

HJR

86

HOUSE COMMITTEE REPORT

(7)

Date Referred: 6/16/92

FURTHER REFERRALS:

Date of Committee Action: 5/17/92

The JUDICIARY Committee considered:

HJR 86

HOUSE JOINT RESOLUTION NO. 86

CONST. AMDT: SUBSISTENCE PREFERENCE

Proposing an amendment to the Constitution of the State of Alaska relating to subsistence uses of fish and wildlife by residents, and establishing an effective date for the amendment.

RECOMMENDATIONS: CS HJR 86 (STA) the same title
 be replaced with _____ a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) GOV

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Max L. Hunter</i>	-	<i>Mike Miller</i>	✓		
<i>John Elvik</i>	X	<i>Mark G. Hopkins</i>	X		
<i>William D. Powell</i>	✓	<i>Terry Martin</i>	X		
		<i>Walter J. Jolley</i>		X	

Walter J. Jolley

 CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

Referred: June 15, 1992

FURTHER REFERRALS:

Judiciary

Report of Committee Action: 6/17/92

by the STATE AFFAIRS Committee considered:

HJR 86

HOUSE JOINT RESOLUTION NO. 86

CONST. AMDT: SUBSISTENCE PREFERENCE

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RECOMMENDATIONS:

to be replaced with CS HJR 86 (STA) the same title a new title

have attached amendments(s)

do pass

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ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact Gov - Div of Elections

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Eugene G. Kukhina</i>	X	<i>[Signature]</i>	✓		
<i>[Signature]</i>	X	<i>[Signature]</i>	✓		
<i>[Signature]</i>					
<i>[Signature]</i>					

Eugene G. Kukhina
CHAIRMAN'S SIGNATURE

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DIVISION OF LEGAL SERVICES

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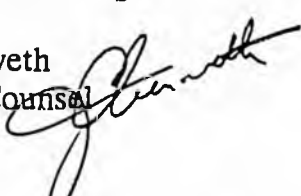
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MEMORANDUM

June 16, 1992

SUBJECT: HJR 86, proposing an amendment to the Constitution of the State of Alaska relating to subsistence uses of fish and wildlife by residents, and establishing an effective date for the amendment.

TO: Representative Georgianna Lincoln

FROM: Jack Chenoweth
Legislative Counsel 

You have introduced HJR 86 and requested a summary of its provisions.

Section 1 of the resolution adds a new section to article VIII of the Alaska Constitution. The new section, relating to subsistence use of fish and wildlife, would require the legislature to grant a preference to residents and among residents to take fish and wildlife for subsistence use based on one or more of the following factors: customary and traditional use; cultural tradition; direct dependence; local residence; or the availability of alternative resources. A preference granted under this section of the constitution must be consistent with the sustained yield principle.

Section 2 of the resolution gives the change proposed in the preceding section an immediate effective date upon certification of the election results by the lieutenant governor.

Section 3 of the resolution provides that the two constitutional amendments proposed in the resolution shall be placed on the ballot at the next general election.

JBC:mi
92-102.mai

HOFFMAN/LINCOLN CONSTITUTIONAL AMENDMENT

1. The Problem a Constitutional Amendment Is Needed to Solve.

Section 805(d) of title VIII of ANILCA requires the State to enact and implement laws of general applicability that, among other requirements, establish a priority for "subsistence uses" of fish and game which is limited to "rural" Alaska residents. In 1986 the Legislature enacted a subsistence statute that satisfied the "rural" resident priority requirement.

In 1989 in McDowell v. State the Alaska Supreme Court held that three sections of article VIII of the Alaska Constitution prohibit the Legislature from allocating subsistence hunting and fishing opportunities among Alaska residents using "rural residency" as a criterion for doing so. The decision invalidated the 1986 Alaska statute whose enactment had brought the State into compliance with the requirements of title VIII.

2. The Hoffman/Lincoln Amendment Solution.

The Hoffman/Lincoln constitutional amendment grants the Legislature authority to enact a statute that allocates subsistence hunting and fishing opportunities among Alaska residents using any or all of the following criteria as the basis for doing so: (1) customary and traditional use; (2) cultural tradition; (3) direct dependence; (4) local residence; (5) availability of alternative resources.

Using those criteria the Legislature may determine that rural residents are the Alaska residents who are most directly dependent upon subsistence hunting and fishing, have the least access to alternative resources, and reside most locally proximate to fish and game, etc. Using such legislative findings as the legal underpinning, the Legislature would then be empowered to enact a statute that reestablishes the Alaska rural resident subsistence priority and, by doing so, bring the State back into compliance with title VIII of ANILCA and return fish and game management to exclusive State control.

In addition, the Hoffman/Lincoln amendment provides the Legislature flexibility to explore other approaches for allocating subsistence hunting and fishing opportunities among Alaska residents, using customary and traditional use and cultural tradition as bases for doing so.

Finally, the Hoffman/Lincoln amendment imposes a nondiscretionary duty on the Legislature to enact and maintain a statute that creates a subsistence priority.

House Work Session on Subsistence

June 20-21, 1990

Anchorage

Transcript section on the
Constitution

resent being told that I am considered....I'm doing this in bad faith, or that it's a political move on my part -whatever way I vote - that there is only one solution, no others and if I don't vote that way, I'm somehow a bad person, that I'm continuing a tradition of prejudice, if you will. I have not ever in my life been a person who has been prejudice against anyone, and I resent the implication that I am or that I somehow have to bend over very far backwards in the other direction in order to make up for something that happened a hundred years ago. I resent that. I have to represent a large body of people, most or all of my district is considered urban rather than rural, and anyway you know, you're going to distant franchise some of those people. So I just wanted to put my two cents worth into the discussion.

Navarre:

Thank you Rep. Davis. Okay, thank you Mr. Walleri, I'm sure we'll be discussing this with you further _____ next week or so. Thank you.

Navarre: Next on the agenda we have a historical perspective and I'd like to invite Judge Stewart and George Rogers to join us.

