseases have been and continue to be purposely introduced in some communities to this day). Large numbers of Native children were forcibly removed from their villages, and were sent to government or church-run boarding schools both within and outside of Alaska. The political, cultural and economic self-determination once enjoyed by our Peoples was seriously

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9. U.N. Charter Article 73e Transmission of information.

undermined during this "territory" phase of our history.

When United States became signatory to the United Nations Charter in 1945, it accepted the "sacred obligation" to bring the inhabitants of it's "non self governing territories", which included Alaska, Hawaii, Guam and others, up to self government.<sup>10</sup> Instead, in violation of this sacred agreement, the U.S. instituted statehood in Alaska, bringing us further away from, rather than closer to, the self-governing status to which we have always had a right.

In 1950, Mr. Felix Cohen<sup>11</sup> wrote a series of letters to the President of the United States, Secretary of the Interior, and the Alaska Native Brotherhood, asking for protection of remaining Native fisheries, timber, minerals, and homes from "white settlers". Instead, in 1958 the U.S. authorized the creation of the State of Alaska, through which these settlers instituted a governmental apparatus run by themselves for their own advantage, and imposed it upon the Native traditional governments. Great numbers of Alaska Natives were denied the right to vote in the Statehood referendum because of a law mandating english speaking as a prerequisite and criteria for voters.<sup>12</sup>

A strong turnout of settler voters was insured by allowing military personell to vote as residents anywhere else in the U.S.. With the discovery of major oil deposits in Alaska in 1968, the multi- national energy corporations,

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10. U.N. Charter, Article 73 Non Self-Governing Territories.

11. Author of the Handbook on Federal Indian Law.

12. Alaska Legislature House Joint Resolution 51, of 1970.



along with the State and federal governments, pushed for a means to "clear title" to Alaska's lands away from the traditional and still legal owners, the Indigenous Peoples. The result was the Alaska Native Claims Settlement Act (ANCSA), passed by the U.S. Congress on December 18, 1971. ANCSA was an act of Genocide<sup>13</sup> perpetrated against the Indigenous Peoples of the the North American Continent and institutionalized as federal law, once again without the consent of the vast majority of the Alaska Native Peoples. The State of Alaska, the Federal government and the multinational energy corporations were the major beneficiaries of ANCSA, while the Indigenous Peoples lost more than 330,000,000 acres of our traditional land base, had profit-making state chartered corporations imposed upon us, and who were denied any land rights to all Native children born after 1971.

Although the text of ANCSA denies that it was "a jurisdiction act",<sup>14</sup> it nevertheless claimed to terminate traditional Native hunting and fishing rights, placing it in direct conflict with the inherent rights of Alaska Natives to exert jurisdiction over their own subsistence activities.

Many Alaska Native Villages (including Chickaloon) refuse to except the valididy of ANCSA because the vast majority of Alaska Natives never had the opportunity to vote or otherwise approve the Act. The persons who voted in favor

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13. Genocide as defined by the United Nation is "an intent to destroy in whole or in part, a national, ethnical, racial, or religious group."

14. Alaska Native Claims Settlement Act Public Law 92-203, Section 2f.

of accepting ANCSA at the Alaska Federation of Natives Convention in 1971 (used as the "proof" of Native acceptance of ANCSA by the U.S. government) did not legally represent the vast majority of Native Alaskan's. 15

In 1991 the provisions of ANCSA will go into full effect, and many villages may lose what is left of their land base through taxation, sale of "Native corporation" stock to non-Natives, confiscation of lands for corporate debts, and other forms of so-called legal land theft provided for by ANCSA and its amendments. Transfer of "corporation" lands to tribal governments is the only protection for Alaska Natives, but this option is not being presented to the villages by governmental, corporate and/or state-chartered organization officials who claim to have our interests at heart.

Similarly, great numbers of these same government officials and corporate representatives are currently involved in presenting "options" to Native communities regarding the preservation of our Subsistence rights. The proposal of a State constitutional amendment as a solution is another example of a campaign of misinformation, and would result in placing Native communities more directly under the thumbs of the those who claim the right to impose their authority over us while they continue to appropriate our resources as they see fit.

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15. Under Freedom of Information Act we learned the U. S. Dept. of Interior violated many Federal Statutes by not having provided a vote in each and every village to relinquish lands or jurisdiction to the U.S.A. or the State Of Alaska.

The fact is that, upon its formation, the State of Alaska disclaimed any jurisdiction over Indian lands, including fishing rights. This "disclaimer clause" is written into the State of Alaska Constitution as follows: "The State of Alaska and its people shall disclaim any and all Lands owned, occupied, and/or claimed by Natives of Alaska, including fishing rights FOREVER)".<sup>16</sup> Meanwhile harassment, and arrests of Native hunters and fishers by State Fish and Game continues, in violation of the State's own constitution.

Amending the Constitution to authorize more State control over our way of life would result in a further denial of our right to self-determination and self-government.

This is the one option not being presented by the State, federal and corporate representatives currently debating the issue of our Subsistence rights -- our basic and fundamental right to assert our sovereignty and self-determination in the area of subsistence as well as in all areas of our lives. This is a right we have never given up or relinquished, just as we have never given up or sold our lands to any government.

The Federal Government recognizes at least some of our Traditional Governments (Chickaloon is one example),<sup>17</sup> but the State of Alaska continues to contest every assertion of sovereignty by the Traditional Tribal Governments. Although the State of Alaska is Public Law 280 State, and uses this law to justify its jurisdiction over Natives (in direct

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16. State of Alaska Constitution, Article XII, Section 12.

17. See Federal Register Vol. 51, No. 132, July 10, 1986.

contradiction to its own Constitution), it continues to fail to comply with the terms of the Indian Civil Rights Act of 1968 which mandates that PL 280 states obtain the consent of the enrolled adult members of each tribe, band, group, village, etc, before any decision can be made affecting Indian lands, jurisdictional rights, etc.<sup>18</sup>

It can be clearly seen that at the heart of the problems of our Native Peoples in Alaska is this crucial historical reality: the United States Government has not fulfilled its sacred obligation towards the inhabitants of Alaska,<sup>19</sup> nor has it or the State of Alaska ever obtained the consent of Alaska Natives to appropriate our lands, assume jurisdiction over us, or to otherwise intrude into our way of life.

This brief overview is not intended as a detailed legal or historical analysis but rather as an introduction to certain trends and perspectives which continue to effect our lives as Native Peoples and Nations in Alaska. In closing, we have included the following chronology of the laws, acts and other significant events which have had a profound effect on the lives of Alaska's Indigenous Peoples since the beginning of colonial intrusion. Reference materials and historical documents are available to those wishing to learn more about this chain of events and its effects upon our Peoples.

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18. See 25 CFR 1.4 State and local regulations of use, and 30 CFR 229.105, Evidence of Consent, 30 CFR 229.106 withdrawal of consent

19. Ibid at 10.

1867 Treaty Of Cession  
1871 U.S.A. Ending of Treaty Making with Indigenous Nations  
1884 Alaska was divided up by the "Missionary Christian Churches"(See Eskimo Administration by Diamond Jennings)  
1884 District Organic Act  
1906 Native Allotment Act  
1924 Indian Citizenship Act  
1936 Indian Re-organization Act was extended to Alaska (IRA)  
1945 United States Signed United Nations Charter (Art. 73)  
1953 Public Law 280 1958 Alaska Statehood Act sec. 4.  
1959 Alaska became the 49th State of the United States  
1968 Indian Civil Rights Act amending PL 280 (ICRA)  
1968 Oil was Discovered on the North Slope at Prudoe Bay  
1970 State of Alaska removed the english speaking Prequisite to vote in Alaska.  
1971 Alaska Native Claims Settlement Act (ANCSA)  
1975 Indian Self-Determination and Educational Assistance Act  
1976 Federal Land Policy and Management Act (FLPMA)  
1978 Indian Child Welfare Act (ICWA)  
1980 Alaska National Interest Lands Conservation Act (ANILCA)  
1982 Indian Tribal Governmental Tax Status Act (ITGTSA)  
1982 Alaska Railroad Transfer Act  
1984 Indian Tribal Governmental Tax Status Act (amendments)  
1986 Recodification of United States Code title 25 "Indians"  
1988 ANCSA "1991 Amendments"  
1988 Genocide Act (Proxmire Act) ratified by U.S. Congress  
1989 Investigation of the Alaska Offices of the Department of Interior by the Senate Select Committee on Indian Affairs.

# Alaska State Legislature

## Senate Resources Committee

Senator Bettye Fahrenkamp, Chairman  
Senator Jay Kertulis, Vice Chairman  
Senator Dick Eliason  
Senator Steve Frank  
Senator Rick Hallford  
Senator Adress Sturgis  
Senator Fred Zharoff

P.O. Box 1  
Juneau, Alaska 99811  
(907) 465-4907

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

To: Members, Senate Resources Committee  
From: Senator Bettye Fahrenkamp, Chairman *Bettye*  
Re: Committee Meeting on Subsistence  
Date: April 4, 1990

As you may know, the Alaska Federation of Natives is holding a conference at the Egan Convention Center on Tuesday, April 10, and Wednesday, April 11, on the issue of subsistence.

*Used*  
In conjunction with the conference, I have scheduled a joint hearing with the House Resources Committee from 5:30 p.m. to 9:00 p.m., to be held at the Egan Convention Center, in the Summit Room, for the purpose of taking public testimony on subsistence. I have made arrangements for the meeting to be teleconferenced to Juneau (Butrovich Room), for those of you who are unable to attend.

It is my understanding that Secretary of the Interior Manuel Lujan will speak before the Anchorage Chamber of Commerce on Wednesday morning. Although he has been invited to participate at the conference, and at our hearing, confirmation has not yet been received.

As per session policy, travel authorizations must be approved by the Senate President.

I am enclosing a copy of the conference schedule for your information. The issue of subsistence is vitally important to all of us and I urge your participation.

SUBSISTENCE: A STRATEGY FOR OUR FUTURE  
DRAFT AGENDA

Wednesday, April 10

- 8:00am WELCOME - Julie Kitka, AFN  
INVOCATION - Rev. Anne Frank, Athabascan, Episcopal Diocese of Alaska
- 8:45 INTRODUCTION & PURPOSES - Ralph Eluska, AFN  
PRESENTATION - Walter Charley, Athabascan Elder
- 9:00 REVIEW OF AGENDA - Co-moderators Perry Eaton & Marlene Johnson  
"CHALLENGES FACING ALASKA NATIVES - SUBSISTENCE"  
ISSUE #1: (Assuming there is not solution by July 11 Federal Pre-emption & Dual Management of Fish & Game)
- 9:10 Speaker: To Be Announced, "The Federal Government's Responsibilities to Alaska Natives"
- 9:50 FEDERAL/STATE PANEL: "How Would It Work?"  
Panel Moderator: Johnny Hawk  
Glenn Ellison, USF&S Steve Behnke, ADF&G  
Tom Koester, Dept. of Law Stan Leaphardt, CACFA  
WRITTEN QUESTIONS FROM THE FLOOR
- 10:45 Break
- 11:00 SPEAKER: To Be Announced, "Dual Federal/State Management"
- 11:20 PANEL: "How Will It Affect Us?"  
Panel Moderator: Chris McNeil  
Trefon Angasan, "Unanswered Questions & Continuing Litigation"  
Ken Johns, "Impacts on Villages Surrounded by State Land"  
Myron Naneng, "Impacts on Y-K Delta"  
Clare Swan, "Kenaitze Lawsuit"  
Ed Thomas, "Co-management Under '638'"  
Walter Sampson, "Living with Federal Management"  
WRITTEN QUESTIONS FROM THE FLOOR
- 12:30pm Break for lunch
- 2:00 REMARKS BY CO-MODERATORS (AGENDA/PROCEDURES)  
ISSUE #2: CONGRESS & ANILCA
- 2:05 PANEL: "Opening ANILCA"  
Panel Moderator: Edgar Blatchford  
TBA, Rural CAP Sheryl Sutton, KPFA  
Willie Kasayulie, ANC Robert Willard, SENSC  
Mitch Demientieff, TCC TBA, Sierra Club  
TBA, Alaska Outdoor Council  
WRITTEN QUESTIONS FROM THE FLOOR
- 4:00 PRESENTATION BY SENATOR TED STEVENS VIA TAPE  
Staff Representative: Marie Matsuno Nash
- 4:20 CLOSING REMARKS, Eddie Hopson, Inupiat Elder
- 4:30 Recess

Wednesday, April 11

- 9:00am OPENING REMARKS, Rev. Billy Sheldon, Sr., Inupiat Elder
- 9:10 REMARKS BY CO-MODERATORS (AGENDA/PROCEDURES)  
ISSUE #3: STATE CONSTITUTIONAL AMENDMENT
- 9:20 Mike Irwin, Office of the Governor
- 9:40 QUESTIONS & ANSWERS
- 10:15 Break
- 10:30 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 Others To Be Announced  
WRITTEN QUESTIONS FROM THE FLOOR
- 12:00pm Break for lunch
- 1:30 REMARKS BY CO-MODERATORS (AGENDA/PROCEDURES)  
ISSUE #4: CONSTITUTIONAL AMENDMENT APPROACH  
PANEL: Village Perspectives  
Will Mayo, Interior Tom Tilden, Bristol Bay  
TBA, Southeast Gary Oskolkoff, Southcentral  
TBA, Western Alaska TBA, North Slope
- 2:20 PANEL: Regional Perspectives  
Myron Naneng, AVCP Bob Willard, SENSC  
Mitch Demientieff, TCC Others To Be Announced  
Trefon Angasan, Bristol Bay  
Sam Demientieff, Fairbanks Native Association
- 3:10 Break
- 3:30 PANEL: Statewide Perspectives  
Ralph Eluska, AFN Matthew Iya, RARA  
TBA, Rural CAP Sen. Al Adams  
Willie Kasayulie, ANC Rep. Eileen MacLean  
Others To Be Announced
- 4:20 CLOSING REMARKS Dr. Walter Soboleff, Tlingit Elder
- 4:30 BENEDICTION Bishop Jacob Nelson, Moravian Mission  
CONFERENCE CLOSING
- 6-9:00pm JOINT HOUSE/SENATE RESOURCES HEARING

# SUBSISTENCE: A Strategy for Our Future

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## THE PURPOSE OF THE SUBSISTENCE SUMMIT CONFERENCE IS:

- \* To provide Alaska Native leaders with the best available **INFORMATION** on the current political and legal challenge to our subsistence way of life, and to present such information in ways which respect the diversity of interests within the Native community and empower Natives to act.
- \* To provide the opportunity for Native leaders to express their **POSITIONS, OPINIONS AND FEELINGS** on the subsistence issue, on its present and future impacts on the well-being of our people, and on effective strategies for protecting our long-term interests.
- \* To generate creative **IDEAS** on how the Alaska Native community can deal effectively with the political opposition on subsistence and related issues of public policy.
- \* To develop an effective network of **COMMUNICATION** in the statewide Native community between individuals, communities and organizations as we confront the external challenge to our subsistence economies and cultures.
- \* To encourage **TRUST AND COOPERATION** among all Alaska Natives and their organizations, while respecting the cultural, geographical and generational diversity of our people.

To Alaska Native People:

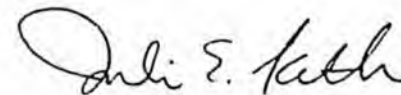
On behalf of the Alaska Federation of Natives, I invite you to attend an important statewide summit conference of the Alaska Native community on subsistence issues. The meeting will be held on April 10-11, 1990, at the Egan Convention Center in Anchorage. Its theme will be **SUBSISTENCE: A Strategy for Our Future**.

At this conference we plan to provide the best possible information on the consequences of the recent Alaska Supreme Court decision (McDowell v. State) which declared the state subsistence law unconstitutional.

We will provide a broad framework for discussion of several different options available to Native people, and the implications of each. The conference will be an educational opportunity for all of us to say what we think and listen to each other. Representatives of villages and Native organizations will be able to return home carrying accurate information and a broad perspective on this complicated issue.

Protection of subsistence hunting and fishing is critically important to the future of Alaska Natives and to the survival of our villages. I urge you to attend the conference.

Sincerely,



Julie Kitka  
President



## PRE-REGISTRATION

Name: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐

YES, I DO plan to attend.

☐

NO, I DO NOT plan to attend.

## ACCOMMODATIONS

The Anchorage Westward Hilton is offering special room rates during the Subsistence Summit Conference. Single- or double-occupancy room rates are \$70 per night. PLEASE MAKE YOUR TRAVEL AND HOTEL ARRANGEMENTS IN ADVANCE. You may call the Anchorage Westward Hilton toll-free at 1-800-478-3616.

PLEASE DETACH AND MAIL TO:  
Alaska Federation of Natives, Inc.  
411 West 4th Avenue - Suite 301  
Anchorage, AK 99501

(907) 274-3611

Alaska Federation of Natives  
411 W. 4th Avenue, Suite 301  
Anchorage, AK 99501

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SUBSISTENCE: A Strategy for Our Future



## SUBSISTENCE: A Strategy for Our Future

Egan Convention Center  
Anchorage, Alaska  
April 10-11, 1990



A Conference of the Native Community

(9)

**DRAFT**

IN THE HOUSE

HOUSE JOINT RESOLUTION NO.--  
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 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. 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.

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.

**DRAFT**

REPRESENTATIVE  
PETER GOLL



P O BOX V  
JUNEAU, ALASKA 99811  
(907) 485 4925

STATE OF ALASKA  
HOUSE OF REPRESENTATIVES

MAY 3, 1990

THE LEGISLATURE SHALL PROVIDE FOR SUBSISTENCE USES OF FISH AND WILDLIFE AND RENEWABLE NATURAL RESOURCES AND MAY GRANT A PREFERENCE IN THE TAKING OF THESE RESOURCES FOR SUBSISTENCE USES BY RESIDENTS OF RURAL AREAS. WHEN NECESSARY TO PROTECT SUBSISTENCE USES, THE LEGISLATURE MAY ALLOCATE THESE RESOURCES ON THE BASIS OF DIRECT DEPENDENCE, LOCAL RESIDENCY AND AVAILABILITY OF ALTERNATIVE RESOURCES.

