

**Subsistence**

**(Special  
Session)**

# AVCP

Association of Village Council Presidents  
P.O. Box 219 • Bethel, Alaska 99559 • Phone 336-5512

RECEIVED  
MAY 14 1990

May 10, 1990

GOVERNOR'S OFFICE

Governor Steve Cowper  
P.O. Box A  
Juneau, Ak. 99811

Dear Governor Cowper:

The Legislature has recently adjourned without addressing the subsistence issue. Lack of action, I am sure, may have created vacancies within the Alaska Department of Fish and Game.

If the vacancies have been created and the Legislature does not address the subsistence issue, we are requesting that you consider having the funds BRU'd to AVCP, so that we can use the funding in administering a contract with USFWS in management of resources on Federal lands.

We are presently preparing our contract proposal to USFWS - DOI for the management of resources.

Thank you for your assistance.

Sincerely,

ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS  
Willie Kasayulie, Chairman

  
Myron P. Naneng, President

MPN:cmh



Post-It™ brand fax transmittal memo 7671		# of pages	3
To	Gov. Cowper	From	ANNA Phillip
Co.	Gov's Office	Co.	ICC
Dept.		Phone #	258-6917
Fax #	463-3454	Fax #	276-4330

## INUIT CIRCUMPOLAR CONFERENCE

### INUIT CIRCUMPOLAR CONFERENCE PRESS RELEASE

**TO:** Newspapers, Television, Radio Stations, and Interested Citizens.

**FROM:** Anna Phillip, Special Assistant - ICC Alaska Office

**DATE:** May 14, 1990

**RE:** ICC statement on subsistence issue in Alaska

Enclosed is the Inuit Circumpolar Conference (ICC) statement on subsistence issue in Alaska. The ICC Executive Council made this statement during the meeting in Barrow, Alaska, May 10 - 12, 1990.

Attached is the names you can contact for more information.

#### HEAD OFFICE:

650 32ND AVE SUITE 404  
LACHINE QUEBEC H8T 1Y4  
TEL (514) 637-3771  
FAX (514) 637-3146

#### REGIONAL OFFICES:

ALASKA 429 D Street Suite 202 Anchorage, Alaska 99501 tel (907) 258-6917 FAX (907) 276-4330  
GREENLAND P O Box 204 DK 3900 Nuuk, Greenland tel (011) 299-23632 FAX (011) 299-23001  
CANADA 170 Laurier Street Suite 510, Ottawa, Ontario K1P 5V5 tel (613) 563-2642 FAX (613) 234-1991

INUIT CIRCUMPOLAR CONFERENCE  
STATEMENT ON THE  
ALASKA SUBSISTENCE  
ISSUE

The Executive Council of the Inuit Circumpolar Conference (ICC), the international organization representing Inuit of Greenland, Canada, and Alaska met from May 10 - 12, 1990 in Barrow, Alaska.

During the meeting Rep. Eileen MacLean addressed the Council on the Alaskan subsistence issue.

ICC is deeply concerned by the failure of the State of Alaska to bring the subsistence priority law into compliance with the Alaska National Interest Lands Conservation Act (ANILCA).

It is the position of the ICC that the priority of indigenous subsistence rights must be recognized and protected. With regard to non-subsistence utilization, it is appropriate that after subsistence needs have been met, and subject to conservation requirements, any harvestable surplus should be available for other uses. To achieve these management objectives in the absence of appropriate state legislation and regulations, ICC recognizes and supports the right of the Alaskan tribes and Native organizations to contract with the federal government to cooperatively manage the resources on which they depend.

Having failed to resolve the present crisis and to avoid further jeopardizing Alaskan subsistence, the State of Alaska should not enter into any federal contract for management responsibilities unless and until the current legal impasse has been resolved to the satisfaction of Alaskan Natives.

It is the view of the ICC that tribal and Native organizations are in the best position to negotiate cooperative management agreements in the long-term interest of the resources and of subsistence users who depend on them.

The Alaska Federation of Natives has called for the ultimate recognition of a subsistence priority for Alaska Native members and for the affirmation of the authority of Alaska tribes to manage and regulate subsistence activities by their members. The ICC strongly supports this AFN priority and calls on the State of Alaska to work with tribal authorities and Native organizations to seek a lasting solution which recognizes and supports Alaskan subsistence.

Page Two  
ICC Subsistence Statement

For more information contact the following ICC representatives.

Mary Simon (514) 637-3771 ICC Head Office,  
ICC President Canada

Edna MacLean (907) 465-2800 Work Phone  
Alaska Vice President

Charlie Johnson (907) 443-5592 Home Phone  
Executive Council

# NORTH SLOPE BOROUGH

OFFICE OF THE MAYOR

P.O. Box 69  
Barrow, Alaska 99723

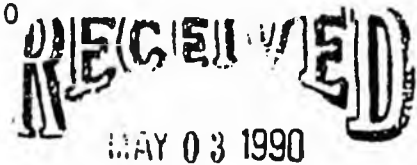
Phone: 907-852-2611

George N. Ahmaogak, Sr., Mayor



April 27, 1990

Walter O. Stieglitz  
Regional Director  
U.S. Fish and Wildlife Service  
1011 E. Tudor Road  
Anchorage, AK 99503



GOVERNOR'S OFFICE

Dear Mr. Stieglitz:

Thank you for including the North Slope Borough in your call for comments in the event the Federal Government takes over the management of fish and wildlife resources on Federal lands in the State of Alaska. I commend the U.S. Fish and Wildlife Service for taking these steps to prepare for that possibility.

I would like to restrict my comments on the lands within the North Slope Borough which would be affected by the possible takeover by the federal government on the management of fish and wildlife resources in Alaska if the State is unable to comply with the terms of ANILCA by July 1, 1990. Under ANILCA these would include national wildlife refuges, national parks, national forests and other lands under the auspices of the Federal Government.

The North Slope Borough encompasses an area of approximately 88,000 square miles, and within its jurisdictional boundaries lies the Arctic National Wildlife Refuge, National Petroleum Reserve - Alaska, Gates of the Arctic National Park and Preserve, Bureau of Land Management CAMA Lands (which includes some of the Haul Road Corridor) and the Teshekpuk Lake Special Study Area. These lands under federal mandates cover a lot of area in the North Slope region and the North Slope Borough asks that careful consideration be given when and if the Federal Government does take over management of these federal lands for the subsistence hunting and fishing of the natural renewable resources in the State of Alaska.

Walter O. Stieglitz  
April 27, 1990  
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The above mentioned lands have been used by local residents for subsistence hunting and fishing from generation to generation and the North Slope Borough would not like to see that continued use disrupted in any way.

The natural renewable resources are plentiful in these lands and the populations of the various species utilized for subsistence purposes by local residents are not in any danger of being diminished in the near and long term. The North Slope Borough Department of Wildlife Management has had good working relationships with both the State and Federal agencies on the management and research of these resources in the past and they should be included in all phases of the probable takeover process.

Most of the resources taken for subsistence purposes by local people of the North Slope are for personal consumption and the by-products then used to create clothing and handicraft either for personal use or for sale to other people within the Borough and outside. We also would not like to see any restrictions placed on the transportation of these resources within and outside the borough. We have people who travel outside the borough who in one way or another utilize subsistence resources while they are away from the borough.

I would like to cite an example of the kind of problem we may face if that concern is not expressed to the Service. Several years ago, a resident of the North Slope Borough had to spent quite a bit of time in Anchorage to be with his daughter who had a terrible accident. She was in critical condition for several weeks and the man in question wanted to be with her until he know that she would survive. While in Anchorage, he craved for native food so he asked his relatives to send him some geese and muktuk. Somehow the U.S. Fish and Wildlife Service Enforcement office was tipped off and when the man went to get his package he was cited on the spot for a violation of federal law regarding migratory birds. He was ordered to appear in district court to face these charges. After having been through a humiliating experience the charges were later dropped. This man was put through a very unnecessary and humiliating ordeal which to this day he shudders even when he thinks about it. No person who wants to eat food he has been raised with or craves for should ever again be put through this process. The transport of subsistence foods to other people within and outside the borough must be allowed if the Federal Government should take over the management of subsistence resources in their lands.

The question of reasonable access should also be addressed and the local people who would be impacted must have the opportunity to

Walter O. Stieglitz  
April 27, 1990  
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be heard by Federal personnel at their own villages and areas where they do most of their subsistence hunting and fishing. There have been instances in the past where local people were denied reasonable access to traditional hunting areas located within Federal lands. If they were allowed access in Federal lands, it was usually restricted to very narrow easements which we believe were unreasonable and arbitrarily laid out without input from the local people. The animals hunted for subsistence purposes wouldn't know an easement if they crossed one and would not stay on it anyway and the people who hunt them would be reluctant to stray from the easements because of their unwillingness to break any laws. We believe these access problems only apply to summer travel since there are few or no restrictions on winter travel on Federal lands. Most people who hunt during the summer months do so with all terrain vehicles or boats in navigable waters. The use of all terrain vehicles should be allowed in the summer months if travel by any other means is not possible. We know there are some hurdles to go through if this was allowed but I know that local people would be willing to talk to Federal personnel about this mode of travel.

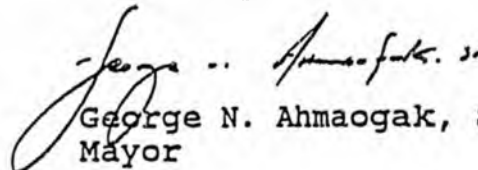
If the Federal Government did take over the management of subsistence resources on their lands, the North Slope Borough, as a home rule government, must be given the opportunity to contract with the Federal Government on the management of fish and wildlife resources within its jurisdictional boundaries as provided for in ANILCA. We are not saying that we are willing to do so at this time but this avenue must be kept open at all times during the life of federal management of our fish and wildlife resources. If we were to contract with the Federal Government on some or all aspects of managing fish and wildlife resources within the borough, we would expect to receive enough financial resources to do a good job.

The Federal Government must make sure that all villages within the North Slope Borough have the opportunity to participate in this rule making process if it has any chance of succeeding. Too many times in the past, the Federal Government has initiated changes in the way things are done in rural Alaska with little or no input from the people who are most impacted. These changes wreck havoc on the lives of these people and they have no ways or means to reverse the changes. The Federal Government has a chance to do something right for a change and that will take a lot of time and effort on your part. We understand that this management process is a temporary measure and that the Federal Government will review the procedures if it happens that the State of Alaska does not make a permanent change to comply with the federal laws.

Walter O. Stieglitz  
April 27, 1990  
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I thank you again for including us in the process and if you have any questions about our position, please contact Mr. Benjamin P. Nageak, Director of the North Slope Borough Department of Wildlife Management at 852-2611, ext. 240.

Sincerely,

  
George N. Ahmaogak, Sr.  
Mayor

cc: Honorable Governor Cowper  
Senator Al Adams  
Representative Eileen MacLean  
Dan Fauske, C.A.O.  
Warren Matumeak, Director, Planning  
Dennis Roper, Federal Affairs  
Ben Nageak, Director, Wildlife Dept.

Donald Bremner  
2150 C Lawson Creek Road  
Juneau, Alaska 99824  
Phone (907-364-2607)

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GOVERNOR'S OFFICE

May 9, 1990

Mr. Manuel Lujan, Secretary  
U.S. Department of Interior  
Interior Building, C Street N.W.  
Washington, DC 20240

RE: RECOMMENDATIONS TO MANAGEMENT OF FISH AND GAME ON FEDERAL LANDS  
IN ALASKA BY THE DEPARTMENT OF INTERIOR.

Dear Mr. Lujan;

My name is Don Bremner, I was born and raised in Yakutat Alaska. Following are my recommendations regarding Federal Management of Fish and Game in Alaska on Federal lands. My recommendations are in two parts, WHAT NOT TO DO and WHAT SHOULD BE DONE by the Department of Interior regarding this management issue.

1. WHAT NOT TO DO

a. Donot contract fish and game management out to the State of Alaska or their agents.

JUSTIFICATION

The State of Alaska has had every legal, political, and administrative opportunity to implement proper measures to manage the resources in Alaska, but, they have failed in their government responsibility to the people and resources involved. The State of Alaska is not now a part of the solution, but, a part of the problem. Therefore, it would not be a solution to allow the State of Alaska to attempt to correct their errors under the veil of Federal Authority and programs.

b. Donot contract fish and game management to native organizations or the Bureau of Indian Affairs.

JUSTIFICATION

In order to manage fish and game requires people, time and money.

Both the native organizations and the Bureau of Indian Affairs lack all three of those necessary items of resource management. Therefore, it would not be a solution to contract fish and game management to either entity.

c. Do not reduce any valid existing right of native resource use or reduce any harvest or escapement goal of fish and game resources.

#### JUSTIFICATION

Native resource users have established uses which have withstood the test of time and nature. Native uses are done in seasons of harmony with the resource and with their native way of life. The Department should take this opportunity to enhance the native ways of resource use with harvest and escapement goals.

#### 2. WHAT SHOULD BE DONE BY THE DEPARTMENT OF INTERIOR

a. Prior to taking over management the Department should make public the laws and authority that will apply to the overall management program.

b. Prior to taking over management the Department should make public all regulations that will apply to fur, fish, game and fowl uses.

c. Prior to taking over management the Department should make public maps of all Federal lands which will be subject to the management program.

d. Prior to taking over management the Department should make known the names, addresses, and locations of all management offices and agents responsible for the management programs, regulation implementation and enforcement.

e. Finally, prior to taking over management the Department should identify the Courts of Jurisdiction responsible for adjudication of claims and cases that will arise as a result of this new program.

#### 3. REGULATIONS SHOULD ADDRESS THE FOLLOWING ACTIVITIES

There are basic components to any resource management program such as program policies that embody the philosophy behind management thinking; Congressional Acts of Authority; Statutes; Codes and Regulations. Current Federal take-over regulations should address the following;

1. Administration operations and procedure.

a. Resource management planning and public participation procedure.

- b. Public relations management.
- c. Inter-government coordination and relations procedure.
- d. Land use planning and procedure.
- 2. Fish and game regulations for Alaska.
  - a. Wildlife management concepts and principles.
  - b. Wildlife management harvest and escape principles.
  - c. Wildlife management conservation and preservation techniques.
- 3. All federal take-over programs should include the following.
  - a. Titles of programs.
  - b. Purposes of programs.
  - c. Authority of programs.
  - d. Applicability and scope of programs.
  - e. Definitions of legal and common use terms.
  - f. Program policies.
- 4. Federal take-over program structure should include the following.
  - a. Program diagrams and charts.
  - b. Local advisory committees.
  - c. Regional fish and game councils.
  - d. Federal boards of fisheries and game.
  - e. Federal monitoring procedures.
  - f. Park and monument subsistence commissions.
  - g. Cooperative federal agency management guidelines.
  - h. Federal subsistence board and division or department.
- 5. Federal take-over regulations should include the following.
  - a. Licenses, permits, harvest tickets, tags and fees.
  - b. Rural and urban uses.

- c. Aircraft uses.
  - d. Penalties.
  - e. Subsistence hunting and trapping.
  - f. Methods of taking wildlife.
  - g. Unlawful methods of trapping.
  - h. Unlawful methods of hunting and fishing.
  - i. Localized restrictions by region.
  - j. Marked or tagged wildlife.
  - k. Wildlife as animal food or bait.
  - l. Feeding of wildlife.
  - m. Emergency taking of wildlife.
  - n. Taking of wildlife in defense of life or property.
  - o. Endangered species.
6. Regulations of subsistence should include the following.
- a. Subsistence uses permitted.
  - b. Types of legal gear.
  - c. Unlawful possession of subsistence species.
  - d. Regional programs that include descriptions, seasons and periods, lawful gear and specifications, areas closed and closures, subsistence permits, marking of subsistence take, possession and bag limits.
7. Regulations should include the following procedures.
- a. Procedures for annual regulations.
  - b. General provisions.
  - c. Purpose and scope of annual regulations.
  - d. Regulation development.
  - e. Seasons, bag limits and possessions.
8. The Yakutat region to remain separate and distinct from other

areas.

a. The Yakutat region should be from Cape Suckling to Cape Spencer for management purposes.

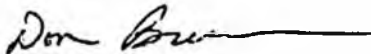
b. A federal agent should be designated for the Yakutat region and stationed in Yakutat.

c. All recommendations herein should apply to the Yakutat region.

d. One exception to any common regulations applied statewide is the fact that aircraft use should be allowed in the Yakutat region along with other existing motorized uses.

This concludes my comments and recommendations regarding Federal take-over management of fish and game resources in Alaska. I look forward to hearing from you and participating in local meetings here in the State of Alaska.

Sincerely,



Don Bremner

cc/ The Honorable Steve Cowper, Governor of Alaska  
Ms. Julie Kitka, President of the Alaska Federation of Natives



May 9, 1990

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MAY 11 1990

GOVERNOR'S OFFICE

Mr. Walter O. Stiglitz  
Regional Director  
Fish and Wildlife Service  
U.S. Department of the Interior  
1011 E. Tudor Road  
Anchorage, Alaska 99503

Re: April 20, 1990 Notice of Intent  
Regarding Title VIII of ANILCA

Dear Mr. Stiglitz:

We are responding to the Fish and Wildlife Service (USFWS) request for public input on how Title VIII of ANILCA should be implemented on public lands in the event the State of Alaska can no longer provide for a subsistence priority. Sealaska Corporation has been extremely concerned about those dynamic changes occurring in fish and wildlife resource management. They have been created, in part, by ineffective administration and ineffective rule making, which has resulted in court intervention and involvement in Alaska fish and game resource management. The inability of the Alaska Legislature to come to agreement before the end of the 1990 session concerning how to begin the process of bringing the State back into compliance with ANILCA only serves to demonstrate how factionalized the public is regarding the issue.

The uncertain nature of the situation and the short time frames make it necessary for your agency to begin to develop interim regulations which will impact subsistence uses on public lands managed by the National Park Service, the Bureau of Land Management, the Forest Service, the Air Force, the Army, and various other land managing agencies as well as your own agency. Because most of the Southeast region is under federal ownership and management, there has been much interaction. Sealaska would like to take this opportunity to share its insights concerning the land and resource management agencies and their apparent "attitudes" concerning subsistence.

In Southeast, the primary federal agency having the authority to manage public lands is the Forest Service. The USFS and Sealaska differ on the priority to be given to subsistence pursuant to ANILCA. Sealaska's position is that ANILCA requires that subsistence must be given the priority over all other consumptive uses of the forest. This, in turn, would result in the "least adverse impact possible on rural residents who depend upon subsistence uses . . . consistent with . . . the purposes for each unit established, designated or expanded by or pursuant to Titles II through VII of ANILCA".

Our involvement in the Tongass Land Management Plan (TLMP) Revision process has enabled us to determine that the current forest management regime places subsistence in a secondary role to all other forest uses and places the burden of proof on the subsistence users to establish how they are adversely affected by USFS activities rather than on the agency to meet the terms and conditions of ANILCA. Neither the new planning process nor TLMP Revision will correct this.

Our concern is heightened by an ongoing resistant attitude on the part of the Forest Service. We have continued to have dialogue with them concerning a more integrated approach to planning and managing for subsistence - without result. All this despite the fact that Native people have organized and channeled their input in order to help agencies to manage land and resources in recognition of the ANILCA subsistence mandates and to prevent further deterioration of their subsistence rights.

Section 810 of ANILCA mandates that a federal agency having primary authority over federal public lands must effect the subsistence priority in land use decisions. Yet in the case of the Forest Service, that mandate is weakened by administrative interpretations under which the agency simply evaluates proposed activities to determine if a significant restriction to subsistence opportunity will occur. Of course, 810 guidelines are written in such a way that they can proceed even if it is determined that the activity poses a significant restriction to subsistence uses *as long as the activity is consistent with the intended use of the area (management prescription)*.

In Sealaska's opinion, to effectively manage subsistence (as well as other consumptive uses) in the Tongass, the USFS must investigate and identify subsistence in the forest prior to making any determinations of use of the forest. Only after the USFS has determined the subsistence uses and area, and only then, can it make section 810 determinations. The burden of proof should not be on the rural residents to establish how they are adversely affected, but on the federal agency to meet the terms and conditions of section 810(a)(1)(3). This process must be clarified in any federal management regime.

Mr. Stiglitz - Sealaska is extremely concerned about the state regional council system. The role of the regional councils, as envisioned by ANILCA, is critical to both the federal management and state regulatory processes. In addition to providing recommendations to the state boards, ANILCA requires that the regional councils and local advisory committees be permitted to influence the decisions of all other agencies having authority over public lands where agency decisions could significantly affect subsistence. This is not occurring. The Forest Service is preparing to make major decisions regarding subsistence in the Tongass without the participation of the regional council system.

Furthermore, the National Park Service will not even recognize subsistence uses as legitimate. In the Glacier Bay situation, the National Park Service has interpreted federal law in such a manner that the outcome is directly opposite of what was intended. They are disallowing any subsistence uses in the Glacier Bay area. When Glacier Bay was brought into protected status in the 1920's, the federal government assured the local residents that they would be allowed to use the lands as they had historically used them. However, the restriction of Native subsistence activities began almost immediately, through bans on fish, gathering of seagull eggs and seal hunting. More recently, the State Board of Fisheries expanded subsistence permits to include certain salmon streams emptying into the Glacier Bay, in recognition of the long term traditional and customary ties that the Hoonah Tlingits have to the area. The National Park Service staunchly

refused to recognize the state permits. The battle has become jurisdictional with the Hoonah people paying the price.

In your notice, the Secretary has expressed an intent to work in close cooperation with the State in order to minimize disruption to fish and wildlife users and to historical state management of resident fish and wildlife. Southeast Natives, through the Southeast Native Subsistence Commission and the General Assembly of the Tlingit and Haida Indian Tribes of Alaska, had also agreed to work cooperatively with the Alaska Federation of Natives and the State of Alaska for an amendment to the state constitution. We took this position in the interest of unifying Native people to achieve a common goal - the protection of existing rights - and in the interest of working out our differences with non-Native friends and neighbors. We took this position to support single resource management on public lands and to keep the management authority with the state and closer to home. It is our belief that dual management would only complicate an already complicated resource management system and process. We have not changed our opinion. However, now that this effort has failed, we assume that USFWS will move ahead with plans which, in part, involve use of the state regulatory and regional council system.