Rogers: We got a call, I guess it was yesterday, inviting us to come up here and put this subsistence thing in something of a historical perspective. I don't know whether that's necessary or not, but we were asked to do it and so we'll do our best. Both Tom and I have been somewhat involved with the issue for many, many years. Tom and I served on the constitutional convention. Tom was the Secretary of the Convention, I was the consultant and a staff member.

Navarre: Mr. Rogers, I just want to make sure you identify yourself.

Rogers; Oh, I'm sorry, I just assumed that everybody knows us. O.K., I'm George Rogers and I an economist. I'm retired and I won't go into my entire background. I've practiced my trade here in Alaska since 1945 and I think that's enough.

Stewart: My name is Tom Stewart. I'm a retired judge of the Superior Court. I'm a lifetime Alaskan I live in a home that my father built before I was born in Juneau and have been involved in legislative matters since..vicariously since I was a child, and actively since I served in the house in 1955, and in the first State Senate in 1959 and '60. For the last 20 years...25 years I've been involved with the Judiciary. I did have some background in the resource issues because I took a particular interest in that when I was in the House in 1955 and secured the passage with the help of George Rogers who was an advisor then of the Resource Development Board, I won't go into the detail of that at the moment, but as your interested in historical background, I can tell you something of what prompted that and also some of the circumstances involved in the writing of Article 8 of the constitution.

Rogers: This, of course, I don't need to tell you this is a charged issue and discussed in legal terms, traditional terms, traditional use. I'd like to, as much as possible, focus on the necessary and practical aspects of subsistence. And in order to get that into perspective simply, my resort is always to go to demographic figures historically and look at them and see what the trends are, and then try to pinpoint what caused the changes. I won't go through all the figures here, but in the beginning, subsistence was it. It was the game, the only game in town. The original inhabitants of Alaska lived on the resources of the territory. Primarily the fish and the game and the marine mammals. I don't have to tell you that, this is obvious when you look at the map

of distribution of the native population was primarily along the coast and along the river systems. The big item was, of course, salmon which provided the basic support of the population all the way from Ketchikan to Barrow and then into the interior. And then you had various combinations of game, marine mammals..whale, walrus, other mammals that were hunted and fished. And this was the basis of which each of the societies geographically were built. The best estimates we have of the native population at the time of the first contact was about 62,000 people, as I say primarily along the coast and on the river systems. They were broken down into various sub-groups. The Eskimo, interior and coastal, the Aleut, the Athapaskan, primarily interior and then later on the Tlingit in southeast part of Alaska. The first contact with the west was followed immediately by attempts to commercialize the resources of Alaska. This had a dramatic and disastrous impact upon subsistence, the economy and the way of life. The Russians were primarily interested in one or two fur items. The sea otter and the fur seal. They needed hunters, and so they took the hunters, using force. The impact upon the Aleuts was to reduce their numbers from an estimated 15,000 in two generations to a little over 2,000. Now this may sound like a shocking figure that was made up by somebody, but it based upon the Russian's own records. The first impact was one of complete lawlessness, there was not government, with the hunters and the rival companies, it wasn't until you had the church and the navy coming in to restore some order that you began to get things civilized. That was the first encounter and a dreadful one. It impacted the subsistence because, although they did not live on sea otters, the providers of the subsistence were taken forcibly from the villages. The villages, the remaining population was left to starve. The next impact had nothing to do with the Russians. It was a smallpox epidemic that struck from the claims of the

separate part of the United States through the Columbia River then by means of the trade between the Columbia River Indians and the Southeast Indians on into the interior. This reduced the population of the Southeast natives and the Athapaskan by about 30%. That was something that would have happened in any case. But, from the 19 century on, other things happened. First was in the invasion of the Bering Sea and the Arctic Ocean by yankee whalers. This almost wiped out the subsistence base of the coastal Eskimo. Combined with this was the traders brought in the rum trade which had another devastating effect. So, between about 1839, the last good Russian census and 1880 the Eskimo was estimated by about 15%. The other one was more insidious. And that was the expansion of canned salmon. The canned salmon industry moved from California up the coast and it was a migratory thing as it wiped out the resources in the Southeast virgin territory. It was unregulated for most of the turn of the century. It wasn't until the 1920's that we began to impose some sort of a conservation management to the resource. But the effect upon the native population again was devastating. And this was all pervasive. You had the people in the interior who in the beginning didn't even know what was happening. The indians in the Copper River, for example, were used to living off the salmon. Suddenly the salmon stopped coming or in numbers that could support their population. It was because, at the mouth, a number of canneries were built. It took most of the run. The population continued to drop and the population....I'm not going to go into details, but remained at less than it was about 60% below the aboriginal levels for most of the century, up to the mid-century point. Since then the native population has recovered and the 1980 census shows a figure that is a couple of thousand over the original estimate of the native population as of the first contact. Now that was the first disastrous impact upon the subsistence base. The

taking commercially of the majority of resources that had supported these people. They made adjustments. Some of them became involved in the commercial fishing. Particularly in Southeast Alaska. So they did make adjustments to this, but they couldn't make enough adjustments and in time, and therefore, people actually died during this period. The other big impact is one that we're living with now, and that's the urbanization of Alaska. And I want to touch on that very briefly. The 1939 census which was just before the onset of WWII in Alaska, ...urban, by the way, I'm not going to sweat the definition. The U.S. Bureau of the Census defined it as places that are 2,500 people or more, so we'll use that as our benchmark and we can argue about things later if you have time. But using the census definition, 32% of Alaskans lived in urban places. Of the 1970 census 81% of Alaskans lived in urban places. Not only did the number of urban dwellers increase in development terms, but, of course in absolute terms. The 1986 estimates, give it a 79%. Alaska lost a few people as you recall right after the oil price dropped. Interestingly enough, what we would then call the people that are left over, also increased. In other words the rural population didn't go away. There was persistence. If you look at the native villages, although the native urban population increased, the native villages were pretty stable. They didn't go away for the most part, some of them did, but for the most part they stayed there. Furthermore, in recent years there has been a growth. In 1939 Census, about 50,000 Alaskans lived in rural places. Those were the day when we had 72,000 people in the state total. In the 1986 estimate, 110,000 lived in rural places. In part, this is a growth of native population, recovery of native population. In part it's an option that non-natives also have exercised of living in rural places. Now how do these people survive? Again, if we go to the census data,