DRAFT

# ALASKA STATE LEGISLATURE

Anchorage Office:  
3111 C St., Suite 530  
Anchorage, AK 99503  
907-561-7616



While in Juneau:  
P.O. Box V  
Juneau, AK 99811  
907-465-4958

Senator Rick Halford

January 15, 1990

Senator Bettye Fahrenkamp, Chairman  
Senate Resources Committee  
P.O. Box V  
Juneau, Alaska

Dear Madam Chairman,

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

As you know, in the recent Kenaitze case, the Ninth Circuit Court of Appeals found the Alaska Subsistence Law to be not in conformity with ANILCA. Now the State Supreme Court has ruled that the state law on Subsistence is unconstitutional. Although the Chief Justice has issued a six month stay on this ruling, the question of the stay is being appealed to the full court. I believe that there is a reasonable chance that the stay will be overturned. Therefore, since this issue is of vital concern to all Alaskans, we must address this issue as soon as possible.

I hope we will concentrate on the following aspects of this issue:

1. In 1986, the Federal U.S. Fish and Wildlife Service, under the direction and delegation of the Secretary of the Interior, developed the Federal Subsistence Resource Management Program [regulations] in the event the State did not pass a new subsistence law which was in conformity with Title VIII of ANICLA. Under Title VIII of ANICLA the Federal Government could take over management of fish and game resources on Federal lands in Alaska if the State of Alaska's Subsistence Law was not in conformity with Title VIII. The Alaska Supreme Court invalidated our Subsistence Law as not being in conformity with Alaska's Constitution which requires that all fish and game resources be "for the common good". Alaska now faces the real threat of a Federal

takeover of fish and game management on two thirds of all lands in Alaska.

2. The Federal U.S. Fish and Wildlife Service was delegated as the lead agency responsible for developing and promulgating, under emergency regulatory authority, the Federal Subsistence Resource Management Program. If promulgated under the emergency regulatory authority, it would most likely not allow any public review or comment in Alaska.

3. If the Supreme Court stay is overturned, this federal regulatory program may be put into place by the Federal government without Alaska having a reasonable opportunity to participate in its application even though it seriously impacts our people and resources. If the stay is not overturned, the federal program should still be released in the Federal Register and public hearings held across Alaska to ensure that all Alaskans, including those who live, work or subsist on federal lands have a reasonable opportunity to review and comment on this regulatory program, consistent with the Federal Administrative Procedures Act.

4. Of course, under either scenario, it would be a real tragedy to the people of Alaska, to lose local control or the management of fish and game resources in a large portion of Alaska, to the Federal government. I firmly believe we can, as Alaskans working together, solve the Subsistence issue, without the necessity of Federal intervention. For decades subsistence needs were met through normal board regulation of seasons, bag limits, harvest methods and means.

5. It is vital that this body consider requesting our Congressional delegation to assess the feasibility of changing Title VIII of ANILCA to remove the threat of Federal takeover of our fish and game resources, and to allow us to solve our Subsistence questions on our own.

6. Failing in obtaining a change in ANILCA, we should explore the option of litigation to remove the threat of Federal takeover and to preserve our State's right to solve its own problems. No other state in the Union operates in managing its fish and game resources under the legislative threat we now find ourselves under.

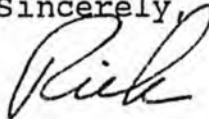
7. We should also consider informing other state legislatures of the Federal threat to take over management of fish and game here. After all, if it can be done in our state, it can be done in other states, especially states with extensive Federal holdings. We should also point out, that a Federal takeover of fish and game management here means that

citizens of other states will be paying, through their Federal taxes, for the expensive costs of managing fish and game in Alaska, whereas, so long as the State of Alaska manages its own resources, citizens of other states do not have to pay for that management.

I understand that Mr. Rick Davidge, whom you know, was the Chairman of the Federal Task Force when the program was written. I believe he, and other members of that task force, should be called to meet with the Senate Resources Committee to discuss the Federal Program, and that all the appropriate Federal officials also be requested to come before this committee and explain their intentions. Other persons, knowledgeable on the issue, will also wish to appear.

The complexity and political volatility of this issue, as well as its potential for divisiveness if we do not provide leadership, is apparent to all of us. It is time that we address this issue directly and in the best interest of all the people of Alaska.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rick", written in dark ink.

Senator Rick Halford  
Member  
Senate Resources Committee

*Subsistence*

Mary L. Bishop  
1555 Gus's Grind  
Fairbanks, AK 99709  
907-455-6151

January 24, 1990

Interior Delegation  
Alaska State Legislature  
Juneau, AK 99811

Dear Legislators: *Bettye*

What I was trying to say, maybe unsuccessfully, during the Tuesday night teleconference is that

1. Subsistence is a source of identity for some people. For many it is an ideology--a system of values which people hold in varying degrees, whether they be named McDowell or Vaska, both litigants in the crucial lawsuit.
2. Governments should never define--or discriminate on the basis of--one's ideology or spirituality. That leads to violence; we see the consequences throughout the world, and sadly, the beginnings of it in certain parts of Alaska. At best, it leads to endless litigation.
3. The subsistence lifestyle and values should be recognized as a valid and desirable ideology. NO ONE who claims to be a participant of the subsistence lifestyle should be denied it. Could government devise a point system that would define whether or not I was a Christian, or Christian enough?
4. If a priority for wildlife harvest is given, then it should CLEARLY be based on something other than one's personal ideology. Any priority should be based upon measurable */definable* individual characteristics that will clearly stand the test of constitutionality.

If the state feels compelled to establish a priority, give it a different name--don't call it a priority for subsistence use. Don't try to define whether or not McDowell or Vaska are subsistence participants. The term "subsistence" has come to mean far more than what government has any business defining.

Sincerely,

*Mary Bishop*  
Mary Bishop



## ALASKA OUTDOOR COUNCIL, INC.

1780 McDOWELL ST. JUNEAU AK 99801  
(907) 784-4450

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 FEDERATION OF NATIVES, INC.

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



FEB 7 1990

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.

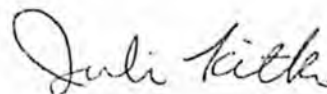
The Federation's position statement is the result of lengthy analysis and evaluation by the Native community of options available in response to the December, 1989 Alaska Supreme Court decision in McDowell v State of Alaska.

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.



THE SECRETARY OF THE INTERIOR  
WASHINGTON

January 30, 1990

Honorable Steve Cowper  
Governor of Alaska  
Juneau, Alaska 99811

Dear Governor Cowper:

The Alaska Supreme Court decision in McDowell v. State of Alaska is a matter of concern to both of us. I want to reiterate my desire to have a constructive dialogue with the State of Alaska on this most important issue. Despite the Court decision, I believe that the state remains in a position to determine its own destiny in this matter.

I remain committed to the principle of state management of fish and wildlife resources. I hope that the state will be able to devise a solution to the issues raised in the McDowell decision before July 1, 1990, and thus continue to administer the subsistence program consistent with Title VIII of ANILCA. I have instructed senior program officials and the Solicitor to work directly and closely with you, your Washington office and your Commissioners to provide whatever assistance we can.

Please do not hesitate to contact me if I can be of assistance.

Sincerely,

*Samuel Ragan Jr.*

cc:  
Julie Kitka, President  
Alaska Federation of Natives, Inc.

# AFN NEWSLETTER

FEB 7 1990

JANUARY ISSUE



Volume VIII, Number 1

Alaska Federation of Natives

January 30, 1990

## Alaska Supreme Court rules State subsistence law "unconstitutional"

Stay of decision granted until July 1, 1990



**COMING SOON:** AFN will publish a special newsletter on subsistence, covering the recent Court decision and how it affects subsistence users, & options for dealing with the current situation.



## AFN PRESIDENT'S REPORT

Julie Kitka



This is our first newsletter for 1990 and my first report to you as President of AFN.

Let me begin by thanking the AFN Board of Directors and members organizations for allowing me the opportunity to work on your behalf. I pledge to do my very best and to work hard on issues of concern to Alaska Natives across the state. With your help, we can make great strides in resolving the difficult problems which continue to impact us.

Priorities for this year are very clear. Foremost is the protection of subsistence rights. As you will read on page 3, the Alaska Supreme Court issued its decision in McDowell v. State on December 22, 1989, ruling that the rural preference in state subsistence law is unconstitutional.

Unless the State of Alaska comes back into compliance with the federal subsistence law, the federal government is mandated to take over management of fish and game on public lands. The short- and long-range impacts of the McDowell decision will require serious consideration by all Native leaders.

In light of this grave situation, we recently met with Interior Secretary Manuel Lujan. We inquired about his plans to meet his federal fish and game management responsibilities, if the state should fail to comply with federal law. Secretary Lujan assured us he will respond to our inquiry this week and will be travelling to the state soon. We will continue to work with both the state and federal governments to review the options available to resolve the current legal situation.

Other priorities for the year include urgent health, social, economic and education concerns of Alaska Natives. Over the past year, AFN has had some success in raising the visibility of these continuing problems. However, more work must be done to enable Alaska Native people to take responsibility for their own lives.

Public officials must be urged to respond to this social crisis, which is expressed statistically in unacceptably high suicide, homicide and accidental death rates among Alaska Natives. No one can rest until all that *can* be done is being done.

Now that the Congress is back in session, we are happy to report that federal legislation creating the Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives is very close to passage. With final adoption of the commission bill, Alaska Natives will have a new opportunity to address comprehensively those issues which are of greatest importance to us.

This year is going to be a busy one. In our next newsletter, we will outline in detail the legislative priorities AFN and its member organizations are working on - and ways you can help. AFN appreciates your continuing input and support.

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## SUBSISTENCE UPDATE:

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Alaska Supreme Court grants stay, State subsistence law remains in effect until July 1.

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The Alaska Supreme Court, acting on a suit filed in 1983 by a group of Alaskans challenging the subsistence priority in the State's subsistence law, ruled December 22, 1989, that giving one group of users priority over another is direct conflict with the constitution of the State of Alaska. As a result, the State's subsistence law has been invalidated and, under the provisions of Federal law, the State must now forfeit management authority of fish and wildlife on public lands.

Following the December 22nd decision, the Alaska Department of Fish and Game closed three winter subsistence hunts in the Nelchina, Fortymile and Dot Lake game management units, citing the need to prevent overharvest of caribou and moose by urban residents now allowed to participate in subsistence hunts. AFN strongly protested these closures and urged the Governor to overturn his Department's decision.

At the State's request, Chief Justice Warren Matthews issued a stay of the Courts decision until July 1, 1990, in order to provide limited time for the development of an orderly process of implementing the decision. With the stay in place, the winter hunts will proceed as scheduled, while the State and Federal governments have a six-month period to work toward a solution to the conflict.

Over the past two decades, there have been repeated challenges to subsistence use of fish and wildlife. Perhaps the best way to examine how this latest development will affect subsistence users in rural Alaska - mainly Alaska Natives - is through a brief history of State and Federal subsistence law.

□

**1978:** The State of Alaska passed a law that required subsistence uses be allowed, once "sustained yield" had been ensured, allowing for a subsistence priority when necessary. This law defined subsistence uses as those "customary and traditional" - mainly the use of fish and wildlife for food and cultural purposes.

**1980:** President Jimmy Carter signed the Alaska National Interest Lands Conservation Act (ANILCA) into law. Under Title VIII of ANILCA, subsistence uses were given priority over sport

and commercial interests on all public lands. The priority was ensured by requiring that the State of Alaska give up management authority of public lands to the Federal government if State subsistence law did not contain a priority for subsistence uses.

**1982:** The State Boards of Fisheries and Game, in order to comply with the requirements of ANILCA Title VIII, adopted a regulation defining "customary and traditional uses" as mainly rural uses, thus allowing the State to manage fish and wildlife on all lands. Following this regulation, a statewide effort was launched by sport and commercial interests to repeal the subsistence priority. The initiative gained enough support to be placed on the ballot, but failed at the polls by a wide margin.

**1983:** After losing the subsistence repeal initiative in 1982, Sam McDowell and Dale Bondurant filed a lawsuit in State Superior Court challenging the constitutionality of the State subsistence priority. The suit was entitled McDowell v. State and is the case decided unfavorably on December 22, 1989.

**1985:** The Alaska Supreme Court ruled in another case, called the Madison decision, that State regulations limiting subsistence use to rural residents are not consistent with the State's 1978 subsistence law. In response, the Department of the Interior notified the State the Madison decision put State law out of compliance with ANILCA and threatened to takeover management of fish and wildlife on public lands.

**1986:** To avoid a Federal takeover, the Alaska Legislature enacted a new law limiting subsistence to rural residents. The McDowell suit was then amended in state superior court to challenge the new subsistence law. Also in 1986, the Kenaitze Indian Tribe filed suit against the State in Federal court challenging the classification of the Kenai Peninsula as urban.

**1987:** A Federal court in Anchorage ruled against the Kenaitzes, citing the State subsistence law's definition of rural as consistent with ANILCA. Also in 1987, State superior court ruled against the McDowell case, ruling that the 1986 State subsistence law was constitutional.

*cont. on page 8*

## Joint Commission receive support from State legislature, moves forward in Congress:

After a stall prior to the Congressional Christmas recess, federal legislation to create the Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives is expected to be passed into law very soon.

The Joint Commission will be funded by a combination of Federal, State and private monies over an eighteen month period. Its membership will include Alaska Natives and State and Federal representatives, with both President George Bush and Governor Steve Cowper making the appointments. Federal funding for the Commission was included in the FY1990 Senate Appropriations Bill by Senator Ted Stevens.

On the State side, Governor Steve Cowper has included the State's portion of the funding in his FY1990 budget bill submitted to the Alaska State Legislature.

AFN is greatly encouraged by the continued strong support for this legislation from Governor Steve Cowper, Senator Ted Stevens, Senator Frank Murkowski, Senator Daniel Inouye, Senator John McCain, Congressman Morris Udall and others.

The recent passage of SJR 46 by the Alaska State Legislature, supporting the establishment of a Joint Commission, is appreciated by AFN and is another indication that public policy makers recognize the serious crisis affecting Alaska Native individuals and families.

AFN will continue to press for early Congressional enactment of this legislation.

### **SENATE JOINT RESOLUTION NO.46 IN THE LEGISLATURE OF THE STATE OF ALASKA**

*Supporting the establishment  
of a Joint Commission on the  
Status of Alaska Natives by  
Congress.*

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

WHEREAS Alaska Natives were the first residents of the state and today represent a significant percentage of the residents of the state, particularly residents who live in rural villages; and

WHEREAS since 1867 Alaska Natives have had a special relationship with the federal government and since 1959 have had an important relationship with the state; and

WHEREAS in 1971 the state participated in the settlement of Native land claims and since that time has worked closely with the federal government and Native organizations to develop and implement federal and state policies intended to improve the health, social, and economic status of Alaska Natives; and

WHEREAS several recently published articles and reports have documented a growing social and economic crisis in the lives of many Alaska Natives, particularly Alaska Natives who live in rural villages, and presented disturbing statistics that attest to growing health and social problems, lack of economic opportunity, and widespread educational failure in the Native community; and

WHEREAS since 1969, when the Federal Field Committee for Development Planning issued its report "Alaska Natives and Land," there has been no comprehensive review of federal and state policies and programs that affect Alaska Natives, their implementation, or the extent to which they have improved the health, social, and economic status of Alaska Natives; and

WHEREAS Alaska Natives have expressed to the Congress and the state a critical need to review the current status of Alaska Natives and to forge a renewed partnership among the federal and state governments and Alaska Natives, with the goal of providing new opportunities, making governmental programs more effective, and building a healthy, productive, and self-reliant rural Alaska; and

WHEREAS, in response to this expressed need, the United States Congress is considering the establishment

*cont. on page 5*



## BLUE RIBBON COMMISSION UPDATE

Since our last report, work on the Alaska Native Blue Ribbon Commission's media campaign has begun in earnest. We have received funding from several corporations for production and placement of three television Public Service Announcements which we will begin airing in late February. The ads will use Alaska Natives and Commission members to promote the idea that *sober behavior is healthy behavior*.

Also planned for February are several appearances by Commission members. First, Commission member Doug Modig will address the Alaska Native Health Board's Health Fair, scheduled for February 6, 7 and 8 in Anchorage, on how the Commission plans to support the efforts of existing individuals and organizations working to make their communities drug- and alcohol-free. On February 13, Commission Co-chair John Schaeffer will speak to Doyon's Health Care Provider workshop in Fairbanks.



Also planned for the upcoming month is the initial production of our "How To" Packet. This information packet will include an "alternative activities kit" - such as how to participate in the ARCO Jesse Owens Games, examples of what other communities are doing, how to organize a Talking Circle group, etc. - as well as a directory of what resources and services are available throughout the state. We plan to bring the "How To" Packet to the Alaska Native Health Board's Health Fair, to hear Health Care Providers' input on what information they feel would be most useful to them.

Finally, at our last meeting, the Commission established a Planning Committee which will meet the first week of February to develop our "1990 Plan". Among other things, we will develop a year-long calendar of events for Commission members or representatives to participate in, and establish a speakers' bureau of individuals who can address conferences and meetings throughout the state. If you have information on upcoming events, or conferences planned in your region later in the year, please contact the AFN offices.

The Blue Ribbon Commission's main goal is to support efforts of *existing* groups and organizations, and to call attention to the positive efforts and successes throughout the state. But to do this, we need your input and help. Our mission is to make the vision of an alcohol- and drug-free Alaska a reality - working together it is possible.

### *SJR 46 cont.*

of a Joint Commission on the Status of Alaska Natives, the membership of which will include federal and state officials and Alaska Natives; and

WHEREAS the purpose of the commission will be to conduct a comprehensive review of federal and state policies affecting Alaska Natives, the implementation of those policies, and the current health, social, and economic status of Alaska Natives;

BE IT RESOLVED that the Alaska State Legislature strongly supports the establishment of the Joint Commission on the Status of Alaska Natives by the Congress and commits the State of Alaska to actively participate on the commission and in its work.

COPIES of this resolution shall be sent to the Honorable Dan Quayle, Vice-President of the United States and President of the U.S. Senate; the Honorable Tom Foley, Speaker of the U.S. House of Representatives; Honorable Morris Udall, Chair, House Interior and Insular Affairs Committee; the Honorable J. Bennett Johnston, Chair, Senate Energy and Natural Resources Committee; the Honorable Daniel Inouye, Chair, Senate Select Committee on Indian Affairs; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

## HEADSTART celebrates its 25th anniversary!

This year marks the silver anniversary of the Headstart program nationwide and will be celebrated on the local, statewide and national levels beginning in March. While generally thought of as simply affordable childcare for low-income families, Headstart services cover a broad range of early childhood development and education, medical and dental health care and screening programs, as well as providing nutritious breakfasts and hot lunches to all their students. Here are some interesting facts about what your local Headstart program provides, and some information on the program nationwide.