Your statement regarding your intent to address the regional council system only in the event that you have to promulgate permanent regulations leads us to believe that you will use the existing regional council system to meet your agency's regional participation mandate. This concerns us since we have had the opportunity to examine the system as it operates in Southeast Alaska. Southeast conditioned its support for state retention of management authority on whether the State agreed to review and revise, as necessary, state subsistence statutes, policies, regulations, programs and practices in order to establish an overall subsistence management regime that is responsive to the true needs of Alaskans. We have attached a copy of the *Summary Recommendations and Conclusions* of Sealaska's white paper study which concluded that the Board of Fisheries and the state advisory committee/regional council system were out of compliance with ANILCA.

Federal oversight has become inevitable at least for an interim period. In one sense it may be an opportunity for the Secretary to ensure an across the board application of subsistence management procedures by all appropriate federal land management agencies. Secretary Lujan indicated the desirability of uniform procedures at the recent AFN Summit Conference in Anchorage. Sealaska strongly encourages this whether the state recaptures management authority or not.

Sealaska agrees with the commitment evidenced by the USFWS statement in the Notice: *"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."* We also like the manner in which you have listed the mandates which must be met through any promulgated regulations. They are simple to understand and straight forward and are a good place to start from. Those mandates:

To ensure the maintenance of healthy fish and wildlife populations.

To 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; or 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.

To provide for nonwasteful subsistence uses of fish and wildlife and other renewable resources as priority consumptive use of such resources on public lands, and when it is necessary to restrict consumptive uses.


To provide reasonable access to subsistence users as well as for a system of regional participation.

The subsistence priority will not be based on race, color, or creed.

In closing, we strongly encourage you listen and talk to those people that will be most affected by your decisions - Native and rural subsistence users. The consequences may be an unacceptable resource management package if subsistence users concerns are ignored, which may, in turn, invalidate federal government efforts. We stand prepared to assist you to this end. Thank you for your consideration.

Sincerely,

SEALASKA CORPORATION



Robert W. Loescher  
Executive Vice President  
Natural Resources Management

**Attachments - 5**

Review of the State Management System - Workbook  
Synar Testimony - Tongass Timber Reform  
Summary Regional Council White Paper  
Sealaska Position on Regional Council System  
Sealaska Position on TLMP Revision

cc: Robert Willard, SENSC President  
Richard Stitt, ANB Grand President  
Susan Sargent, ANS Grand President  
Ed Thomas, CCTHIFA President  
Marlene Johnson, Sealaska Corporation  
Byron I. Mallott, Sealaska Corporation  
Chris McNeil, Sealaska Corporation  
William K. Williams, President - Cape Fox Corp.  
Joe Wilson, President - Goldbelt, Inc.  
James P. Senna, President & CEO - Shee Atika, Inc.  
Lowell Peterson, President - Yak-Tat Kwaan  
Corrine Garza Medina, CEO - Klawock Heenya Corp.  
Ralph Strong, CEO - Klukwan, Inc.  
Clarence Jackson, President & CEO - Kake Tribal Corp.  
Gordon James, President - Shaan-Seet, Inc.  
George D. Cooper, CEO - Huna Totem Corp.  
Bruce Cook, Jr., President - Haida Corporation  
Louis A. Thompson, President & CEO - Kavilco, Inc.

Mayor Liv C. Gray, City of Hoonah  
Mayor Daniel Johnson, Jr., City of Angoon  
Mayor Donald James, Sr., City of Kake  
Mayor Aaron Isaacs, Jr., City of Klawock  
Mayor Dennis Watson, City of Craig  
Mayor , City of Hydaburg  
Mayor Frank Waliace, City of Haines  
Mayor Estelle Thompson, City of Kasaan  
Mayor Harry A. Davidson, City of Pelican  
Mayor Forrest Dewitt, City of Saxman  
Mayor Dan Keck, City & Borough of Sitka  
Mayor Larry Powell, City of Yakutat  
Sam Kito, Kito & Associates  
Julie Kitka, AFN  
Southeast Conference  
Southeast IRA Councils  
Alaska Congressional Delegation  
Governor Steve Cowper  
Craig Lindh, Office of the Governor  
Michael Barton, Regional Forester, USFS Alaska Region  
Steve Brinks, Team Leader - TLMP Revision  
Bob Muth, USFS Regional Office - Subsistence  
USDOJ/BIA Tribal Operations - Juneau Area Office  
State Board of Fisheries  
State Board of Game  
Southeast Regional Fish and Game Council  
Commissioner Collinsworth, ADF&G  
Southeast State Legislators  
Joe Mehrkens, Southeast Natural Resources Center  
Bart Kohler, Southeast Alaska Conservation Council  
Jim Clark, ALA  
Thyes Shaub, ALA

201 - down 11

# ALASKA FEDERATION OF NATIVES, INC.



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

May 15, 1990

The Honorable Steve Cowper  
Governor, State of Alaska  
P.O. Box A  
Juneau, AK 99811

Dear Governor Cowper:

With considerable speculation now being voiced in the media over a possible special session of the Sixteenth Alaska Legislature, I want to pass along the encouragement of the Alaska Federation of Natives, and the statewide Native community for a responsible solution of the impending subsistence crisis.

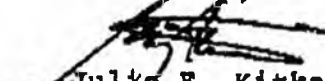
As you know, AFN made every possible effort during the regular session to support passage of a constitutional amendment. We are convinced that such an action, allowing State law to comply with Federal law, is the only way of keeping fish and game management in State hands.

The position of the Native community remains that which emerged from our Subsistence Summit Conference on April 11. We do not want a Federal takeover on Alaska's public lands after July 1. Such a scenario would most likely result in management chaos, years of litigation and further divisiveness in our state's politics. The Legislature's initial failure to deal with the issue, while disappointing, has not caused us to give up or to change our minds. We support continued State management of all fish and game through compliance with ANILCA, and we stand ready to support you in that effort. If a special session is feasible, we strongly encourage you to take the lead in making it a reality.

Integrity • Pride in Heritage • Progress

Should a special session turn out to be impossible, then we, like all Alaskans, have no choice but to prepare ourselves for Federal intervention. But as long as there is any chance to fix this problem at the State level and to keep our renewable resources in Alaskan hands, we want you to know that we support your efforts and will help in any way you deem appropriate.

Sincerely,

  
Julia E. Kitka  
President

# MEMORANDUM

## State of Alaska

Department of Law

TO: Denby S. Lloyd, Special Assistant DATE: May 15, 1990  
Office of the Governor

FILE NO:

TEL. NO: 465-3600

SUBJECT: Pros and cons of  
challenging ANILCA's  
subsistence provisions

GTK

FROM: G. Thomas Koester  
Assistant Attorney General

CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATION AND  
DELIBERATIVE PROCESS DOCUMENT

You asked for a short memorandum outlining the advantages and disadvantages of filing a lawsuit challenging the provisions of Title VIII of the Alaska National Interest Lands Conservation Act ("ANILCA"), P.L. 96-487, 94 Stat. 2371, 2422-30, 16 U.S.C. §§ 3111 et seq. (1980), which give rural residents a preference for subsistence uses of fish and wildlife on federal land.

I. Advantages of filing suit

There would be some advantages to filing a suit challenging the constitutionality of ANILCA's subsistence preference for rural residents on federal land. First, such a suit would please those Alaskans who believe all Alaskans, no matter where they live, should have the same rights to fish and wildlife resources, those who oppose a subsistence preference for rural residents, and those who believe the federal government has no right to dictate the manner in which fish and wildlife in Alaska should be managed or allocated among competing user groups.

Second, if a preliminary injunction preventing the federal government from taking over fish and wildlife management on federal land while the suit is pending can be obtained, such a federal takeover would at least be postponed (but see below: a preliminary injunction probably cannot be obtained).

Third, if the suit is successful on the merits, the threat of a federal takeover would be eliminated altogether (but see below: the suit probably would not be successful on the merits; moreover, success on the merits might well lead to new Congressional action at least as onerous as the existing subsistence preference for rural residents).

Fourth, during the pendency of the litigation, such a lawsuit would provide an excuse for the state to take no action with respect to a constitutional amendment until the courts have

finally ruled on the federal government's authority to require such a preference on federal land and to take over fish and wildlife management unless the state enacts such a preference.

Finally, such a lawsuit would resolve the issue of the federal government's authority to enact such legislation once and for all (but see below: the lawsuit probably would be resolved in favor of the federal government).

## II. Disadvantages of filing suit

There are several disadvantages to filing a lawsuit challenging the federal government's authority to establish a subsistence preference for rural residents on federal land. The first is that, on the legal merits, such a case probably cannot be won. Attached is a copy of a May 6, 1990, letter from me to Representative Mike Navarre in which I concluded that such a lawsuit probably would not be successful. <sup>1/</sup> In that short letter, I discussed the two most obvious potential challenges to ANILCA's subsistence preference for rural residents: (1) challenging the rural/urban classification on federal equal protection grounds; and (2) challenging the federal government's action as a violation of state's rights. In my opinion, the federal government would prevail on both issues.

Both Representative Robin Taylor (minority leader in the House and a staunch opponent of the subsistence preference for rural residents) and Wayne Anthony Ross (Vice President of the National Rifle Association and a staunch opponent of the subsistence preference for rural residents) have stated publicly that they agree with my conclusions with respect to those two issues. They believe, however, that the state should argue that the term "subsistence" cannot be given a meaningful definition and therefore ANILCA's subsistence provisions are void for vagueness.

The problem with such an argument, of course, is that Congress defined the term "subsistence uses" in section 803 of ANILCA:

Sec. 803. As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild,

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<sup>1/</sup> I deliberately styled the letter as my own personal conclusions and not those of the Department of Law so, should the state file such a suit, my views could be discounted as those of only one Assistant Attorney General who had reviewed the matter only briefly, and whose views therefore do not bind the state. Most attorneys who have studied the questions addressed in that letter, however, agree with my conclusions.

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 for 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 of their parts; or

(B) for other food or nonedible items other than money if the exchange is of a limited and noncommercial nature.

In addition, the state has made determinations regarding "subsistence uses" for many years. While some people have disagreed with those determinations, the determinations nonetheless have been made, demonstrating that it is possible to make such determinations with respect to the given factual circumstances surrounding specific uses of various fish stocks and wildlife populations. Those applications of the term "subsistence uses" to various factual contexts will be highly persuasive in any void for vagueness court challenge: "It is well established that vagueness challenges to statutes which do not involve First Amendment freedoms must be examined in the light of the facts of the case at hand." United States v. Mazurie, 419 U.S. 544, 550 (1975).

In short, Congress defined "subsistence uses" in ANILCA as "customary and traditional uses" of fish and wildlife. That definition has been, and will continue to be, applied administratively, either by the state or by the federal government. "The fact that Congress might, without difficulty, have chosen '[c]learer and more precise language' equally capable of achieving the end which it sought does not mean that the statute which it in fact drafted is unconstitutionally vague." United States v. Powell, 423 U.S. 87, 94 (1975) (citation omitted). A void for vagueness challenge of ANILCA's subsistence provisions probably would be unsuccessful.

A second disadvantage to bringing such a lawsuit is that, until a final judgment is obtained, the uncertainty over the final resolution of this controversy would be prolonged. During that

time, as pointed out in my May 6, 1990 letter to Representative Navarre, it is unlikely that a preliminary injunction could be obtained since the lower federal courts would be bound to apply governing United States Supreme Court precedents and accord ANILCA's subsistence provisions a presumption of validity. 2/ As a consequence, the federal government would begin managing at least some fish and wildlife resources in the state, making it more difficult for the state to regain management authority over those resources later on.

A third disadvantage is that such a lawsuit would represent an apparent reversal of what has been the state's policy for most of a decade (since Congressional enactment of ANILCA): favoring a subsistence preference for rural residents. This most certainly would upset rural residents, including large numbers of Alaska Natives.

Moreover, ANILCA was the product of intense negotiations between the state, the oil companies, the Alaska Native community, and the commercial and sport hunting and fishing interests. As finally enacted, it was viewed as a compromise that did not satisfy everyone but that all parties could accept. A state challenge to the subsistence provisions in ANILCA undoubtedly would be viewed by Congress as the state now reneging on the agreement it struck a decade ago. This clearly could have implications in the future with respect to the state's ability to advocate effectively before Congress on other issues: If the state reached agreement on ANILCA's subsistence provisions only to turn around and challenge them, what is to prevent the state from reaching agreement on other compromises only to turn around and challenge those provisions it does not like?

Finally, if the state is successful in such an action, that success might well provide the opportunity for Congress to exercise its constitutional authority over interstate commerce, Native issues, and federal land to craft subsistence provisions which are even more onerous and undesirable from the state's

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2/ Both the state and the federal government would be required to manage in such a way that sustained yield is not jeopardized, so the balance of hardships with respect to the resource probably does not tip in either direction. Because of United States Supreme Court precedents, the federal government would be able to show a greater probability of success on the merits, and preliminary injunctive relief probably would be denied. It should be pointed out that the lower federal courts are bound by prior decisions of the United States Supreme Court, and it is questionable whether the Supreme Court would even review this case if brought. Moreover, it does not take a genius to recognize that the state's actions in this area have not been given much respect by the federal courts.

perspective than a rural subsistence preference. The ANILCA subsistence preference for rural residents is one that the state has accepted and attempted to live with, albeit not without difficulty (particularly in light of decisions by both federal and state courts). Should Congress legislate on this subject again, there is no guarantee that the new approach will be even as acceptable as the rural preference in current law.

III. If suit is brought, consider outside counsel

If a decision is made to file a lawsuit challenging ANILCA's subsistence preference for rural residents on federal land, some consideration should be given to retaining outside counsel to bring the action. The attorneys in this department have consistently supported the subsistence preference for rural residents, both as it exists in ANILCA and as it existed in state law prior to the McDowell decision. In terms of credibility with the courts, it could be prejudicial to the state's case for those who once defended the rural preference to now turn around and attack it.

In addition, those who oppose the rural subsistence preference have been very critical of this department's work on this issue. To the extent filing such a lawsuit is what that constituency wants, having an attorney in this department file the action would negate any good will which otherwise might be gained. Indeed, the opponents of the rural subsistence preference probably would conclude that the state was not seriously challenging the preference since the same lawyers that used to defend it now would be attacking it.

At a minimum, when (as we believe likely) ANILCA's rural subsistence preference ultimately is held constitutional, the opponents of that preference will be tempted to attribute the court's decision to a lack of effective state advocacy and not the legal merits. To the extent one advantage of bringing such a suit is to resolve the question once and for all, it is imperative that all parties accept the final court judgment on the merits and not continue to argue the issue.

If such a lawsuit is brought, all of these problems would be eliminated by retaining private counsel to prosecute the action. (This department unfortunately has no discretionary funds to pay for such an effort. We do not know what funds the Department of Fish and Game may have available for this purpose.)

Denby S. Lloyd, Special Assistant  
Office of the Governor

May 15, 1990  
Page 6

We hope this answers your questions. If we can be of further service, please contact us at your convenience.

GTK:prm

Attachment

cc: Norm Cohen, Deputy Commissioner  
Department of Fish and Game

Steve Behnke, Director  
Subsistence Division  
Department of Fish and Game

Mike Irwin, Special Assistant  
Office of the Governor

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

May 16, 1990

The Honorable Bettye Fahrenkamp  
Alaska State Senator  
119 N. Cushman Street, Suite 201  
Fairbanks, AK 99701

Dear Bettye,

The Alaska State Legislature adjourned last week without tackling one of the most significant issues facing the State: subsistence. As you know, the Alaska Supreme Court, in McDowell v. State, found the current State subsistence law unconstitutional, leaving us in direct conflict with requirements for a rural subsistence priority in federal law. I believe that the Legislature must act on this issue, and that the only viable solution is an appropriate amendment to the Alaska Constitution. Amending ANILCA or suing the federal government to address this basic issue are not viable options.

On July 1, regardless of legislative action, the federal government will begin substantial management of fish and wildlife in Alaska. The uncertainties of interim federal management can be kept to a minimum if there is an indication that Alaska will provide for a solution to this dilemma; however, with no such indication, the federal government will have no incentive to tailor its efforts to meet our needs.

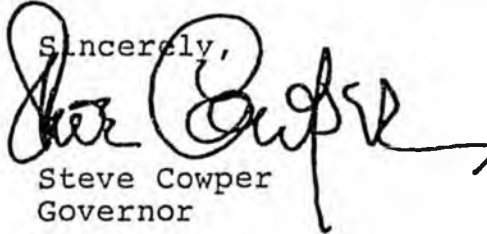
It was opposition to distant and insensitive federal control of Alaska's fish and wildlife that largely fueled the hard-won fight for statehood. Only you can prevent a return of federal agencies back into control of our fish and wildlife resources. A special legislative session to deal with this crisis is still possible but, as I have said before, it is only warranted if two-thirds of each house are willing to solve the problem.

Now that other pressures of the regular session are behind you, I encourage you to concentrate on the subsistence issue. I hope you will review the enclosed information and consider what is best for Alaska. At the very least, the Legislature should pass a constitutional resolution and

allow the voters of Alaska to express their preference at the ballot box. Inaction by the Legislature precludes the public from expressing its desire and is a positive vote for the chaos, uncertainty, and insensitivity of federal management.

If you have any questions, please call me or my staff. We still have a chance to do the right thing: ratification of established State policy to assure subsistence opportunities to those residents who most rely upon fish and wildlife, as opposed to reliance upon a quixotic challenge to Congress's actions in ANILCA. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", with a long horizontal flourish extending to the right.

Steve Cowper  
Governor

Enclosures

# NEWS RELEASE

STATE OF ALASKA

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

STEVE COWPER,  
GOVERNOR



FOR INFORMATION CONTACT:

DAVID RAMSEUR  
PRESS SECRETARY

TERENCE O'MALLEY  
DEPUTY PRESS SECRETARY

(907) 465-3500

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FOR IMMEDIATE RELEASE

May 17, 1990

No. 90-69

## COWPER URGES SUPPORT FOR SUBSISTENCE CONSTITUTIONAL AMENDMENT

JUNEAU--Gov. Steve Cowper today announced that he is sending a letter and information packet to state lawmakers urging them to support an amendment to the state's constitution giving rural Alaskans a priority for subsistence uses of fish and wildlife.

Cowper also restated his position that a constitutional amendment is the only viable solution to resolving the state's impending subsistence crisis.

"Many Alaskans, including legislators, don't realize what's at stake here," Cowper said. "We're about to abandon control over much of our fish and wildlife resources, something we fought long and hard for in our struggle for statehood."

Cowper said that he will call legislators back to Juneau for a special session if there is an indication that a subsistence resolution will pass. He called on the people of Alaska to urge their senators and representatives to support a constitutional amendment and prevent a federal takeover.

-MORE-

The Governor also refuted assertions that the state could win in a lawsuit against the federal government in an attempt to change federal law.

"That's like whistling past a graveyard," Cowper said. "It would take years in court to resolve this issue, and eventually we would probably lose. New Mexico has already tried it and lost."

In December, the Alaska Supreme Court declared unconstitutional the state's subsistence laws giving rural residents priority over other uses when fish and wildlife resources are scarce.

That ruling jeopardized the state's authority to manage fish and wildlife on federal lands because federal law (ANILCA) requires that rural residents be given priority for subsistence uses on federal lands. Approximately sixty percent of all the land in Alaska is owned by the federal government.

In March, Cowper introduced a joint resolution in both houses of the state legislature that would amend the state constitution to authorize a subsistence priority for rural residents. The resolution was never voted on in the Senate and it was voted down by the House.

As a result, the federal government is drafting a fish and wildlife management plan for federal lands in Alaska, without public input. The federal government intends to take over management on July 1.

"It's going to be an absolute nightmare," Cowper said. "You'll have federal management in some areas and state management in others. Hunters and fishermen will have to know at all times whether they are on federal or non-federal land and what the applicable state and federal regulations are."

Federal Management of Fish and Game:  
What to Expect

May 16, 1990

Federal agencies will manage fish and wildlife in the context of what is "best" for all citizens of the United States and, even then, may not have the flexibility, monetary resources, or indeed the interest in assuring that Alaskan needs are satisfied. Consider the national emphasis on animal rights, movements toward abolition of trapping and hunting. And, consider the lack of importance that Congress will ascribe to adequate research and management for Alaska's fish and game, particularly considering increasing federal deficits.

Yet, who will set management objectives and standards; who will define and manage for harvestable surplus? Look at what's happened with Native use of sea otters, with trapping in the Kenai Moose Range, with commercial and subsistence fishing in Glacier Bay.

There is also the possibility that, eventually, the federal government will contract out the management of fish and wildlife to tribal or native non-profit organizations. All of this will result not only in a patchwork of management authorities, based upon the checkerboard ownership of land in Alaska, but also a complex mixture of management philosophies that may not coincide with the State's emphasis on optimum sustainable yield and public use of fish and wildlife.

Beyond what this shift in emphasis means in broad-scale terms, the following are only a few specific scenarios of likely impacts to individual Alaskans:

- The proposed Federal Subsistence Management Board will be composed of federal land managers from a variety of agencies like the National Park Service, the U.S. Fish and Wildlife Service and the Bureau of Land Management, of all whom have different missions and management philosophies. This board will appoint representatives to local and regional advisory committees, rather than providing for local election of representatives to these important committees. This will result in a dilution of local access and input to the decision-making process. Anyone wishing to be on a local advisory committee will need to secure appointment from the

Federal Subsistence Advisory Board, rather than garner the support of fellow residents.

- With federal management of subsistence on public (federal) lands, but State management on other lands, there will be at least two separate sets of authorities and regulations to abide by. This will be confusing, not only to regulators and enforcement officials, but most directly to hunters and fishers. Anyone hunting, say, caribou in the Nelchina Basin will have to know the applicable state regulations, the applicable federal regulations, and know at all times whether he is on federal or non-federal land.
- The U.S. Forest Service controls almost all of the land in Southeast Alaska, in the Tongass National Forest. Management of timber harvest is already a contentious issue, particularly regarding protection of old growth forests for deer habitat and water quality. With federal management of not only timber harvest but also subsistence use of fish and wildlife, there will be greatly reduced opportunities for local residents to affect logging plans and harvest limits. At the extreme, there will be very limited opportunity for State residents to assure sufficient old growth habitat or to set standards for high sustained yields and harvests of deer and salmon.
- Federal officials in Interior Alaska have already indicated, to a local advisory committee, that sport fishing limits for northern pike in the Innoko River are too high and that managers of the national wildlife refuge there believe harvest levels should be reduced. Such recommendations in the future will be made from one federal official to another. Alaskans with life-long knowledge and dependence on fish and wildlife, such as residents of Ruby and the Interior, will not have equal footing with federal officials, such as refuge managers, to set fish and game harvest limits and allocations.
- Recently the Board of Fisheries set regulations to allow subsistence fishing in Glacier Bay. The National Park Service has objected, not only to subsistence activities but also to long practiced commercial fishing within park boundaries. With federal management of subsistence, desires of local residents may not even be an issue if they conflict with other land management concerns. If the National Park Service had definitive control over subsistence in Glacier Bay National Park, Hoonah residents would likely be excluded from historic fishing and berrving grounds.