economic data, and this gets back to Tom's mention of 1955 legislation that we both worked on. The then Commissioner of Labor, Henry Bellamy, came to my office right after the census and said George, we've got something here we've got to take care of. He showed me and it was something I should have looked at myself, the report of the cash income received by census division in the rural areas. These were substantially below, these levels were below what the census considered the poverty level. Now, these cash incomes included welfare, social security, aid to dependent children, all those sort of things as well as earned income. The difference had to be made up by something because these people were surviving. Sometimes not too well, sometimes quite well. There had to beand we used this a rough measure of the importance of subsistence. Comparing the actual cash income received in these areas with the poverty level, gave us a very significant value for what the people must have been harvesting from the land. So, the survival of the rural population was dependent upon the continuation of subsistence practices. Now they were on a cash economy, there was some employment, there were transfer payments and so on. But still in all, this required the continuation of a subsistence harvest for the survival of these people. Today the same thing applies. If you look at the U.S. Department of Commerce personal income estimates for census division, which is done every year, again you will see that the per capita income level is extremely low for those areas. Which means, again, that subsistence still plays a practical role in keeping these people alive and giving them the option of living some place other than urban areas. As I say, with the increase of the rural population between '39 and '86 indicates that there is more than just traditional forces at work here. There's a choice actually going on. So, I'm going to stop talking. I could talk....

(Noise interference on tape makes speaker inaudible)

...ways of doing this. The chairman says you have three minutes. This time I wasn't given that whistle. They blew the whistle instead, so I'll stop. I just wanted to get those points over.

(tape has empty section, then begins again with someone speaking in mid-sentence)

_____: ...the equal access provision in there. The basis of it, what were some of the criterias. I think we just heard Dr. Rogers speak about one of the measurements was the cash value in rural vs. urban Alaska and that was useful, so if you can continue along those lines.

_____: I knew, Judge Stewart, I knew he was a delegate to the constitutional convention.

_____: This is Barrow, we can't hear you.

JoAnne: This is JoAnne in Juneau, and I think Anchorage is experiencing technical difficulties at this time. If we could all standby, I'm sure they're working on it.

Koponen: Juneau, I see that there is....this is Niilo Koponen in Fairbanks in the McDowell case I see that Judge Cutler has issued a memorandum of decisions severing unconstitutional portions of the statue. In otherwords, the words "rural" and areas abutting "rural". Could we have legislative/legal look at that decision and give us a reading on the

applicability on the remaining portion of the statute? I don't mean immediately, but obviously we'll need that by the time we get down there.

Navarre: Yes ~~Niilo~~, this is Rep. Navarre, Department of Fish and Game and Department of Law are working on that as we speak and they may be back this afternoon. And they may have a preliminary discussion available for this afternoon and, if so, we'll go through that this afternoon and it will be available in Juneau.

Koponen: Yeah, okay, I prefer to read...I read much faster than I listen and some of this is interminable.

Navarre: Okay, thank you. Judge Stewart I think our technical difficulties are solved.

_____: (inaudible speaker)

Koponen: Well, that's a solution.

_____: (inaudible speaker)

JoAnn (?): I'm sorry, you're cutting off, would you please speak to the mike.

Judge Stewart: _____ to discuss how the resource development should occur. That section was passed, but I don't think that it ever worked in terms of the heads of the department sitting down and doing that. So when we came to the convention, in ..at the end of that year, there was not really a pattern of coordinated approach to the use of the development of the natural resources. At the convention, the committee, and I can't remember for sure who the Chairman of the committee was, my father was c the

committee. He was the Commission of Mines and had been for 30 years, from 1919 until 1949. Brook Riley was on the committee, Truman Endberg a fisherman from Dillingham was on the committee, Beau Smith, a commercial fisherman on a Troller from Ketchikan was on the committee. I believe one of the people from the F-P company in Fairbanks was on the committee and a couple of others that I can't remember for sure who they were. And when they sat down to write that article, they had real problems to know how to make an approach. There was no other state that they could look to as a pattern that had an article that dealt in an overall view of how to use and develop the resources. They had the use of an consultant and you may wish to make some contact with this gentlemen, I'm still in touch with him, his name is Vincent Ostrom. And Vince Ostrom was a professor from one of the western universities, he's now in Ohio and was the consultant to that committee. They met a lot of frustration on how to draft the article. Late in the time of the convention, one Sunday, they went to a church basement in Fairbanks, and Vince got a big blackboard and with all the members of the committees speaking, they outlined each of the topics that ought to be dealt with. They made an outline of the topics that should be dealt with and the approach that should be taken to them. And I think the basic thing was that these resources should be available to all of the people of Alaska, and that's where you find the equal access language. It was something that....I shouldn't say that they "dreamed" up, but it did not come from a pattern from other states. It was not language that had court interpretation from other state court's for example. It was new language that they thought up and that expressed their philosophies as to how the resources should be used. Subsistence, per se, I don't think was a matter on which they focused. Because it was accepted. It was the pattern that existed in the free territory of Alaska and in

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territorial Alaska. And I think that when they wrote that language nobody was really sensitive to the possibility that the language could affect the fact that subsistencesubsistence was the highest priority/use of the fish and game resources, but I think that Fred Rogers could tell you that when you looked at the priority of uses, subsistence was first. Then came commercial uses, then pleasure uses, in that order. And that was a fact of life and not something that they really needed to focus on when that article was written. Now what the debates were in the committee in substance, or on the floor in the plannery session of the Constitutional Convention, I cannot tell you. My job as Secretary was primarily administrative and organizational and I was not on the floor listening to the debates and I was not in the committee sessions. George was in both of those things. So, I think that's about what I can give you, unless you have questions of me in terms of the history of how it developed.