**SOME NUMBERS.** For the school year 1989-90, in Alaska 1,820 children and families in 59 communities will receive Headstart services. Enrollment figures nationwide for 1989 were projected at more than 452,000, with handicapped children (mental retardation, health impairments, visual handicaps, hearing impairments, emotional disturbance, learning disabilities, and speech and language impairments) accounting for 13.3 percent of enrollment. For this school year, Headstart programs in Alaska provided 329 permanent jobs and over 100 temporary positions. Of these employees, 157 in Alaska are bi-lingual.

**HEADSTART SERVICES.** Headstart's services focus on keeping the whole child healthy, and thus provide many educational and developmental services to the children and families they serve. These include: \*\*Working with low-income parents to increase their knowledge about child development and parenting skills. \*\*Providing opportunities for low-income parents to develop leadership qualities and employability skills. \*\*Linking low-income families with other resources and agencies available in the area. \*\*Working with children from low-income families to better prepare them for school, both academically and socially. \*\*Providing health services for children (medical/dental). \*\*Providing nutritional snacks and hot lunches for children. \*\*Providing on-the-job training for locally-hired staff.



photo by Harold Schietzle

**DOLLAR FIGURES.** In Alaska, Headstart funding for 1989-90 combined federal, state and local dollars to total \$7,742,887 or an average cost per child of \$4,560. Community and parent in-kind or volunteer contributions were estimated to total more than \$1,494,033 in FY1988. Headstart's budget for FY1989 nationwide was funded at \$1,235,000,000, while the number of programs across the country grew to over 1,200! And although these figures sound astromically high, Headstart directors estimate that the program's budget - were it *fully funded* - would total as much as \$5 billion!

So if you're a Headstart parent, the next time you drop your child off in the morning or the Headstart bus stops at your house, take a minute to thank the driver or teacher aide. The services they provide not only benefit our children, but by helping parents learn how to improve their child's ability to learn in school and the community, we all benefit. Headstart teachers and helpers are working hard to ensure that our greatest resource is well-prepared for the job ahead of them - our future.



# **ANHB Health Fair:**

**"Choices for Healthy Communities"  
February 6, 7 and 8 in Anchorage**

The Alaska Native Health Board (ANHB) is planning a statewide health conference in Anchorage, February 6, 7 and 8, at the Captain Cook Hotel. The conference theme, **"CHOICES FOR HEALTHY COMMUNITIES IN THE 1990S"**, will focus on giving participants ideas and resource for developing their own health care programs at the village level.

In addition to several respected speakers who represent both American Indian tribes and Alaska Natives, the conference will also feature workshops, presentations and discussion on such topics as Intervention Strategies for Families, Careers in Health for Alaska Natives, Youth Alcohol Abuse, and Community Development Case Studies. The primary purpose of the conference is to provide a forum for village residents and health providers to share practical information on how to meet the unique health needs of Alaska Natives.

Also planned for the conference is a "Program Fair" which will feature unique, working examples of successful programs, with village providers on hand to explain how to design and implement similar programs. In addition, a resource booklet has been prepared for distribution during the conference, which describes some of the many programs and events organized in communities around the state to promote and celebrate healthy living.

Other activities planned for the week will include a Native Potluck, being sponsored by the Village of Anchorage, and an Awards Banquet to honor Community Health



Representatives and other village providers. The Native Potluck will take place Monday night, February 5 at 7:00PM, at the Fairview Recreation Center, and the Awards Banquet will be held Wednesday, February 7, at the Captain Cook Hotel. A question and answer period with the Republican, Democratic and Independent candidates for Alaska's Governor seat has been scheduled for Tuesday afternoon, February 6, from 2:30 to 5:00PM at the Captain Cook Hotel. For more information on these and related events, contact the Alaska Native Health Board at 337-0028, or your local health care provider.

## **Task Force on Guiding & Game proposes resource-based management system:**

The Legislative Task Force on Guiding and Game is working to develop of a new resource-based management system that will be used in allocating access to big game hunting opportunities among guide/outfitters.

Two related tasks are being carried out: first, the Task Force is currently drafting legislation for introduction to the Alaska Legislature in January. The draft legislation will represent a first effort at designing a game management area allocation program for managing guide/outfitters. An important aspect of the new program will be the integration of wildlife resource management concerns into the process of creating specific resource areas (game management units and subunits) for guide/outfitters.

The second task involves the development of resource area maps that will be the basis for the new

management system. The Alaska Department of Fish and Game (ADF&G) is the lead agency in developing the resource area maps. ADF&G is seeking input to the process from users and landowners.

The new system is being developed as a result of a recent Alaska Supreme Court decision which struck down the State's previously-used "exclusive guide area" system. The Court ruled that an exclusive guide area system excluded new applicants and was therefore unconstitutional. To remedy the situation, the State Legislature created the Legislative Task Force on Guiding and Game, and gave it the charge of developing a new system.

Requests for information on the draft legislation should be directed to Senator Jan Faiks, Chairman, Legislative Task Force on Guiding and Game, P.O. Box V, Juneau, AK 99811.

For information on the resource mapping project, contact Marianne See, Division of Wildlife Conservation, ADF&G, 333 Raspberry Road, Anchorage, AK 99518-1599. The resource area mapping project is scheduled for completion in two years.

## SUBSISTENCE:

*cont. from page 3*

1988: The Kenaitze decision was reversed in the ninth U.S. circuit court of appeals in San Francisco, which ruled that the State definition of "rural" was not consistent with ANILCA. However, the U.S. Supreme Court denied the review. As a result of an appeal, in summer, 1989, the Kenaitze Tribe and the State agree to implement a one-year educational fishery which allowed the Kenaitzes to set subsistence nets at the mouth of the Kenai River for limited periods of time with a limited harvest of salmon. Prior to this agreement, the State sought to amend ANILCA and change its definition of "rural" to match the State's. The effort failed in the face of opposition from the Native community.

December 1989: Finally, the Alaska Supreme Court issued its ruling in the McDowell case, effectively invalidating State subsistence

law and making a Federal takeover of management of fish and wildlife a reality. At this point, unless either State subsistence law is changed, the State constitution is amended, or ANILCA is changed, fish and wildlife in Alaska will be managed under a dual system: resources on public lands by the Federal government, and State and private lands by the State of Alaska.

□

As this brief history demonstrates, subsistence uses have been challenged repeatedly in the past two decades. We have been successful in our efforts to protect our subsistence lifestyle and what it means to our cultures and identities as a people. We are confident that - working together - we will be successful in this effort as well.

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### To contact AFN:

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TO: Nancy Peterson  
FROM: Stan Leaphart *SL*  
DATE: January 30, 1990

|                                                           |                           |
|-----------------------------------------------------------|---------------------------|
| *****<br>F A X   T R A N S M I T T A L   M E M O<br>***** |                           |
| TO: <u>NANCY PETERSON - SEN. FAIRBANKS</u>                | NO. OF<br>PAGES<br><br>12 |
| DEPT: _____ FAX #: <u>463-4867</u>                        |                           |
| FROM: <u>S. LEAPHART</u> PHONE: <u>456-2012</u>           |                           |
| CO: <u>CACFA</u> FAX #: <u>456-2039</u>                   |                           |
| Post-It brand fax transmittal memo 767                    |                           |

RE: Federal Subsistence Resource Management Program

In September, 1985 the U.S. Department of the Interior notified the State of Alaska that it was no longer in full compliance with the requirements of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). This determination of non-compliance was based on the interpretation given by the Alaska Supreme Court to the Alaska subsistence statute in the Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985). In the same notification, the State was informed that the Department of the Interior would be forced to take over administration of subsistence use on public lands (federal lands) if the State program was not brought back into compliance with ANILCA by June 1, 1986. Passage of the State's 1986 subsistence statute prevented a federal take-over at that time.

In preparation for assuming administration of subsistence uses, the federal government created the Federal Subsistence Resource Management Board consisting of officials from the Bureau of Land Management, National Park Service, Bureau of Indian Affairs, Forest Service and U.S. Fish and Wildlife Service. These federal agencies also drafted regulations defining the operation of the Federal Subsistence Resource Management Program to manage subsistence activities within Alaska. These regulations were never released for public review and were shelved when the State subsistence statute was passed.

It is my understanding that these same federal agencies are now taking ~~another~~ look at this program because of the recent Alaska Supreme Court decision in the McDowell v. State of Alaska case, which overturned the current State subsistence statute. It appears, that if the federal government assumes management of subsistence activities on federal lands, this or a similar program would be utilized. It would be beneficial for our legislators to be aware of this proposal and to understand some of its ramifications.

The purpose of this memo is to briefly outline some of the key points of the draft proposal and to give you some idea about how the federal agency would manage subsistence activities under a federal program. I have also attached some additional material which should help clarify a number of the points in the draft proposal. You also have Ric Davidge's letter to Walter Stieglitz which discusses development of the program.

#### Subpart A- General Provisions

§30.1 through §30.3- These sections outline the Federal government's authority to manage subsistence under Title VIII of ANILCA. The language is derived directly from Title VIII.

§30.4- Definitions. The definition of "rural Alaska residents" in §30.4(a)(1) is essentially the same definition contained in the 1986 state subsistence statute. As you know, the courts ruled in the Kenaitze decision that this definition was inconsistent with the definition of "rural" as used in ANILCA, Title VIII. It would appear that this definition would require revision if the federal program is implemented. (See attachment #1 for an explanation of the process used for identification of rural Alaskan residents)

Both ANILCA and its legislative history provide little useful guidance on the definition of "rural". In fact, the legislative history generally only mentions a number of communities that Congress considered to be non-rural and several that they believed may be considered rural. Davidge explains this more fully in his letter to Stieglitz.

In determining whether or not subsistence uses of a community or area are "customary and traditional", the federal program would utilize the same eight criteria developed by the State Boards of Fisheries and Game. (See attachment #2, under A(2) for additional information)

Another important point to be considered (see: §30.4(b)(2)) is the application of this program to those lands, not federally owned, but within the exterior boundaries of a conservation system unit (national parks, monuments, preserves, national wildlife refuges, Forest Service wilderness areas, wild & scenic river corridors, national conservation areas, and national recreation areas). This means that subsistence activities on millions of acres of State and Native owned lands within these federal conservation system units would be under federal management. I would question the legal authority of the federal government to regulate hunting and fishing activities on State owned land, even if that land is within the exterior boundaries of a federal conservation system unit.

§30.5- Policy. This general policy is derived from Sections 802 & 804 of ANILCA which established the federal government's policy on subsistence and the preference for subsistence uses.



Subpart B- Program Structure

§30.10- Program diagram. I have attached an organizational chart for the subsistence resource management program. (See attachment #3)

§30.11- Use of State entities. The federal program would utilize the existing State system of local fish and game advisory committees, regional fish and game councils, the Board of Fisheries, and the Board of Game.

§30.12- Local fish and game advisory committees. This section of the proposal authorizes the Secretary of the Interior to establish advisory committees in addition to those established by the State, if he determines that the establishment of such committees are necessary to satisfy the requirements of ANILCA Section 805.

§§30.12 & 30.13 also outline the functions and responsibilities of the local fish and game advisory committees and the regional fish and game councils. I am not familiar enough with their current functions and responsibilities to determine how they might differ under a federal program. You may want to consult the Division of Boards in the Department of Fish & Game for additional analysis on this point.

§30.14- State Boards of Fisheries and Game. Under the current system, the Boards of Fisheries and Game set subsistence seasons and bag limits and make determinations of customary and traditional use of subsistence resources for communities and areas of the State. In the proposed federal program, it appears that the Boards would only fulfill an advisory role with respect to subsistence activities on federal lands. §30.14(b) of the proposal states, in part:

"With respect to the program, these State Boards may perform the following functions:

(3) Make recommendations to Federal agencies and the Federal Board concerning the program."

§30.14(c) further points to the strictly advisory role of the Boards in the federal program:

"Restrictions or other limitations established by the Boards of Fisheries and Game to govern the taking of fish and wildlife on lands under their jurisdiction, including but not limited to seasons, permit and license requirements, and quantity limits, may be adopted by the Secretary to regulate subsistence activities, to the extent that such measures are not in conflict with ANILCA or other applicable Federal laws or regulations."

While it does appear that under a federal subsistence management program the Boards of Fisheries and Game will have only an advisory role with respect to subsistence activities on federal lands in Alaska, it is not clear whether they would still be able to establish regulations for sport fishing, sport hunting or commercial fishing activities on those same federal lands.

§30.16 Federal monitoring. Section 806 of ANILCA requires that federal agencies, on behalf of the Secretary of the Interior, monitor the functions of the local advisory committees and regional councils in providing for a preference for subsistence activities. The federal agencies would also monitor the actions of the State Boards of Fisheries and Game with respect to subsistence uses.

30.17 Park and park monument subsistence resource commissions. These commissions have already been established for seven park and park monument areas, as required by Section 808 of ANILCA. The proposal defines their responsibilities under a federal management program. Those responsibilities would remain essentially the same as they are under the current system.

One very important point that needs to be brought out is the fact that these subsistence resource commissions for the park units have been severely mismanaged by the National Park Service over the last six years. The agency has provided very little in the way of technical or administrative support which has served to delay the commission's development and implementation of subsistence hunting plans. Many of the commissions have submitted recommendations on subsistence activities to the Secretary of the Interior and with very few exceptions those recommendations have been rejected. The only recommendations that have been accepted are those which could actually result in a decrease in the number of people who could engage in subsistence activities in a given park unit.

The Secretary of the Interior has the responsibility to appoint 3 members to each of the subsistence resource commissions. In several cases these appointments have not been made for up to two years, again hindering the functioning of the commissions. In addition, the agency often dictates what items the commissions can place on their agendas for discussion and, in at least one instance, has failed to forward a recommendation to the secretary for consideration. In short, I have grave concerns about the future of subsistence activities within national park units if the federal government, in this case the National Park Service, assumes management.

§30.18 Federal land management agencies. This section of the proposal authorizes federal agencies to develop "(s)uch agency-specific regulations as are required to carry out agency responsibilities under the Program." Depending upon agency policies, programs and statutes other than ANILCA, this may also result in significant change in the current system. This may be one of the



JAN 31 '80 09:53 CALIFORNIA STATE ARCHIVES  
Federal Subsistence Resource Management Program  
Page 5

most critical aspects of this proposed program. (See Attachment #2, page 3, Item E.)

§30.19 Federal Subsistence Resource Management Board. This is the entity that will govern the federal subsistence program if the federal government assumes control of subsistence activities on the federal lands in Alaska. The Board will consist of: the regional director for the U.S. Fish & Wildlife Service (chair and lead official for developing and implementing the program), the area director of the Bureau of Indian Affairs, the state director of the Bureau of Land Management, the regional director of the National Park Service, and the regional forester for the U.S. Forest Service.

The board will coordinate interagency implementation of the program, review recommendations of other entities in the program, develop policies and procedures necessary to operate the program and recommend to the Secretary of the Interior such regulations as are necessary to carry out the functions of the board and discharge the Secretary's responsibilities under Title VIII of ANILCA.

§30.20 Federal regulations. This section states that in the event that the Secretary of the Interior assumes control of subsistence activities, the regulations establishing the federal board and program will be supplemented by such additional regulations as are found to be necessary to implement federal control of these activities.

#### Subpart C- General Requirements

§30.31 Rural residents. This sections clearly states that subsistence activities are limited to rural Alaska residents, as previously defined (§30.4(b)) and in accordance with supplementary criteria established by the board. (Again, see Attachments #1 & #2 for the supplementary criteria that would likely be used.)

§30.32 Aircraft Use. This section prohibits, except in extraordinary cases, any use of aircraft of any type for access to or from public lands for subsistence activities. This represents a significant departure from the current situation. Currently the only categorical prohibition of aircraft use for subsistence activities applies to national parks and park monuments. This proposal apparently would apply to all federal public lands, regardless of their designation.

#### Subpart D -Subsistence Hunting and Trapping Subpart E- Subsistence Fishing

These sections contain specific guidelines on means and methods of harvest as well as area specific regulations. Again, I do not have sufficient knowledge of the current State regulations to determine if significant changes are proposed under a federal program. These

proposals are also subject to change on an annual basis, if the board determines changes are necessary.

Subpart F-Procedures for Issuance of Annual Regulations. This section provides guidance for the issuance of annual regulations and directs the board to develop regulations in consideration of the following:

- 1) The policies established by ANILCA to provide for a preference for subsistence uses of fish and wildlife,
- 2) Public input, scientific information, and recommendations received from the general public and from agencies and bodies such as local advisory committees, park and park monument subsistence resource commissions, regional councils, the State Boards of Fisheries and Game, the Alaska Department of Fish and Game, and federal land management agencies, and
- 3) Applicable non-conflicting State and federal laws and regulations.

§§30.101 & 30.102 provide for annual seasons and bag limits on hunting and fishing activities and for annual seasons and taking and possession limits for aquatic plants and finfish.

### Conclusion

In developing this plan, the federal agency have proposed adoption of many of the existing definitions, guidelines and advisory mechanisms in the State's program. The obvious, most important change, is the fact that the federal government, not the State, would be setting policy and establishing regulations for subsistence activities on all federal lands in Alaska. The State would be relegated to an advisory role in the decisions made regarding subsistence activities on some 218 million acres of land.

Promulgation of federal regulations requires a nation-wide review before implementation. This, in my opinion, increases the risk that the federal agencies will be subjected to considerable public pressure to develop increasingly more restrictive regulations. An example that comes to mind is the national park units in Alaska. There are a considerable number of people who view consumptive uses in national parks as inappropriate, regardless of what ANILCA says. In fact, as a hunter yourself, you must be aware of the growing opposition to hunting anywhere! There is already pressure to limit the levels of subsistence activities that occur in the park units. Federal management, I believe would ultimately result in the elimination of much, if not all, subsistence hunting and fishing in the Alaskan park units.

Finally, a dual system of fish and game management in Alaska would be very complicated and confusing. The complicated land ownership patterns virtually ensure conflict between State hunting and

fishing regulations and those developed by the federal agencies for the lands under their control. I simply believe that a federal takeover of subsistence activities on federal lands would not be in the best interest of Alaskans.