• The U.S. Fish and Wildlife Service is developing a management plan for the Togiak National Wildlife Refuge. There is escalating tension over the appropriate mix of sport, commercially-guided sport, and subsistence harvest levels in the productive Kanektok, Goodnews, and Togiak Rivers. With federal management over access and subsistence harvests, local residents, as well as sport fishermen and guides, may find they have no recourse to local or State regulatory processes to resolve disputes.

• The National Park Service has developed a general management plan for the Gates of the Arctic National Park and Preserve that emphasizes the wilderness characteristics of the area. Many limitations have already been placed on the use of aircraft and all-terrain vehicles for guiding and subsistence activities. With federal management, residents of Anaktuvuk Pass can anticipate even further limitations to access into traditional areas, and guides and outfitters can expect further restrictions to the use of mechanized travel, with no real avenue for State assistance.

# NEWS RELEASE

STATE OF ALASKA

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

STEVE COWPER,  
GOVERNOR



FOR INFORMATION CONTACT:

JUN 11 1990

DAVID RAMSEUR  
PRESS SECRETARY

TERENCE O'MALLEY  
DEPUTY PRESS SECRETARY

(907) 465-3500

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FOR IMMEDIATE RELEASE

June 8, 1990  
No. 90-77

## COWPER CALLS LEGISLATURE INTO SPECIAL SESSION FOR SUBSISTENCE

JUNEAU--Gov. Steve Cowper today called the state Legislature back into special session to prevent a federal take-over of fish and game management in Alaska for subsistence.

The Governor called legislators to convene at 10 a.m. on June 25 to consider a solution to the problem created when the state Supreme Court ruled unconstitutional Alaska's subsistence law which gives a preference to rural Alaskans.

"Alaskans don't want to see a federal take-over of fish and wildlife management," Cowper said. "That was a major statehood issue and we're not going to hand it back to them by doing nothing.

"We still think the best solution is a constitutional authorization for rural subsistence, but it's clear to us that the votes aren't there. We will propose an alternative plan, and will make it public when we've ironed out the final details."

Cowper used his authority under Articles II and III of the Alaska Constitution to call the special session. Under those provisions, the Governor can call a special session and specify what issues will be considered. He is permitted to add other issues during the session.

Cowper said he decided to call the special session following Thursday's announcement by the federal government of interim regulations designed to govern federal take-over of fish and game management in Alaska. Cowper said that while those regulations may appear benign now, they invite considerably broader federal involvement in Alaska wildlife issues in the future.

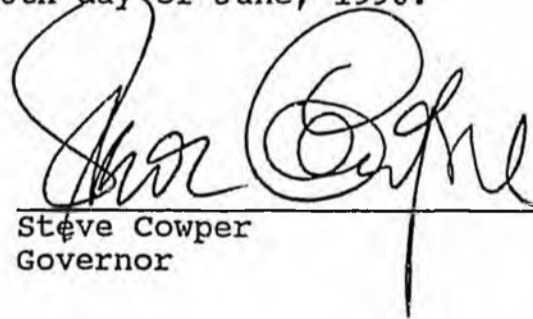
# STATE OF ALASKA



## PROCLAMATION

Under the authority of article II, section 9, and article III, section 17 of the Alaska Constitution, I call the Sixteenth Legislature of the State of Alaska into special session. The legislature shall convene its first special session at Juneau, Alaska in the legislative chambers on June 25, 1990 at 10:00 a.m. to consider the enactment of a law or an amendment to the Constitution of the State of Alaska relating to the subsistence uses of fish and wildlife and other wild renewable natural resources.

Dated at Juneau, Alaska this 8th day of June, 1990.

  
Steve Cowper  
Governor



Telegram

05008 ANCHORAGE ALASKA 51 06-08 1450 ADT

PMS

SENATOR BETTYE FAHRENKAMP

119 N. CUSHMAN, SUITE 201

FAIRBANKS AK 99701

JUN 11 1990

000534

DEAR SENATOR FAHRENKAMP:

GOVERNOR COWPER HAS CALLED, TODAY, A SPECIAL SESSION OF THE LEGISLATURE TO BEGIN ON JUNE 25TH. THE SENATE WILL CONVENE AT 10 AM. THE GOVERNOR HAS INDICATED THE SESSION WILL BE PRIMARILY CONCERNED WITH SUBSISTENCE, ALTHOUGH HE MAY ADD OTHER ITEMS AT A LATER DATE. SEE YOU IN JUNEAU.

SENATOR TIM KELLY

SENATE PRESIDENT



## North & Northwest Mayor's Conference

P.O. Box 68  
Unalakleet, Alaska 99684



President: Albert Washington (907) 923-3771  
Secretary: Robert Foote (907) 624-3655

18 May 1990

Vice President: Loren Ahlers  
Treasurer: Valerie Bergman

Steve Cowper, Governor  
Office of the Governor  
Third Floor, State Capitol  
P.O. Box A  
Juneau, Alaska 99811

JUN 8 1990

Dear Governor Cowper,

Thank you for your strong standing on the subsistence issue. I hope you will remain firm in your stand.

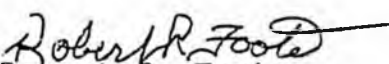
I disagree with the constant attitude of any organization or individual that uses divisive tactics and means to divide the people of Alaska and it's different cultural origins. This position and attitude failed in 1982 and is due to fail in 1990 or 1996.

The issue of subsistence is not life threatening to anyone except the people whom are, or would be deprived of their own way of life. I personally have lived and worked in villages over most of Alaska. I have observed the Native way of harvesting the fruits of the land. In no way has the Native people threatened the White Man's way of living.

Having just held our North and Northwest Alaska Mayor's Conference in Barrow, we discussed in depth the subsistence issue. in our resolutions Committee meeting, it was discussed in depth and over much deliberation, we balanced out a very positive resolution, Resolution 90-42, which we could all support as a positive answer to a disturbing question.

As Secretary of the North and Northwest Mayor's Conference for the past five years, and a charter member since 1980, I wish to offer you my services in any manner you might see fit. I believe as much as possible, there needs to be a solid, unified effort in convincing our voting public to support a Constitution amendment for subsistence.

Sincerely,

  
Robert R. Foote  
Secretary

PLANNING FOR YOUR FUTURE

SECOND SESSION OF THE TENTH ANNUAL  
NORTH AND NORTHWEST ALASKA MAYORS' CONFERENCE  
BARROW, ALASKA  
May 10 - 12, 1990  
Resolution No. 90-42

A resolution supporting the adoption of an amendment to the Alaska constitution to bring Alaska Law in compliance with Federal law regarding subsistence.

WHEREAS, subsistence is important for natives in order to provide food for themselves; and

WHEREAS, hunting, fishing, and other subsistence activities remain the most important part of traditional Alaska Native culture and Alaska Native spiritual values; and

WHEREAS, for generations, Alaska Natives have depended on fish and wildlife as their main stay of livelihood; and

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

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

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

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

NOW THEREFORE BE IT RESOLVED BY THE SECOND SESSION OF THE TENTH ANNUAL NORTH AND NORTHWEST ALASKA MAYORS' CONFERENCE THAT: we support amending Article VIII, Constitution of the State of Alaska, by adding a new section to read:

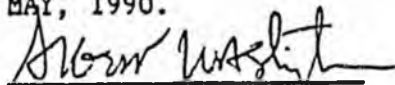
SECTION 19, USE OF FISH AND WILDLIFE RESOURCES FOR SUBSISTENCE. The legislature may grant a preference in the use of fish and wildlife resources for subsistence based upon geographic, "socioeconomic" and cultural considerations; and

BE IT FURTHER RESOLVED BY THE SECOND SESSION OF THE TENTH ANNUAL NORTH AND NORTHWEST ALASKA MAYORS' CONFERENCE THAT: the amendment proposed by this resolution be placed before the voters of the state at the next general election in conformity with Art. XIII, Section 1, Constitution of the State of Alaska, and the election laws of the state; and

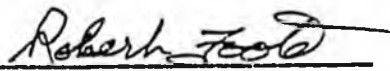
BE IT FURTHER RESOLVED BY THE SECOND SESSION OF THE TENTH ANNUAL NORTH AND NORTHWEST ALASKA MAYORS' CONFERENCE THAT: once such an amendment is adopted, the Alaska State Legislature provide, by statute, a preference in the use of local resources by local people in those geographic areas of Alaska where subsistence has special importance.

BE IT FURTHER RESOLVED BY THE SECOND SESSION OF THE TENTH ANNUAL NORTH AND NORTHWEST ALASKA MAYORS' CONFERENCE THAT: we urge Governor Cowper to call a special session of the legislature for the specific purpose of dealing with subsistence.

PASSED AND APPROVED BY THE SECOND SESSION OF THE TENTH ANNUAL NORTH AND NORTHWEST ALASKA MAYORS' CONFERENCE THIS 12th DAY OF MAY, 1990.



Albert Washington /  
President



Robert Foote  
Secretary

Introduced by: Kotzebue  
Seconded by: Savoonga

Vote: Yes: Unanimous

Directed to: Governor Cowper  
Alaska State Legislature

RECEIVED  
MAY 21 1991

GOVERNOR'S OFFICE

Governor Steve Cowper

P.O. Box A

Juneau. Ak. 99811

Dear Governor Cowper,

Just for the record. I think the Education Endowment Fund was the best idea any political figure has put forth in the seven years I have been a resident of Alaska. I wish to commend you for creating and promoting it. I have promoted it as a private citizen and am appalled that our State Senate failed to back you and bring this issue to the public.

Alaska will be losing a real statesman, a forward thinking man of high ideals, with your departure. I sincerely hope you have not finished with us yet.

Sincerely,

Kathleen H. Ashmore

Kathleen Askmore  
HCO-4 Box 9248-D  
Palmer, Ak. 99645

6/1/90

Sir: ~

It seems to us that time is running out for the "Special Session" to consider/reconsider subsistence legislation. It's sheer madness to allow federal control over Alaskan programs such as subsistence.

Please call the boys and girls together. Who knows, it may pay off!

SC  
Evans  
Legisl.  
to Denby

Sincerely,  
Leo / Vivien Antrim  
Box 210832  
Anko Bay, Alaska 99521

# ALASKA CONFERENCE OF MAYORS

SC  
Legisl.  
Denby  
to Evans

217 SECOND STREET, SUITE 200  
JUNEAU, ALASKA 99801

June 4, 1990

RECEIVED  
JUN 05 1990

The Honorable Steve Cowper  
Governor of Alaska  
Post Office Box A  
Juneau, Alaska 99811

GOVERNOR'S OFFICE

Dear Governor Cowper:

On behalf of the Alaska Conference of Mayors, I respectfully urge you to call a special session of the 16th Alaska State Legislature to consider legislation dealing with subsistence, assistance for communities affected by spills, and the education endowment. The Alaska Conference of Mayors met in Anchorage on June 1, 1990, and voted unanimously to request that you call a special session.

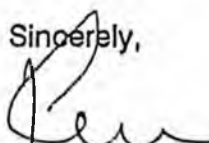
The Alaska State Legislature adjourned without passing a comprehensive measure to protect the subsistence hunting and fishing rights of rural Alaska residents. Without legislative action the federal government will take control of hunting and fishing activity on federal lands July 1, thus reversing one of the hard fought gains of Alaska statehood.

Another measure which was not passed in the Second Session was SB 359, which would have given further financial and legal protection to communities affected by the *Exxon Valdez oil spill* and to other communities which might find themselves in the same financial and legal situations as a result of future disasters. A recent example was the *Alaska Railroad spill*. The Alaska Conference of Mayors does not feel communities should remain unprotected for another year while Alaskan oil traffic poses a continued threat to its citizens' livelihood.

*The Conference also supports the right of the people to vote on the education endowment.* Education has always been a priority with Alaskans and a decision on a permanent future funding mechanism is an issue of statewide public importance.

Again, the Alaska Conference of Mayors urges you to call a special session of the legislature to complete the unfinished work on subsistence, SB 359, and the education endowment.

Sincerely,

  
FOR Willie Goodwin  
President

cc: Senator Tim Kelly, President  
Representative Sam Cotten, Speaker

## Subsistence dies; special session looms

Without a moment to spare, the Sixteenth Alaska Legislature brought down the gavel near the stroke of midnight, May 8, the constitutionally mandated 121st day of session.

A near record 216 measures survived (see related summary), but several critical ones perished.

The most serious issue left on the table was subsistence: how to ensure that Alaskans accustomed to the tradition of hunting and fishing for food will be guaranteed first opportunity to harvest those resources.

The legislature's failure to act is triggering a complicated federal takeover of nearly 400,000 square miles of public land in Alaska and could result in a special session this summer.

"I find it ironic, considering how passionately Alaskans battled for statehood so that we could manage our own affairs," Gov. Cowper said. "The Alaska Legislature abdicated its responsibility. Now, federal managers, controlled by a bureaucracy thousands of miles away, will be in charge of the bulk of Alaska's resources."

The key was to create a state preference for subsistence users that would conform with an overriding federal requirement that rural residents have priority taking fish and wildlife.

The Alaska Supreme Court ruled in December that giving a rural preference is unconstitutional. Yet, federal law designates a rural priority on federal land. Thus, state law needs to match federal law without running afoul of the state constitution.

After considering a number of proposals, the Cowper administration decided that a constitutional amendment is the best long-term solution.

However, despite round-the-clock efforts, the necessary 27 votes in the House could not



Gov. Cowper meets with the press after midnight adjournment.

be mustered. The Republican minority blocked passage of the measure, which also needed Senate approval.

In the days following adjournment, the administration continued to seek sufficient votes for a subsistence amendment in order to call a special session. The possibility of a special session looms and appears favored by the public (see related story).

In the meantime, at least six federal agencies are preparing to co-manage vast areas in Alaska, including nearly all of Southeast, blanketed by a national forest.

Hunters and fishermen will have to know at all times whether they are on state or federal land and what regulations apply.

The legislature also killed in the last moments of the session a comprehensive ethics package and a proposal to let voters decide whether to establish a permanent education fund.

## Public wants subsistence resolved

A statewide poll of 517 Alaskans in May showed a strong majority favors a special legislative session to resolve the subsistence issue.

The poll reinforced Governor Cowper's attempt to secure the necessary legislative votes to put a subsistence preference on the November ballot.

Another poll question resulted in an overwhelming majority supporting an opportunity for Alaskans to vote on creation of an education fund. However, Cowper said the education fund alone was not reason enough to bring back the legislature.

The poll, administered by Dittman Research Corporation, showed that 55 percent favor bringing the legislature back to deal with the subsistence question.

In nearly every region and demographic category, a majority of the respondents want

a special session.

On the proposed education fund, 84 percent felt Alaskans should have a chance to vote on its creation. In every region, support for placing the constitutional amendment on the ballot exceeded 80 percent.

The education fund would be created by putting 40 percent of Permanent Fund profits back into a special account within the principal. Compromise legislation established the education fund for four years, at which time it would be voted on again.

Over four years, up to \$2 billion would be saved. Dividends would grow, but be about \$62 smaller than they would have been otherwise over that four-year period.

State News Notes is now printed on 50 percent recycled white paper-- which can be recycled again!

# Reading effort wins award

First Lady Michael Cowper visited more than 60 schools, distributed hundreds of books and attracted a prestigious national award during the first year of her reading encouragement program, Look to a Book.

Mrs. Cowper visited schools from Barrow to Bethel and Kasigluk to Ketchikan, reading to children and oftentimes talking with their parents about the importance of reading.

A video promoting reading and two books were distributed to all 383 elementary schools in Alaska.

Four Look to a Book public service announcements featuring Alaskan children were aired on television during the school year.

This month Look to a Book PSAs receive the nationally-recognized ACT Achievement Award from Action for Children's Television, a Boston-based public advocacy group dedicated to improving the quality of programming for children.

In addition, the Literacy Council of Alaska has selected Mrs. Cowper as the winner of 1990 State Reading Association Literacy Award and the Juneau-Haines Reading Council honored her for promoting literacy.

Mrs. Cowper raised more than \$42,000 in private support for Look to a Book, includ-

ing donations from Alaska Airlines, Wings of Alaska, Alascom, Chugach Heritage Foundation, Cook Inlet Region, IBM, Scalaska, MarkAir, Alaska Commercial Company, Seley, Inc., and a number of publishers. The program is not funded by the state, but the Governor's Office and the Department of Education provided technical assistance.

Look to a Book will continue in the fall. For more information about the program, call Nancy DeCherney at 465-3500.



## Soviet deals need patience

Gov. Steve Cowper last month told U.S. business leaders at a Moscow conference to exercise patience and flexibility when dealing with the Soviet system. Cowper spoke to the 13th Annual U.S.-U.S.S.R. Trade and Economic Council May 22. About 1,000 Soviet and American business leaders attended the session.

The governor, who was on his third trip to the Soviet Union, stressed that business and cultural exchanges by necessity must occur on an ad hoc basis while economic reforms are developed over time. He also encouraged nurturing personal relations with Soviet counterparts to ease business transactions.

Cowper spent six days in the Soviet Union and traveled to Great Britain, where he visited the Sullum Voe oil terminal in the Shetland Islands. The North Sea terminal, owned by British Petroleum and operated jointly with the government, is considered a model of safety.

The vessel tracking system emphasizes helicopter escorts and radar monitoring.

## 216 bills survive legislative hurdles

Here's a summary of some of the bills that passed:

- Agency and community assistance budget, \$2.3 billion.
- Public works construction budget, \$359 million (including about half, or \$127 million of the Railbelt Energy Fund).
- A \$150 million deposit to the Permanent Fund.
- Five "spill bills" toughening State enforcement and prevention.
- Comprehensive forest management requiring stream buffers.
- Consumer-oriented rewrite of outdated insurance code.
- Land trust to fund mental health care.
- Mandatory seat belt law.
- Rewrite of laws pertaining to sexual abuse of minors.
- Four bills aimed at recycling.
- Revised payment and priority for new school construction.
- \$10 million to clean up leaky underground tanks.
- Competition of in-state long-distance phone service.
- Reform of welfare programs to encourage employment and family unity.
- A ballot measure to create a budget reserve.
- Additions to the marine park system.
- Tougher anti-smoking restrictions.
- Pay raises for public employees and judges.
- Elimination of most AHFC mortgage subsidies.

### HOME SWEET HOME

Gov. Steve Cowper, his wife Michael and son Wade are not leaving Alaska following his term, although that's been the impression left by headlines. The family intends to take a break together, probably on an extended trip, perhaps to Asia. The Cowpers then will return to Fairbanks, where they are planning to buy or build a house.

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JUN 22 '90 12:59 LIO - ANCH 277-6112

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## Alaska State Legislature

2917 SHELDON JACKSON STREET  
ANCHORAGE, ALASKA 99501

SENATOR  
ARLISS STURGULEWSKI  
Senate President Pro Tempore  
Chairman, Senate Rules Committee

WILSON JUNEAU  
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JUNEAU, ALASKA 99801  
(907) 465-3818

## Senate

EMBARGOED UNTIL 12 NOON AST  
JUNE 22, 1990

CONTACT: CLARE LYNAM  
(907) 272-2403

STATEMENT BY SENATOR ARLISS STURGULEWSKI CONCERNING  
A LEGISLATIVE SOLUTION TO SUBSISTENCE

"Just 31 years ago Alaska became a state so we could control our own resources. Today there are some who say we should give up what we fought so hard for and let the federal government take back management of fish and game on sixty percent of our state. I disagree.

"I can not believe the drafters of our Constitution ever envisioned legitimate subsistence needs being denied nor that anyone would even consider throwing away management of our own resources.

"We are in this situation because of recent decisions in both federal and state courts, most notably the McDowell and the Kenaitze decisions, compounded by Judge Cutler's decision Wednesday on severability.

"Together, these decisions mean that on July 1st the federal government will take over management of fish and game on all federal lands. On that date as well, subsistence hunts and fisheries with a priority over all sport and commercial uses will become allowable statewide, including in urban areas.

"This is not a tolerable situation, it is to the detriment of every user of Alaska's wild resources, whether sport, commercial, or subsistence.

"In 1982 I served on the Blue Ribbon Commission to oppose Proposition 7 which would have repealed the subsistence statutes. In 1986 I was the Chair of the Senate Resources Committee that drafted the subsistence bill that became law. This past session I worked on legislation and helped draft the language of the Senate amendment. I have a long history with subsistence, a history of results.

"I know the very real dependence of many people in our state on subsistence and I am dedicated to defending it. I also know the

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tremendous problems that have been caused by the undefined terms in ANILCA and game management by judicial interpretation. I am dedicated to fixing these problems.

"I have spent a good portion of this past year, both during the legislative session and since, talking to representatives of all affected user groups. While they may differ on the means, the one thing I found in common was that everyone wanted to fix this problem and none wanted to do away with subsistence. When the Governor announced the special session of the legislature I was encouraged because I know that he is also dedicated to finding a solution for this problem.

"As I was, throughout the last session, I am convinced that the proper solution consists of a package which will resolve both the McDowell and Kenaitze cases and address the longer term challenges of subsistence. The appropriate legislation is being drafted and on Monday I will introduce four legislative measures as a package:

1. A narrowly defined constitutional amendment to allow for a rural preference for subsistence, similar to the version the Senate Resources Committee passed this session. A constitutional amendment is necessary to fix the problems caused by the McDowell case.
2. A two part amendment to state statute. The first part would adopt the definition of rural currently proposed in federal regulation. A definition of rural in statute is required to fix the Kenaitze case. The second part would provide for a \*sunset clause on the entire state subsistence statutes in four years unless the legislature acts to reauthorize the statutes.
3. Establishment of a (Subsistence Commission) which would include representatives of all major user groups to recommend long term solutions to the first session of the 18th legislature.
4. \* A resolution to Congress urging a technical amendment to ANILCA specifying that all (undefined terms) in Title 8 (such as "rural", "customary trade" and "wild renewable resources") are defined by reference to definitions adopted in statute by the Alaska Legislature.

"This is a package of legislation that deals with our problems and can pass. It retains state management of our resources by resolving both the McDowell and Kenaitze cases. It provides a mechanism to bring affected user groups together for a long term Alaskan solution. It calls for definition of terms by Alaskans to help get our game management out of the federal courts. By including a sunset clause on the subsistence legislation, it

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provides a strong incentive for all of us to work together for our common good and an Alaskan solution.