Rogers:

My memory confirms what Tom has said, that at that time subsistence and commercial was focused primarily on fishing and not the hunting aspects of it. The hunting conflict came with what I call the explosion of urbanization. We have a new population dumped on Alaska who wanted to go out and hunt and fish. When we were doing the constitution, that was in '56, that was a long time ago. Population was much smaller, and there had been a sort of an adjustment made between commercial and subsistence take of fish. In fact, frequently the same people participated in both fisheries. The thing that's happened most recently is the recreational hunting and fishing which is expanded and created a new conflict, which I don't believe was one that we considered seriously at that time. But Tom's mentioning that the priorities we discussed which were not incorporated in language, but were probably thinking was that subsistence

first because of people's life depended on that. Commercial second because people's livelihood depended upon it, and recreational third because this contributed to people's way of life. So that was pretty much the definition we had in mind. But one thing that we did in the constitution was to leave a lot of things out. We said the legislature will take care of those. This is one of those issues.

Hoffman: So, you're saying that the subsistence issue, you felt was going to be addressed by the legislature?

Rogers: I think that that was pretty much the feeling of the group. The resources committee. It was not one that was a burning issue at the time. As I say, an adjustment has been arrived at without any help from any of us, between the fishermen, and the subsistence fisherman.

Navarre: Questions? Rep. Hudson.

Hudson: Yes, thank you Mr. Chairman. Judge Stewart, you were on the bench for many years and we are reacting to a recent to a court determination on the equal access provision, these would be the rural allocation of subsistence uses. And yet, you are living history as a part of that process, and you just told us that the subsistence uses, specifically and probably and primarily in rural Alaska, was always intended even to the original drafters for this provision in the constitution. I wonder whether or not the courts have either aired or not perhaps gone to sufficient determination as to whether or not that original intent has not beenif they haven't taken that out of contents. If you hear what I'm saying is that....

Stewart: It's responsible. It depends on what was argued to them, because their decision is a reflection of the arguments they received. On the other hand, since subsistence was not an issue, subsistence for rural people at the time the article was written, the committee members that drafted the article were, I think, were not sensitive to the possibility that it could be interpreted in this way. I suppose, if you're asking me my opinion, I think that you'll probably have to the Constitutional Amendment that makes it clear that this priority can be established or continued. I think that historically it's always been there.

Hudson: I guess what I'm asking is, that if in your opinion, both as someone who's been there and as a member of the bench if the authority doesn't already exist, it's the interpretation of the authority that's at fault at this time. That is that the court's today are ruling that the equal access provision does not provide for "subsistence" that the makers of the constitution had taken for granted would continue on. And so I'm wondering, you know whether or not we have to get rid of that or if you can amplify that in statutes or if some historical readings back made available to the courts wouldn't modify the courts decision today.

Stewart: I doubt that it would. As I say, I think....let me just back up for a moment, I have a note from the honorable delegate, Jim Doogan that the other...I mentioned Truman Endberg, but also on this committee were Muktuk Marston, who obviously was a man steeped in rural culture. Frank Proctorvich, the native leader from LaRock who was reared in a village that in those days were certainly of a subsistence style flavor, and Bill Egan. They were the...all very interested in subsistence and equal rights for natives as well. I think that the writers of that language, simply did not see that given the language that there could be this

kind of a challenge. I don't have any argument with the Supreme Court looking at equal access language and saying that you can't enact laws under that constitutional language that would give preference to a class of citizens of this kind. Therefore, unless the constitution specifically recognizes a right to protect rural users, the court had no alternative.

Hudson: But the constitution also provides today...this is Bill Hudson, for the record....Also provides, today, for the sustained yield and the allocation among beneficial uses as opposed to users. Which some could argue that through the proper regulations, then perhaps, backup statutory requirements, that we could continue to provide, in effect, the continued subsistence uses, not necessarily specifically naming, say native or rural or one sector of Alaska over another, but by attacking the thing from the uses point of view as opposed to users point of view.

Stewart: It's possible. I'm certainly not going to sit here and say I have a legal opinion, you can't do that. I think it is possible. It's not something I've studied, I haven't focused on the issue until this morning. First of all, all I can give you is the historical circumstance under which it arose and that historical circumstance was and in my memory was subsistence was an engrain part of the culture. And it wasn't something that those delegates thought they were somehow going to lose given the use of the term equal access. They were specifically trying to prevent, for example, commercial interests, the commercial fishing interests from outside of Alaska from having some kind of a strangle hold. And the equal access was to assure that that wouldn't happen. But I just don't think that they had before them an issue of whether or not subsistence uses, apart from the users, would be subject to limitations under

the language that they chose. It was not being discussed. Because everybody did it, most of the communities _____ . I got a pass from high school so I could go hunt a goat. So my family could eat goat, literally. One winter we lived on moose all winter. When there was a depression in 1932. We had nothing but moose meat.

Rogers: We lived on canned salmon in San Francisco once

Stewart: But, as I say, it was a part of life, and they didn't have to focus on it separately, and I don't think they ever dreamed that that language could be interpreted as the court has done. I don't have any argument with what the court has done, because when you read the language on it's face, equal access means that. But whether or not you can come up with some statutory scheme, I'm not here to say.

Navarre: Rep. Taylor.

Taylor: Thank you Mr. Chairman. (voice inaudible - not at mike)

Phone: Dillingham can't hear the question.

Taylor: (still not at mike - difficult to understand - will do best for transcribing) I said, I think it's wonderful for both these gentlemen to be here today. I certainly appreciate the background and perspective that they, Mr. Doogan and other bring to us because we need that _____. We often abandoned just as many people have abandoned in the rural areas listening to the elders. We have lost _____ same thing in our haste to move forward with solutions to perceived problems. My concern here is the one addressed earlier by Mr. Hudson. And that is that it would appear as though we do have the opportunity to legislatively provide for a mechanism that will protect what

I think is an essential element to Alaskan life and we can do so, I believe, through the constitution where it allows us to discriminate as a legislature among uses of the resources. Now,...