IN REPLY REFER TO

DRAFT

ATTACHMENT #1

## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
1011 E. TUDOR RD.  
ANCHORAGE, ALASKA 99503

PRIORITY

May 7, 1986

### Process for Identification of Rural Alaska Residents

"Rural Alaska residents" are defined as those persons whose principal residence is in a community or area of Alaska in which a significant portion of the economy and culture is dependent on uses of fish or wildlife characterized by the following criteria:

1. a long-term consistent pattern of use of fish or wildlife populations, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions
2. use patterns that usually recur in specific seasons of each year
3. use patterns consisting of methods and means of harvest that are characterized by efficiency and economy of effort and cost, conditioned by local circumstances
4. the consistent harvest and use of fish or wildlife near, or at locations reasonably accessible to, the residence of the persons taking such fish or wildlife
5. the handling, preparing, preserving and storing of such fish and wildlife in a manner that has traditionally been used by past generations, but not excluding recent technological advances in appropriate instances
6. use patterns that include the handing down of knowledge of fishing, trapping, or hunting skills and values from generation to generation
7. use patterns in which the products derived from such fish or wildlife are distributed or shared among others within a definable community of persons, including customary trade (excluding significant commercial enterprises) barter, sharing, gift-giving.
8. use patterns that include reliance upon the wide diversity of fish and wildlife populations of an area for personal and family consumption and that provide substantial benefits to the economic, cultural, social, and nutritional well-being of persons who take or consume fish and wildlife for their sustenance.

The Federal Subsistence Resource Management Board shall periodically review communities and areas of Alaska to determine whether they comply with these eight criteria. In the absence of adequate evidence documenting conformance with these criteria, the Federal Board shall determine whether or not a community or area is rural according to the definition of "rural" employed by the U.S. Bureau of Census. Those communities or areas with populations less than 2,500, as determined by the most recent certified State or Federal census, will be considered rural, and those communities or areas with populations greater than 2,500 will be considered non-rural until information related to the aforementioned eight criteria is presented to the Board to indicate otherwise.

DRAFT

**DRAFT**

## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
1011 E. TUDOR RD  
ANCHORAGE, ALASKA 99503**PRIORITY**

IN REPLY REFER TO:

FEDERAL SUBSISTENCE RESOURCE MANAGEMENT BOARD  
SUBSISTENCE POLICY

## I. SUBSISTENCE USES

MAY 7 1986

The Federal Subsistence Resource Management Board (Board) will implement the Federal Subsistence Resource Management Program (Program) to ensure the conservation of the fish and wildlife resources on federal lands in Alaska pursuant to existing federal laws and policies. The program will be consistent with the purposes of the conservation system units as defined by ANILCA.

## A. The Program will be implemented as follows:

(1) The board will assess the biological status of fish and wildlife resources and determine whether a portion of a fish or wildlife population may be harvested during a regulatory year consistent with the conservation, protection and utilization of healthy populations of these resources as required by ANILCA.

(2) The board will identify subsistence uses of fish and wildlife resources, recognizing the customary and traditional subsistence uses by rural Alaska residents of 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; for barter, or sharing for personal or family consumption; and for customary trade. Subsistence uses shall be considered to be customary and traditional for a community or area conforming to the following criteria:

- a. a long-term consistent pattern of use of fish or wildlife populations excluding interruption by circumstances beyond the user's control such as regulatory prohibitions
- b. use patterns that usually recur in specific seasons of each year
- c. use patterns consisting of methods and means of harvest that are characterized by efficiency and economy of effort and cost, conditioned by local circumstances

d. the consistent harvest and use of fish or wildlife near, or at locations reasonably accessible to, the residence of the persons taking such fish or wildlife

e. the handling, preparing, preserving, and storing of such fish and wildlife in a manner that has traditionally been used by past generations, but not excluding recent technological advances in appropriate instances

**DRAFT**

f. use patterns that include the handing down of knowledge of fishing, trapping, or hunting skills and values from generation to generation

g. use patterns in which the products derived from such fish or wildlife are distributed or shared among others within a definable community of persons, including customary trade (excluding significant commercial enterprises), barter, snaring, gift-giving

h. use patterns that include reliance upon the wide diversity of fish and wildlife populations of an area for personal and family consumption and that provide substantial benefits to the economic, cultural, social, and nutritional well-being of persons who take or consume fish and wildlife for their sustenance.

(3) After identifying subsistence uses based upon the criteria as set out in A.(1) & (2) of this section and in accordance with section 305 of ANILCA, the board will determine the amount of fish and wildlife necessary to provide for reasonable opportunities to engage in these customary and traditional uses.

(4) The board will recommend to the Secretary of the Interior regulations that provide an opportunity for the subsistence taking of fish and wildlife resources in amounts sufficient to provide for the customary and traditional uses identified in A (2) of this section, while being consistent with sound conservation and management principles and the laws, regulations and policies governing the management of the conservation system units and other Federal Lands. In no instance will the level of subsistence uses of fish and wildlife within a conservation system unit be inconsistent with the conservation of healthy populations.

(5) When circumstances such as increased numbers of user, weather, predation, or loss of habitat may jeopardize fish or wildlife populations, the board will exercise all practical options for restricting non-subsistence harvest before subsistence uses are restricted. If all available restrictions for non-subsistence uses have been implemented and further restrictions are needed, the board will reduce the take for subsistence by giving maximum protection to subsistence users who:

- (1) live closest to the resources;
- (2) have fewest available alternative resources; and
- (3) have the greatest customary and direct dependence upon the resource.

B. The board may, in cooperation with the State of Alaska, recommend to the Secretary of the Interior regulations that provide an opportunity for non-subsistence uses of the resource, to the extent that the non-subsistence uses do not jeopardize or interfere with the conservation of healthy populations of fish or wildlife resources or with the opportunity for taking these resources for customary and traditional subsistence uses as provided in A (4) of this section.

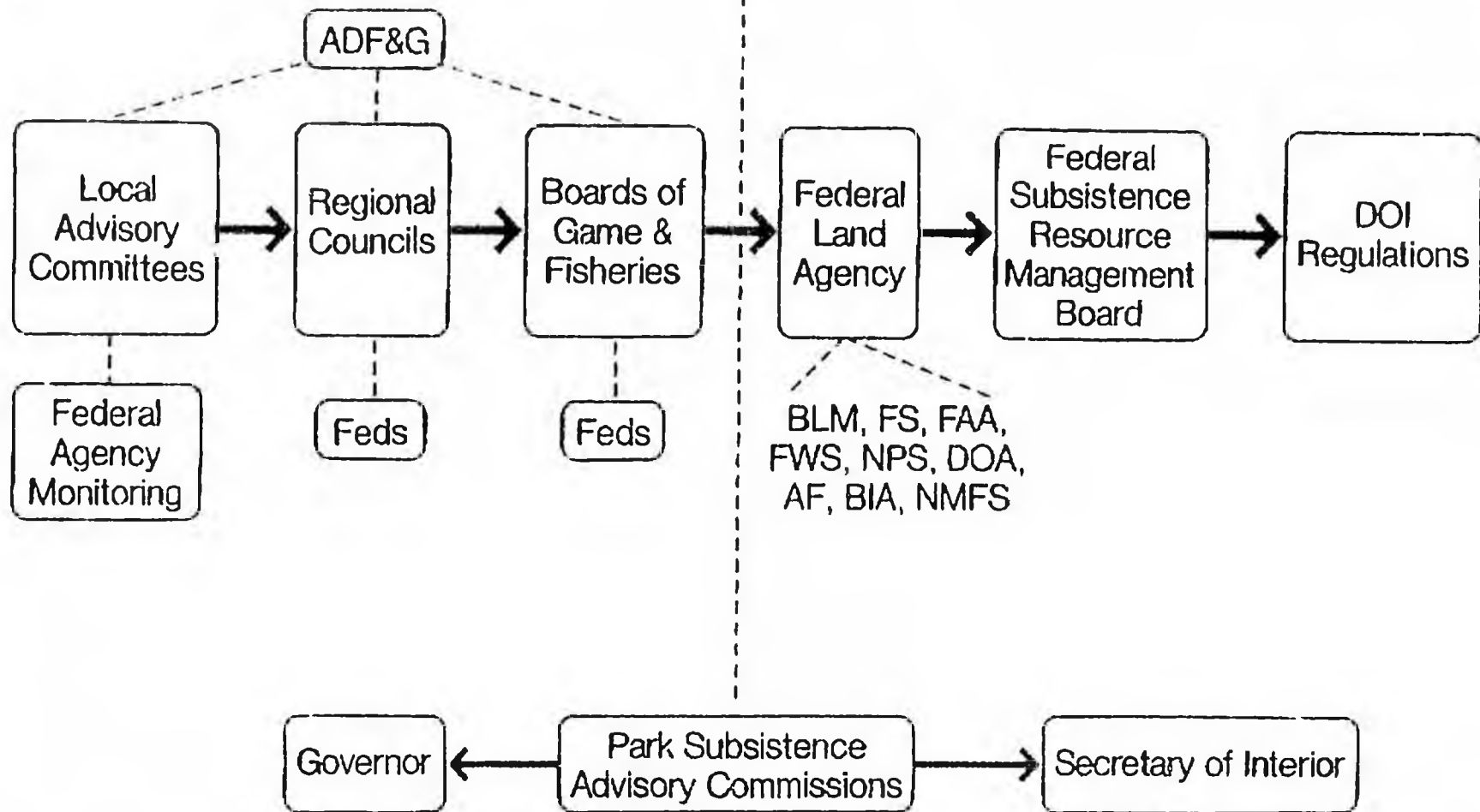
C. Except in extraordinary situations, aircraft shall not be used for access to fish and wildlife populations for subsistence purposes. Section 811 of ANILCA authorizes the use of snowmachines, and motor boats for subsistence purposes and also allows for the use of other means of surface transportation that have been traditionally used for subsistence.

D. In its discussions regarding implementation of the Program with regard to lands within the National Park System and the National Wildlife Refuge System, the Board shall, in conformance with the requirements of ANILCA, limit subsistence activities to use by local rural residents.

E. The Board shall, in making decisions or recommendations concerning the Program, consider and ensure compliance with specific statutory requirements regarding the management of resources on each type of conservation system unit or other type of Federal land, recognizing that the management policies applicable to some units may entail methods of resource and habitat management different from methods appropriate for other units.



# FEDERAL SUBSISTENCE RESOURCE MANAGEMENT PROGRAM



Existing State System

ATTACHMENT #3



# NEWS

**EXXON** COMPANY, U.S.A.

PUBLIC AFFAIRS

P.O. BOX 196601 • ANCHORAGE, ALASKA 99519-6601

FOR ADDITIONAL INFORMATION CALL: ANCHORAGE (907) 561-5331

February 22, 1990

For immediate release

MAR 2 1990

## SUBSISTENCE SEAFOOD TESTS REPORT COMPLETE

ANCHORAGE, Alaska -- Studies of subsistence seafoods in Prince William Sound, Kenai Peninsula and Kodiak Island have provided findings that all sampled finfish and most of the sampled shellfish were safe for human consumption. The tests were conducted by the National Oceanic and Atmospheric Administration (NOAA) and funded by Exxon.

The final report on the studies was issued by NOAA this week and an Expert Committee of Toxicologists are meeting in Seattle, Washington, on Feb 21 and 22 to discuss the results.

Several hundred samples of finfish and shellfish were collected between July and September last year from 13 subsistence gathering areas used by native Alaskans. These were compared to samples taken from Angoon village, the designated clean reference area in southeast Alaska.

All 210 finfish samples collected showed levels of contaminants which are considered safe for consumption, when compared to the generally accepted Food and Drug Administration guidelines.

Most of the shellfish also showed low levels of aromatic contaminants comparable to those from Angoon. However, samples of mussels from oil-impacted Windy Bay and Kodiak city, near the harbor area, had much higher levels of aromatic contaminants and are considered unsafe for consumption.

Exxon will conduct a winter sampling program on the low tide cycle beginning Feb 25. Samples of shellfish will be taken from traditional subsistence areas near Chenega Bay, English Bay and Port Graham and also from the Windy Bay beach. The samples will again be analysed by NOAA.

###

# EXXON COMPANY, U.S.A.

ALASKA OPERATIONS  
POST OFFICE BOX 240405 • ANCHORAGE, ALASKA 99524-0409

O. R. HARRISON  
GENERAL MANAGER

February 23, 1990

Michael Carey  
Editorial Page Editor  
Anchorage Daily News  
Box 149001  
Anchorage, Alaska 99514-9001

Dear Mr Carey:

I resent the Anchorage Daily News attempt to rewrite the history of what went on in Valdez last summer.

Contrary to your February 20, 1990 editorial "Cleanup Deceit", Exxon did not try to keep secret the findings of the results of the hot-water cleanup method study. As a matter of fact, I spent an hour or so with your reporter Charles Wohlforth in Valdez in August 1989, going over the preliminary information with him. We could not give him a copy of it since the data had not yet been analyzed at the time and there were no conclusive findings. And, as best I can determine, Wohlforth never asked anyone at Exxon for a copy of the final report.

Further, you need to make clear that the ANCHORAGE DAILY NEWS application under the Freedom of Information Act was made not to Exxon but to NOAA, since this Act applies only to public agencies, not the private sector. It was misleading for your editorial to suggest that Exxon had anything to do with suppressing or releasing the test results.

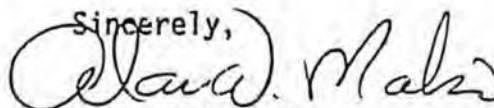
Certainly, the hot-water cleanup method did have a certain amount of impact on the shoreline organisms. We did not deny it last year; nor did we try to downplay the consequences. In fact, the study data were used to develop operations guidelines minimizing the damage while maximizing oil removal.

The extent of the impact of hot-water washing was weighed against the alternative, which was, to leave the heavy oil concentrations on the beaches, posing a greater threat to shoreline species. Data clearly indicate that while hot water washing caused some incremental localized impact on these species, the removal of heavy hydrocarbon concentrations stabilized the shoreline and will likely speed overall recovery of biota.

The finalized report on the tests results show a considerable variety of organisms still present on shorelines treated by the hot-water cleanup method. Although the numbers of several species were reduced significantly, enough remain to strongly suggest the ability to reproduce and the return of a viable shoreline ecology. This trend has been observed in several studies of other oil spills worldwide, showing that shoreline biota recovered in impacted areas within two to three years after the event.

The scientists from NOAA, ADEC, Exxon and other agencies who served on the Inter-Agency Shoreline Cleanup Committee were called on many times to make tough "balance" decisions like this. They deserve something better from the ANCHORAGE DAILY NEWS than your attempt to paint them as deceitful and uncooperative.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alan W. Maki".

Alan W. Maki, PhD  
Senior Environmental Advisor

# AFN profoundly disappointed with court subsistence ruling

The recent decision of the Alaska Supreme Court invalidating a long-standing rural subsistence priority is, in the words of the new president of the Alaska Federation of Natives, "a profound disappointment which causes us great concern for the future of Alaska."

Julie Kitka, in a recent statement, placed AFN's response to an imminent fish and game crisis in an historical context.

As yet, no changes in state policy have been made, awaiting action by the legislature.

"For years, Native leadership at the village, regional and statewide level has consistently supported a unified, comprehensive system of statewide fish and game management under the jurisdiction of the State of Alaska," Kitka said. "We have worked for a decade to keep management of fish and game in Alaskan hands, and to keep federal involvement at a minimum. But now, unless Natives and non-Natives can find some way to resolve the legal impasse created by the McDowell decision, we are heading into a sad and divisive period of history."

"In 1982, we campaigned hard to defeat a ballot initiative which would have repealed the Legislature's statutory subsistence preference, and we won. In 1985 and 1986, after the State Supreme Court issued its Madison decision, we went all out to secure legislative changes so that Alaskan statutes could be brought into compliance with federal law.

"If we had failed in either of these efforts, state law would undoubtedly have been found to be out of compliance with federal law, and we would have witnessed a federal takeover of fish and game management on those 60 percent of Alaska's lands which are in federal ownership. The Secretary of Interior, operating 4,000 miles away, would have become the de facto commissioner of fish and game over almost two-thirds of Alaska. This would have created a divided system without adequate resources to manage the species and habitats which migrate across the state without regard to land ownership.

"The Native community has worked consistently with governors, legislators, commissioners and members of the Boards of Fish and Game toward two mutually-reinforcing goals: to protect the subsistence economy on which the lifestyles of all rural Alaskans depend, and to do so within the context of the unified state management system. Until now, the effort has succeeded.

"Today, in light of the McDowell case, we see that these goals may no longer be compatible. Alaska's court system has spoken, and the 1990 fishing season will soon be upon us. In a recent letter to Governor Cowper, I indicated that AFN has no choice but to inquire of the Secretary of the Interior his plans for assuming his responsibility under Title VIII of ANILCA. However, we look forward to working with the Secretary and the Governor to resolve this situation."

RIC DAVIDGE  
3501 ADMIRALTY BAY  
ANCHORAGE, ALASKA 99515  
349-7329H 563-1912W

#### SUBSISTENCE: FACT AND FICTION

Why should the State of Alaska amend its constitution, attesting 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 VII 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.



# NEWS RELEASE

STATE OF ALASKA

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

STEVE COWPER,  
GOVERNOR



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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.



# ALASKA OUTDOOR COUNCIL, INC.

MAR 6 1990

March 1, 1990

Senator Bettye Fahrenkamp  
Pouch V  
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

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.

## 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>

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<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>

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<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

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<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 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.