"Fishing, hunting, the ability to live off the land; these things are very special in Alaska, unique among the states and the reason many of us live here. Together we can resolve the challenges of subsistence for the benefit of all."

-30-

TELECOPY COVER SHEET  
SENATOR BETTYE FAHRENKAMP

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FAX: (907) 586-6246

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JUNEAU, ALASKA 99811

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FROM: Joan Hope Phone: 465-3834

DATE/TIME SENT: 6/22 3:07

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PLEASE ACKNOWLEDGE RECEIPT: YES NO (UNLESS GARBLED)

SPECIAL INSTRUCTIONS:

*Frank(?) Coleman*

# Special session

## *Governor should force lawmakers to deal with subsistence, ethics*

If any issue ever cried out for leadership from an Alaska governor, it's subsistence.

State legislators have decided to run as far as they can from the issue. They refused to do the responsible thing and pass a constitutional amendment to restore the state's rural subsistence preference. Their duck-and-run act dooms Alaska to the certain chaos that will come with a federal takeover of fish and game management. Now, it's up to Gov. Cowper to lasso cowardly lawmakers and lean on them until they to do the right thing.

So far, Gov. Cowper has been quiet — too quiet. The impression he's created for Alaskans is one of indifference. When it looked like he couldn't get the votes before adjournment, he quit. His press office suggested that when two-thirds of lawmakers are ready to pass the amendment, they can call themselves back into special session.

Right. And the entire legislature might be captured by UFO's, too. This gang is one that spooks at the slightest peep of protest. No way they're going to rise up and call themselves back to deal with something so controversial.

Asked if he was as indifferent as it appears, Gov. Cowper told the Daily News no. Fixing subsistence is his highest priority, he said, and he's busy trying to round up the votes. Until he gets them, he won't call a special session.

Here's hoping he gets the votes — and soon. July 1 is the deadline for the federal takeover. Subsistence needs the firm hand of the governor to steer the state back to the status quo. No issue is imbued with greater urgency or inflamed by worse passions.

The Alaska Constitution gives the governor all the clout he needs. Gov. Cowper can bring lawmakers back before the deadline for announcing his vetoes. He can make them wonder what he'll do to their pet projects and bills. He can make lawmakers sweat under a statewide spotlight. He can make them explain to Alaskans why we shouldn't worry about having decisions about our fish and game made in that bastion of ecological enlightenment, Washington D.C.

And as long as Gov. Cowper is calling lawmakers back, he would do Alaskans a favor by putting legislative ethics on the agenda, too. A majority in both houses supported tough ethics reform, but it got impaled on a procedural point and died as time ran out. Let lawmakers show whether they were sincere — or were just posturing.

As good political animals, legislators want something they can brag about come election day. Gov. Cowper can oblige them — by asking them to put a subsistence amendment on the ballot and overhaul their joke of a legislative ethics law.

Apr 13 '90

# Snubbing subsistence

Times  
5-12-90

IT WAS before last Christmas that the Alaska Supreme Court declared unconstitutional the state's subsistence hunting and fishing law. Now Easter has come and gone, Mother's Day is at hand, and a quarter of the New Year has slipped away. And last Tuesday night the legislature, after four months of looking at the subsistence problem sitting there, adjourned without touching it.

Members of the legislature, said Senate President Tim Kelly, were evenly divided on the issue — just like the rest of Alaskans, he said.

So there wasn't anything they could do.

Except walk away.

And that they did, to get ready for their campaigns for re-election or their bids for higher political office.

What now?

Well, nobody knows for sure.

Absent anything else, Uncle Sam says he will take over management of fish and game resources on federal land in Alaska on July 1.

**MAYBE THE** legislature, in some queer kind of reasoning, figured this was one way to cut state spending. If we don't manage wildlife resources on 60 percent of the land in the state, maybe we lay off 60 percent of the Alaska Fish & Game enforcement agents and professional biologists.

Surely not.

But equally certain is the fact that nobody in Juneau has the foggiest idea of what best to do about the crisis.

The governor proposed a constitutional amendment that, in effect, would repeal the current provision of the constitution that says all Alaskans have equal access

to the resources of this state. That would put Alaska in conformity with a congressional law that says in Alaska — and in Alaska alone — rural residents have a preferential right for subsistence purposes to fish and game resources.

And that's what the Alaska law had said, in an attempt to conform to Congress, until the state Supreme Court nixed the idea.

But it was this proposal, renewed as a constitutional amendment, that the legislature rejected, denying it a place on the November ballot.

**IN LIEU** of no solution on the home front, the state apparently has no plan for a court challenge of that particular section of the federal law that imposed this crisis on the state.

One reason might be that even a discussion of the matter — let alone a lawsuit on one side of the issue — stirs racial fires. Subsistence indeed is a rural concern, but more than that it is a Native concern because a majority of Alaska's rural residents are Eskimos, Indians and Aleuts.

All of which suggests that subsistence has become a crisis in leadership — or the lack of it. After all, the right to manage our own fish and game resources was one of the compelling drives that led us to embrace statehood more than three decades ago.

And now that right is in danger of monumental erosion — because nobody in authority has come up with a solution to this political problem. One whole branch of government, in fact, just walked away from it.

That's statesmanship, Juneau style.

# If D.C. gets subsistence

Times 5-14-92

JUNEAU — Anybody who watched the Alaska Legislature stumble to a halt over subsistence hunting and fishing can see why this issue should stay out of Washington. Imagine transplanting last week's debacle to Congress....

Stalemated politically at home, Alaskans began lobbying federal officials in 1991 to make sense out of the management mess. The final straw was the disclosure that the Seward Silver Salmon Derby would need the approval of five federal agencies and a U.S. District Court judge to proceed as planned.

The appeal for help was confusing, however. Some Alaskans were asking for repeal of the rural subsistence preference in federal law, others for an amendment granting subsistence to Natives only, and still others for a simple definition of what subsistence is.

"We thought we knew what subsistence is," said Alaska's new governor in a letter to President Bush. "But the courts keep telling us something different, and I was able to get elected last fall without ever taking a position on the issue. Can you please help us get state fish and game management back?"

The letter reached Bush while he was fishing in Florida. The president had always meant to visit Alaska following the big oil spill, but he never quite made it, and this latest request for assistance was forwarded to the vice president who gave it to an aide.

The first hearings on subsistence in Congress were uneventful and largely ignored by the national media. Sen. Jesse Helms was seeking a broader definition of obscene art that federal money won't buy, and he grabbed all the headlines.

Then events began to snowball. Sensing the divisions in Alaska, animal-rights activists and a few extreme environmental organizations saw the moribund subsistence bills as their chance to put some long-sought restrictions into law. A ban on leg-hold traps, as well as on hunting and fishing in national



## john greely

parks in Alaska, became the subject of a massive letter-writing campaign and high-powered lobby on Capitol Hill.

"Alaska has a problem that needs fixing," said J. Allen Smith, president of Vegetarians for Subsistence Reform. "Our group also supports returning fish and game management to Alaska, but with a few improvements."

Smith and the VSR were able to push through a compromise subsistence bill after breaking a filibuster by Sens. Ted Stevens and Frank Murkowski. They gave up their opposition to the bill when environmental groups agreed to drop an amendment banning oil and gas development in the Arctic National Wildlife Refuge.

"Dear Governor," the president wrote as he signed the legislation, "I am pleased to return fish and game management over all of Alaska to your hands. This authority, as you know, was promised at statehood, and frankly I could never understand why Alaska surrendered it in 1980, when you had a chance to solve the problem without federal help.

"Oh well, this bill is in keeping with my environmental presidency. Hope to see you in '92. I may have time for a little fishing then."

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John Greely is a KTOO-radio reporter in Juneau. He covered the Alaska Legislature for various news organizations from 1972-1982 and was Gov. Bill Sheffield's deputy press secretary and press secretary from 1982-1986.

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# Showdown at Glacier Bay

3-4-90  
ADN

JUNEAU — Public hearings by the National Park Service this week foreshadow what may lie ahead if Alaskans don't settle their differences over subsistence hunting and fishing rights. Hundreds of jobs and millions of dollars are at stake in a move to close Glacier Bay National Park to commercial fishermen.

The conflict started out innocently last year, when subsistence fishermen from neighboring Hoonah requested permits from the state to harvest a small number of salmon from streams in and near the park. The Board of Fisheries agreed and a handful of permits were issued.

In researching federal law, however, the Park Service found that there was no authorization for subsistence activities in Glacier Bay. In fact, despite decades of use by trollers, crabbers and longliners, the Park Service concluded they may have no standing to continue commercial fishing, either.

While waters within the 3.2-million-acre park are not heavily fished, those bordering the park along Icy Strait and the lucrative Fairweather Grounds are. And those waters also may fall under a federal ban or cutback on fishing.

"A national park is not a multiple-use area," said Marvin Jensen, superintendent of Glacier Bay. "It's a place where nature is left to operate at its own will."

Indeed, that's the case all over the country, except for Alaska, where our small population and history of living off the land convinced Congress in 1980 to relax the normal restrictions imposed



**john greely**

on the use of motorized vehicles such as snow machines, motorboats and airplanes to hunt and fish on federal parklands.

In Glacier Bay itself, tens of thousands of tourists visit each summer to see the ice fields and the wildlife. Invariably, those multitudes must ask their guides, "What is that boat doing out there fishing?"

If the guides know their stuff, they'll tell the visitors that Congress has seen fit to allow the state of Alaska to regulate hunting and fishing of most species even though many wander across federal, state and private boundaries. And despite conflicting ownership (the state, for example, owns submerged lands under navigatable waters in Glacier Bay, but the water belongs to the Park Service) it only makes sense to have one government making rules about the fish swimming there.

Some people, of course, would prefer to see the federal government making those rules on federal land. The conflicts over land-and-shoot wolf hunts are but one example of the pressure that can be brought to bear on state game managers imple-

menting controversial policies.

But the scattered instances of federal pre-emption now threaten to spread far wider with the Dec. 22 decision of the Supreme Court in the McDowell case. Unless some solution is found quickly to the constitutional conflict over subsistence, the Interior Department will be stepping in where the state defaults.

Gov. Steve Cowper apparently has been converted on this point, announcing he will ask the legislature and voters to approve a constitutional amendment designed to preserve state fish and game management authority. The congressional delegation is unanimous in its opinion that this is the best course, and that Washington, D.C., is the last place on earth from where hunting and fishing in Alaska should be regulated.

Right now, though, the coalition behind Cowper's amendment is composed chiefly of the Alaska Federation of Natives. It will take much broader support to generate the super majority needed in the legislature to get the amendment on the ballot.

Time is short, but that kind of support might be generated if the smaller controversies like fishing in Glacier Bay multiply.

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□ John Greely, a KTOO radio reporter, covered the legislature for various news organizations from 1972-1982 and served as Gov. Bill Sheffield's deputy press secretary and press secretary from 1982-86.

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# A subsistence solution?

THE STATE was handed the subsistence hunting and fishing hot potato back in December.

The legislature, in session for almost four months now, is just starting to poke around on the subject through committee hearings scheduled in the House today and tomorrow on the issue.

So far, no clear direction is in sight.

Among those apparently hoping the matter will go away are most of the candidates for governor, who have been busy looking for other things to talk about.

But one candidate took a stab at the issue the other day — and at least has come up with a viable proposal. His idea doesn't meet the apparent need to resolve this matter by July 1, but as Republican candidate Jim Campbell put it: "Federal law be damned. Alaska needs more than three months to untangle this two-decades-old conflict."

Mr. Campbell is proposing that the state create what he calls the Joint Commission on Subsistence Use and then petition the federal government to participate.

**THE CRISIS** exists because of a conflict between the Alaska Constitution, adopted more than 30 years ago and put into effect at the time of statehood in 1959, and a federal law enacted by Congress a few years ago.

The constitution says that all Alaskans have equal rights to the fish and game resources of the state. That's clean and simple.

But a federal law, enacted in the course of the old D-3 land battles in which Congress created a bunch of wilderness in Alaska and took a lot of other land classification actions, says residents of rural areas where subsistence may be a way of life have priority rights to fish and game resources.

And if the state doesn't agree, the law says, Uncle Sam will take over management of the resources on federal lands.

The state tried to conform, passing a law some

years ago that granted subsistence favors to rural residents.

But under challenge from a suit filed by a number of Alaskans, the state Supreme Court just before year-end held that law to be unconstitutional because it denied equal access to fish and game.

As much as it upset a lot of apple carts, not to mention a lot of Alaskans, the Supreme Court decision clearly was right. And, just as clearly, the federal law is obnoxious to the interests of Alaska because it goes against the grain of our constitution — which not only was ratified by the people of Alaska at the time of statehood, but which also was an inherent part of the federal compact under which statehood was granted.

**BUT ALL** three members of our congressional delegation say there is no hope of amending the federal law — Congress simply will not do it, they say. As a result, the Interior Department is ready to take over fish and game management on federal lands on the state.

That offends Mr. Campbell, who says "this resource management question goes to the heart of our statehood compact."

His proposal is for a joint commission composed of members appointed by the governor "so as to fairly represent state and federal agencies, the native community, and parties of interest such as sport and recreational resource users." The purpose, he says, would be "to define the issue; identify the low- and high-conflict user areas; explore any options for subsistence management, and make recommendations to the governor for implementation by the Boards of Fish and Game."

And he thinks the feds would cooperate and delay a takeover of management duties. If there's a chance that might happen, his proposal is worth being pursued with vigor in the next couple of months.

TIMES 4-24-80

# Feds' turnaround

## *Officials begin to show some sense*

For a while, it looked like the federal government was doing its best to vex Alaska. Federal officials, in the way they were drawing up subsistence regulations, had chosen secrecy over openness, arrogance over cooperation, and flippant dismissal over state involvement.

In locking the state out of the process, the federal government was carrying out a scenario guaranteed to provoke bitterness.

But on Monday it relented. Federal officials invited state wildlife management people to participate in planning for the management of subsistence regulations on federal land in Alaska. The invitation — if it proves to allow substantive participation — will help make up for months of neglect. But some animosity is certain to linger.

Federal officials until Monday had pursued an infuriating course of secrecy and arrogance. Since last year, they had been meeting in secret to discuss subsistence management plans. Participants snubbed the public and barred state wildlife managers.

Walter Stieglitz, regional director of the U.S. Fish and Wildlife Service, flatly dismissed state officials' concerns. When asked when the state would be involved in planning, he replied, "When we think it's appropriate to sit down and talk to them."

"Appropriate" apparently meant two weeks before July 1, the day the federal government is scheduled to take over management of about two-thirds of Alaska. State officials had been told they'd get to look at the regulations the same time as everyone else, when they're published in the federal register June 15.

Had federal officials left the state only two weeks to review and comment on such a critical issue, it would have been unconscionable. That attitude represented a pathetic lack of tact. And it suggested an extraordinary scarcity of good sense — essentially ignoring, as it did, the unmatched knowledge and experience of state wildlife managers.

The new federal posture, however, appears to relent on those policies somewhat. The changes portend the state at least will gain a foothold in planning how wildlife will be managed on two-thirds of Alaska's land.

The plan at issue, of course, will be best never put to use. For the remedy to federal fish and game management — and any accompanying arrogance — remains state approval of a constitutional amendment restoring the state's rural subsistence preference. Gov. Steve Cowper holds the key to getting that process rolling. The governor should call a special session of the state legislature, demand it approve the amendment, and thus get the proposal into the hands of the state's voters.

The federal posture has shown hints its regulatory posture could be distasteful. It could be aloof, distrusting and contemptuous. It's a prospect well worth Alaskans' best efforts to avoid.

NEWS CLIPPINGS IN  
Anchorage Daily News

## Ostrich alert

*Lawmakers should quit stalling  
and pass a subsistence amendment*

The Alaska Legislature has but five days to deal with the subsistence question. Lawmakers have a choice: they can act now and pass a constitutional amendment restoring a subsistence preference for rural residents, or they can do nothing and be remembered for letting much of Alaska's fish and game management slip into federal hands.

Some urban legislators are apparently happy to play the ostrich. They apparently think that by doing nothing they can block a rural subsistence preference. They're wrong.

Federal law requires a rural preference on federal lands — a third of the state. But the federal reach may not stop at federal borders. Fish and game migrate; they don't respect arbitrary boundaries between landowners. To protect fish and game on federal land, the federal government may have to claim jurisdiction far into state and private lands.

What would federal management look like? The feds aren't saying, but one thing is for sure: it's a recipe for endless frustration and litigation.

Yet, an equitable solution lies within easy reach of state lawmakers. They can ask voters to approve a constitutional amendment overturning the court ruling that killed the state's rural subsistence priority law. The status quo wasn't perfect, but it was a workable solution.

Critics of the subsistence amendment are loud, but they are a minority. A rural priority law won statewide voter endorsement in 1982. A recent poll shows that Anchorage voters support such an amendment by 82 to 28 percent.

A constitutional amendment is Alaska's only chance to settle the subsistence issue among ourselves. If legislators fail to act, they will put power over fish and game in the hands of federal bureaucrats and federal courts.

Office of the Governor

# Subsistence amendment

## Pro: Rural priority is only good solution

Last Dec. 22, the state Supreme Court presented Alaskans an early Christmas present few of us wanted—a resumption of the sometimes bitter conflict over subsistence.

In a split decision, the court upset a notion to which a majority of Alaskans have subscribed for more than a decade: when fish and game are scarce, those most dependent on them should have first crack.

The decision has refueled a long-standing debate over an issue that Alaskans have visited several times since 1978. In essence the question is this: At a time when there is not enough fish and game for all Alaskans who want them, how do we decide which Alaskans have a priority in the harvest?

There's only one good solution: an amendment to the state Constitution to permit the Legislature to give rural Alaskans priority access to fish and game for subsistence purposes. Earlier this month I proposed such a constitutional amendment to the Legislature.

If passed by two-thirds of both the House and Senate, the proposed amendment would appear on the November general election ballot where all Alaskans will be asked to

### Guest Opinion



By GOV.  
STEVE  
COWPER

vote on it. If approved by voters, the proposal would become a part of the Alaska Constitution, and I hope, resolve this issue once and for all.

Alaskans have consistently supported giving those who depend on fish and wildlife resources a priority when they are scarce. We showed our support for this policy when the Legislature passed the first subsistence law in 1978. We showed our support during the congressional debate over the Alaska National Interest Lands Conservation Act in the late 1970s.

We showed our support in 1982 when Alaska's voters decisively rejected a referendum to overturn the rural subsistence preference. And we showed our support in 1986 when the Legislature approved our

current subsistence law.

To the surprise and frustration of many Alaskans, the state Supreme Court four months ago said that long-standing policy doesn't square with the state's Constitution. The court said giving rural Alaskans a preference violates the state Constitution, at the same time the federal government says Alaska must give such a preference to rural Alaskans.

The ruling makes it virtually impossible to ensure that Alaskans who depend on fish and game the most have the opportunity to take those resources. Equally important, the decision jeopardizes the state's authority to manage fish and wildlife on federal lands and perhaps throughout the state.

When it mandated a rural subsistence priority in ANILCA, Congress also said the federal government must take over the management of fish and game resources for subsistence users on federal lands in Alaska if the state did not pass similar legislation.

To me and to most Alaskans, the prospect of the federal government managing Alaska's fish and game is unacceptable. One of the main reasons Alaskans fought for state-

hood was so that we—not federal bureaucrats 5,000 miles from here—could make decisions about our own lives.

Alaskans know what's best for Alaska. We know that subsistence is part of the culture, tradition and economy of many families and communities in Alaska. We know that, in general, rural Alaskans depend more on the subsistence use of fish and game than Alaskans living in our cities.

Certainly there are exceptions. One of my first reactions to the court's ruling was to consider creating an individualized permitting system under which the state could determine which Alaskans should qualify for subsistence, regardless of where they live. But it didn't take long to realize that such a system would require a huge and expensive state bureaucracy, would intrude into the lives of Alaskans and, because of a lengthy appeals process, would be a legal nightmare.

Some have suggested that we return to the days before Alaska had a subsistence priority law, when the boards of Fisheries and Game used seasons and bag limits to favor rural residents. Unfortunately, any

direct attempt by the boards to do that is subject to the same constitutional challenge as the rural preference struck down in December. And since state law would still be inconsistent with federal law, we'd still be running the risk of a federal takeover.

I also thought long and hard about trying to fix the problem by attempting to change federal law. But the problem, at least according to our Supreme Court, is with our state Constitution. Opening up ANILCA to possible amendment makes us vulnerable to other changes that could affect our ability to manage our own affairs. Without the support of Alaska's congressional delegation and the Alaska Native community, Congress would be unwilling to change federal law anyway.

Amending the state Constitution is not something we should do lightly. That carefully crafted document provides us basic guidelines for how we run our government and our state. That's why all Alaskans should have a say in this important decision. That's why preserving this essential Alaska tradition belongs in the Constitution.

Steve Cowper of Fairbanks was elected governor in 1986.

# Kenaitze set up subsistence salmon net

TIMES 5-16-90

By JOHN TETTON  
Times Writer

Kenaitze tribal members set a 60-foot salmon net near the mouth of the Kenai River early Tuesday using guidelines approved last month by a federal judge, tribal leader Clara Swan said.

The subsistence fishing venture, dubbed an "educational" fishery by state and tribal negotiators, seeks to teach Indian youngsters old ways, tribal leaders say.

A decades-old controversy over subsistence fishing on the Kenai has been the subject of fierce court battles between the tribe and anglers. The Kenai River and its tributaries hold the most popular sportfishing areas

in Southcentral Alaska.

Last year, anglers and fishing guides floated past the net in river boats, raising their rods at tribal members as they floated past the site near the mouth of the river. No violence was reported then, although tribal members said children were harassed when no adults were present, Swan said.

The Alaska State Troopers in Soldotna said no trouble was reported Tuesday.

The 600-member tribe will be allowed to catch up to 6,000 salmon in all under an agreement hammered out by attorneys for the tribe and the state. The number includes a harvest of up to 600 king salmon.

See Kenaitze, back page



Times map

# Sovereign Women of Kenai member jailed in fishing case

TIMES 5-16-90

TIMES STAFF

Department of Fish and Game troopers on Tuesday arrested a member of Sovereign Women of Kenai on charges of illegal subsistence fishing in Cook Inlet, officials said.

Dena Jacobson, 42, of Kenai was arrested on a charge of illegal fishing after troopers discovered her net in closed waters in Cook Inlet, said Lt. Ted Ruddell. She was lodged in Wildwood Pre-Trial Facility.

Members of the Sovereign Women of Kenai were arrested at least four times last July for setting a net out in closed waters and for catching fish illegally.