Phone: We're breaking up badly.

Taylor: I can't help that. My concern at this point is that simplistic solutions have been offered. They say pass an amendment to the constitution and it will happen. The problem occurs when you practically carry out any of those simple solutions. And the problem is one of resource management. 'cuz that's the real bottom line here. We have two things I guess we're really responsible for. One is to preserve a certain life style, and an opportunity out there, I certainly support that. The second, however, is a mandate that we are to manage that resource and not allow resources to be disseminated or to be abandoned through neglect or misuse. I think that's a very difficult thing to carry out as a practical matter. When the population was much smaller, and people had an understanding, so to speak, of the need for their neighbor to have a extra moose or an extra few deer....one fella has maybe a good job and he can afford to buy groceries for his family, the other fella is out of work because the mine has shut down or whatever, and no one thought a thing about him taking an extra deer or two, it was anticipated he'd have to. If you had food, you helped him out too. Now we're into times when we've got 185 airplanes on floats flying around, and we've got snowmobiles, and we've got expanding populations and we're faced with the difficulty of trying to sort out very small practical problems in small areas. We're not really talking about big uses the resources, and yet people who are in the commercial fishing industry right now, I think, are very

frightened of this whole concept. Especially since we put in limited entry. They perceive the closure or a vault like reaction out of the state of Alaska. Closing down major fisheries resources. People who are concerned about developing this state, as far as roads, gas pipelines and other things are very concerned.....

..... than they want to do. And we certainly did not see the misuse of our court systems through the injunctive process during the year that you're talking about. People didn't go out and file _____ law suits in 1955, just so they could restrict or prevent the development of a road or a bridge or a highway. Nor did they go out and do those sorts of things and then say, "Well, you can pay us off, we'll allow you to go through now, and just take care of all of this.". Those things are now a fact of life. We work with those things every day. And.....

Stewart: I'm sure you agree with me that there are too many lawyers.

Taylor: You bet I do, Tom. We have for years. Too many good ones, we'll say that. Not enough courts. But my concern in, I think we may be able to address this in this fashion. But I'm looking for local and regional solutions on a fish and game management decision concerning the utilization of the resource. And through that providing a macrocosm for the continuation of lifestyles and cultures and other things. Because as soon as I attempt to make discriminatory decisions based upon where a person lives, what the color of their skin is, what religion they happen to practice, I think I'd find my self in complete conflict with the very tenants of this society that we all so allegedly agree with. So, I find that very difficult. It's going to be on uses, how that resource is going to be used, gonna have too much problem coming up with some stuff on it. But if it's going

to be on users.....How do I tell the fella who lives on the Kenai Peninsula, works up on the oil patch, and he wants to go back up home because it's whaling time in Barrow and he's always gone out with his family. He's always participated in that. Am I supposed to pass something something that's to preclude him from going back home and doing that? 'course, I would hope I'm not. I hope that's what _____ is saying. Everytime you attempt to carry out one of these schemes, you run into these impractical, ridiculous scenarios. I have a question for you George on percentages. Now, what percentage...what is the racial breakdown on people living in the rural areas?

Rogers: Robin, I don't have that figure here, but it is down on the native. I just can't give you that....I could get that figure for you very easily.

Taylor: Somebody told me the other day it was 60/40 roughly.

Rogers: Yeah, it may be about that now.

Taylor: Okay.

Rogers: But at one time it was almost a 100% as you know.

Taylor: Well, of course. But it isn't today, that's what I'm getting at.

Rogers: So, what I'm talking about here, and I notice I didn't use...when I talked about that, I didn't use the term rural/urban break. I think that's what makes this significant today. I used the native figure to indicate what happened to a people who were dependent upon subsistence, when you had commercial development take place.

Now we have this other club now, between the urban and rural users.

Taylor: Well, I understand that, but my frustration, I guess is that, my district, as you know Reverend, is Ketchikan, Wrangell, Petersburg. Using the numbers that you've used as a benchmark, everybody seems to grab at different numbers, some people 750, and the numbers go as high as 3 to 4 thousand as _____ urban/rural. If we use your benchmark of 2500, all of my urban dwellers would be precluded from subsistence. Many families in Wrangell and Petersburg, and even in Ketchikan who utilize... a significant portion of their diet is foods, whether it's salmon or berries or whatever, that are gathered off the land. And I have a hard time coming back from Juneau saying "sorry folks, you're out of the business".

Rogers: See, I wasn't advocating that figure, that's one that the census uses when they figure out urban life. So let's just use that. I think I'll preface that by saying, you don't have to agree with this for purposes of this discussion, but we'll use that. Tom made reference to the resource development board constant that he and I worked on. We had a definition of rural that was based upon the size of the place of residence and whether or not it was accessible by surface transportation. In other words, isolation and size were the two things. Limited entry has as you know, and the brownie points you get to get a permit, one is the availability of alternative employment. There are lots of these things that really should be worked into our concept. And I agree with you, you can have a place that's a thousand, which is very urban, maybe a government or military outpost, that has nothing to do with the size, and in your case where you have a population that is partly dependent upon the harvest of resources, timber and fish,

but also everybody has personal use of the resources which is another term for subsistence and those things are the things that have to be protected as well as the traditional uses.

Stewart: Mr. Chairman, I don't want to try to comment on the merits of constitutional amendments legislative changes, because I'm not a student of this subject, and I really haven't given it adequate consideration to be competent in giving you responses, for example to Representative Taylor's comments. Glad I'm not on the legislature, I'm retired. If you have any questions, otherwise, I'd be glad to try to answer them, but I don't feel myself to be competent address the merits of these issues. Historically, but not currently.

Navarre: Representative Hudson.