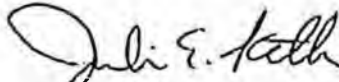
In addition, time and time again, problems between subsistence users and the State regulatory system escalate and

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

# ALASKA FEDERATION OF NATIVES, INC.

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



## 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.

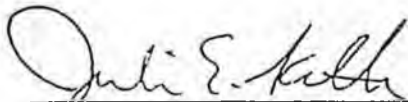


- Act immediately to request and to take action to involve affected Native organizations directly and fully in development, promulgation and implementation of any federal subsistence management regime developed for federal lands in the event State management is terminated. Native organizations shall 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

# ALASKA FEDERATION OF NATIVES, INC.

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



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

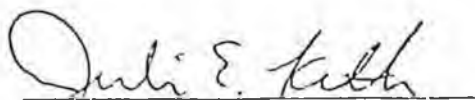
WHEREAS, Alaska Native tribes have managed fish and game in their traditional areas since before anyone can remember, and both the Native people and the animals benefited from tribal management; and

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

# ALASKA FEDERATION OF NATIVES, INC.

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



## 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

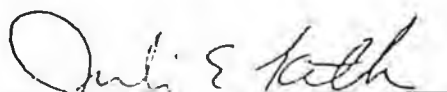
WHEREAS, joint State and federal planning for implementing a dual fish and game management system in the State after July 1, 1990, has taken place without participation or over consultation with the Alaska Federation of Natives or other Native organizations; and

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. Kitka  
President

| Species                      |                        | Historic range | Status | When listed | Critical habitat | Special rules |
|------------------------------|------------------------|----------------|--------|-------------|------------------|---------------|
| Scientific Name              | Common Name            |                |        |             |                  |               |
| Boreognathidae—Borage family |                        |                |        |             |                  |               |
| <i>Cryptantha crepitans</i>  | Tongva Green cat's-eye | USA (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; 8:43 am]  
 BILLING CODE 4310-55-M

### 50 CFR Part 36

RIN 1018-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.

**DATES:** 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) 788-3542.

**SUPPLEMENTARY INFORMATION:** Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3128) 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 is 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.

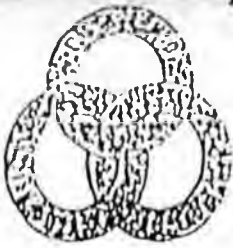
Dated: April 6, 1990.

John F. Turner,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 90-8534 Filed 4-12-90; 8:45 am]

BILLING CODE 4310-55-M

*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.

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State of Alaska  
CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS  
230 Cushman Street, Suite 4H  
Fairbanks, Alaska 99701  
(907) 456-2012

TO: Nancy Peterson  
FROM: Stan Leaphart *SL*  
DATE: January 30, 1990

| FAX TRANSMITTAL MEMO                   |                                 |        |          |
|----------------------------------------|---------------------------------|--------|----------|
| TO:                                    | NANCY PETERSON - SEN. FAIRBANKS |        |          |
| DEPT:                                  |                                 | FAX #: | 463-4867 |
| FROM:                                  | S. LEAPHART                     | PHONE: | 456-2012 |
| CO:                                    | CACFA                           | FAX #: | 456-2039 |
| Post-it brand fax transmittal memo 767 |                                 |        |          |

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RE: Federal Subsistence Resource Management Program

In September, 1985 the U.S. Department of the Interior notified the State of Alaska that it was no longer in full compliance with the requirements of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). This determination of non-compliance was based on the interpretation given by the Alaska Supreme Court to the Alaska subsistence statute in the Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985). In the same notification, the State was informed that the Department of the Interior would be forced to take over administration of subsistence use on public lands (federal lands) if the State program was not brought back into compliance with ANILCA by June 1, 1986. Passage of the State's 1986 subsistence statute prevented a federal take-over at that time.

In preparation for assuming administration of subsistence uses, the federal government created the Federal Subsistence Resource Management Board consisting of officials from the Bureau of Land Management, National Park Service, Bureau of Indian Affairs, Forest Service and U.S. Fish and Wildlife Service. These federal agencies also drafted regulations defining the operation of the Federal Subsistence Resource Management Program to manage subsistence activities within Alaska. These regulations were never released for public review and were shelved when the State subsistence statute was passed.

It is my understanding that these same federal agencies are now taking ~~another~~ look at this program because of the recent Alaska Supreme Court decision in the McDowell v. State of Alaska case, which overturned the current State subsistence statute. It appears, that if the federal government assumes management of subsistence activities on federal lands, this or a similar program would be utilized. It would be beneficial for our legislators to be aware of this proposal and to understand some of its ramifications.



The purpose of this memo is to briefly outline some of the key points of the draft proposal and to give you some idea about how the federal agency would manage subsistence activities under a federal program. I have also attached some additional material which should help clarify a number of the points in the draft proposal. You also have Ric Davidge's letter to Walter Stieglitz which discusses development of the program.

Subpart A- General Provisions

§30.1 through §30.3- These sections outline the Federal governments authority to manage subsistence under Title VIII of ANILCA. The language is derived directly from Title VIII.

§30.4- Definitions. The definition of "rural Alaska residents" in §30.4(a)(1) is essentially the same definition contained in the 1986 state subsistence statute. As you know, the courts ruled in the Kenaitze decision that this definition was inconsistent with the definition of "rural" as used in ANILCA, Title VIII. It would appear that this definition would require revision if the federal program is implemented. (See attachment #1 for an explanation of the process used for identification of rural Alaskan residents)

Both ANILCA and its legislative history provide little useful guidance on the definition of "rural". In fact, the legislative history generally only mentions a number of communities that Congress considered to be non-rural and several that they believed may be considered rural. Davidge explains this more fully in his letter to Stieglitz.

In determining whether or not subsistence uses of a community or area are "customary and traditional", the federal program would utilize the same eight criteria developed by the State Boards of Fisheries and Game. (See attachment #2, under A(2) for additional information)

Another important point to be considered (see: §30.4(b)(2)) is the application of this program to those lands, not federally owned, but within the exterior boundaries of a conservation system unit (national parks, monuments, preserves, national wildlife refuges, Forest Service wilderness areas, wild & scenic river corridors, national conservation areas, and national recreation areas). This means that subsistence activities on millions of acres of State and Native owned lands within these federal conservation system units would be under federal management. I would question the legal authority of the federal government to regulate hunting and fishing activities on State owned land, even if that land is within the exterior boundaries of a federal conservation system unit.

§30.5- Policy. This general policy is derived from Sections 802 & 804 of ANILCA which established the federal governments policy on subsistence and the preference for subsistence uses.

Subpart B- Program Structure

§30.10- Program diagram. I have attached an organizational chart for the subsistence resource management program. (See attachment #3)

§30.11- Use of State entities. The federal program would utilize the existing State system of local fish and game advisory committees, regional fish and game councils, the Board of Fisheries, and the Board of Game.

§30.12- Local fish and game advisory committees. This section of the proposal authorizes the Secretary of the Interior to establish advisory committees in addition to those established by the State, if he determines that the establishment of such committees are necessary to satisfy the requirements of ANILCA Section 805.

§§30.12 & 30.13 also outline the functions and responsibilities of the local fish and game advisory committees and the regional fish and game councils. I am not familiar enough with their current functions and responsibilities to determine how they might differ under a federal program. You may want to consult the Division of Boards in the Department of Fish & Game for additional analysis on this point.

§30.14- State Boards of Fisheries and Game. Under the current system, the Boards of Fisheries and Game set subsistence seasons and bag limits and make determinations of customary and traditional use of subsistence resources for communities and areas of the State. In the proposed federal program, it appears that the Boards would only fulfill an advisory role with respect to subsistence activities on federal lands. §30.14(b) of the proposal states, in part:

"With respect to the program, these State Boards may perform the following functions:

(3) Make recommendations to Federal agencies and the Federal Board concerning the program."

§30.14(c) further points to the strictly advisory role of the Boards in the federal program:

"Restrictions or other limitations established by the Boards of Fisheries and Game to govern the taking of fish and wildlife on lands under their jurisdiction, including but not limited to seasons, permit and license requirements, and quantity limits, may be adopted by the Secretary to regulate subsistence activities, to the extent that such measures are not in conflict with ANILCA or other applicable Federal laws or regulations."

While it does appear that under a federal subsistence management program the Boards of Fisheries and Game will have only an advisory role with respect to subsistence activities on federal lands in Alaska, it is not clear whether they would still be able to establish regulations for sport fishing, sport hunting or commercial fishing activities on those same federal lands.

§30.16 Federal monitoring. Section 806 of ANILCA requires that federal agencies, on behalf of the Secretary of the Interior, monitor the functions of the local advisory committees and regional councils in providing for a preference for subsistence activities. The federal agencies would also monitor the actions of the State Boards of Fisheries and Game with respect to subsistence uses.

30.17 Park and park monument subsistence resource commissions. These commissions have already been established for seven park and park monument areas, as required by Section 808 of ANILCA. The proposal defines their responsibilities under a federal management program. Those responsibilities would remain essentially the same as they are under the current system.

One very important point that needs to be brought out is the fact that these subsistence resource commissions for the park units have been severely mismanaged by the National Park Service over the last six years. The agency has provided very little in the way of technical or administrative support which has served to delay the commission's development and implementation of subsistence hunting plans. Many of the commissions have submitted recommendations on subsistence activities to the Secretary of the Interior and with very few exceptions those recommendations have been rejected. The only recommendations that have been accepted are those which could actually result in a decrease in the number of people who could engage in subsistence activities in a given park unit.

The Secretary of the Interior has the responsibility to appoint 3 members to each of the subsistence resource commissions. In several cases these appointments have not been made for up to two years, again hindering the functioning of the commissions. In addition, the agency often dictates what items the commissions can place on their agendas for discussion and, in at least one instance, has failed to forward a recommendation to the secretary for consideration. In short, I have grave concerns about the future of subsistence activities within national park units if the federal government, in this case the National Park Service, assumes management.

§30.18 Federal land management agencies. This section of the proposal authorizes federal agencies to develop "(s)uch agency-specific regulations as are required to carry out agency responsibilities under the Program." Depending upon agency policies, programs and statutes other than ANILCA, this may also result in significant change in the current system. This may be one of the

most critical aspects of this proposed program. (See Attachment #2, page 3, Item E.)

§30.19 Federal Subsistence Resource Management Board. This is the entity that will govern the federal subsistence program if the federal government assumes control of subsistence activities on the federal lands in Alaska. The Board will consist of: the regional director for the U.S. Fish & Wildlife Service (chair and lead official for developing and implementing the program), the area director of the Bureau of Indian Affairs, the state director of the Bureau of Land Management, the regional director of the National Park Service, and the regional forester for the U.S. Forest Service.

The board will coordinate interagency implementation of the program, review recommendations of other entities in the program, develop policies and procedures necessary to operate the program and recommend to the Secretary of the Interior such regulations as are necessary to carry out the functions of the board and discharge the Secretary's responsibilities under Title VIII of ANILCA.

§30.20 Federal regulations. This section states that in the event that the Secretary of the Interior assumes control of subsistence activities, the regulations establishing the federal board and program will be supplemented by such additional regulations as are found to be necessary to implement federal control of these activities.

#### Subpart C- General Requirements

§30.31 Rural residents. This sections clearly states that subsistence activities are limited to rural Alaska residents, as previously defined (§30.4(b)) and in accordance with supplementary criteria established by the board. (Again, see Attachments #1 & #2 for the supplementary criteria that would likely be used.)

§30.32 Aircraft Use. This section prohibits, except in extraordinary cases, any use of aircraft of any type for access to or from public lands for subsistence activities. This represents a significant departure from the current situation. Currently the only categorical prohibition of aircraft use for subsistence activities applies to national parks and park monuments. This proposal apparently would apply to all federal public lands, regardless of their designation.

#### Subpart D -Subsistence Hunting and Trapping Subpart E- Subsistence Fishing

These sections contain specific guidelines on means and methods of harvest as well as area specific regulations. Again, I do not have sufficient knowledge of the current State regulations to determine if significant changes are proposed under a federal program. These

proposals are also subject to change on an annual basis, if the board determines changes are necessary.

Subpart F-Procedures for Issuance of Annual Regulations. This section provides guidance for the issuance of annual regulations and directs the board to develop regulations in consideration of the following:

- 1) The policies established by ANILCA to provide for a preference for subsistence uses of fish and wildlife,
- 2) Public input, scientific information, and recommendations received from the general public and from agencies and bodies such as local advisory committees, park and park monument subsistence resource commissions, regional councils, the State Boards of Fisheries and Game, the Alaska Department of Fish and Game, and federal land management agencies, and
- 3) Applicable non-conflicting State and federal laws and regulations.

§§30.101 & 30.102 provide for annual seasons and bag limits on hunting and fishing activities and for annual seasons and taking and possession limits for aquatic plants and finfish.

### Conclusion

In developing this plan, the federal agency have proposed adoption of many of the existing definitions, guidelines and advisory mechanisms in the State's program. The obvious, most important change, is the fact that the federal government, not the State, would be setting policy and establishing regulations for subsistence activities on all federal lands in Alaska. The State would be relegated to an advisory role in the decisions made regarding subsistence activities on some 218 million acres of land.

Promulgation of federal regulations requires a nation-wide review before implementation. This, in my opinion, increases the risk that the federal agencies will be subjected to considerable public pressure to develop increasingly more restrictive regulations. An example that comes to mind is the national park units in Alaska. There are a considerable number of people who view consumptive uses in national parks as inappropriate, regardless of what ANILCA says. In fact, as a hunter yourself, you must be aware of the growing opposition to hunting anywhere! There is already pressure to limit the levels of subsistence activities that occur in the park units. Federal management, I believe would ultimately result in the elimination of much, if not all, subsistence hunting and fishing in the Alaskan park units.

Finally, a dual system of fish and game management in Alaska would be very complicated and confusing. The complicated land ownership patterns virtually ensure conflict between State hunting and

fishing regulations and those developed by the federal agencies for the lands under their control. I simply believe that a federal takeover of subsistence activities on federal lands would not be in the best interest of Alaskans.



IN REPLY REFER TO

DRAFT

ATTACHMENT #1

## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
1011 E. TUDOR RD.  
ANCHORAGE, ALASKA 99503

PRIORITY

May 7, 1986

### Process for Identification of Rural Alaska Residents

"Rural Alaska residents" are defined as those persons whose principal residence is in a community or area of Alaska in which a significant portion of the economy and culture is dependent on uses of fish or wildlife characterized by the following criteria:

1. a long-term consistent pattern of use of fish or wildlife populations, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions
2. use patterns that usually recur in specific seasons of each year
3. use patterns consisting of methods and means of harvest that are characterized by efficiency and economy of effort and cost, conditioned by local circumstances
4. the consistent harvest and use of fish or wildlife near, or at locations reasonably accessible to, the residence of the persons taking such fish or wildlife
5. the handling, preparing, preserving and storing of such fish and wildlife in a manner that has traditionally been used by past generations, but not excluding recent technological advances in appropriate instances
6. use patterns that include the handing down of knowledge of fishing, trapping, or hunting skills and values from generation to generation
7. use patterns in which the products derived from such fish or wildlife are distributed or shared among others within a definable community of persons, including customary trade (excluding significant commercial enterprises) barter, sharing, gift-giving.
8. use patterns that include reliance upon the wide diversity of fish and wildlife populations of an area for personal and family consumption and that provide substantial benefits to the economic, cultural, social, and nutritional well-being of persons who take or consume fish and wildlife for their sustenance.

The Federal Subsistence Resource Management Board shall periodically review communities and areas of Alaska to determine whether they comply with these eight criteria. In the absence of adequate evidence documenting conformance with these criteria, the Federal Board shall determine whether or not a community or area is rural according to the definition of "rural" employed by the U.S. Bureau of Census. Those communities or areas with populations less than 2,500, as determined by the most recent certified State or Federal census, will be considered rural, and those communities or areas with populations greater than 2,500 will be considered non-rural until information related to the aforementioned eight criteria is presented to the Board to indicate otherwise.

DRAFT



**DRAFT**

IN REPLY REFER TO.

## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
1011 E. TUDOR RD.  
ANCHORAGE, ALASKA 99503**PRIORITY**FEDERAL SUBSISTENCE RESOURCE MANAGEMENT BOARD  
SUBSISTENCE POLICY

## I. SUBSISTENCE USES

MAY 7 1986

The Federal Subsistence Resource Management Board (Board) will implement the Federal Subsistence Resource Management Program (Program) to ensure the conservation of the fish and wildlife resources on federal lands in Alaska pursuant to existing federal laws and policies. The program will be consistent with the purposes of the conservation system units as defined by ANILCA.

## A. The Program will be implemented as follows:

(1) The board will assess the biological status of fish and wildlife resources and determine whether a portion of a fish or wildlife population may be harvested during a regulatory year consistent with the conservation, protection and utilization of healthy populations of these resources as required by ANILCA.

(2) The board will identify subsistence uses of fish and wildlife resources, recognizing the customary and traditional subsistence uses by rural Alaska residents of 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; for barter, or sharing for personal or family consumption; and for customary trade. Subsistence uses shall be considered to be customary and traditional for a community or area conforming to the following criteria:

a. a long-term consistent pattern of use of fish or wildlife populations excluding interruption by circumstances beyond the user's control such as regulatory prohibitions

b. use patterns that usually recur in specific seasons of each year

c. use patterns consisting of methods and means of harvest that are characterized by efficiency and economy of effort and cost, conditioned by local circumstances

d. the consistent harvest and use of fish or wildlife near, or at locations reasonably accessible to, the residence of the persons taking such fish or wildlife

e. the handling, preparing, preserving, and storing of such fish and wildlife in a manner that has traditionally been used by past generations, but not excluding recent technological advances in appropriate instances

**DRAFT**



f. use patterns that include the handing down of knowledge of fishing, trapping, or hunting skills and values from generation to generation

g. use patterns in which the products derived from such fish or wildlife are distributed or shared among others within a definable community of persons, including customary trade (excluding significant commercial enterprises), barter, sharing, gift-giving

h. use patterns that include reliance upon the wide diversity of fish and wildlife populations of an area for personal and family consumption and that provide substantial benefits to the economic, cultural, social, and nutritional well-being of persons who take or consume fish and wildlife for their sustenance.

(3) After identifying subsistence uses based upon the criteria as set out in A.(1) & (2) of this section and in accordance with section 805 of ANILCA, the board will determine the amount of fish and wildlife necessary to provide for reasonable opportunities to engage in these customary and traditional uses.

(4) The board will recommend to the Secretary of the Interior regulations that provide an opportunity for the subsistence taking of fish and wildlife resources in amounts sufficient to provide for the customary and traditional uses identified in A (2) of this section, while being consistent with sound conservation and management principles and the laws, regulations and policies governing the management of the conservation system units and other Federal Lands. In no instance will the level of subsistence uses of fish and wildlife within a conservation system unit be inconsistent with the conservation of healthy populations.