They say federal law gives them — and all Kenai Peninsula residents — the right to subsistence fish in the most popular sportfishing river in Southcentral Alaska. Thousands of fishermen flock to the river every summer to bag the prized king

See Arrest, back page

B-8 Wednesday, May 16, 1990, The

## Kenaitze

Continued from page B-1

The tribe last summer caught nearly 4,000 salmon including 96 kings, it said.

U.S. District Court Judge H. Russel Holland granted the tribe a salmon-fishing season from May through September.

Meanwhile, dissident members of the tribe set their own salmon net at the tribe's fishing site to protest the deal struck between the Kenaitze and the state.

Kenai River sportfishing guide Harry Gaines, who led the protest group of 60 to 80 boats last June, said although one subsistence net will not harm the sportfishing industry by itself, he fears what will happen if the tribe eventually is allowed more.

Gaines said he does not agree subsistence is necessary in an urban area like Kenai. The Kenaitze tribe has argued the Kenai Peninsula is rural, and the U.S. 9th Circuit Court in San Francisco agreed after the tribe lost in Alaska Supreme Court.

"We're living in modern times. We feel like they have a job like everybody else and they're teaching their young people how to subsistence fish? It doesn't make sense," he said.

Gaines also said his group was encouraged to "show a sign of strength" by clients, mostly anglers from outside Alaska.

Of the estimated 6 million salmon of all species that migrated to Cook Inlet and its tributaries last year, 5.5 million were netted by commercial fishermen, 340,000 by anglers and 18,000 by subsistence users, said Alaska Fish and Game biologist Dave Nelson and Paul Reusch. Those numbers include catches from the Kenai River.

## Arrest

Continued from page B-1

salmon.

Ruddell said his officers found a net in Cook Inlet and questioned a group of people on the beach. Jacobson reportedly claimed the net and was arrested, he said.

The woman was arrested about 6:30 p.m. one mile south of the mouth of the Kenai River.

Jacobson said earlier Tuesday she and members of the group were ready to face jail and would refuse to pay bail if arrested.

"We are sovereign," Jacobson said. The only law that exists is tribal law and the Kenaitze Indian tribe has bowed to state and federal pressure to conform, she said.

Two other members of the group who are Kenai Peninsula residents were kicked out of the Kenaitze tribe last year when they refused to go along with the "educational fishery" agreement reached by the tribe with the state Department of Fish and Game. Jacobson, a Yupik-Athabaskan who lives and works as an artist in Anchorage, contends the Kenaitze tribe is wrong to agree to a fishery that allows only one net.

Kenaitze tribal leader Clara Swan Tuesday said although she respects their tenacity, the women would be breaking the law. "I don't know that things like that help a lot," she said. "I think it makes it harder for Native people" to get community support.

# Feds draft rules on subsistence

By CRAIG MEDRED  
The Anchorage Daily News

Only Alaskans in communities of 2,500 or less will be guaranteed special privileges to subsistence hunt and fish when the state government assumes management of fish and wildlife on federal lands in Alaska this summer, according to a draft plan obtained by the Daily News.

Residents of communities larger than 2,500 people — Anchorage, Fairbanks, Juneau, Kenai, Ketchikan, Sitka and Valdez — will be automatically denied subsistence privileges according to the plan.

Residents of places with populations of 2,500 to 2,000 people — Barrow, Bettler, Cordova, Homer, Kotzebue, Nome, Palmer, Petersburg, Seward, Soldotna, Wasilla, Wrangle, Kenai and

Please see Back Page SUBSISTENCE

## THE BACK PAGE

### SUBSISTENCE: Federal government to set its own rural preference

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Kotlik will have their status determined by a new Federal Subsistence Management Board.

Whether these latter communities have rural or urban characteristics will decide their subsistence status under the federal plan. Even some communities of less than 2,500 people could be denied subsistence privileges, according to the draft plan.

Federal officials are as yet undecided whether those characteristics will be defined. Walter Storz, regional director of the U.S. Fish and Wildlife Service, said Thursday night.

The federal government on July 1 will assume management responsibility over 10 percent of the state in order to enforce subsistence priority. The Alaska National Interest Lands Conservation Act requires federal protection of that priority.

Subsistence is the customary and traditional harvest of fish and wildlife for food and cultural enrichment.

The state, which now manages fish and wildlife in most of Alaska, can no longer grant a subsistence preference for rural residents because of a state Supreme Court decision that distribution on the basis of residence is unconstitutional.

State subsistence privileges had been determined on a community-by-community basis by the boards of Fish and Game, Anchorage, Fairbanks, Juneau, the Matanuska-Susitna Borough, most of the Kenai Peninsula, Valdez, Whittier and the Eastern Air Force Station were classified as non-rural. Sitka, Kotlik and most of the rest of the state was classified as rural.

Commercial fishing would be largely unaffected by the federal plan. Commercial fisheries take place in state waters, and Storz said an attempt will be made to exert federal authority there.

Subsistence groups, unhappy about federal action, have already sued the state in federal court. Subsistence fishermen in the Bethel area have already sued the state in an effort to block commercial fishing at False Pass in the Aleutian chain.

Storz said he doubts federal officials can win their way through the maze of conflicting interests and opinions surrounding the subsistence issue without getting sued by someone.

For a decade, the subsistence issue has left a trail of litigation through state and federal courts. State courts have twice overturned the subsistence law, with the latest and most critical decision coming this winter.

That was when the Alaska Supreme Court ruled the subsistence priority for rural residents is unconstitutional.

An effort to restore the rural preference by passing a constitutional amendment before Alaska voters this fall died in the legislature. That set the stage for a federal takeover of fish and game in 1980.

Under the leadership of the Fish and Wildlife Service, federal officials have been ruling to discuss subsistence management plans. State officials and the public have been told little of those discussions.

"They're not talking to us," Dan Thum, regional supervisor for wildlife in the Alaska Department of Fish and Game, said Thursday. "They've told us we'll get to review their regulations when they're published in the federal register on June 15, or something like that."

"When we think it's appropriate to sit down and talk to them we will," Storz said. He defended secret discussions as routine business for the Fish and Wildlife Service.

"It's the way regulations are commonly set," he said. "We didn't think it was a good idea to go public with a program. This program still has not been finally proposed."

All the major issues are decided, he acknowledged, but minor points remain to be ironed out. Until all of those are settled, the public and other Alaska resources must wait. Storz said he would be able to give the public a draft of proposed regulations, along with issue statements. Key points in that document:

- State regulations would be adopted and modified where necessary to provide for subsistence hunting and fishing, as well as sport hunting and fishing, this year.
- No federal licenses would be required of Alaskans, but state hunting, fishing and trapping licenses would be necessary, and free federal permits might be required in some cases.
- The federal government would move to take over management of fish and wildlife not only on the federal lands in Alaska, but on 60 million acres of land selected by but not yet transferred to the state and private Native corporations.
- Each federal agency would be allowed to determine rules for access to its lands for hunting, fishing and trapping.
- An effort would be made to differentiate subsistence trapping from commercial or sport trapping and establish a subsistence priority for rural trappers.
- Subsistence hunter and trade of fish, wildlife and furs would be allowed to continue "if the exchange is of a limited and noncommercial nature," and if it is restricted to "types and volumes of trade which existed prior to passage of ANILCA in 1980."
- Alaskans would have to substantiate they are rural residents to qualify for subsistence.
- Healthy fish and wildlife populations will be maintained, even if that means curtailing subsistence activities.
- Subsistence hunting and fishing within parks and refuges would be limited to local rural residents, "defined as people using the area without the use of aircraft to gain access."
- Berries, herring, hark, mussels, mussels, trout, fish, fungi, vegetables and other resources would be reserved for subsistence where necessary.
- All of these activities would be supervised by the Federal Subsistence Management Board, made up of the regional directors of the U.S. Fish and Wildlife Service and the National Park Service, the state director of the Bureau of Land Management, the regional forester for the U.S. Forest Service and an at-large federal official as yet unnamed.
- These top level bureaucrats would be advised by a federal subsistence staff committee with representatives from Fish and Wildlife, National Parks, BLM, the Bureau of Indian Affairs, the Forest Service, the Army and Air Force, the National Marine Fisheries Service, the Federal Aviation Administration, the regional subsistence offices of the Department of the Interior, and other federal officials to be determined.
- Also advising the board would be new regional fish and wildlife councils set to be established, and possibly the state boards of Fish and Game.

which the management board would deal with the issue of those unincorporated communities of 2,500 to 2,000 residents. Storz said. How many people qualify for subsistence is the key issue, he said.

All of Alaska's wild resources are owned by the state. The state has the sole right to provide hunting and fishing for non-rural Alaskans. The fewer the people who qualify for subsistence, the more chance there is to provide hunting and fishing opportunities for non-rural Alaskans.

Seasons and limits for hunting and fishing for all Alaskans will depend to some degree on subsistence decisions, although the implications for hunting are far greater than for fishing.

Sport fishermen shouldn't see much change in regulations because of a federal takeover, said Becky Debus, deputy director of sport fisheries for the Alaska Department of Fish and Game.

Most of the major sport fisheries take place in state waters, he said, and in those fisheries an federal takeover "has no noticeable impact on the sport fishery. It has never been any conflict with subsistence."

Aside from the Russian herd sport fisheries occur on state lands on in the public waters like the Kenai River and Port Krusenowki. State regional sport fisheries supervisor. The state owns all navigable waters.

Hunting is a different matter, he said, and that from 10 to 90 percent of the top game animals killed in Alaska are shot on federal lands.

For instance, he said, about 50 percent of Northern quinnone are shot on federal land. The herd that roams the Rubicon basin north of Anchorage is the most popular with Southern tundra herds. It has provided a constant source of conflict for non-rural hunters from Anchorage and the Matanuska Valley, and rural hunters from Ekwonuk.

Because of a subsistence preference for Ekwonuk hunters there are early season hunting permits. Non-rural hunters must enter a lottery with a small number of permits.

The status of that lottery, as well as the Ekwonuk subsistence permit, is to be made at the moment awarding further decisions on subsistence, Thum said.

Storz said the Fish and Wildlife Service would officially unveil its plan next week.

# Subsistence strategy casts burden on state

By JOE HUNT  
Times Writer

Alaska's cooperation is essential for the U.S. government to successfully take over fish and game management on vast tracts of federal land in the state, said Glen Ellison, chairman of a group planning the July 1 takeover.

A draft plan outlining how the federal government will provide subsistence hunting and fishing seasons in national parks,

refuges and forests was put together behind closed doors, without public hearings or state involvement.

The plan is to be hand-carried to Washington, D.C., today for review by high-level officials from several agencies.

Lew Pamplin, director of the Alaska Department of Fish and Game's Division of Wildlife Conservation, said he saw the federal plan for the first time Monday.

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## Game

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Considering the complexity of wildlife management in Alaska, the federal plan appeared reasonable, he said.

"Yeah, it can work, but that doesn't mean it's good," he said. "In fact, I know it's not."

Ellison warned the transition from state to federal control likely would not be smooth. However, the plan does the job required by Congress when it guaranteed rural Alaskans a priority for subsistence hunting and fishing in the state, he said.

"We'll admit up front there's going to be substantial amount of confusion in the process," Ellison said. "But the law's the law, and we're going to do the best job we can administering it."

Federal officials are counting on complete cooperation from the state boards of Fish and Game, and they want to use the expertise of Alaska Department of Fish and Game biologists and managers without paying for their help.

There will be no contract this year for the state to manage the hunting and fishing seasons and conduct biological research on federal lands, Ellison said. But state cooperation will be essential to ensure the health of animal populations and maintain a subsistence lifestyle for rural Alaskans, he said.

The federal government will

be spending at least \$3 million to beef up its wildlife management program. If Alaska does not cooperate fully, the cost will be more than \$10 million, Ellison said.

The state, in many ways, can control federal subsistence decisions by the way it manages wildlife on its own land. Salmon, for example, must pass through state waters where they can be harvested commercially, by sport fishing or by subsistence users. Upriver, on federal land, the small percentage of fish getting through are needed to spawn.

It will be up to the state to either provide subsistence or "personal use" fisheries on state land or ensure enough fish escape upstream to allow a subsistence harvest on federal land, Ellison said.

Federal law prohibits subsistence hunting or fishing if it endangers the health of a species.

Similarly, the Nelchina caribou herd migrates over state land onto federal land. Hunting seasons on state and federal land could conflict, creating a difficult political and biological situation.

The question of which side would set seasons and bag limits is unresolved. "It'll probably be a mixed bag," Ellison said. "It's going to be a very interactive process between state and federal governments and the state and federal boards."

Pamplin pledged the state's cooperation. "If we don't and they don't, the loser is going to be the resource — and then the people," he said.

The state subsistence pro-

gram was thrown into a tailspin in December when the Alaska Supreme Court ruled unconstitutional a state law that gave rural residents priority to fish and game in the state. That forced the state out of compliance with the Alaska National Interest Lands Conservation Act of 1980 which guaranteed rural residents subsistence priority over other users of fish and game on federal land in Alaska.

Because the state no longer can give rural residents preference, ANILCA calls on the federal government to open subsistence hunting and fishing seasons on its land. The law strips the state of its right to manage wildlife on federal lands, which covers about 60 percent of the state.

The takeover and the federal plan are sure to meet with objections, Ellison said.

"I think it's safe to assume we'll probably get sued on a variety of aspects from a variety of sources," he said.

The plan creates a federal subsistence board to oversee wildlife management, set hunting seasons and bag limits and determine whether a community qualifies as rural. The plan categorizes communities by population. Villages with fewer than 2,500 people usually will qualify for subsistence, but even they are not guaranteed a rural designation, the plan said.

Some smaller towns along the road system, and several larger bush communities with populations up to 7,000 residents, must be analyzed for their urban characteristics, Ellison said.

# Subsistence failure could cost sportsmen

By JOE HUNT  
Times Writer

Splitting wildlife management in Alaska between the federal and state governments could threaten the stability of sport and subsistence hunting and fishing seasons, wildlife managers say.

The Alaska Legislature almost guaranteed such a division when it adjourned without approving a measure that would have asked voters in November whether to change the constitution to give rural residents a priority in allocating fish and game in the state.

"It seems terrible to me the Legislature won't give Alaskans a chance to have their say on that and I think it's going to come back to haunt them," said Steve Behnke, director of the state Department of Fish and Game's Subsistence Division.

Walter Stieglitz, regional director of the U.S. Fish and Wildlife Service, said in a statement the federal government prefers to leave wildlife management in state hands.

"We are extremely disappointed the state Legislature appears to be coming up empty-handed on this extremely important issue," Stieglitz said. "Our goal is to have as smooth a transition as possible."

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Sen. Bettye Fahrenkamp, D-Fairbanks, and Sen. Al Adams, D-Kotzebue, pass the time with a game of cribbage during a lull in the legislative session Tuesday.

## Game

Continued from page A-1

ble considering the complexity of the issue and the tight time constraints facing us."

Sportsmen's lobbyists opposed the vote, saying they feared rural communities and native corporations would wage an expensive media campaign to win voter approval of the proposed amendment. It is a complicated equal rights issue that can too easily be distorted by a heavy advertising blitz, said Russ Redick, spokesman for the Alaska Sportsmen's Association.

"This issue is not about whether subsistence will continue — of course it will and it should," Redick said. "This is about priority."

The Alaska Supreme Court in December ruled unconstitutional the state's subsistence law giving rural residents a priority to fish and game in the state.

The state constitution guarantees residents equal access to the fish and game in Alaska, but the Alaska National Interest Lands Conservation Act of 1980 requires rural residents be given a preference for subsistence purposes. The state could lose its management authority over wildlife on federal lands making up 60 percent of Alaska if it cannot conform to this federal law.

State and federal wildlife managers have said they hoped to avoid such a split.

Separate management of wildlife on state and federal land promises duplication of effort, turf battles, data problems and poor control of hunting seasons, said Lew Pamplin, director of Fish and Game's Division of Wildlife Conservation. It easily could lead to shortened or canceled hunting seasons in parts of the state.

"Essentially we're looking at a revolution in the overturning of the way fish and game have been managed in the state since statehood," Behnke said.

Legislative action was the only hope for a quick fix, Behnke said.

Though the Supreme Court set a July 1 deadline for federal takeover, Behnke said the state would have asked for a stay until the November election if the Legislature had approved the proposed constitutional amendment.

"It seems clear to me that Alaskans as a whole don't want federal management and the polls also seem to indicate Alaskans are willing to provide a rural preference," he said.

A March survey conducted by Dittman Research Corp. showed 51 percent of Alaskans polled supported an amendment allowing such a preference.

Redick said he objected to the survey question. If respondents had been asked whether they would allow Kenai Peninsula residents to hunt or fish when Anchorage residents could not, there might have been a very different answer, Redick said.

Sportsmen's groups also object to a federal takeover, but Redick said it would be a better alternative than voting away constitutional rights. He said the state should sue the federal government to regain its authority to manage fish and game in the state. He also said Congress should change the federal law.

A possible solution would be for the Fish and Wildlife Service to contract with state biologists to continue their management of fish and game on federal lands. But the agency has not started any such negotiations, said Bruce Batten, spokesman for the service.

"They haven't thrown out many of those options right now, but we're developing a separate plan," Batten said. "We're definitely not negotiating with them."

# Secret

Continued from page A-1

That likely means Alaska will be left out of the federal effort, said Norm Cohen, deputy commissioner for the Alaska Department of Fish and Game. There have been no negotiations for the state to conduct biological studies for the federal government or to manage the subsistence hunting and fishing seasons on federal lands, he said.

"I don't think we're looking at contracting," Cohen said. "It's been raised as an issue, but I just don't think it will happen."

Stieglitz said a federal board will be formed to oversee wildlife management on federal holdings. The group, composed of representatives from various federal agencies, will set seasons and bag limits as well as oversee biological studies and monitoring programs.

Federal land managers will provide their own law enforcement, Stieglitz said.

Many existing state regulations will be incorporated in the federal plan as long as they fit the new program, he said.

The Alaska Supreme Court in December ruled unconstitutional the state's subsistence law giving rural residents a priority to fish and game. The state constitution guarantees residents equal access to fish and game in Alaska, but that is in direct conflict with the Alaska National Interest Lands Conservation Act of 1980.

That federal law requires rural residents be given a preference for subsistence hunting and fishing.

The Legislature failed to address the conflict and the federal

government is going ahead with plans to manage subsistence on its land.

The draft federal regulations attempt to answer one of the trickiest questions of the subsistence issue: What defines a rural community? The plan divides Alaska communities into three categories.

If the regulations remain as drafted, most communities with fewer than 2,500 people would qualify for subsistence, said Lou Waller, who represents the National Park Service on a federal task force writing the rules.

But there are no guarantees, he said. A small town that "demonstrates characteristics of an urban community" and does not have a history of "customary and traditional use" of the resource may not qualify.

Towns with populations of 2,500 to 7,000 people could qualify if they are in a bush setting and meet the criteria set by federal law, he said. Any city with more than 7,000 residents would not qualify.

Waller said that broadcasting every move the federal task force made would have slowed down the process considerably.

A public hearing on the federal plan is expected late this month or in early June.

Though state officials have sat in on a few meetings of the task force, the Department of Fish and Game has not been told of the federal plan, Cohen said. The state files are open to public view, he said, and that would have blown the federal blackout on the planning process.

"There's an awful lot to fish and game management and it's really a sorry state of affairs that they haven't been working with the guys that know how to do it," said Dan Timm, state game biologist.

## Subsistence plan evolves in secret

By JOE HUNT  
Times Writer

Hastily written regulations on subsistence hunting and fishing on federal land in Alaska are being fine-tuned behind closed doors and next week will be shipped to Washington, D.C., for approval, officials close to the process say.

Walter Stieglitz, director of the U.S. Fish and Wildlife Service in Alaska, defended the secrecy in developing the management plan.

"I realize this cuts the public a little short in being able to react to the proposal, but that's the nature of the beast because of the time crunch involved," he said Thursday.

Lew Pamplin, director of the state Division of Wildlife Conservation, said he cannot understand why the federal process has not been more open.

"This is not the MX missile system here," Pamplin said. "This is subsistence that will be governed on public lands. This is ridiculous. It should be conducted in a public forum."

The federal government intends to take over subsistence management on federal land July 1, following the Legislature's failure to resolve the controversial issue. The federal government owns about 80 percent of the land in the state.

The federal plan is being crafted without information from state biologists who have managed and monitored hunts on federal acreage, state officials say. While a few state biologists have received telephone calls from their federal counterparts asking for biological or administrative information, state experts largely have been ignored.

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# Subsistence talks shift to W

**TIMES STAFF**

Members of Alaska's congressional delegation plan to meet with the secretary of the Interior today regarding a federal take-over of subsistence rights on federal lands in the state, said Sen. Ted Stevens, R-Alaska.

Stevens made his comments at a press conference Friday. Federal officials have drafted a management plan to take over subsistence hunting and fishing rights on federal land — about 60 percent of Alaska — on July 1.

The federal government is stepping in following the state's failure to resolve who has subsistence rights. The Alaska National Interest Lands Conservation Act of 1980 requires a subsistence preference for rural Alaskans. Conforming with that act is the basis of the subsistence controversy.

Stevens said he and other members of Alaska's congressional delegation plan to meet

with Interior Secretary Manuel Lujan today in Washington, D.C., to discuss subsistence. He did not say what the delegation hoped to accomplish.

"We're putting this on the front burner," Stevens said.

The plan would deny subsistence hunting privileges to Alaskans who live in communities with populations over 7,000, while smaller communities' subsistence rights would be governed by a special federal board.

Stevens would not comment specifically on the draft plan Friday. But he did warn of possible dire consequences if Congress must revisit ANILCA to resolve the subsistence issue.

"This now shifts to Washington; there's no question about it," Stevens said. "I still think this is an issue that begs a state solution, and if it comes to Washington . . . there isn't a single segment of Alaska that's not going to suffer."

# Cowper weighs support for special session



Mindful before the legislature adjourned Tuesday night, Senate President Tim Kelly takes a phone call from Gov. Steve Cowper. Cowper sought a special session for consideration of his education endowment bill. He dropped the request because of lack of support for his bill in the Senate.

## Governor's ready to call legislators back to reach agreement on subsistence law

Daily News staff and wire services

JUNEAU — Gov. Steve Cowper said Friday he is prepared to call a special session of the legislature to settle the controversy over subsistence hunting and fishing rights in Alaska — if enough lawmakers want it.

Senate President Tim Kelly, R-Anchorage, and Tony Knowles, a Democrat candidate for governor, called for a special session Friday, and U.S. Sen. Ted Stevens, R-Alaska, warned of dire consequences if the legislature does not settle the issue this summer.