Hudson: Thank you. I think I'm sensing that the solution has got to come from...in some form amplifying the findings behind the original intent of the constitution since that's the guiding light as far as the State of Alaska is concerned. And/or changing ANILCA since that's sort of the guiding light of the federal lands concern. Or finding some way in which we can accommodate both of them, and live within both of them. But it sounds to me, as though from your testimony, and your recollection of the fact of the subsistence use, subsistence use of fish and wildlife was always intended to remain and was not to be excommunicated by virtue of the adoption of the equal access. If I understand you right, you're saying that one of the biggest motivators perhaps to an adoption or incorporation of the equal access provision, was to make certain that the out of state fisheries activities didn't come in and gobble up all the resources. That you were more concerned in developing that provision that the economic

development of the resources and the access of the resources in order to accommodate that was very important to embody in the constitution. Is that essentially correct?

Stewart: I think so.

Hudson: As so, it seems to me as though those are findings that ought to be documented by the body at large here. So that... maybe we can't affect the McDowell case at the present time. Maybe that'll stand. Maybe, as you say, that they've dealt with that upon the merits of what was presented them on the surface. But it seems to me as though that's the kind of stuff that needs to be put into law. But it needs, in my opinion, not to users but to uses. Just like you say subsistence uses and then in law come back in and have the guts enough to define what the hell subsistence uses really are. Because we don't do that. We leave that up to some court to decide that. And I think that we, as legislators, ought to go back in and strike a consensus as to what subsistence uses are. And that may not necessarily say that just because you live in some rural part of Alaska that you are the only one that gets it. It may say that subsistence includes the customary and traditional and even try to define that to some extent, so that...we're really talking, in my opinion, only about a very limited small percentage of the total resources of Alaska. The balance of it is probably of sufficient quantity to handle the commercial needs and the personal use. And I think personal... use also needs to be....

Stewart: _____ sustained yield.

Hudson: Managed on a sustained yield always. And then from their we work it on down, but....You know we're to figure out how in the world we can make something that is not well defined

useful, and I think we've got to work on definitions. Both from the federal side as well as on the state side, and then we can protect those legitimate native and non-native rural subsistence requirements and at the same time, show that we are treating people equally. If they want to live in rural Alaska in order to have that priority, they can do so. You know. Do you think I'm on the right track in this?

Stewart: I don't have any argument in that. I just don't envy you the difficult job of trying to reach that kind of a definition.....

(Both parties speaking at once - inaudible)

Stewart: I've not seen it previously defined in law. It's going to take somebody with imagination and expertise to try to come up with it. But I don't have any argument with the principle.

Navarre: Representative Taylor.

Taylor: Yes, thank you Mr. Chairman. Tom as we struggle with this and we're not alone, we've watched legislative sessions now for over ten years struggle with this question. They tried "needs" base, that didn't work. It was held as discriminatory. We tried urban vs. rural, that certainly didn't work. And each time we tried to do...use the word you just suggested, make that definition, draw some line someplace, each time we do that, we are immediately indicating that one group or class of people someplace in this state, shall be allowed to participate in an activity...and what we're really saying is that other groups shall not be. That's where we were in the first place. As soon as we start doing that, we run into problems. How in

the world we could have survived all of this time....without the intervention of the words subsistence being mandated by federal law, I don't know. It seems to me that we survived pretty well, really. People understood what it meant, though we might not be able to clearly define it, we understood what it meant and know one abused it. I think each of you know, from living in Southeast Alaska, we had quite an activity going on, on the sale of herring eggs on kelp. Down in Frank Brackovich's old country Kowak and Craig out there in Sea Otter Sound. This product was taken under the guise of subsistence, placed in boxes and shipped to Japan and were selling for several thousand dollars a box. We're talking millions of dollars of herring eggs on kelp that went that way. Felony complaints were brought. A two or three year investigation. So we're not talking about speculated belief that somebody might abuse it. We've seen it abused. We know it can be abused. The one group of people talking about how their customarily and historically have been selling salmon eggs for almost 20 years and that that ought to be part of their right to continue to sell salmon eggs. I fished salmon a lot of years when all the eggs went right out the shoot with the gurry and heads and tails. Then I watched salmon eggs become more valuable than the entire salmon pack was. So when I hear about somebody catching a whole bunch of fish so that they can sell the salmon eggs, that doesn't sound like subsistence to me, that sounds like a commercial use. When I see herring eggs on kelp being sold for millions of dollars to Japan, it sounds like a commercial use. I don't see a lot of it on the tables _____. That's the kind of thing we're running into here. We start making these definitions, we're going to be precluding, in my district, by any numbers I've seen so far, everyone of my native families from being able to utilize subsistence. Some of these people are 80 years old and have been eating fish and deer all their lives. Now

their going to be told, "Oh no, you can't have this right. This right goes to someone who's living more rural than you are. I have a real hard time telling them they can't do that anymore, George. Just because they happen...I mean, my God, how big is Bethel? Will Bethel be precluded?

Rogers: I wished I hadn't use the census figure, but I had to use something.

Taylor: But everybody else is, George. They all are, they're all grabbing a number someplace.

Rogers: And I think that, as I quickly suggested, the definition has to be more than just that. It's a combination of factors. Yes, I agree with you, that the figure was applied nationally. We have to have a figure for Alaska and I don't think that's too difficult the way the Alaska population is distributed. I'd say 80% lives in central places and for your concern is that your constituents would be considered urban, and I agree with you that it's more than just the size, it's the lifestyle and a lot of other factors. I think we can take care of it the way we did with limited entry points. It would be a combination of things.

Stewart: Limited entry did take a constitutional amendment

Rogers: That's right, because that was a special thing andsetting up....I'm not arguing. I'm not a lawyer, thank God.

Navarre: Judge Stewart, how much difference would the courts give to...if we passed another statutory change and defined or attempted to define subsistence and even rural and then put some findings in, an interpretation of what the legislature thinks the history of the constitutional convention, with

respect to that issue, was. How much deference would the courts give that upon a review.