(5) When circumstances such as increased numbers of user, weather, predation, or loss of habitat may jeopardize fish or wildlife populations, the board will exercise all practical options for restricting non-subsistence harvest before subsistence uses are restricted. If all available restrictions for non-subsistence uses have been implemented and further restrictions are needed, the board will reduce the take for subsistence by giving maximum protection to subsistence users who:

- (1) live closest to the resources;
- (2) have fewest available alternative resources; and
- (3) have the greatest customary and direct dependence upon the resource.

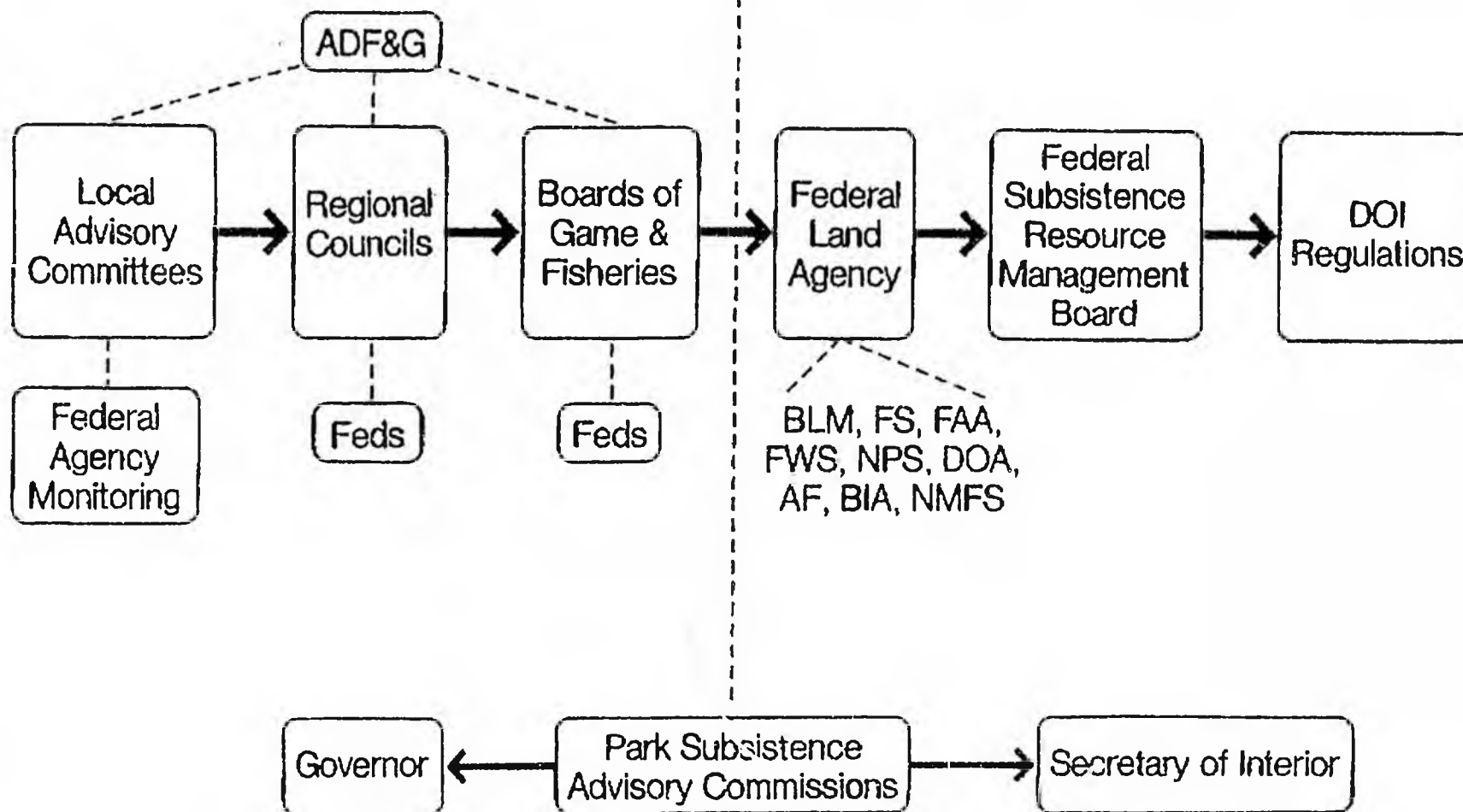
B. The board may, in cooperation with the State of Alaska, recommend to the Secretary of the Interior regulations that provide an opportunity for non-subsistence uses of the resource, to the extent that the non-subsistence uses do not jeopardize or interfere with the conservation of healthy populations or fish or wildlife resources or with the opportunity for taking these resources for customary and traditional subsistence uses as provided in A (4) of this section.

C. Except in extraordinary situations, aircraft shall not be used for access to fish and wildlife populations for subsistence purposes. Section 811 of ANILCA authorizes the use of snowmachines, and motor boats for subsistence purposes and also allows for the use of other means of surface transportation that have been traditionally used for subsistence.

D. In its discussions regarding implementation of the Program with regard to lands within the National Park System and the National Wildlife Refuge System, the Board shall, in conformance with the requirements of ANILCA, limit subsistence activities to use by local rural residents.

E. The Board shall, in making decisions or recommendations concerning the Program, consider and ensure compliance with specific statutory requirements regarding the management of resources on each type of conservation system unit or other type of Federal land, recognizing that the management policies applicable to some units may entail methods of resource and habitat management different from methods appropriate for other units.

# FEDERAL SUBSISTENCE RESOURCE MANAGEMENT PROGRAM



Existing State System

# NEWS

**EXXON** COMPANY, U.S.A.

PUBLIC AFFAIRS

P.O. BOX 196601 • ANCHORAGE, ALASKA 99519-6601

FOR ADDITIONAL INFORMATION CALL: ANCHORAGE (907) 561-5331

February 22, 1990

For immediate release

MAR 2 1990

## SUBSISTENCE SEAFOOD TESTS REPORT COMPLETE

ANCHORAGE, Alaska -- Studies of subsistence seafoods in Prince William Sound, Kenai Peninsula and Kodiak Island have provided findings that all sampled finfish and most of the sampled shellfish were safe for human consumption. The tests were conducted by the National Oceanic and Atmospheric Administration (NOAA) and funded by Exxon.

The final report on the studies was issued by NOAA this week and an Expert Committee of Toxicologists are meeting in Seattle, Washington, on Feb 21 and 22 to discuss the results.

Several hundred samples of finfish and shellfish were collected between July and September last year from 13 subsistence gathering areas used by native Alaskans. These were compared to samples taken from Angoon village, the designated clean reference area in southeast Alaska.

All 210 finfish samples collected showed levels of contaminants which are considered safe for consumption, when compared to the generally accepted Food and Drug Administration guidelines.

Most of the shellfish also showed low levels of aromatic contaminants comparable to those from Angoon. However, samples of mussels from oil-impacted Windy Bay and Kodiak city, near the harbor area, had much higher levels of aromatic contaminants and are considered unsafe for consumption.

Exxon will conduct a winter sampling program on the low tide cycle beginning Feb 25. Samples of shellfish will be taken from traditional subsistence areas near Chenega Bay, English Bay and Port Graham and also from the Windy Bay beach. The samples will again be analysed by NOAA.

###

# EXXON COMPANY, U.S.A.

ALASKA OPERATIONS  
POST OFFICE BOX 240409 • ANCHORAGE, ALASKA 99524-0409

O. R. HARRISON  
GENERAL MANAGER

February 23, 1990

Michael Carey  
Editorial Page Editor  
Anchorage Daily News  
Box 149001  
Anchorage, Alaska 99514-9001

Dear Mr Carey:

I resent the Anchorage Daily News attempt to rewrite the history of what went on in Valdez last summer.

Contrary to your February 20, 1990 editorial "Cleanup Deceit", Exxon did not try to keep secret the findings of the results of the hot-water cleanup method study. As a matter of fact, I spent an hour or so with your reporter Charles Wohlforth in Valdez in August 1989, going over the preliminary information with him. We could not give him a copy of it since the data had not yet been analyzed at the time and there were no conclusive findings. And, as best I can determine, Wohlforth never asked anyone at Exxon for a copy of the final report.

Further, you need to make clear that the ANCHORAGE DAILY NEWS application under the Freedom of Information Act was made not to Exxon but to NOAA, since this Act applies only to public agencies, not the private sector. It was misleading for your editorial to suggest that Exxon had anything to do with suppressing or releasing the test results.

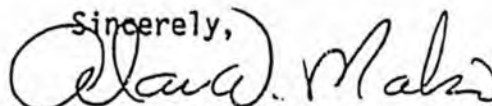
Certainly, the hot-water cleanup method did have a certain amount of impact on the shoreline organisms. We did not deny it last year; nor did we try to downplay the consequences. In fact, the study data were used to develop operations guidelines minimizing the damage while maximizing oil removal.

The extent of the impact of hot-water washing was weighed against the alternative, which was, to leave the heavy oil concentrations on the beaches, posing a greater threat to shoreline species. Data clearly indicate that while hot water washing caused some incremental localized impact on these species, the removal of heavy hydrocarbon concentrations stabilized the shoreline and will likely speed overall recovery of biota.

The finalized report on the tests results show a considerable variety of organisms still present on shorelines treated by the hot-water cleanup method. Although the numbers of several species were reduced significantly, enough remain to strongly suggest the ability to reproduce and the return of a viable shoreline ecology. This trend has been observed in several studies of other oil spills worldwide, showing that shoreline biota recovered in impacted areas within two to three years after the event.

The scientists from NOAA, ADEC, Exxon and other agencies who served on the Inter-Agency Shoreline Cleanup Committee were called on many times to make tough "balance" decisions like this. They deserve something better from the ANCHORAGE DAILY NEWS than your attempt to paint them as deceitful and uncooperative.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alan W. Maki".

Alan W. Maki, PhD  
Senior Environmental Advisor

## AFN profoundly disappointed with court subsistence ruling

Week of

The recent decision of the Alaska Supreme Court invalidating a long-standing rural subsistence priority is, in the words of the new president of the Alaska Federation of Natives, "a profound disappointment which causes us great concern for the future of Alaska."

Julie Kitka, in a recent statement, placed AFN's response to an imminent fish and game crisis in an historical context.

As yet, no changes in state policy have been made, awaiting action by the legislature.

"For years, Native leadership at the village, regional and statewide level has consistently supported a unified, comprehensive system of statewide fish and game management under the jurisdiction of the State of Alaska," Kitka said. "We have worked for a decade to keep management of fish and game in Alaskan hands, and to keep federal involvement at a minimum. But now, unless Natives and non-Natives can find some way to resolve the legal impasse created by the McDowell decision, we are heading into a sad and divisive period of history."

"In 1982, we campaigned hard to defeat a ballot initiative which would have repealed the Legislature's statutory subsistence preference, and we won. In 1985 and 1986, after the State Supreme Court issued its Madison decision, we went all out to secure legislative changes so that Alaskan statutes could be brought into compliance with federal law."

"If we had failed in either of these efforts, state law would undoubtedly have been found to be out of compliance with federal law, and we would have witnessed a federal takeover of fish and game management on those 60 percent of Alaska's lands which are in federal ownership. The Secretary of Interior, operating 4,000 miles away, would have become the de facto commissioner of fish and game over almost two-thirds of Alaska. This would have created a divided system without adequate resources to manage the species and habitats which migrate across the state without regard to land ownership."

"The Native community has worked consistently with governors, legislators, commissioners and members of the Boards of Fish and Game toward two mutually-reinforcing goals: to protect the subsistence economy on which the lifestyles of all rural Alaskans depend, and to do so within the context of the unified state management system. Until now, the effort has succeeded."

"Today, in light of the McDowell case, we see that these goals may no longer be compatible. Alaska's court system has spoken, and the 1990 fishing season will soon be upon us. In a recent letter to Governor Cowper, I indicated that AFN has no choice but to inquire of the Secretary of the Interior his plans for assuming his responsibility under Title VIII of ANILCA. However, we look forward to working with the Secretary and the Governor to resolve this situation."



RIC DAVIDGE  
3501 ADMIRALTY BAY  
ANCHORAGE, ALASKA 99515  
349-7329H 563-1912W

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.

# NEWS RELEASE

STATE OF ALASKA

OFFICE OF THE GOVERNOR  
P.O. BOX A  
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STEVE COWPER,  
GOVERNOR



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DEPUTY PRESS SECRETARY

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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.



# ALASKA OUTDOOR COUNCIL, INC.

MAR 6 1990

March 1, 1990

Senator Bettye Fahrenkamp  
Pouch V  
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

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



**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>

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<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>

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<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 takeover, Alaskan fish and wildlife resources would not be managed for

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<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 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.

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



## 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

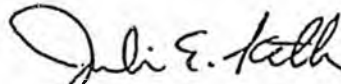


turn into conflicts which eventually end up in court. This costs both the State and the subsistence users much time, energy and money. In our view, litigation should be an avenue of last resort. A thorough review of the State regulatory system as it affects real people could provide us both an opportunity 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:

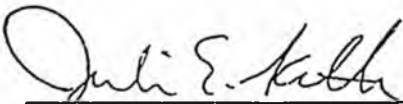
- Act to continue to support the inherent Native rights to subsistence resources and uses.
- Act to gain approval of an amendment to the Constitution of the State of Alaska that allows the State to exercise management jurisdiction over all fish, wildlife, plant and other renewable natural resources within 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.

  
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Julie E. Kitka  
President

# ALASKA FEDERATION OF NATIVES, INC.

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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

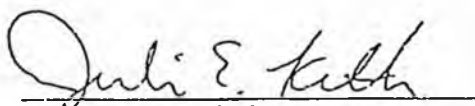
WHEREAS, Alaska Native tribes have managed fish and game in their traditional areas since before anyone can remember, and both the Native people and the animals benefited from tribal management; and

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.

  
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. Kitka  
President

| Species                     |                           | Historic range | Status | When listed | Critical habitat | Special rules |
|-----------------------------|---------------------------|----------------|--------|-------------|------------------|---------------|
| Scientific Name             | Common Name               |                |        |             |                  |               |
| Boraginaceae—Borage family: |                           |                |        |             |                  |               |
| <i>Cryptantha crassipes</i> | Terningue Creek 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 35

RIN 1018-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.

**DATES:** 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) 788-3542.

**SUPPLEMENTARY INFORMATION:** Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3128) 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. Turbot,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 90-8534 Filed 4-12-90; 8:45 am]

BILLING CODE 4310-06-M





*Integrity, Pride in Heritage, Progress*

ALASKA FEDERATION OF NATIVES, INC.

# 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.

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# ALASKA FEDERATION OF NATIVES, INC.

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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 AIRE. 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 FIS" AND GAME IN THE HANDS OF THOSE WHO  
KNOW BEST HOW TO MANAGE THEM - THE ALASKANS.

THANK YOU.

## PRE-REGISTRATION

Name: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐

YES, I DO plan to attend.

☐

NO, I DO NOT plan to attend.

## ACCOMMODATIONS

The Anchorage Westward Hilton is offering special room rates during the Subsistence Summit Conference. Single- or double-occupancy room rates are \$70 per night. PLEASE MAKE YOUR TRAVEL AND HOTEL ARRANGEMENTS IN ADVANCE. You may call the Anchorage Westward Hilton toll-free at 1-800-478-3616.

### PLEASE DETACH AND MAIL TO:

Alaska Federation of Natives, Inc.  
411 West 4th Avenue - Suite 301  
Anchorage, AK 99501

(907) 274-3611

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## SUBSISTENCE: A Strategy for Our Future

Egan Convention Center  
Anchorage, Alaska  
April 10-11, 1990



A Conference of the Native Community

SUBSISTENCE: A Strategy for Our Future

# **SUBSISTENCE: A Strategy for Our Future**

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## **THE PURPOSE OF THE SUBSISTENCE SUMMIT CONFERENCE IS:**

- \* To provide Alaska Native leaders with the best available **INFORMATION** on the current political and legal challenge to our subsistence way of life, and to present such information in ways which respect the diversity of interests within the Native community and empower Natives to act.
- \* To provide the opportunity for Native leaders to express their **POSITIONS, OPINIONS AND FEELINGS** on the subsistence issue, on its present and future impacts on the well-being of our people, and on effective strategies for protecting our long-term interests.
- \* To generate creative **IDEAS** on how the Alaska Native community can deal effectively with the political opposition on subsistence and related issues of public policy.
- \* To develop an effective network of **COMMUNICATION** in the statewide Native community between individuals, communities and organizations as we confront the external challenge to our subsistence economies and cultures.
- \* To encourage **TRUST AND COOPERATION** among all Alaska Natives and their organizations, while respecting the cultural, geographical and generational diversity of our people.

To Alaska Native People:

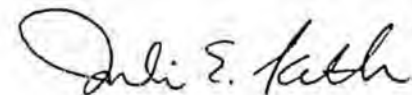
On behalf of the Alaska Federation of Natives, I invite you to attend an important statewide summit conference of the Alaska Native community on subsistence issues. The meeting will be held on April 10-11, 1990, at the Egan Convention Center in Anchorage. Its theme will be **SUBSISTENCE: A Strategy for Our Future**.

At this conference we plan to provide the best possible information on the consequences of the recent Alaska Supreme Court decision (McDowell v. State) which declared the state subsistence law unconstitutional.

We will provide a broad framework for discussion of several different options available to Native people, and the implications of each. The conference will be an educational opportunity for all of us to say what we think and listen to each other. Representatives of villages and Native organizations will be able to return home carrying accurate information and a broad perspective on this complicated issue.

Protection of subsistence hunting and fishing is critically important to the future of Alaska Natives and to the survival of our villages. I urge you to attend the conference.

Sincerely,



Julie Kitka  
President



# 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.

# 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."

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 an 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.



## **SUBSISTENCE:**

### **A Strategy for Our Future**

**Egan Convention Center - Lower Level  
Anchorage, Alaska  
April 10-11, 1990**

## **Conference Guide & Agenda**



# 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,

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

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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, SENS

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 Vvallis

Greg Rerikas, 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, SENS

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 'ya, 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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## 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.

## **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.



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PROPOSED LEGISLATION (cont.)