Cowper said several legislators have asked him about the prospects for a special session since the legislature adjourned its regular session Tuesday without acting on the issue.

"I've certainly gotten a strong indication from several people that they wish they had acted favorably on subsistence before they left town," he said. "People simply did not understand the implications of a failure to act."

Kelly met with Cowper Friday and asked him to call a special session within the next six weeks to reconsider subsistence, legislative ethics reform and new regulations for hunting guides and outfitters.

"I think we're going to be here in June," Kelly said. "The governor is actively going to work to put together a consensus on the subsistence issue."



House Majority Leader Mike Navarre, D-Kenai, said it was ironic that Kelly was calling for a special session when the Senate never even voted on the subsistence issue. But Navarre said House leaders were open to the idea.

"We're going to wait a few weeks and see how people are feeling then, and if it looks like some votes have changed we'll give it a try," he said.

The Alaska Supreme Court ruled in December that the rural subsistence preference in state law was unconstitutional. But federal law requires a rural preference on federal land in Alaska.

Cowper and some lawmakers proposed a constitutional amendment to guarantee the rural preference. But lawmakers were unable to agree on the best solution.

Please see Page B 3, COWPER

ADN 5-12-70

## COWPER: If enough lawmakers support special session, governor says he'll call one

Continued from Page B 1

Stevens would not say at a news conference in Anchorage Friday if he supports a special session, but said it is the only way for the state to fend off congressional action that he said would hurt the state while not leading to the best solution to the subsistence problem.

Stevens opposes changing the Alaska National Interest Lands Act of 1980, which mandates a subsistence preference for rural Alaskans, but said ANILCA will be changed if the legislature does not act on the subsistence issue in a special session.

"There isn't a single segment of Alaska that isn't going to suffer by having that issue opened up by Congress," Stevens said.

He said the U.S. House is against having state management of fish and game on federal lands.

Stevens said Rep. Morris Udall, D-Arizona, plans to try to amend the law anyway, and will be joined by various members of Congress who want to reduce access to Alaska national parks by hunters, cabins owners and pilots.

"There are people in Congress who don't believe in hunting, there are a lot more who don't believe in guns at all, and there are many who believe that larger areas of Alaska should be set aside with no access to hunting," Stevens said.

Besides, he said, he supports the rural preference for subsistence rights.

"In times when there is a shortage of game, then people in the area should be able to hunt first," Stevens said.

Knowles also called for a special session Friday.

"We can't let others decide our future by default,"

Knowles said "That would be a step backward."

The legislature's failure means the federal government will take over management of its land in Alaska — about 60 percent of the state — starting in July when the court ruling takes effect.

"They don't have any choice," Cowper said. "They have to come in, they have to take over and impose their own rules whether we like them or not. And they're preparing to do that."

"People are going to realize because of the announcements that are being made practically on a daily basis

by the federal agencies involved, that we're in deep trouble. And we've got to come back and resolve this."

Early Wednesday, minutes after the legislature adjourned, Cowper said it would be up to lawmakers to call themselves back into session. That would require a two-thirds vote of both houses.

But he said Friday he will call the special session himself if he confirms there is the two-thirds majority needed to refer a constitutional amendment to voters.

"At the moment the votes aren't there," Cowper said.

The governor said the Republican minority voted almost as a bloc against a subsistence amendment when it failed on a 20-20 vote in the House Sunday.

Cowper said some of those Republicans are among the lawmakers who have called him expressing their regret.

"People are looking at them and saying, 'My God, why didn't you resolve that? What's the matter with you folks?'" Which is exactly the kind of the public pressure that's going to have to be put on the legislators that voted against it, specifically in the House minority," Cowper said.

Legislature Fails to Act on Subsistence; Federal Management Next

By LARRY PERSILY

Associated Press Writer

JUNEAU (AP) - The proposed constitutional amendment on subsistence hunting and fishing has died, and with it the state is expected to lose control of fish and game management on federal lands July 1.

Although the House had the subsistence resolution on the floor Monday night, supporters never put the issue to a vote because they lacked the two-thirds majority needed for passage.

The Senate never made it that far. Its resolution was stuck in the Judiciary Committee, headed by Sen. Jan Faiks, R-Anchorage.

There will be no special session, Gov. Steve Cowper said late Monday night. "I'm not going to haul them in there when the votes aren't there," Cowper said.

The Legislature's failure to put a rural preference for subsistence hunting and fishing on the November general election ballot guarantees federal takeover of fish and game management on federal lands, Cowper said.

Federal agencies control more than 60 percent of the land in Alaska.

"We'll have to sort it out when it comes," Cowper said.

The Alaska Supreme Court in December ruled that state law providing rural residents a subsistence preference violated the state constitution. But federal law requires rural preference, and a court stay giving the state time to resolve the dilemma will expire July 1.

"Hello federales," Rep. Mike Davis, D-Fairbanks, said Monday night.

Davis voted in favor of the constitutional amendment when it failed 20-20 on its first try Sunday.

The issue was scheduled for final reconsideration Monday, but after waiting until late into the evening supporters decided against taking a vote because they knew it would be a loser.

"I think it's a sad day for Alaska," said Rep. Peter Goll, D-Haines.

Cowper said he stopped badgering people to vote for the amendment about 8:30 p.m. He said the vote count had reached 24, maybe 25, and no more were forthcoming.

The constitutional amendment died when the Senate adjourned for the day shortly after 9 p.m., leaving only one day before tonight's adjournment deadline.

The constitution requires that legislative issues receive a minimum of two days consideration in each chamber.

Even if the House were able to pass the amendment today - or the Senate were to pass its version - the measure would fall short of the two-day requirement for consideration in the other chamber.

Lawmakers could vote to extend the session to consider subsistence, but that would take a two-thirds vote of each chamber, and no one in the Capitol said that is likely.

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House Republicans Take Control of Final Day's Agenda

By LARRY PERSILY

Associated Press Writer

JUNEAU (AP) - The Republican minority has taken control of the final day's agenda in the House, and several major bills could die without GOP support today.

more

# House defeats subsistence amendment, will vote again

ADN 5-7-90  
By LARRY PERBILY  
The Associated Press

JUNEAU — House members late Sunday night defeated a proposed constitutional amendment to allow rural preference for subsistence hunting and fishing, but supporters will have a second chance today.

The measure fell seven votes short of the required two-thirds majority needed

to pass a constitutional amendment. Senate approval also would be needed for the issue to win a spot on the November election ballot.

A similar constitutional amendment was in the Senate Judiciary Committee Sunday, with a vote by the full Senate possible today. Passage of either measure by both chambers before

Tuesday's adjournment deadline would put the issue on the ballot.

The Alaska Supreme Court in December said state law giving rural residents a preference for subsistence hunting and fishing violated the state Constitution. But federal law requires a rural preference, and the legislature has spent much of the session debating possible an-

swers to the legal dilemma. Supporters of a constitutional amendment say failure to legalize the rural preference will result in the loss of state control over fish and game management on federal lands.

The House vote was 20-20. It had been 21-19, but Rep. Loren Leman, R-Anchorage, changed his vote to "no."

"The first vote was my

heart, the second vote was my district," he said.

Rep. Richard Foster, D-Nome, said he was not optimistic about winning approval on the second try.

"There's just not only any understanding of the rural problem, there's not even any sympathy," he said.

Sunday's failure was not a surprise, Foster said. All but five of the 24

House Democrats voted for the measure, and all but one Republican voted against it. Rep. Bill Hudson, R-Juneau, voted in favor of House Joint Resolution 74. "No" votes came from Democratic Reps. Mark Boyer of Fairbanks; Curt Menard of Wasilla; Ron Larson of Palmer; Kay Wallis of Fort Yukon; and Dave Donley of Anchorage.

# Poll backs Cowper

4-3 90

## On amendment for subsistence

By BRIAN S. AKRE  
The Associated Press

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

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

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

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

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

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

The legislature is considering several subsistence measures in response to a recent Alaska Supreme

Please see Page B-3, POLL

## POLL: Alaskans favor rural preference for subsistence

Continued from Page B-1

Court ruling. The court ruled the state subsistence law was unconstitutional because it provided a preference to rural residents.

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

Should the legislature fail to come up with a solution, the federal government may assume management of fish and game on its lands within

Alaska as early as summer, officials say.

Cowper reacted cautiously to the poll results.

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

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

Rep. Ramona Barnes, an

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

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

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

"I don't think people un-

derstood the question," Barnes said. "When it's explicit, they're very opposed to amending the constitution."

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

Anchorage was 47 percent in favor and 38 percent opposed, Southcentral had 41 percent in favor and 33 percent opposed, and Southeast residents favored the measure 55 percent to 23 percent

# Governor and lawmakers split on subsistence

By DAVID POSTMAN  
Daily News reporter

JUNEAU — Gov. Steve Cowper believes lawmakers fear a vote on subsistence and their failure to act is illogical and jeopardizes fish and game management "for years and years to come."

"They haven't done a cock-eyed thing on subsistence except dodge it," Cowper said in an interview Wednesday.

"I think they are afraid to vote on it."

The future of Alaska Natives' traditional right to hunting and fishing was thrown into doubt when the Alaska Supreme Court ruled that the state law giving rural residents preference was unconstitutional.

Rather than change the state's subsistence law to conform with the constitution, Cowper wants lawmakers to put a constitutional amendment on the November ballot to change the constitution to match the existing law.

Some lawmakers have criticized the governor's approach, saying a ballot measure would bring a bitter campaign pitting Natives against urban sportsmen — a replay of a 1982 subsistence election. Native groups and sportsmen's organizations have already faced off as they lobbied the legislature this session.

But Senate President Tim Kelly, R-Eagle River, said that rather than being afraid of bringing on a divisive campaign, the Senate has not done much with Cowper's proposal because there aren't the votes to place it on the ballot.

"We wasted a lot of time on his plan," Kelly said. "Until he recognizes that he does not have the support of the Alaska Legislature or



Gov. Steve Cowper

the public, we're high-centered."

In the House, Rep. Max Gruenberg, D-Anchorage, co-chairman of the House Judiciary Committee which is considering Cowper's proposal, would not respond to Cowper's comments.

"I cannot give you a comment," he said. "We are still talking about it."

Both the House and Senate are considering bills that would place constitutional amendments on the fall ballot that would guarantee a subsistence priority. Cowper and several lawmakers have introduced slightly different versions of the proposed amendment.

If the legislature does not act, state officials have said the federal government will be forced to take over management of Alaska's fish and game.

So far, the Senate Resources Committee has given very little attention to Cowper's proposal.

"We've been trying to

Passes see Page B-3, COWPER

## COWPER: Subsistence strife

Continued from Page B-1

find something that works," said committee Chairwoman Sen. Bettye Fahrenkamp, D-Fairbanks. "He doesn't have any support, but I could move the bill tomorrow if he wants."

In the Democratic-controlled House the bill has been approved by the resources committee and is now being considered by the judiciary committee, which was scheduled to hold a meeting on the bill Wednesday night.

"They're running a terrible risk," Cowper said. "The action has effectively stopped in the House Judiciary Committee and the people on that committee are jeopardizing fish and wildlife management for

years and years to come."

Cowper said he was concerned about reports that the subsistence bill is being held up by House Democrats who are angry that their rural colleagues are trying to kill a bill that would give public school teachers the right to strike.

"That's not very smart to link up something as important to all Alaska as subsistence with something that has absolutely no relationship to it," Cowper said.

Rep. Peter Goll, D-Haines, co-chairman of the judiciary committee, said he wasn't aware of any link between the two issues.

"It might be happening with out my knowledge," he said. "This is a very strange political world we are working in right now."

# Outside activists join Alaska fight over subsistence

'Indian has license to steal,' leader says

By DAVE PATRICK  
Times Journal Bureau

JUNEAU — The leader of a Wisconsin group that opposes Indian treaty rights said the group will become involved in Alaska's subsistence fight if a state constitutional amendment goes to voters in November.

Larry Peterson, chairman of Protect Americans' Rights and Resources, said Alaska is one of 41 states where federal policies and court decisions have created a special class of people.

"The reservation Indian has been given a license to steal by the federal courts," Peterson said.

He said Alaska's natives have

been amply compensated for the loss of their historical land rights by the 1971 Alaska Native Claims Settlement Act. The ANCSA settlement gave natives \$1 billion dollars and 44 million acres of land.

PARR claims a membership of 8,000 hunters and other outdoors enthusiasts in Wisconsin. The group has acquired a reputation among Indian rights advocates, who say the group promotes racial bigotry.

Sue Erickson, spokeswoman for The Great Lakes Indian Fish and Wildlife Commission, says PARR and Peterson have wrapped themselves in patriotism and fundamental constitutionalism while spreading rumor and misinformation.

"As far as I'm concerned, it's just a lynching of minority

See Subsist, page A-10

## Subsist

Continued from page A-1

rights," Erickson said. The Wisconsin-based tribal commission, working with a \$2.6 million appropriation from Congress this year, oversees harvest areas, seasons and bag limits of the Chippewa Indians in three Midwest states.

Erickson accused PARR members of provoking violence last year in northcentral Wisconsin over the fish spearing rights of Chippewa Indians.

Peterson denies any role in the ugly racial attacks on Indians, recorded by network news television crews covering the protests. He says his organization will support any member implicated in the confrontations.

Peterson claims his group's reputation springs from federal bureaucrats and Indian rights attorneys who feel threatened by PARR's assaults on Indian treaties.

The strident exchanges may be a harbinger of the debate to come in Alaska as Lower 48 hunting, fishing and outdoors organi-

zations are turning their attention to the state's struggle over subsistence hunting and fishing rights.

"There are five or six major organizations in America that will come on board, on this fight," said Sam McDowell, who brought the lawsuit that resulted in an Alaska Supreme Court ruling on subsistence last year.

The court in December declared the state's subsistence law unconstitutional finding that it illegally discriminates against city residents who may want to subsistence hunt and fish. The decision stands at odds with provisions in the Alaska National Interest Lands Conservation Act that require a rural preference.

The conflict could set the stage for a federal takeover of subsistence hunting on more than half the land in Alaska.

Gov. Steve Cowper proposed a constitutional amendment Friday to re-establish the hunting and fishing preference for rural residents. The proposal requires a two-thirds vote of each house of the legislature, which would place the amendment on the November ballot.

Peterson said his group will lend financial support to defeat the constitutional amendment.

Apr 4-11-90

# Emotions run high on subsistence rights

By DAVID HUIJEN  
Daily News reporter

Evelyn Alexander, a 74-year-old Athabascan from the Interior village of Minto, stood in front of the representatives of the National Rifle Association and the Alaska Outdoor Council and stared them in the face. Behind her, some 600 Natives from around the state fell silent.

Her voice, amplified by a microphone, was loud and stern.

"I live off the world," she began.

"I live off Native food my whole life. I still live in camp. I still live on trapline. I go out in winter on snow-go. I fish summer time with fish net.

"You people that work, have a steady job, you have money, you have money to buy hamburger. But if you don't have that kind of money, it's going to hurt you. And that's what I am today. I live on

little money. ... It's nothing. Lots of you don't know what's going on in the villages. ... I'm trying to say what I can for my people.

"And subsistence means lot to me."

Alexander, a stout, wrinkled woman in a long print dress, checkered jacket and speakers, said she's worried about the future. Her voice wavered with emotion.

"That's why I come. I don't

know what you're going to do to us. I'm Indian, Athabascan Indian. I live on Native foods. ... And if you shut down that subsistence," she said, waving her hand, "you just threw me in the river right now. You don't know what you do to old people like me."

She is among hundreds of Natives in Anchorage this week for a two day gathering on perhaps the thorniest, most complicated issue in Alaska — subsistence.

Alexander expressed no preference for any of the constitutional amendments being pondered by state legislators, nor did she have a specific opinion on how Alaskans should resolve the tangled legal debate over who should have access to a limited amount of fish and game.

But like other village residents at the conference, Alexander con-

Please see Page B-3, NATIVES

## NATIVES: Emotions run high at subsistence conference

Continued from Page B-1

veyed a fear that appears to be growing among many Natives around the state — that their right to customary and traditional hunting and fishing is under attack by outsiders, from the Alaska Supreme Court to recreational hunters and fishermen.

In December, the state Supreme Court declared Alaska's old subsistence law unconstitutional because it gave preferential treatment to rural residents.

"Us old people in Minto gathered up as soon as we heard about it," said Alexander. "It really hurt me."

The conference was organized by the Alaska Federation of Natives to spread information and try to bring closer together various Native groups, which disagree on what should be done. The court has given the state until July 1 to resolve the issue.

The session Tuesday featured an almost-unheard-of face-to-face meeting between Native political leaders and their biggest foes in the subsistence battle — groups representing the state's sports hunters and fishermen.

Wayne Anthony Ross, an Anchorage lawyer and a national vice president of the NRA, and Bud Burris, president of the Alaska Outdoors Council, both told the gathering that they weren't at all opposed to subsistence by Natives. They're opposed to others being



BOB HALLBERG / Anchorage Daily News  
Mitch Demientieff of Tanana Chiefs: "The Native people have compromised again and again."

denied equal access to fish and game.

In fact, they said, sport hunters have a lot in common with Natives. Ross' four kids grew up on moose, he said — he and his wife even put moose meat in a blender to feed them as babies.

The real enemies of all hunters and fishermen in Alaska, Ross and Burris told the gathering, are animal-rights activists and environ-

mental groups outside the state. The pair want Natives and sports groups to work closer together to fight them.

"The only time we talk to one another is in court," Ross said.

He and Burris received polite applause, especially when they said they wanted nothing to do with a Wisconsin group that has staged violent protests against Indian subsistence hunts there and has threatened to come to Alaska if there's a subsistence election.

But it became clear during Tuesday's session that many Natives fear a loss of subsistence rights, and that the issue is highly emotional. Evelyn Alexander got a standing ovation, and several people talked about how any loss of subsistence rights would further erode Native culture in the state.

"The Native people have compromised again and again," said Mitch Demientieff, chairman of the Fairbanks-based Tanana Chiefs Conference. "We've had to fight for everything we do. It shouldn't be insulting to the non-Native community that we want to practice our culture."

Native groups disagree on what the answer should be. The AFN, the state's largest Native group, has backed a plan by Gov. Steve Cowper for a constitutional amendment to give all rural residents a subsistence priority. It would essentially restore the state's old subsistence law.

But other Native groups, includ-

ing the Tanana Chiefs Conference and the Southeast Native Subsistence Commission, want subsistence priority explicitly given to all Natives, as well as rural residents. AFN leaders say this has little chance of getting support from non-Natives.

The sport-hunting groups oppose any constitutional amendment to give a subsistence preference to anyone. It discriminates against other hunters, they say. The answer, they say, is more aggressive game management by the state so there's more wildlife to go around. They favor, for example, bigger seasons on predators such as bear and wolf to boost moose and caribou populations.

But despite opposition from outdoors groups and in the legislature, Demientieff said people in Interior villages are adamant about a Native preference, as are those in several other regions of the state.

"People don't look at it as just Native preference — they see it as cultural restoration," Demientieff said. "They want a guarantee they'll have that right in the future."

Leaders of some Native groups want to try to develop a statewide Native consensus on subsistence at today's session. Gov. Steve Cowper is scheduled to speak this morning, and a joint hearing of the House and Senate Resources Committees is scheduled for tonight at the Egan Convention Center from 5:30 to 9.

# Natives favor state control of subsistence

## Proposal called vital for Alaska

By JACQUES PICARD  
Times Writer

Several Native leaders told state legislators Wednesday they support a proposed constitutional amendment giving the Legislature broad power to regulate subsistence hunting and fishing.

The proposal by Rep. Lyman Hoffman, R-Bethel, would say that nothing in the state constitution prohibits the Legislature from regulating subsistence activities if they comply with federal law.

Byron Mallott, executive director of the Native Sealaska Corporation, said an amendment to the state constitution is vital not only for preserving subsistence hunting and fishing but also to prevent federal control of Alaska wildlife management.

"I think that it is very important that the state of Alaska maintain management control over all of its resources in its boundaries," Mallott said.

He was among more than 50 people to testify at a Joint Resources Committee hearing on subsistence issues. The hearing was held in Anchorage to coincide with a conference of the Alaska Federation of Natives.

Mallott said he favored the Hoffman amendment because the broad language would give the state flexibility to comply with federal law as the subsistence needs of Alaska residents change.

But support for the Hoffman proposal was not unanimous.

Some speakers supported House Joint Resolution 88, the constitutional amendment proposed by Governor Steve Cowper.

Cowper's bill would specifically allow the Legislature to limit subsistence hunting and fishing to rural residents, based on community residence and tradition.

Sam McDowell urged the Legislature not to pass the Cowper bill. He said if fish and game were managed to provide a sustained yield there would be no problem. McDowell, an Anchorage resident, was a co-defendant in the case that resulted in an Alaska Supreme Court ruling

that threw out the present subsistence law, saying it discriminated against urban residents.

McDowell urged the legislature to file a lawsuit against the



Katie John  
... unhappy with laws

federal government. "If you don't do so, I'm pleased to tell you, we are going to do that," McDowell said.

Trefon Angusan, a member of the Bristol Bay Native Corporation, said he supports subsistence rights for both Native and non-Native rural residents.

Angusan said he favored the Hoffman amendment because it had the best chance of receiving broad political support.

Katie John, 74, of Mentasta, said she was unhappy with laws telling her where and when she could fish.

"There's a lot of old people living here, and still they make all kinds of laws, and we can't go out and do anything," she said.

Katie John was one of many Native elders who testified about the importance of subsistence to the Native culture.

"We are tradition. We have been in Alaska for many, many years," she said.

"I have been fighting for five years for my own land, my own fishing place. Still somebody push me around and somebody tells me what to do — that many days you go fishing, that many fish you get," she said.

"This year I ask for nets. Nobody wants to give me nets. I wonder why? A lot of people using nets. Look at them down at the ocean. The big fishermen they all use nets. And there's one little creek I want to use nets, and they won't let me have them."

TIMES 46-90

# Rural lawmaker dishes up subsistence amendment

By LARRY PERSILY  
Associated Press

JUNEAU — The newest proposal for a constitutional amendment on subsistence hunting and fishing tries to solve the state's legal dilemma without specifically guaranteeing a subsistence priority.

The amendment would simply say that nothing in the state constitution prohibits the Legislature from passing laws governing subsistence activities, as long as they comply with federal law.

That differs from the proposals by Gov. Steve Cowper and Rep. George Jacko, who would amend the constitution to provide a specific preference for rural subsistence hunters and fishermen.