Stewart: The deference would come in the specific language that you used. Whether or not it was consistent or inconsistent with the language they were interpreting. I can't tell you where I've seen actual language that you're going to use and how does it measure up under what they wrote in the McDowell decision. I don't think it's impossible to come up with some statutory language that would be consistent with the existing constitution. It might satisfy the bulk of this problem. But I'm not prepared to sit here and write out some language for you. That's a difficult job. Why don't I say I'm glad you have it and not I.

Navarre: Representative Salo.

Salo: Judge Stewart, In both of these...the explanation of what equal access was originally was real helpful here. I also am hearing from you that the constitutional amendment route in order to give the legislature authority to deal with all of the hard problems that are there, would be an appropriate route for.....

Stewart: I'm not saying it's a preferable route. It's certainly a possible route. If you did it I would want to have the simplest, briefest language that enables an address to the subsistence question. And I'm not sure whether one or the other of these things that are before you is better. I think I probably was attracted to the senate language because of its brevity and apparent simplicity. But, again, I don't want to be heard to say that the constitutional amendment is the only way you can go. I think it may be possible to draft a statute focusing on use, and if you two gentlemen, Mr. Hudson and Mr. Taylor suggests on uses rather

than users, it might pass mustard under the existing constitutional language. But until I say that language, I would not presume to say, "yes, it will".

Salo: Well, if you were to try to draft a statute or essentially do what Rep. Navarre laid out in front of you, it would be an appeal process to McDowell, would it not?

Stewart: It would what?

Salo: It would constitute an appeal for process to the Supreme Court decision...

Stewart: Well, not until somebody brought a case.

Salo: Well, my question.....

Stewart: If you passed the statute and the governor signs it and it becomes law, and until somebody then challenges the validity of it.....

Salo: We can probably anticipate that though, right?

Stewart: Depending on what it says.

Salo: Well, what I'm trying to figure out is, which is the more efficient way to get to legislative authority for dealing with the more complex issues than a long term solution.

Stewart: As a matter of policy, I do not like to see the constitution amended, unless it's absolutely necessary. And especially in the form of an amendment that puts restrictions on everybody having equal rights. I would hope that some route would be found where you didn't have to do that. But, as with limited entry, it may be your only alternative. I

think I'm not very helpful to you. I think it would be desirable if you had staff people trained in this field that could attempt to come up with a statute that would pass muster under the tests that was laid down by the court in McDowell, and what the existing constitution requires, but if you can't find language that would do that, then your alternative is the amendment.

Hudson: What's your analysis of the strict interpretation of rural subsistence preferences in ANILCA? You know, judging....basing back from where we came from as a state.

Stewart: I wouldn't presume to say. George would be more qualified than I. I'd have to have the ANILCA language before me and look at the cases it's interpreting and I've not done that. I'm not an expert.

Rogers: Yeah, I'd have to check the language too, Bill, but it....again, we're concerned about the definition of rural as a very valid one. It depends on how you define it and of course, we were dealing in that legislation with a particular group of Alaskans rather than where they lived. We were trying to settle aboriginal land claims which included subsistence use.

Navarre: George, the federal definition that there intending to use now is 2500 or below is rural, 7,000 or above in non-rural, absent any others, that I guess, findings, indicate otherwise. And the areas between 2500 and 7,000 are going to be determined based on, I guess, looking at a lot of different criteria and testimony to determine whether or not it fits the rural type of.....

Rogers: What we're talking about when we say rural is a way of life, as well as....I mean we think Robin's done that very

clearly. Talking about his old people who live in an urban, by definition, center for a living what would be considered an rural life style and this is one of the things that we find all over Alaska not just in your constituency. I'd have to re-reexamine that sort of attempt to sort of arbitrarily set the limits. It's a very tough one. I don't like to have just, what is it the census does, just one criteria for cutting it off. They have to, because they deal with statistics, we deal with people. The rural development resources court that Tom mentioned, we tried to factor in size and isolation, but then that, again, precludes your constituency. And it has to be done on the basis of how the resources are used, for what purpose. But, I'm not answering your question.

Mike Navarre

This is Mike Navarre, and they, I guess they have indicated that it's not going to be simply an arbitrary number. What they've indicated is that's what their starting point is going to be, but then they're going to factor in other criteria to try to determine whether or not it truly fits a non-rural or rural designation that they've arbitrarily used at the starting.

Rogers:

When we get the 19...which census is this?1990 return's then, I'm going to be very interested in going through all the socio and economic indicators because in the last several decades, in fact every time I live here, every decade, you have to redefine Alaska. I think precisely what we are going to have to be doing here is not just defining rural, but defining what Alaska is. And I do think that those returns are going to be very useful if they use them right.

Hudson:

This is Bill Hudson. It was rather interesting this morning when we listened to the federal managers. The

Federal Fish and Game people. They said that they picked the 2,500 as a figure out of the bureau of census. Their definition of anything over that was urban and then they picked 7,000 on the basis...in the old law Ketchikan was included in the 5 that were not rural, that were urban, considered urban, was Anchorage, Fairbanks, Ketchikan and Juneau and at that time Ketchikan had about 7,000 population, so they choose the census figures as the bottom hand and the 7,000 predicated upon that. So everybody is scrapping for some sort of an arbitrary definition. Which is why I really believe that the legislature is empowered, and should be responsible enough to really try to figure out a definition that, in fact, does what is the proper thing to do. You know that settles this thing to some extent and I think that would even help the future court cases.

Rogers: I think that has to come in the form of a statutory change. Not necessarily a change in the constitution.

Hudson: One of the possibilities, that seems to me, is...both you gentlemen speak of uses rather than user. But then if you do that, it seems to me that you would probably have to license people to make that use. (Several voices talking at once - indiscernible) Special licenses for the use that you might have to set up much more of a bureaucracy than you now have to arrive licensing. Look at the problem that limited entry had to determine with cases. And the courts still have issues about who is and who's not entitled to a permit.