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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

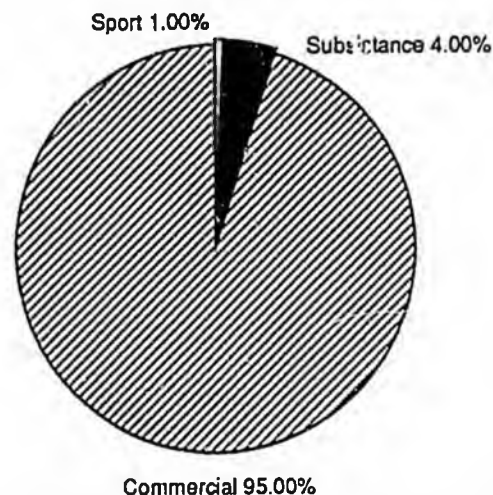
### Does subsistence take most of Alaska's fish & game?

" As a general rule, no. Commercial fishing outstrips subsistence many times. In Alaska in 1986, commercial fisheries harvested about 908,500,000 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.)

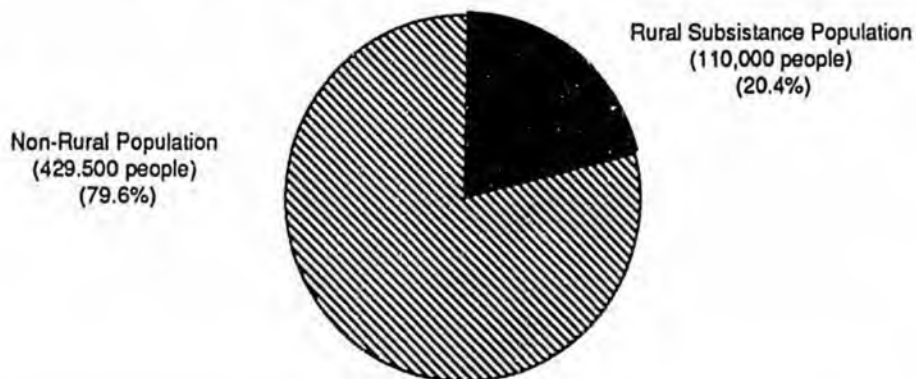
Of course, the proportions vary by area. In the areas with roads, the sport harvest is usually larger than the subsistence harvest. In the areas without roads, the subsistence harvest is larger than the sport harvest. But commercial fishing is the clear leader in overall volume."

SOURCE: *Alaska Fish & Game Magazine*.

Who Uses the Most Fish and Game ?  
Resource Harvests in Alaska



How Many Subsistence Participants, 1985 ?



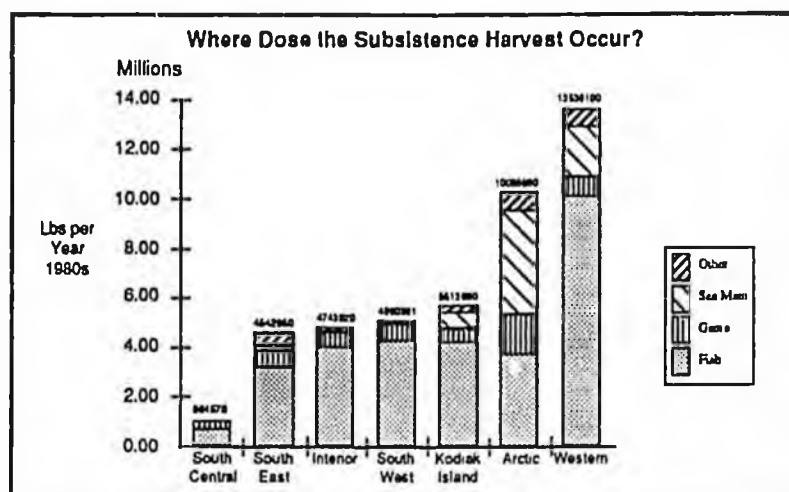
How many people participate in subsistence? " During the 1980s, our best estimate is that there were about 110,075 people in about 225 communities who participated in subsistence practices to some degree. Of these, about 50,000 were Alaska Native, and about 60,000 were not Alaska Native.

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.

# AFN NEWSLETTER

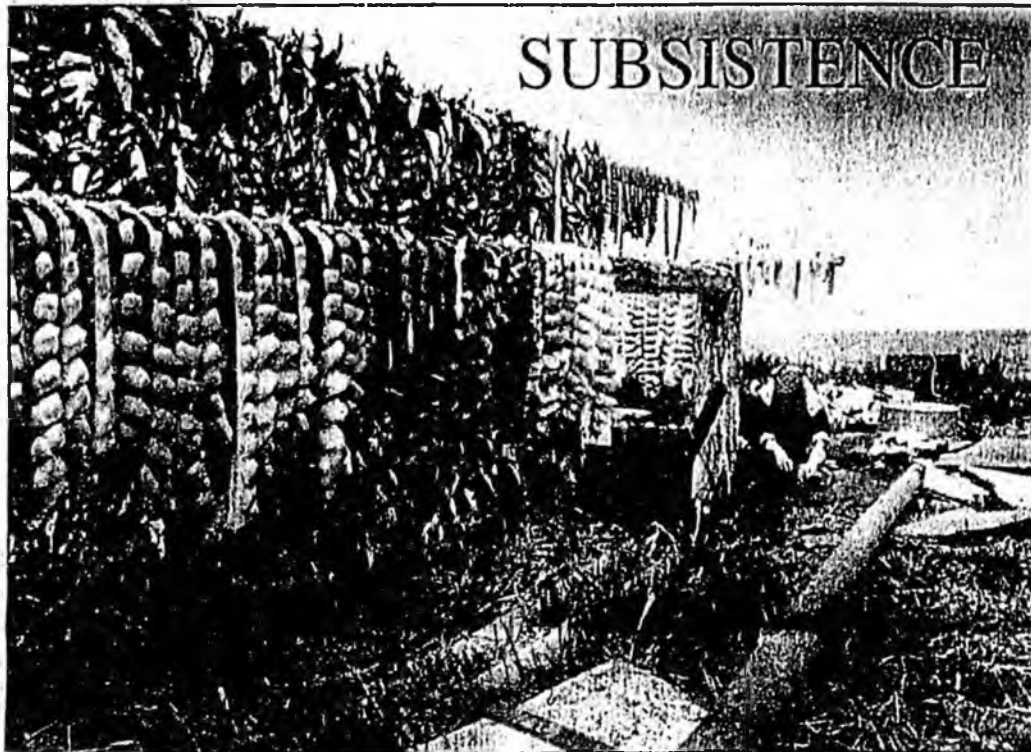
## SPECIAL ISSUE



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.

The case had been started in 1983 by several individuals who had strongly supported the 1982 Ballot Proposition 7 to repeal Alaska's subsistence priority. After Proposition 7 was defeated by the voters, the McDowell suit was filed, claiming that the state subsistence law, originally adopted in 1978 and amended in 1986, was unconstitutional and should be thrown out.

Although the people who brought the suit lost their case in the Superior Court in early 1988, they appealed the decision; and

the Alaska Supreme Court, on December 22, 1989, reversed the decision of the lower court. The Supreme Court held that providing rural Alaskans special subsistence privileges violates Article VII, 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 fishing to "apply equally to all persons similarly situated."

At the State's request, Chief Justice Warren Matthews, the author of the McDowell decision, stayed the effect of the decision until July 1, 1990. Justice Matthews also granted the State and the AFN an extension of time to February 9, 1990 to file petitions for a rehearing of the McDowell case by the Supreme Court. AFN has filed its petition for rehearing, explaining to the court why it should reconsider the case. If rehearing is granted, the Supreme Court will take

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. Again, the state finds itself in a

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 this newsletter.

Alaska Federation of Natives  
411 W. 4th Avenue, Suite 301  
Anchorage, AK 99501

# HISTORY OF SUBSISTENCE

## NATIVE HERITAGE

Subsistence hunting, fishing and gathering activities of Alaska Natives reach back thousands of years in history. Although the methods used to take fish and game have changed over the centuries, subsistence remains an absolute necessity for the economic survival of modern Native families. Moreover, it is the cultural nucleus of Native life.

## NON-NATIVE LAW

The history of subsistence in twentieth century Alaska is the story of how federal laws made by the Congress in Washington, D.C., and Territorial and State laws made by the Legislature in Juneau, have tried to affect these age-old Native practices. Some laws have protected subsistence rights; others have diminished the freedom of Native people to take what they need.

In general, it is the state government which has the legal power and responsibility for most fish and game management. But state action is often influenced - or even determined - by the encircling power of the federal government, which owns 60 percent of the land in Alaska and maintains a special obligation towards Native Americans. (Indeed, the active involvement of the U.S. Congress in subsistence goes back as far as 1902.) Public policy on subsistence is thus a constant back-and-forth power game between the United States and the State of Alaska - with the economy and cultures of Native people at stake.

## PRIORITY USES VS. EQUAL ACCESS

The central issue of subsistence law since Statehood is simple to understand. There are too many people - Native and non-Native - who want to harvest Alaska's fish and game resources. There are not enough animals to let everyone take everything he or she wants. So, the power of state law must decide who gets to take:

- \* which animals (species),
- \* where (game units and fisheries),
- \* when (seasons),
- \* how (methods and means), and
- \* for what purposes (uses).

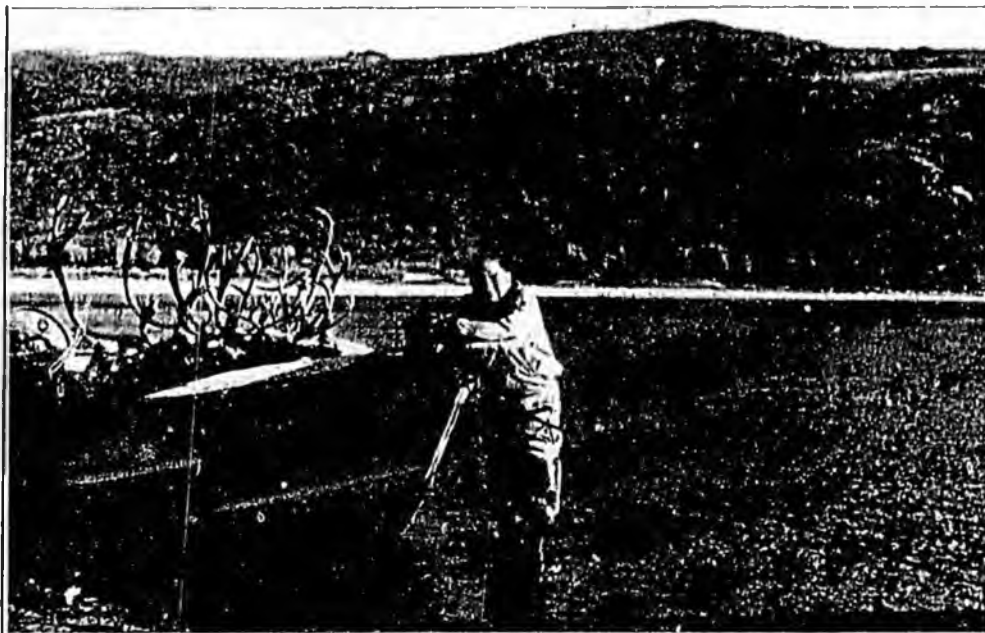


photo courtesy Tommy Ongtooguk/Maniilaq

To do this, the State Legislature must choose one of two alternatives. It can open up any fish stock or game population to all Alaska residents, with no special preference for anyone ("first-come, first-served"), until all available surplus animals are taken; or it can allocate fish and game among defined groups of Alaskans, according to whatever public purposes it decides are most important - as long as it does not violate the Alaska Constitution in doing this.

Between 1960 and 1978, the State Legislature, through the Board of Fish and Game, managed hunting and fishing on the "first-come, first-served" basis. Everyone in Alaska could take these resources until the surpluses were exhausted each year. No one group had priority over another. This caused serious problems for many Native villages, which were impacted by urban, non-Native fishermen and hunters, particularly during the pipeline population boom of the late 1970's.

## ANCSA: A FEDERAL STATEMENT OF CONCERN

As early as 1971, during its consideration of the Alaska Native Claims Settlement Act, Congress was aware that the State of Alaska was not protecting Native village hunters and fishermen. Although section 4(b) of ANCSA extinguished all "aboriginal hunting or fishing rights that may

exist," various settlement bills which had been considered in prior years had contained specific language to protect subsistence. One had proposed setting aside "subsistence use units" of public lands around Native villages, to be administered by the Department of the Interior. Another contained a policy declaration protecting "Native subsistence hunting, fishing, trapping and gathering rights." Neither was included in the final version adopted by the Congress.

In their place, language was inserted in the ANCSA Conference Report (an official document which accompanies a final bill to the floor of Congress, explaining its history, provisions and intent) which stated that Native subsistence interests and subsistence resource lands would be protected. It was assumed that the federal government, through the Department of the Interior, would guarantee this. But Congress expected the state to take similar responsibilities: "The Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives."

## THE 1978 STATE LAW: A SUBSISTENCE PREFERENCE

The decade of the 1970's saw increasing non-Native, urban pressure on subsistence resources around Native communities. By 1978, the

Alaska Legislature had come to a point where it felt it must enact its own law giving a clear preference to subsistence over other uses of fish and game. In part, the Legislature did this in response to hearings and debates in the U.S. Congress over subsistence protections then being considered for inclusion in the Alaska National Interest Lands Conservation Act (which would finally be adopted by the Congress in 1980).

The 1978 state subsistence statute did not define subsistence users as "Natives." Nor did it limit subsistence to "rural Alaska residents," as did ANILCA two years later. What it did was to state that subsistence uses, reflecting the dependency of subsistence hunters and fishermen on limited resources, would have priority over commercial and sport uses. It was unclear about who or where the subsistence users were in Alaska.

## ANILCA: THE CRITICAL FEDERAL LAW

At the same time, the U.S. Congress was involved in several years of policy debate over the Alaska National Interest Lands Conservation Act. This is the law which was to set the major outlines of federal land ownership and management over the 60 percent of Alaska lands which remain owned by the United States. In many ways, ANILCA was the second chapter of ANCSA, completing the legal structure of public land



## History of Subsistence cont.

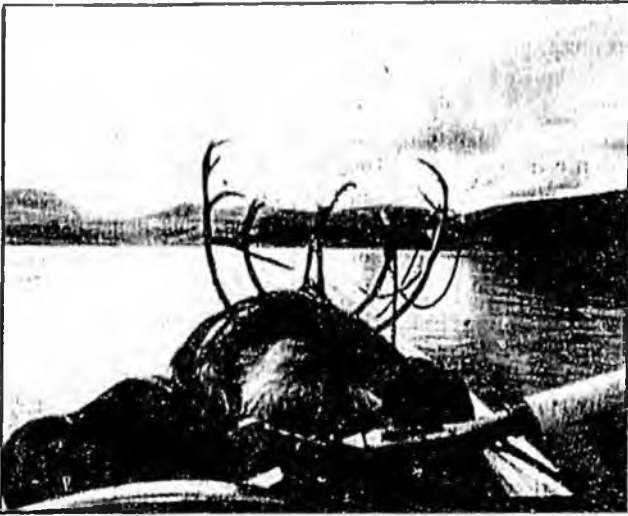


photo courtesy Tommy Ongtooguk/Maniilaq

allocations, purposes and uses. But in addition to its land provisions, ANILCA showed that Congress was determined to adopt clear language protecting subsistence rights.

Here Congress chose to define subsistence users by geography, rather than race. The Senate Committee Report stated that "by its nature, a 'subsistence use' is something done only by Native and non-Native residents of 'rural' Alaska." The Committee included in its definition of rural areas such communities as Bethel, Nome, Kotzebue, Barrow, etc. However, it recognized that the rural nature of communities can change, leaving open the possibility that population growth and economic development might move a community out of the rural category (with its subsistence preference) over time.

The text of ANILCA states that "the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives on the public lands, and by Alaska Natives on Native lands, is essential to Native physical, economic, traditional and cultural existence and to non-Native physical, economic, traditional and social existence." It notes that rural Alaska residents are dependent on subsistence resources, having no practical alternative food supplies. It concludes, therefore, that "it is necessary for Congress to invoke its constitutional authority over Native affairs and its constitutional authority under

the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native residents." Accordingly, "non-wasteful subsistence uses shall be given preference on the public lands over other consumptive uses . . ."

However, Congress also wanted Alaska's fish and game management to be done by one level of government in one unified, statewide system. It hoped to avoid a situation in which the Secretary of the Interior managed fish and game on federal lands and the Alaska Department of Fish and Game managed similar resources, but with different regulations, on state and private (mainly Native) lands. In order to encourage a unified system, ANILCA gave the State of Alaska one year in which to enact its own rural subsistence priority to conform with the new federal law. If it did so, the state would be allowed to manage fish and game on both federal and non-federal lands. This is an excellent example of how the power of federal law - in this case based on the general supremacy of the Congress, the federal ownership of more than half of Alaska and the congressional obligation to Natives - can require a state to take certain actions it might not otherwise have taken. The ANILCA rural subsistence priority on federal lands, with its management incentive for state compliance, is the bedrock on which the system of subsistence law currently rests.

### FIRST STATE COMPLIANCE WITH ANILCA, BY REGULATION

The State of Alaska soon acted to come into compliance with the new federal law and to maintain a single system of management in its own hands. Its own subsistence preference law, previously adopted in 1978, had not specifically limited subsistence uses to "rural Alaska residents." Technically, the state was immediately out of compliance with ANILCA. Rather than amend the 1978 law in the Legislature, it was decided in 1982 that the Board of Fisheries and the Board of Game would jointly adopt a regulation which added the "rural Alaska resident" limitation to the state's definition of subsistence uses. When this was done, it was assumed that the state had complied with ANILCA.

### A POLITICAL ASSAULT ON SUBSISTENCE

The passage of ANILCA and subsequent efforts of the state to comply with its mandated rural subsistence preference had the effect of bringing anti-subsistence interests together in the early 1980's. Since before statehood, various individuals and organizations - often involved in the political defense of sport hunting and fishing activities - had objected to the very idea of a subsistence preference, particularly one that favored either rural residents or Alaska Natives.

In 1982, a coalition of such groups succeeded in placing before the voters an initiative which, if adopted by a majority of those voting in the November general election, would have repealed the state subsistence preference. Organized as Alaskans for Equal Fish and Game Management, this coalition raised thousands of dollars for a media campaign designed to persuade the electorate to vote YES on Ballot Proposition 7.

The opposing group, composed of Native people and organizations, as well as many non-Natives sympathetic to rural subsistence needs, fought back under the banner of Alaskans for Sensible Fish and Game Management. These two groups competed for months - in speeches, debates, newspaper columns, TV ads and voter registration campaigns across Alaska.