The Alaska Supreme Court in December ruled the state's subsistence law unconstitutional because it gave a preference to rural residents. Federal law, however, requires a rural subsistence preference in Alaska.

See Hunting, back page

## Hunting

Continued from page A-1

Supporters of the latest proposal by Rep. Lyman Hoffman, D-Bethel, say it would give legislators flexibility in responding to federal laws, while also preserving state management rights.

"It's the best I've seen that would be close to acceptable in my district," Rep. Curt Menard, D-Wasilla, said Thursday. Menard is co-chairman of the House Resources Committee, which plans to hold hearings on the issue Wednesday in Anchorage. The committee will be in Anchorage for the Alaska Federation of Natives convention, he said.

The Senate Resources Committee also is scheduled to hold subsistence hearings that day in Anchorage, said Sen. Bettye Fahrenkamp, D-Fairbanks and committee chairwoman.

In addition to the amendments proposed by Cowper and Jacko, D-Pedro Bay, a native-preference amendment has been offered by Rep. Kay Wallis, D-Fort Yukon.

Hoffman said the other proposals lack the political support needed to win a two-thirds majority in the House and Senate and approval by the voters in November.

Rep. Dick Shultz, R-Tok, said he opposes a constitutional amendment guaranteeing a subsistence preference, but he said Hoffman's proposal may be acceptable.

Not everyone is sold on Hoffman's proposal.

"It probably will gain ground, but it won't gain my ground," said Sen. Steve Frank, R-Fairbanks. Frank favors changing federal law instead.

Cowper's special assistant for resource issues, Denby Lloyd, said Hoffman's proposal appears to have fewer legal problems than other plans.

But some lawmakers said it could result in pressure on the state to change its laws if Congress decides in the future to modify the rules for subsistence.

Hoffman is circulating his proposal among lawmakers and administration officials. It's too late in the session for individual lawmakers to introduce legislation, and Hoffman said he expects his proposal could be substituted for one of the other measures in committee.

Lawmakers face a May 8 adjournment deadline.

The Alaska Federation of Natives in February gave its support to a rural-based subsistence preference in the constitution, and Hoffman said he plans to discuss his proposal with the group.

"This amendment does not address the controversy of rural or native," he said. "That can be dealt with, but let's not deal with it now."

Failure by the state to resolve its legal conflict with federal law could result in federal takeover of fish and game management on federal lands. "That is the problem that the residents of the state have to realize," Hoffman said.

# Subsistence debate continues to expand

Fort Yukon legislator says preference should go to Natives, rural residents

By LARRY PERSILY  
The Associated Press

JUNEAU — A Native-preference proposal has been added to the legislature's constitutional amendment debate on subsistence hunting and fishing rights.

Gov. Steve Cowper and many legislators support a rural preference amendment to govern subsistence hunting and fishing, but Rep. Kay Wallis, D-Fort Yukon, said that falls short of protecting the Native culture.

Wallis introduced a measure Wednesday that would amend the state constitution to limit subsistence rights to Natives and rural residents.

"I'm just coming from a cultural basis," she said. "This isn't a you-against-me type of thing."

Her proposal also would extend Native preference to urban residents, a group not covered by previous subsistence laws or Cowper's proposal.

But Rep. Richard Foster, D-Nome, said it would be hard enough to convince people of the

need for rural preference, and he doubts a Native preference amendment could win public support.

The Alaska Supreme Court in December declared the state's subsistence law unconstitutional because it gives preference to rural residents for limited fish and game resources.

Cowper last week proposed amending the constitution to allow rural preference. Rep. George Jacko, D-Pedro Bay, offered the same proposal in January.

Although many Natives find it hard to support anything less than Native preference, such an amendment likely would fail to gain legislative or public support, Jacko said.

"We really need unity," he said.

Foster agreed that divisiveness among rural lawmakers is a problem. "The Bush caucus is so split on this that everyone is doing their own idea."

The Alaska Federation of Natives last month said it supports a

rural-preference amendment. A Native-first constitutional amendment is supported by the Southeast Native Subsistence Commission of the Tlingit and Haida Central Council.

Sen. John Binkley, R-Bethel, predicted failure for a Native-preference amendment.

"The rural preference gets us back to the status quo, and I think, a majority of the people were satisfied with that," Binkley said.

The state faces a legal deadline to solve its subsistence problem because federal law requires rural preference. The state Supreme Court issued a stay on its ruling until July 1 to allow the state time to cope with its dilemma.

Lack of state action to follow federal law could result in federal takeover of subsistence management on federal lands.

Rep. Cliff Davidson, D-Kodiak and co-chairman of the House Resources Committee, said a full day of public testimony will be heard by the committee Saturday.

ADN 3-8-70

# Jacko seeks subsistence amendment

By LARRY PERSILY  
Associated Press

JUNEAU — A proposed constitutional amendment that would guarantee rural Alaskans continued preference for subsistence hunting and fishing rights has been added to the legislative debate on the issue.

Rep. George Jacko's proposal would amend the state constitution to allow subsistence preference based on rural residency, traditional use or dependence on fish and game for food.

Two-thirds of the House and Senate must approve Jacko's resolution before the amendment can go before voters in the November general election.

The Alaska Supreme Court last month ruled the state's subsistence law was unconstitutional because it gives preference to rural residents. Federal law, however, requires a rural preference, putting the state in a legal dilemma.

The court has granted a stay in the case until July 1 to give the state time to solve the problem.

A state constitutional amendment is the answer, rather than federal legislation, Jacko said Tuesday.

House Joint Resolution 74 is the third proposal offered this session to resolve the subsistence issue.

A group of House Republicans Jan. 15 proposed that subsistence privileges be based on economic need only. They later amended their bill to drop the need provisions and instead proposed a subsistence program for urban and rural residents.

Rural lawmakers said the income-based plan was inappropriate. They said it failed to consider subsistence as a way of life that is not necessarily based on economic need.

The second proposal came from Gov. Steve Cowper, who last week said he was working on a bill to establish a permit system for subsistence hunting and fishing. Permits would be granted based on past use of fish and game.

Jacko, D-Pedro Bay, said he opposes a permit system.

"It is inconceivable and incompatible with the subsistence concept to think that subsistence users will fill out paperwork to report their take of fish and wildlife," he said.

Times, 1-31-70

## SUBSISTENCE SOLUTIONS

Options for managing Alaska's wildlife resource

### ✓ Judicial Solution

Action — The Alaska Supreme Court could reconsider and reverse its Dec. 22 decision that said the state's subsistence law is unconstitutional. The state of Alaska and Alaska Federation of Natives have filed petitions for rehearing with the court.

Process — The court would make the decision.

### ✓ Alaska Legislature Solution

Action — Amend the Alaska Constitution to allow the Legislature greater flexibility to provide a subsistence priority. There are two options: provide a "rural" priority or a Native-and-rural priority.

Process — The Legislature must pass an amendment by a two-thirds vote in both the Senate and the House. The amendment must then be approved by a majority of the voters.

### ✓ Congressional Solution

Action — Amend Title VIII of the Alaska National Interest Lands Conservation Act, which requires that the state give "rural" residents a subsistence priority.

Process — The U.S. Congress would amend Title VIII, drop the existing rural subsistence priority and allow a different means of determining priority, such as by individual evaluation.

### ✓ Federal Court Solution

Action — Delete Title VIII of the Alaska National Interest Lands Conservation Act.

Process — The state or another party would have to sue the federal government, alleging that Title VIII is in violation of the U.S. Constitution because it does not provide equal protection under the law. The court would strike down the law.

### ✓ Federal Takeover

Action — No action

Process — Under Title VIII of the Alaska National Interest Lands Conservation Act, unless Alaska provides a priority use of fish and wildlife for rural residents, federal agencies will take over management on federal lands. The law would remain in conflict with the Alaska Constitution.

Gina Hines/News Miner

# Solution to subsistence morass won't come easily

By KELLY BOSTIAN  
Staff Writer

Plans to mop up the legal quagmire created when the Alaska Supreme Court ruled the state's subsistence law unconstitutional are as varied as Alaska's people, and the only thing anyone seems to know is that all sides will put up a tough fight.

With anglers lining riverbanks shoulder to shoulder, thousands applying for a few dozen special hunting permits and Bush residents worrying about the future of their lifestyles, the court decision has added even more pressure to the controversy over how Alaska doles out its wildlife resources.

The problem is finding a solution that is equitable but also recognizes the unique lifestyles of some Alaskans.

The state is in a quandary because the 1980 Alaska National Interest Lands Conservation Act mandates that state law give rural Alaska residents a hunting and fishing preference. The approach has outraged hunters from urban areas, and they want it changed. They convinced the state Supreme Court to support them.

But if the state doesn't give a rural priority, the federal government can take over wildlife man-

agement on federal lands—more than half the state.

Now three basic strands emerge from the pools of public opinion: amend the state constitution to bring it in line with federal law and save the status quo; amend federal law to bring it in line with the state constitution and create a new system; or challenge the federal law in the courts, do away with it, and create a new system.

The Supreme Court still could make all points moot by reversing its December decision, but officials are not hopeful.

### Restore status quo

Gov. Steve Cowper is pushing for an amendment to the state's constitution. That would bring state law in line with the Alaska lands act and save the regulation system presently in use.

Following the court's decision, the governor did not immediately support a constitutional amendment, but he said Wednesday that he finally concluded it was the only practical solution. "I came to this out of a process of elimination," Cowper said in a Wednesday interview. "I just don't see any other way to restore the status quo."

The Supreme Court's decision all but spelled out the need for a sub-

sistence system based on individual permits, Cowper said. Evaluating that option, he saw a "specter of an enormous bureaucracy."

The status quo seems the best of all solutions. "Essentially, this is an accepted way of doing business in Alaska," Cowper said. "This law has been worked out over the last 12 years. It's revisited us a time or two but it's always worked out as the same sort of deal."

### A Native preference

Opinion among Alaska Native leaders appears divided, with some backing the governor's proposal and others demanding that a Native preference is the only logical solution.

Rep. Kay Wallis, D-Fort Yukon, introduced a resolution similar to Cowper's, only it stretches the priority to Natives, as well as rural dwellers.

Wallis said her measure is vital to the future of Alaska Natives. More than half of the state's Natives are not eligible for subsistence uses under current law because they live in urban areas.

"Providing for a Native Alaskan priority will make it clear that the state wants the culture to persevere," Wallis said in a telephone interview. (See *SUBSISTENCE*, Back Page)

# SUBSISTENCE: Solution not easy to find

(Continued from page 1)  
interview from Juneau  
Wednesday.

"To me, if the resolution makes it to the floor, a no vote against the resolution will be a vote against the survival of the culture. That's about the bottom line," she said.

Tanana Chiefs Conference delegates voted Thursday to support a Native preference.

The Alaska Federation of Natives, on the other hand, voiced support for the governor's proposal. Loph Eluska, chairman of AFN's board of directors, pitched AFN's stance to Tanana Chief Conference delegates in Fairbanks this week.

Eluska said that after months of studying the issue, AFN concluded that Cowper's bill could pass, while Wallis' bill faces slim chances.

While Cowper and Native Alaskans push for constitutional amendment, the Alaska Outdoor Council, an 11,000-member sporting interest lobby, pushes for an amendment to, or challenge of, the Alaska lands act.

"ANILCA forces the state to violate its own constitution. How can Congress, which approved our constitution, then enforce a law that forces us to violate it," said Fairbanks resident Bud Burris, the Council's president.

In a memorandum released last week, the Council called for changes to the Alaska lands act, which the Council noted has been amended nine times already since its enactment.

Burris said the act could be amended again to create a subsistence preference based on some criteria other than urban verses rural, such as personal need and lack of alternative means of getting food.

The rural priority assumes that urban people have grocery stores as an alternate to wild fish and game, Burris said. "But it's not an alternate option if you don't have money," he said.

The council memorandum also calls for the state to sue the federal government. "No other state has this kind of blackmail hanging over it," Burris said.

If nothing else, the Council said, the state could provide a rural subsistence preference through "method and means" regulations adopted by the state fish and game boards.

For example, the boards could limit transport of meat by airplane,

which gives local hunters an advantage. Also, winter seasons can be provided, which also gives local residents an extra crack at the game.

If the effort that has been put into regulating subsistence were put into game management, more animals would be available for everyone, Burris said.

Both Cowper and Sen. Ted Stevens say the Council's approach won't work.

Cowper said the demand for fish and wildlife is too great for a subsistence preference based only upon methods and means.

"I'm not sure it could it work that way anymore. Alaska's not the same state it used be," he said.

Sen. Stevens said Alaska will "rue the day we stir up a debate about ANILCA in Washington." Stevens said he instead supports an amendment to the state's constitution, but not one that creates an ethnic preference.

TIMES 3-2-75  
**Cowper backs  
subsistence  
amendment**

By LARRY PERSILY  
Associated Press

JUNEAU — Gov. Steve Cowper has decided to support a state constitutional amendment to grant rural residents a preference for subsistence hunting and fishing.

Cowper confirmed Thursday that he would seek legislative approval of a constitutional amendment and scheduled a press conference today to introduce his plan. He declined to release the details Thursday.

Five weeks ago Cowper said a constitutional amendment was not "politically practical."

See Amend, page A-8

## Amend

Continued from page A-1

An amendment would need approval by two-thirds of the House and Senate to win a spot on the November general election ballot.

The Alaska Supreme Court in December ruled the state's subsistence law unconstitutional because it gave preference to rural residents. Federal law, however, requires a rural preference in Alaska.

Cowper in January proposed to solve the problem by setting up a permit system to regulate subsistence hunting and fishing. He said a point system based on past use and other factors could be adopted, similar to the limited entry system used for commercial fishermen.

Rural legislators and native groups severely criticized the permit system as too cumbersome and inconsistent with the traditional harvest of fish and

game by rural Alaskans.

Cowper's new support for a constitutional amendment gained favor with rural lawmakers Thursday, but their urban colleagues said it's going to be tough to win enough votes for passage in the legislature and on the ballot.

Rep. Curt Menard, D-Wasilla, said he supports a constitutional amendment, although "it's probably not the most popular thing in my district." He said he expects a bitter fight over the issue in the final nine weeks of the legislative session.

Rep. Ramona Barnes, R-Anchorage, opposes an amendment. She said it would create two classes of residents in the state. Barnes favors regulating subsistence users by hunting and fishing methods and harvest limits.

House Republicans can be expected to oppose the amendment, she said. "I don't know many Republicans who believe in discrimination."

Sen. John Binkley, R-Bethel, said a constitutional amendment to conform with federal law is

the state's only solution. "The alternative is doing nothing and having federal management," he said.

If given a chance on the ballot, the public would support the constitutional change because it would maintain the rural preference law that existed before the court decision, Binkley said.

Alaska voters in 1982 rejected a ballot initiative that would have repealed the state's subsistence law.

The Alaska Federation of Natives supports a constitutional amendment and last month called on lawmakers to push for an amendment as the best solution to the state's legal problem.

The court has granted the state a stay in the case until July 1 to allow time to solve the problem. But the Alaska Supreme Court on Monday ruled it would not grant a further extension of the stay, Assistant Attorney General Tom Koester said.

The July 1 deadline worries Sen. Bette Fahrenkamp, D-Fairbanks, who said she fears federal takeover of fish and game management.

# Income-based subsistence bill draws fire

By LARRY PERSILY  
The Associated Press

JUNEAU — Rural lawmakers on Thursday attacked a proposal by Anchorage-area Republicans that would grant subsistence hunting and fishing rights based on financial need.

House Bill 415 would limit subsistence rights to people living in households at or below the poverty level. Low-income urban residents would have the same rights as rural Alaskans under the bill, introduced Monday by Rep. Ramona Barnes, R-Anchorage.

It would be inappropriate to define subsistence by income level only and ignore Native culture, said Rep. Eileen MacLean, D-Barrow, co-chairwoman of the Bush



caucus. The caucus represents 13 rural legislators.

"Subsistence embraces our whole way of life," MacLean said. "It does not simply refer to hunting and fishing, but describes an integral part of our lifestyle that reflects our cultural heritage.

"Determining subsistence on the basis of income ignores and insults its signifi-

cance to rural Alaskans."

An income-based application process to determine subsistence rights also would require more bureaucracy, opponents of the measure say.

The caucus comprises almost one-quarter of the legislature, and likely would be able to block any subsistence legislation it disapproves.

Although the caucus opposes the income-based proposal, it has not offered an alternative bill. The group is reviewing other options, MacLean said. The income-based bill has been the only subsistence measure introduced during the first two weeks of the session.

"Nobody knows what the solution is ... nobody has

provided the details for what that solution might be," said House Speaker Sam Cotten, D-Eagle River.

The Alaska Supreme Court in December ruled the state's subsistence law unconstitutional. The ruling said the law discriminated against urban residents by giving preference to rural Alaskans.

The problem for lawmakers is that federal law requires a rural preference. The state court granted a stay on its ruling until July 1 for state officials to deal with the ruling.

Rep. Ben Grussendorf, D-Sitka and a caucus member, said possible solutions include a change in federal law or in the state constitution.

# Subsistence rift draws Stevens warning

By BRIAN S. AKRE

1-18-90, p. 1 Page

UNFAVORABLE U.S. Sen. Ted Stevens told state legislators Wednesday they must resolve the quandary over subsistence rights in Alaska or face a federal takeover of wildlife management on federal and state lands.

The Alaska Supreme Court ruled Dec. 22 that a state law limiting subsistence hunting and fishing rights to rural residents was unconstitutional. Legislators remain uncertain how a subsistence law could be worded to meet federal requirements and those of the state constitution.

Stevens bluntly told a joint session of the 16th Alaska Legislature not to look for a federal solution.

"I think the subsistence issue can be dealt with here at home and it should be," the Republican said. "Before the year's out we will have federal management of fish

**NEW CHALLENGE:** Hunters have asked the Alaska Supreme Court for immediate end to Alaska's subsistence priority law. E-2

and game in Alaska unless you act."

It was not the answer some lawmakers wanted to hear.

"He had no plan, nor are there any plans to do anything on the federal level to prevent a federal takeover," said Sen. Pat Pourchot, D-Anchorage. "He pretty much threw the ball back in our court."

"I remain skeptical that there is any state legislative solution to this that doesn't smack right up against our constitution or the federal law."

Stevens said if Congress tried to tackle the issue, Alaska would lose more than it would gain. That's because environmentalists would get other issues tack-



Daily News file photo

Sen. Ted Stevens

ed onto a subsistence bill, such as a ban on oil drilling in the Arctic National Wildlife Refuge or reductions in logging in the Tongass National Forest, he said.

Sen. John Binkley, R-

Bethel, praised Stevens' speech.

"He impressed me with the urgency of dealing with the matter at the state level, and impressed upon the legislature that takeover by the federal government is imminent if we don't act," Binkley said. "The problem is, what is the solution at the state level? Nobody's come up with it yet."

Rep. Peter Goll, D-Haines, said a legislative solution is preferable but may be impossible. "I'm tending to believe that a constitutional amendment is going to be required," he said.

Stevens also spoke briefly on the congressional stalemate over changes in management of the Tongass National Forest in southeast Alaska. The main "sticking point" in unsuccessful negotiations last fall was the amount of additional land to

Please see Page E-2, STEVENS

Daily News 1-18-90

## STEVENS: Issues a warning

Continued from Page E-1

be removed from timber harvesting, he said.

Stevens also promised tougher legislation to control the use of drift nets on

the high seas, and said Congress has no choice but to open the Arctic National Wildlife Refuge for oil drilling.

"The question is when they'll do it," he said.

December 26, 1990  
Empire

# Court nixes subsistence preference

THE ASSOCIATED PRESS

**ANCHORAGE** — The Alaska Supreme Court declared unconstitutional Friday a state law that limits subsistence hunting and fishing to rural residents.

In a 4-1 decision, the court said excluding all urban residents from subsistence hunting and fishing violates three clauses of the constitution. Those clauses preclude exclusive fisheries and deal with uniform application of the law and equal rights protections.

"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," the court said.

The opinion written by Chief Justice Warren Matthews said the ruling does not mean that everyone can engage in subsistence hunting and fishing.

"We do not imply that the constitution bars all methods of exclusion where the exclusion is required for species protection reasons," the court said. "We hold only that the residency criterion used in the 1986 act which conclusively excludes all urban residents ... regardless of their individual characteristics is unconstitutional."

The 1986 law was enacted after the Alaska Supreme Court struck down an earlier subsistence statute, and the federal government threatened to take over fish and game management on federal lands if a new law wasn't passed.

All the fish and wildlife in Alaska are supposed

to be managed by the state, regardless of what land or water they occupy. But the 1980 Alaska National Interest Lands Conservation Act stipulates there must be subsistence priority for rural residents.

The state defined rural 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 principal characteristic of the economy of the community or area."

The way that definition has been applied is under attack in federal court in another case. But the Alaska Supreme Court said Friday that whatever the definition, it is unconstitutional to treat hunters and fishermen differently based solely on where they live.

"There are...substantial numbers of Alaskans living in areas designated as urban who have legitimate claims as subsistence users," the court observed. "Likewise, there are substantial numbers of Alaskans living in areas designated as rural who have no legitimate claims."

The majority of justices agreed the state has a compelling interest in preserving Alaska's subsistence lifestyle. But they said in order for the subsistence preference to be constitutional, it must involve minimal infringement on individual rights.

"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," Justice Daniel Moore wrote in a

concurring opinion.

"The state may, indeed must, make allocation decisions between sport, commercial and subsistence users," the court ruled. "That authority, however, does not imply a power to limit admission to a user group."

In a 15-page dissent attached to the 38-page majority opinion, Justice Jay Rabinowitz reached exactly the opposite conclusions from analyses of the constitutional clauses cited by the majority.

"In my view ... the right to participate in subsistence hunting and fishing is not a fundamental right," Rabinowitz said. As such, it doesn't enjoy the same degree of constitutional protection as other basic rights, he said.

The case has been wending its way through the courts since 1983. The challenge was brought by Sam McDowell and Ron Mahle of Anchorage, Dale Bondurant of Cooper Landing and Harold Eastwood of McKinley Park.

The court noted all four were Alaska residents who had engaged in subsistence hunting and fishing in the past, and wished to continue doing so.

McDowell and Mahle were excluded because they lived in Anchorage, while Bondurant and Eastwood's residence fell within the state's definition of rural.

The Alaska Federation of Natives and several individual Natives intervened on the side of the state in trying to preserve the law.

Gov. Steve Cowper called the court's decision Friday unfortunate.



FAX  
265-6470

## ALASKA OUTDOOR COUNCIL, INC.

Ben R. Milam, VP Southcentral Region  
3410 E. 42d Street, Apt. 1  
Anchorage, Alaska 99508

28 June, 1990

Mr. William Wade  
President  
ARCO Alaska

Dear Mr. Wade:

I am utilizing this method of correspondence because we have been unable to contact you by telephone. I trust you will understand that I would prefer a much more personal contact to discuss this critical issue.

I am sure you are aware of the fact that the Alaska Outdoor Council is the only environmental organization in Alaska to publicly support development of the Arctic National Wildlife Refuge. This has caused a lot of controversy within our organization for over three years when we first made that commitment.

Because of your decision to foster the debate between natives and non natives in the subsistence issue, our Board of Directors have met to reconsider this decision. It now appears we will no longer be able to support your organization or development of ANWR if the rumors of your support for a constitutional amendment prove to be true. I trust you understand that we cannot support any organization who cannot foster equal rights for all the people of Alaska.

Please publicly withdraw your support for a constitutional amendment so we can continue our relationship to develop the resources of ANWAR in an environmentally safe manner.

Cordially,

*Ben R. Milam*

For Oliver (Bud) Burris  
President

SENT VIA FAX 1:10 PM  
6-28-90



FAX  
564-5900

## ALASKA OUTDOOR COUNCIL, INC.

Ben R. Milam, VP Southcentral Region  
3410 E. 42d Street, Apt. 1  
Anchorage, Alaska 99508

28 June, 1990

Mr. Julian Darley  
President  
BP Exploration Alaska

Dear Mr. Darley:

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Please publicly withdraw your support for a constitutional amendment so we can continue our relationship to develop the resources of ANWAR in an environmentally safe manner.

Cordially,

*Ben R. Milam*  
for Oliver (Bud) Burrie  
President

Sent via FAX 1:17 PM  
6-28-90

Al Judson (Big Eagle)

These are my statements made at the Federal Hearing held at the Centennial Hall June 13, 1990---on behalf of Douglas Indian Association.

(some Racists had made some derogatory statements earlier about Alaska Natives and subsistence) I was on the 3rd list of people to comment--I had waited all night and finally testified at about 10:30 p.m. and my testimony took 10 minutes.

I have a comment to make but first Douglas Indian Association would like to be the first to request transcripts of this hearing to be sent to: Douglas Indian Association box 434 Douglas, Alaska 99824.

"Earlier tonight, someone stated that Alaska Native People were given land under land claims. My comment is--"You cannot GIVE anyone anything that RIGHTFULLY belongs to them."

Also---Subsistence is a Basic Right--a Basic Right is something that cannot be given to you or taken away-it is a right of all Human Beings. I challenge anyone and everyone in this country to prove that Alaska Native People are NOT Human Beings.

Currently, I am Spokesman for Douglas Indian Association and their Representative on Public Issues. My Missionary Name is Al Judson. I am Kogwanton/Eagle. My real name is-- Schkadanah , my other name from Hoonah area is Ganaa Eesh, and my other name given to me by Joe White of Hoonah is- Big Eagle. My father was Nakweh he was DAKDeintan--also, he was a soldier/U.S.Army W.W. I, My Uncles fought for the U.S. in W.W.II and Korea--some of them died there, my brothers fought for the U.S. in Vietnam--some of them died there.

Douglas Indian Association has 10 major points on the issue of SUBSISTENCE.

1st \_\_\_\_\_ Formally, we PROTEST the fact that Halibut is NOT included for Subsistence purposes. The reason that it isn't is because of an International Treaty between the U.S. and Canada.

2nd \_\_\_\_\_ We also PROTEST against Alaska Native People being left-out of the International Treaty Process between the U.S. and Canada. Our people fought for the U.S. in WWI, WWII, Korea and Vietnam-- "How many more times do we have to pay for our Citizenship? Is my question. At the United Nations we are considered NATIONALS because we do not have a Treaty with the State of Alaska.

3rd \_\_\_\_\_ We agree with the definition of Henry Shue who states that Subsistence is: "to put food on the table."

4th \_\_\_\_\_ We would like to emphasize ALL Seafood as well.

5th \_\_\_\_\_ We would like TRIBAL CARDS/ issued by the Tribes in Alaska-- recognized by the Federal and State Governments.....for Subsistence Purposes.

6th \_\_\_\_\_ We disagree with Subsistence being managed, regulated, and further RESTRICTED by people who have NEVER lived off the land or the ocean.

7th \_\_\_\_\_ We believe the I.R.A. and Traditional Councils in Alaska should be recognized and NOT left-out of the Management of the Subsistence effort.

8th \_\_\_\_\_ The Federal and State Governments should recognize the fact that Alaska Native People have "GRANDFATHER RIGHTS" which is a legal term that recognizes that we as a people have Basic Rights that Pre-empt all efforts that have come behind us...long AFTER-THE-FACT.

9th \_\_\_\_\_ We Formally PROTEST on behalf of our Elderly Native People in Pioneer Homes who have been DENIED Native Food as part of their diet. (This is happening today/RIGHT NOW.)

10th \_\_\_\_\_ We disagree with the use of the word RURAL and would like to see "food" and "food gathering purposes" to be interjected into ANILCA to replace the current wording.

FINALLY, We would like to re-emphasize the fact that Subsistence is a Basic Right, a right that cannot be given or taken away.

IF the U.S. Government and the State of Alaska proves to be unfair, unjust, inequitable in the treatment of Alaska Native People in the area of Subsistence and further restricts our Basic Right of Subsistence---then we as Alaska Native People will become PRISONERS in a FREE COUNTRY, a Country we have fought and died for.





Official Business

**COMMITTEE:**

SENATE RESOURCES

**DATE:** June 25, 1990

**Subject of meeting:**

SUBSISTENCE ISSUES

**SIGN-IN**

PLEASE PRINT!

**NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?**

PHILLIP GRAY	4410 N DOUGLAS HWY 4 JUNEAU	586-6913	MYSELF	YES
✓ AL JUDSON	Box 434 DOUGLAS INDIAN ASSOCIATION	364-2482	DOUGLAS INDIAN ASSOCIATION	
✓ <del>DICK</del> BISHOP	1555 BASS GRIND, FAI. 99709	455-6151	SELF	Yes
✓ Julie Kitter	411 West 4th S. 301 DURHAM AK 99501	274-3611	AFN	yes
✓ Rupa Andrews LUCIE SANDERSON	Box 833 KATLISHNE AK 99722	492-2500	NANA / AFN	no
Wayne Anthony Ross	Box 101522 Anchorage AK 99510	276-5307	NRA-	Yes







Official Business

### COMMITTEE:

SENATE RESOURCES

DATE: June 26, 1990

# SIGN-IN

## Subject of meeting:

SUBSISTENCE

PLEASE PRINT!

NAME

ADDRESS (MAILING) & (ZIP)

PHONE

REPRESENTING

DO YOU WANT TO TESTIFY?

PHILLIP GRAY	4110 N DOUGLAS HWY. JUNEAU, AK 99801	586-6913	MUSELF + MY FAMILY	YES
✓ Bob Polasky	200908 Anchorage 99520	279-2571	Rural CAP	Yes
✓ Nick Jackson	406 W Firwood Anch.	2747662	Ahtna	yes
✓ ARLYN BECKER	Drawer F1 Copper Center AK 99575	822-5241	OKNA	yes <del>yes</del>
✓ MATTHEW IHA	Box 998 Nome AK 99762	443-5231	RARA/Kawerik	Yes
✓ Bruce W. Campbell	Box 82245 Fairbanks AK 99708	488-1667	Tanana Valley Sports Assoc	Yes



# NATIONAL RIFLE ASSOCIATION OF AMERICA

*Publishers of*

THE AMERICAN RIFLEMAN  
AND  
THE AMERICAN HUNTER



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

22 June 1990

## PRESS RELEASE

I am enclosing a copy of a resolution passed by the Board of Directors of the National Rifle Association of America, at our Annual Members Meeting, in Anaheim, California, last week.

The Resolution reflects the opposition of the NRA to Governor Cowper's attempt to bullyrag the Alaska Legislature into passing out legislation, or a proposed Constitutional Amendment, that would allow a rural preference for Subsistence.

In summary, it is the position of the National Rifle Association of America that:

1. There should be comprehensive management of fish and game resources to insure sustained development (sustained yield) of those resources for the maximum benefit of all citizens. This position is in keeping with the provisions of Alaska's Constitution, Art. VIII, Sec 1, 2, 3, and 4.

2. The NRA opposes any exclusive right or special privilege to take fish and game resources. Fish and game should be reserved to all the people for their common use. This position is in keeping with the provisions of Alaska's Constitution, Art. VIII, Sec. 2, 3, and 15.

3. Laws and regulations governing the use or disposal of fish and game resources should be applied equally to all persons.

4. The Alaska National Interest Lands Conservation Act (ANILCA) directly inhibits Alaska's ability to properly manage its fish and game resources, and interferes with Alaska's Constitutionally mandated duty to manage fish and game resources on a sustained yield basis. It inhibits Alaska by authorizing the direct intervention of the U.S. District Court, by allowing that Court to authorize specific hunts (which the Court has done, see Kwethluk IRA Council vs State of Alaska), and by allowing that Court to open and close seasons (which the Court has done, see Bobby and Lime Village vs State of Alaska). Such Judicial intervention in resource management is detrimental to the resources.

5. ANILCA, through its requirement for a rural preference for Subsistence, mandates discrimination by the U. S. Government, and

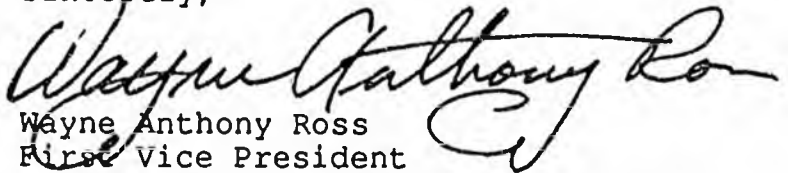
the State of Alaska, against Alaskan urban residents, and all non-residents. ANILCA's provision for a rural preference for Subsistence creates a special class of citizens (rural residents) who are eligible to participate in hunting and fishing in Alaska, to the exclusion of all others.

6. The NRA supports equal hunting and fishing rights for all citizens of the United States without regard to race, creed, or place of residence.

7. The NRA is aware that even though the Governor of the State of Alaska has, thus far, failed to file litigation, on behalf of the people of Alaska, to challenge the provisions of ANILCA, other Alaskan groups have done so this week.

8. The NRA Board has empowered its Executive Vice President to use all appropriate resources to oppose discriminatory allocation of fish and game resources in Alaska, to secure return of fish and game management to the State of Alaska itself, to oppose discriminatory allocation of fish and game resources (and to oppose those who advocate same), to assist in the litigation which has been filed this week by the Alaska Outdoor Council, the Isaak Walton League and others, and to seek from Congress appropriate changes in ANILCA.

Sincerely,

A handwritten signature in cursive script that reads "Wayne Anthony Ross". The signature is written in dark ink and is positioned above the typed name and title.

Wayne Anthony Ross  
First Vice President  
National Rifle Association of America



THE NATIONAL RIFLE ASSOCIATION  
OF AMERICA

# Resolution



WHEREAS, The National Rifle Association of America supports and encourages comprehensive fish and game management of state resources to ensure sustained development of those fish and game resources for the maximum benefit of all citizens; and

WHEREAS, The National Rifle Association of America opposes any exclusive right or special privilege of fishery or hunting; and wherever occurring in their natural state, the fish, wildlife and waters of a state should be reserved to all the people for their common use; and

WHEREAS, All laws and regulations governing the use or disposal of natural resources, including a state's fish and wildlife resources, should apply equally to all persons similarly situated; and

WHEREAS, The Alaska National Interest Lands Conservation Act, enacted in 1980 by the United States Congress, directly inhibits the State of Alaska's ability properly to manage its fish and wildlife resources and to encourage a sustained yield of those resources for all citizens; and

WHEREAS, The Alaska National Interest Lands Conservation Act, by specifically authorizing direct intervention by the U.S. District Court in authorizing specific hunts, or the opening or closing of seasons, directly inhibits the ability of the State of Alaska meaningfully to manage its fish and wildlife resources, to the detriment of the resource itself; and

WHEREAS, The Alaska National Interest Lands Conservation Act mandates that both the Federal Government and the State of Alaska discriminate against Alaskan residents, and non-residents, by creating a special class of citizens, i.e., rural residents, eligible to participate in hunting and fishing in the State of Alaska, to the exclusion of all others; and

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

WHEREAS, Legal action will be filed challenging federal management and rural preference for subsistence by Alaskan groups; now, therefore, be it

RESOLVED, That the Board of Directors of the National Rifle Association of America assembled at Anaheim, California, this 11th day of June, 1990, hereby directs the Executive Vice President of said association to use appropriate resources at his disposal to assist in securing an appropriate legal ruling to foster the intent of this resolution, and to encourage Congress to make the appropriate changes in the Alaska National Interest Lands Conservation Act to secure the intent of this resolution.

Attest:

Warren L. Cheek  
Secretary



## THE WILDLIFE LEGISLATIVE FUND OF AMERICA

To protect the Heritage of the American Sportsman to hunt, to fish and to trap

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# SUBSISTENCE ANALYSIS AND COMMENTS

BY: RON SOMERVILLE

June 13, 1990

The present arguments supporting the proposals to amend the Alaska State Constitution to provide authority for the State Legislature to establish a discriminatory subsistence preference law violating the common use clause of the Constitution are flawed for several reasons.

1. Amending the State Constitution does nothing to resolve the Kenaitze case which has now preempted the authority of the State to determine who is "rural". Because of the Federal Court ruling, there is virtually nothing the State can do in law which will override the effects of the court except to agree that every resident is a subsistence user, excluding only residents of Anchorage, Fairbanks, Juneau and Ketchikan.

2. Despite the fact that the Federal law has been in existence for ten years, several terms in the law, crucial to administrative implementation, still have not been defined to the satisfaction of the courts nor the public. Those terms are:

- a. rural
- b. customary
- c. traditional
- d. barter
- e. customary trade

3. To ask that the citizens of Alaska amend their Constitution to dismantle the common use, equal protection and uniform application provisions to comply with existing Federal law while hoping that somehow someone will amend the Federal law to acceptably define the above administrative terms is ludicrous.

4. Why shouldn't ANILCA be amended first so that Alaskans know precisely what they are getting when they modify provisions of their Constitution which has been regarded as one of the most progressive in the country?

5. It is argued that "the people should decide" whether or not the

Constitutional provision proposed should be adopted. This would make more sense if in fact the public were properly informed as to how the terms were going to be defined, how the law would be implemented and whether or not they are in or out as subsistence users. To ask the public to dismantle a major provision in the Constitution and give the legislators unlimited freedom to later interpret those provisions without Constitutional guidance is unreasonable.

6. The proponents of this Constitutional Amendment and the State Legislature have given cause for the public to be suspicious and overly cautious. As subsistence was first being debated the advocates clearly promoted that any Alaskan who takes fish and wildlife for food would be considered a subsistence user. When the first State subsistence law was passed, the Legislature assured the prime sponsor that the residents of Fairbanks would be considered as subsistence users and would not be eliminated under any circumstance as long as they took fish and wildlife for food. Alaskans were told when Title VIII was placed in ANILCA that the Boards of Fish and Game would be allowed the flexibility of determining who was "rural". The Boards of Fish and Game were clearly promised the authority to adopt regulations protecting the health and viability of the resources (note the Kwethluk caribou case as an example). None of the above promises have been fulfilled. This issue has been totally dominated by political rhetoric, lies, deceit and propaganda. What proof is there that the public should now trust the politicians and make one more sacrifice by amending a major common use clause in the Constitution which could adversely impact all fish and wildlife uses in the State.

7. Arguments that the Federal subsistence priority only applies when the resource is in short supply is false. See the Tyonek and Kenaitze cases. The subsistence priority is in existence at all times and must be specifically provided regardless of the status of the resource.

8. Since the McDowell decision, Federal preemption only applies to Federal lands as clearly defined in ANILCA. Despite all the rhetoric, again by those who have advocated the Subsistence Title in ANILCA, that the Feds will preempt State management on all State and private lands and waters, there are no provisions in ANILCA which authorize that type of preemption to occur. The Alaska Department of Fish and Game specifically requested the Congressional Delegation to insert a clause, should the State ever be found in noncompliance, specifically stating that nothing in the law would allow preemption of State fish and wildlife management on State and private lands and waters. That request was rejected only after we were assured that the provisions clearly limited the

authority of Federal subsistence management to Federal public lands.

Whenever Congress has intended for Federal preemption of State authorities (i.e. Marine Mammal Protection Act), it has specifically authorized such preemption. There is no such authorization in ANILCA and, in fact, provisions clearly limit its scope and jurisdiction to Federal lands and for subsistence uses only.

9. If Federal authority is limited to only Federal public lands, it is in the State's best interest to keep its lands and waters separated from any discriminatory allocation scheme until adequate modifications are made in Federal law which makes State compliance acceptable. By keeping State lands and waters separated, it protects all existing uses such as commercial fishing and recreational uses from being totally undermined or eliminated due to some unpredictable Federal judge's resource management whims.

10. If, under the worst case scenario, it is eventually determined that the Feds have some authorities to preempt State management of fish and wildlife on State and private lands and waters, we are no worse off than we are right now. At least, the State will know exactly where it stands and can then make the appropriate changes in its Constitution and laws or negotiate some sort of compromise.

11. Just because the State is not in compliance with the Federal subsistence law does not mean the State cannot continue to provide for subsistence uses for all residents of Alaska just as it had prior to the enactment of the first subsistence law. It just has to be done in concert with the State Constitution.

12. It is presently being argued that the State should change its Constitution or the existing commercial fisheries will be in jeopardy. It is arguable that the commercial fisheries may be in greater jeopardy, not only in the short run but the long run as well, if the proposed Constitutional amendment is adopted. The responses presented in #'s 8 and 9 illustrate a clear reason for separating State and private lands and waters from Federal lands until there are acceptable standards and definitions. If State lands and waters are kept separate, over 99% of all commercial fisheries in Alaska will not be impacted by any irrational subsistence court ruling such as in the Kenaitze case.

In addition, there is one major problem in ANILCA which could potentially affect the entire commercial fishery and it has never been resolved. The Attorney General under Governor Hammond pointed out that the Federal definition of "subsistence uses" includes

several parts. One key part is:

As used in the Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild renewable resources for .....; and for customary trade.

This term (and for customary trade) was not used in the State law and, in fact, the State law stated that subsistence could not be for commercial purposes. However, as the Attorney General pointed out then, this term in Federal law could mean for commercial purposes--how much, of course, is subject to the Federal courts interpretation. Judging by the recent rulings on Kenaitze, Kwethluk and others, it is doubtful that the commercial fishing industry should trust a Federal judge to make those decisions. It should also be pointed out that "commercial trapping" is considered a valid subsistence activity. Why not commercial fishing?

In the Tanana Fish and Game Association v. State of Alaska, residents of the village of Tanana are claiming that the commercial sale of salmon roe from subsistence harvested salmon has been traditional and customary for the last 20 years and should be considered a qualified subsistence use. Currently the sale of roe from subsistence taken salmon is illegal under State law. This is a major test of the customary trade provision of ANILCA. If it is successful it has phenomenal potentials for impacting virtually every fishery in the State.

Another key element is the potential impact on the limited entry system. At present, the State's limited entry system is run totally at the discretion of the State. If, the Federal courts decide that the term "and for customary trade" used in the Federal law includes "some" commercial purposes, and the State is in exact compliance with the Federal law, does the State's limited entry system still apply to subsistence users? What are the potential economic limits of "customary trade"? Will the State be required, again, to modify its Constitutional Limited Entry provision to make an exception to accommodate an undefined subsistence commercial user in order to stay in compliance with the Federal law? Under the present scenario being proposed, the Federal courts will make that decision, not the State courts.

13. Proponents of a Constitutional amendment have attempted to threaten the non-resident users continued access to hunting and fishing activities on all lands in Alaska--particularly as it relates to the hunting and fishing guiding industries. The fact is that the proposed Federal regulations will have virtually no immediate impact on the guiding industries on Federal lands. I agree that potential is there but the risk is no greater than it would be if the State was implementing the exact same regulations, which should be remembered are always subject to Federal court

interpretations. Both industries are presently much better off separating all State and private lands and waters from under the Federal subsistence provisions until some of the above uncertainties are settled.

It is my opinion that the nonresidents recreational activities and the guiding industries would be in greater jeopardy if the Constitutional amendment were adopted. Not only would all State and private lands and waters be subject to the provisions of the Federal law and the interpretations of the Federal courts, but the existing Kenaitze case would apply to all lands and waters in the State which appears to set a course where massive numbers of resident Alaskans will qualify as subsistence users.

If the latter were to occur it is an absolute sure bet that the remaining residents who are disenfranchised will resurrect Senator Vic Fisher's old proposal giving all residents a higher priority than non-residents in the taking of fish and wildlife for food. This provision would, for all practical purposes eliminate nonresident uses of most fish and wildlife resources.

14. The fuel driving the Constitutional amendment is the threat that the Feds are coming. Unfortunately, agreeing to the inclusion of the Subsistence Title in ANILCA guaranteed that the Feds were here as the entire legal remedy for any discontent lies in the Federal courts. The State has been given virtually no latitude to implement a fair and equitable solution or interpretation to the Federal law. To continue to argue that we should extend the uncertainties of the Federal subsistence law to all State and private lands without asking, at least, for further clarification and definition is totally irresponsible. The Feds are already managing fish and wildlife resources by telling the State exactly what they must do to meet Federal standards. That is not State management.

15. There appears to be a movement towards challenging the Constitutionality of the Federal subsistence law. If that lawsuit were successful, which some choose to debate, it would again put Alaska on the same footing with other States and force us to once again deal with the true subsistence needs of Alaskan residents under the provisions of the State Constitution.

16. An argument has been presented that opening ANILCA will create pressures from the environmental organizations to make additional amendments that are undesirable to Alaskans. One way or the other, ANILCA must be opened up to acceptably define the terms listed above, such as rural. The State is being asked to amend its Constitution first rather than waiting to see whether or not acceptable definitions are adopted. This just isn't a prudent way

to deal with Constitutional amendments.

17. There is only one reasonable long term solution to this dilemma and that is to force all parties to sit down and arrive at a reasonable long term legal remedy for identifying and protecting true subsistence uses and providing for the transition for communities and individuals that no longer qualify as being totally subsistence dependent. If the political leaders of the State allow this issue to continue to deteriorate, severe social wounds are going to be established that will take decades to heal.