In the end, the voters spoke - and resoundingly rejected Proposition 7, keeping a unified system of fish and game management in state hands by retaining the subsistence priority. If the vote had gone the other way, state law would again have been out of compliance with ANILCA's rural subsistence preference, requiring the Secretary of the Interior to assume fish and game management on public lands in Alaska. Rural residents had survived a powerful political assault on the foundation of their village economies and lifestyle.

cont. on page 4



photo courtesy Tommy Ongtooguk/Maniilaq

## History of Subsistence, continued

### SECOND STATE COMPLIANCE WITH ANILCA, BY STATUTE

The "rural Alaska resident" regulation, which the Boards of Fisheries and Game adopted in 1982 to comply with the same standard in ANILCA, worked for three years, until the State Supreme Court decided the Madison v. Alaska Department of Fish and Game case. The court said that the Boards of Fisheries and Game had gone beyond their legal authority in making a regulation limiting subsistence to "rural Alaska residents" - because the Legislature had not specifically stated such preference in its 1978 law. The court threw out the regulation. Again, Alaska was out of compliance with the "rural Alaska resident" subsistence preference in ANILCA and faced the possibility that the Department of the Interior would have to come into Alaska and set up a separate system of fish and game management on federal lands.

To solve this, in 1986 the State Legislature amended the 1978 state subsistence law, limiting subsistence use to hunters and fishermen residing in "rural areas." Now, for the time being, the State of Alaska was back in compliance with ANILCA and continued to manage fish and game statewide.

### THE DEFINITION OF "RURAL"

Although the 1986 amendment made state law conform to federal law, it also contained the seeds of another political controversy. It defined the term "rural area" as a "community or area of the state in which the non-commercial, customary and traditional use of fish or game for personal or family consumption is a significant characteristic of the economy of the community or area." In other words, the state's definition of "rural" depended on the nature of the community - its culture and economy - rather than on mere size of population.

Some people were not happy with this definition. In particular, residents of the Kenai Peninsula - one of the most heavily affected areas of competing fish and game uses - were categorized by this state definition as being non-rural, and there was no priority for subsistence in their area. The Kenaitze Indian Tribe filed suit in U.S. District Court, claiming that the state's definition of "rural" was not in compliance with ANILCA.

The Kenaitze Tribe lost its case in the District Court but won an appeal to the Ninth Circuit Court. The appellate court stated that the word "rural" in the ANILCA "subsistence uses" definition refers to "areas of the country that are sparsely populated, . . . more broadly, rural is the antonym of urban and includes all areas in between cities and towns of a particular size." As a result of this decision, thousands of residents of the Kenai Peninsula, may now be considered "rural residents" and,

therefore, subsistence users. This may result in future management difficulties, particularly in allocations of fish along the coasts and in the rivers of the Peninsula.

A temporary solution in 1989 was a negotiated agreement between the Kenaitze Tribe and the State of Alaska in which the Department of Fish and Game issued an "educational permit" enabling the Tribe to operate one subsistence set net in the Kenai River and to catch a limited number of salmon for subsistence uses. This is only a short-term arrangement and is already being challenged in federal court.

This was the situation of state and federal subsistence laws when, on December 22, 1989, the Alaska Supreme Court handed down its decision in the case of McDowell v. State. The implications of that case are discussed in the article on page one of this newsletter.

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## State & Federal management responsibilities

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) sets out the subsistence rights of rural Alaska residents. Title VIII ensures that the subsistence way of life will continue and that the customary and traditional harvest of fish and wildlife of village residents will change as little as possible.

Title VIII recognizes that rural Alaskans live a lifestyle different from that of Alaskans who live in urban areas such as Anchorage. Rural residents depend on fish, wildlife and plant resources on a daily basis to meet their nutritional needs. It was essential that they not be stopped from hunting, fishing and gathering on the lands and waters in their immediate areas.

If Native culture is to survive the intrusion of non-Native ways into village life, the opportunity for Alaska Natives and other rural residents to continue to hunt and fish must be protected.

Subsistence is also an important part of the economic life of rural communities, with

the dollar-replacement value of the subsistence foods consumed by Native villages exceeding \$40 million per year.

### SUBSISTENCE: The State's Traditional Role

#### Wildlife management

Traditionally, each of the 50 states has been responsible for regulating hunting and fishing within its borders. Since statehood in 1959, hunting and fishing in Alaska have been regulated by the Alaska Department of Fish and Game according to policies set by the Board of Fisheries and Board of Game.

**Exception:** The federal government, rather than the state, regulates migratory bird hunting and marine mammal hunting.

#### Federal management authority

In a case brought by the State of New Mexico, in 1972, the U.S. Supreme Court decided that the United States Constitution allows the federal government to manage wildlife on public lands. However, as a matter of federal policy, Congress has regarded fish and game management as a state responsibility.

Protection of subsistence uses. In 1977, village residents told Congress that the State of Alaska was not regulating hunting and fishing in a manner that adequately protected subsistence uses. In response, Congress included

ANILCA to require that the priority use of fish and wildlife resources on public lands and waters in Alaska.

#### State Advisory Councils

Concerned that village residents were not being provided ample opportunity to participate in the development of State regulations that affect subsistence hunting and fishing, in Title VIII of ANILCA Congress required the State to establish advisory councils to advise the Board of Fisheries and Board of Game on hunting and fishing regulations.

To comply with Title VIII, the State divided Alaska into six geographical regions and established a regional council in each region to hear suggestions from local fish and game advisory committees. Unfortunately, the regional council system needs to be strengthened at the local level.

One difficulty has been the lack of adequate staffing to provide technical and scientific information to council and advisory committee members.

### SUBSISTENCE: The Federal Role

Title VIII of ANILCA guarantees rural residents, when subsistence hunting and fishing on federal lands and waters, the right to use snowmobiles, motorboats and dog teams for transportation. Rural residents **DO NOT** need a permit to use snowmobiles, motorboats and dog teams while subsistence hunting and fishing.

Title VIII of ANILCA requires the federal government to monitor the Board of Fisheries and Board of Game's development of hunting and fishing regulations. Title VIII requires the Secretaries of Interior and Agriculture to advise the State whether the Board are effectively providing the priority for subsistence uses and to report annually to Congress.



# STATE AND FEDERAL OPTIONS: What can be done about the subsistence problem?

The following is an outline of the major legal options which have been mentioned, to date, as methods by which the current subsistence dilemma in Alaska might be remedied:

## A. JUDICIAL REMEDY

The Alaska Supreme Court could reconsider and vacate its December 22, 1989 decision in McDowell v. State. The State of Alaska and AFN have both filed petitions for rehearing with the Alaska Supreme Court asking that the court do so.

Process: Court Action

## B. LEGISLATIVE OR CONGRESSIONAL REMEDIES

1. Amend the Alaska Constitution to allow the Legislature greater flexibility to provide a subsistence priority. Two alternative models which have been suggested are:

a) a rural subsistence priority, which would protect customary and traditional uses of fish and game by Alaska Natives and other rural residents;

b) a Native subsistence priority, which would protect customary and traditional uses of fish and game by Alaska Natives in all locations in Alaska.

Process: The Alaska State Legislature must pass an amendment by a two-thirds (2/3) vote in both the Senate and the House of Representatives. The amendment must then be approved by a majority (50% plus 1) of the voters. Also, in the case of a constitutional amendment that provides a Native subsistence priority, the U.S. Congress would have to amend Title VIII of ANILCA to conform to the amendment and the Alaska Legislature would have to enact a state law to implement the amendment.

2. Amend Title VIII of ANILCA to conform to the Alaska Constitution, as interpreted by the Alaska Supreme Court. Two alternative models which have been suggested are:

a) an individual test of income;

b) an individual test of dependency, availability of alternative

resources, and traditional uses.

Process: The U.S. Congress would have to amend Title VIII of ANILCA, dropping the existing rural subsistence priority and allowing a different priority to be implemented by the state on public lands and waters in Alaska. In addition, the Alaska State Legislature would have to enact a subsistence law implementing such a priority.

3. Amend Title VIII of ANILCA to preempt totally the Alaska Constitution on all lands and waters in Alaska.

Process: The U.S. Congress would have to take action to amend Title VIII of ANILCA.

4. Amend ANILCA to repeal Title VIII.

Process: The U.S. Congress would have to take action to repeal Title VIII of ANILCA.

## C. IF NO REMEDY IS POSSIBLE BY JULY 1, 1990

1. The Secretary of the Interior exercises his responsibilities under Title VIII of ANILCA.

a) The Secretary could directly regulate the taking of fish and game on public lands and waters, with the geographical extent of his jurisdiction still unclear.

b) The Secretary may have authority to contract fish and game management functions on public lands and waters to Native contractors, pursuant to the Indian Self-Determination Act.

c) The Secretary could require the State to regulate the taking of fish and game on public lands and waters, in conformity with the U.S. Congress' policy goals enacted in Title VIII of ANILCA

2. The Secretary elects not to exercise his responsibilities under Title VIII of ANILCA. Alaska Natives would be compelled to sue the Secretary, requesting the United States District Court to compel him to implement Title VIII.

## AFN'S POSITION 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:

- 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
- 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.

## Interior Secretary Lujan, AFN discuss federal management responsibilities.

Following the Alaska Supreme Court's decision in *McDowell v. State*, and the Court's stay of its decision until July 1, 1990, AFN asked Secretary of the Interior Manuel Lujan to describe the Department's plan for implementing Title VIII of ANILCA, if no legal solution is reached between Title VIII and the Supreme Court's decision prior to July 1.

On January 15, 1990, AFN President Julie Kitka wrote to Secretary Lujan, reviewing Title VIII's preemption of State fish and game regulation on public lands. She also noted that, since the State of Alaska's voluntary compliance with ANILCA has been effectively prohibited by the *McDowell* decision, the Department of the Interior must begin implementing Title VIII no later than July 1.

On January 24, AFN representatives met with Secretary Lujan. Following this meeting, the Secretary sent a letter to Ms. Kitka, reprinted here. In her response, she reiterated AFN's commitment to work with Governor Cowper to resolve the subsistence conflict, noting, however, that "if, despite our collective efforts, on July 1 the State cannot continue to implement Title VIII, the Title imposes a non-discretionary duty on the Department of the Interior to implement the policy in the State's stead."

AFN has requested a follow-up meeting with Secretary Lujan in late February or early March to discuss the State's efforts to find a solution and the Department of the Interior's future plans.



THE SECRETARY OF THE INTERIOR  
WASHINGTON

January 10, 1990

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

Dear Julie:

Thank you very much for your letter of January 15, 1990, and your January 24th visit with me on your concerns involving the future of the State subsistence program in light of the State Supreme Court decision in *McDowell v. State of Alaska*.

As you know, this Department has previously certified the State's subsistence program under Title VIII of the Alaska National Interest Lands Conservation Act. It is my hope that, by July 1, 1990, the State will be able to devise a solution to the issues raised in the *McDowell* decision to permit it to continue to administer the subsistence program consistent with the Act. You may be certain that this Department would give its full consideration to any timely State effort to resolve this problem.

Again, thank you for your input on this most important issue for Alaska.

Sincerely,

cc: The Honorable Steve Cowper

### Alaska National Interest Lands Conservation Act

Sections 801-804 of Title VIII of ANILCA, reprinted here, illustrate Congress' recognition of the importance of protecting subsistence uses of fish and game by rural residents of Alaska. Title VIII implements this important congressional policy by establishing a rural subsistence use hunting and fishing priority.

#### *Title VIII -- Management & Use*

##### *Findings*

SEC. 801. The Congress finds and declares that—

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

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

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

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

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

##### *Policy*

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

(1) consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for each unit established, designated, or expanded

by or pursuant to titles I through VII of this Act, the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so.

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

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

##### *Definitions*

Sec. 803. As used in this Act, the term "subsistence uses" means the customary and traditional uses 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 by-products of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. For the purposes of this section, the term—

(1) "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses—

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

##### *Preference for Subsistence Uses*

Sec. 804. Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria:

(1) customary and direct dependence upon the populations as the mainstay of livelihood;

(2) local residency; and

(3) the availability of alternative resources.

### **AFN Board actions on subsistence:**

AFN is committed to keeping Native people informed of the on-going developments of the subsistence issue. Subsistence remains the absolute necessity for the cultural and economic survival of Native families. Therefore, threats to the subsistence way of life demand the serious attention of all Native people.

With the critical importance of this issue in mind, the AFN Board of Directors met in Juneau on January 31-February 1 to discuss the current situation, and all available options. The result was a clear position statement, reprinted on page 5, as well as the following actions:

- \* The AFN Board authorized the filing of a petition for rehearing before the Alaska State Supreme Court in the McDowell case. The petition was filed by AFN's counsel on February 9, 1990.
- \* The AFN Board endorsed the request to Secretary of Interior Manuel Lujan to fulfill his obligations under Title VIII of ANILCA, provided a solution is not reached by July 1, 1990.
- \* The AFN Board went on record opposing any attempt to repeal Title VIII of ANILCA.
- \* The AFN Board authorized the AFN Legislative Committee to continue working on the subsistence issue, including all interested Native organizations in meetings on the subject.
- \* The AFN Board directed the AFN Legislative Committee to review all options consistent with AFN's policy.
- \* The AFN Board directed staff to convene a special AFN Board meeting to focus specifically on subsistence, no later than 30 days prior to the end of the Alaska State Legislative Session.

The process to find a suitable solution to the current situation has just begun. It will take all our best efforts, working together, to accomplish our goals. AFN and its member organizations are committed to protecting Native subsistence activities in the most effect and responsible way.

### **Gov. Cowper on subsistence:**

Governor Steve Cowper and members of his administration met at length with the AFN Board of Directors in Juneau on February 1, 1990. Following productive discussions of various options to solve the current problem of subsistence law in Alaska, Governor Cowper stated:

*"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 Supreme Court has dropped in our laps. But to find an answer, we've first got to reach a consensus with the Native community about what will work best for those with a personal stake in subsistence."*

### **Sen. Stevens on subsistence:**

In an address to a Joint Session of the Sixteenth Alaska Legislature on January 17, 1990, U.S. Senator Ted Stevens emphasized the readiness of the Alaska Congressional Delegation to work with the State on remedies for the subsistence situation. He then responded to a question from the floor concerning the difficulties of Congressional action:

"My fear is that, if we are required, as Alaska's Congressional Delegation, to obtain enactment of legislation to deal with this . . . we will face the necessity of getting a bill through. Added to that bill will be several subjects: the closure of ANWR, the transition of Tongass into a non-productive timber area. We will lose our conventional access to federal lands — particularly in parks and wildlife refuge areas — that we obtained under the 1980 Act . . . 80 percent of the goals we attained under the 1980 Act . . . are going to be disappearing if you have to go to Congress and, in effect, amend the 1980 Act to deal with this single issue.

"I think the subsistence question can be dealt with here at home, and it should be. In my judgement, it is possible that there is still the avenue that has not been pursued . . .

"I would urge you not to think that the federal solution is the one that is easiest — because we will lose more than we gain. Even the Native people would lose more than they gain, because many of those rights that would be curtailed are rights that are utilized intensively by people in rural areas."

### **Sen. Murkowski on subsistence:**

The following statement is excerpted from Senator Frank Murkowski's remarks to the Alaska State Legislature on January 18, 1990:

*"The State must again face this difficult problem. Our plan must: provide for the needs of those Alaskans critically dependent upon fish and game for their nutritional and cultural needs; maintain continuity of state management on federal lands as well as on State and private lands; and meet the demands of sport and commercial users.*

*We can meet this challenge by working together with an abiding respect for the rights of all citizens and a deep concern for the welfare of current and future generations of fellow Alaskans.*

*This issue has the potential to carve ugly divisions among interest groups in our State. If we allow this to occur, all Alaskans will suffer. However, I think we have the ingenuity, the commitment and the capability to work this issue out. To resolve this problem will take cool heads, and it can not be expected that any of us can resolve this problem today. I will be traveling around the State, meeting with interested Alaskans who have different points of view on this issue, in the hopes that we can develop a meaningful consensus."*



## **Proposed legislative solutions:**

In the past month three bills have been introduced in the Alaska Legislature to deal with the conflict between the Alaska Constitution, the State subsistence law and Title VIII of ANILCA. **HOUSE RESOLUTION NO. 74**, sponsored by Rep. George Jacko of Pedro Bay, amends the Alaska, Constitution to allow the Legislature to enact a subsistence priority that complies with Title VIII of ANILCA.

**SENATE CONCURRENT RESOLUTION NO. 39**, by Sen. Jay Kerttula of Palmer, establishes a Commission to review the legal situation and identify options available to the Senate to resolve the issue.

**HOUSE BILL NO. 415**, sponsored by Rep. Ramona Barnes of Anchorage, amends the Alaska subsistence law to change the definition of which hunters and fisherman qualify for the subsistence priority from "rural residents" to "subsistence users." The bill then bases the identification of "subsistence users" on two criteria: 1) local residency, 2) direct dependency on subsistence resources - an annual income below the national poverty level (\$10,000 or less a year).

All three bills are currently in various committees of the Legislature for review.

### ***HJR NO. 74 - Introduced by Rep. Jacko***

This is an example of what a constitutional amendment might look like. As AFN continues its work with Governor Steve Cowper and the Legislature leadership technical language for a constitutional amendment will probably change.

### ***SAMPLE CONSTITUTIONAL AMENDMENT***

**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.

\* Section 2. The amendment proposed by this resolution shall be place before the voters of the state 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.



### **RESOURCE PEOPLE WHO CAN HELP YOU UNDERSTAND WHAT'S GOING ON:**

- \* *Your Regional Non-profit Association*
- \* *Alaska Federation of Natives (274-3611)*
- \* *Rural CAP, Subsistence Division, Bob Polasky or Eric Smith (279-2511)*
- \* *Alaska Legal Services (276-6282)*
- \* *Bureau of Indian Affairs, Agency offices or Juneau Area Office (586-7177)*
- \* *Alaska Department of Fish & Game, Commissioner's Office, Norman Cohen (465-4100)*
- \* *Alaska Department of Fish & Game, Subsistence Division, Steve Behnke or Ethel Lund (465-4147)*

*AFN Newsletter - Janice Ryan, Editor  
For additional copies, call 274-3611.*