Rogers: And that is true, your honor, and I think that certainly there are other and misuse of economic situations such as indicated on the permanent fund application and other wide-spread literally encompassing, all encompassing, types of things out there. And I know that's something that's

very likely is going to be involved in this, but I don't know any other way out of it. The value of the equal access, if I might just one quick one, the value of the equal access perhaps is maybe just as legitimate today as when it was incorporated originally. If that intent is carried forward. If the original intent is carried forward so that the "intent" of equal access was to make certain that all of Alaskan's had an opportunity to the resources for legitimate development or for, you know, public policy, or public interest development and not necessarily as a curtailment of the other subsistence uses.

Leman:

This is Loren Leman. Mr. Rogers you went through some interesting numbers on demographics, and I don't have the length of your history, I don't recall the mid-thirties, but I do talk to my dad who tells me many of the same stories and I do remember the mid-fifties and I can attest to what you two are representing about subsistence use going on and it just wasn't considered to be a big deal. In fact, in the community where I was raised, people would subsistence fish and typically share the early kings that were caught or reds as one were. And it just became a "thing", you know, you'd share that. That typically was done and set a net in front of a trap and now if you did that, you'd probably get shot. But then it wasn't a big deal, you know. In fact we'd even scoff at the inefficiency that some people would go through in doing it. But things are different now. But one of the things you didn't mention, and I think it's 'cuz you didn't talk about native vs. non-native, but an interesting statistic is that Anchorage is now the largest native community in the state. One of the problems I'm having, and I know Rep. Taylor talked about it, is that the proposal that was presented to us for a vote, the closing days of last session, really didn't provide for accommodating for these people and many of which I think depend on

subsistence. I've been to potlatches here in Anchorage, I don't know exactly how they got it. I don't know if it's subsistence, or commercial, or sport, or poaching or however, but it's certainly a part of their lifestyle. I'd certainly like to make sure that those people, in addition to those native people, those non-native people who really do depend on subsistence may live in Anchorage or other urban areas would have access. But at the same time I'm concerned about opening up and creating 500,000 users who all of a sudden, because if it's available, become subsistence users under a more liberal standard than the sport or recreational type regulations that we have. So, it's a...this issue is complex to me. There's not an easy answer and I appreciate what you're saying and I think of mine as more of a comment than a question. If you have any response to any of those thoughts I'd appreciate it.

Rogers:

This again is something I think that if when we get the 1990 census that we can see what has been happening. There has been an increased urbanization of native population. And the native population, as I indicated, has since WWII expanded very rapidly, almost explosively. And a great deal of that population is, as you indicate, Anchorage is the largest native community in Alaska. Southeast Alaska we have two, in addition to the regional and village corporations we have two urban corporations. These are natives who live in Sitka and Juneau who have, in a sense, asked to be incorporated because they are no longer living the life style of the village. They're living a different lifestyle. However, the traditions are still there as you point out. Potlatches and so on. Where very much is...where those of us European have certain traditions that we observe. On _____ (Burnis?) night I wear a kilt for example and that sort of silly thing, but then that's important too. There is, when we're talking about the use

of a resource, when you become urban, you change your lifestyle. You still may have traditions, but your lifestyle, the way you live can change from the way you life when you lived in the villages. And it is something that is very complex. It is something, as I said earlier, that we have to redefine Alaska every ten years. That we're going to be faced with this again. And looking at the native population, how they fit into the scheme of things. That's a very important point to bring out. The people who have traditionally been rural to become urban. Their particular place in the scheme.

Navarre: Representative Taylor.

Taylor: Thank you Mr. Chairman. I am concerned that as we continue to struggle with this problem, that we maintain before us the...what I think is the crucial issue..or the crucial word here, that's "resources". There's only a argument over how many caribou are going to be shot in a given herd while there's still a herd of caribou. If there's no longer a herd of caribou, there's no reason to argue about who's gonna get 'em, 'cuz they're gone. They're destroyed. The way we maintain that herd of caribou or that salmon run into a given stream is what we've felicitously, I think in this state call management, because I think we do a very poor job of managing our resources. And what we really usually do is manage man's activity as a predator on those resources. We don't do anything about the bears or the wolves. They won't let us touch those. They'll let us talk about what man's impact is on the resource, so what we really do is, we don't regulate the resource, we regulate men. How they're going to approach this. It would seem to me that if you have some scientific basis for the management of fish and management of ungulates in Alaska, then it ought to bear some resemblance to a scientific proposition that says we need to

maintain 'x' amount of these critters wondering around so the herd will continue to grow and be sustained. We call that sustained yield. But that's our bottom line. We can't allow any more than that to be taken. And it shouldn't matter at that point. What the use is that man might put to it. Whether it's recreational, livelihood or lifestyle. We can't kill them all off. Some where's above that limit we've got to have...we've got to establish some priorities. And as our populations, as you've indicated George, have been expanding in both our urban and our rural areas, with what appears to be a fluctuating, but somewhat finite game and fish resource. We're ending up with a conflict between...of being...we're being asked as legislators to establish who shall get this resource and have access to it and who shall not. And as you have indicated to do it just on the arbitrary basis of how many people happen to congregate together in a given community, really doesn't have to say anything about their lifestyles, who they are, what use they'll put the resource to. It doesn't say any of those things. And yet if we attempt to come up with another series of definitions, we run into the bureaucratic problem of how in the world do we administer this monster? What if instead we manage the resource and the use made of the resource, as opposed to the individual people who may, at given times, choose to use it. Limit the taking the resource itself. As opposed to limiting the takers, and their ability to do it. One suggestion that had been made, I think Senator Halford made it, was people want to go shoot at caribou on one side of the Brooks Range, let him eat it there. If they can't eat it there, they want to take it someplace else, but we don't allow them to transport it out, then they'll probably not going to fly all the way up there and shoot a caribou for the fun of killing it. If we impose something like that now on the Kenai River, it probably wouldn't work. A whole bunch of people live in that area,

and you could probably have a greater impact on it than what would be healthy for the resource. But it seems to me, that with tunnel vision, say some groups of people living in certain areas shall have unlimited source to the resource. Someplace, whether it's the federal government or us, we've got to manage that resource so's not to kill it off.

Rogers:

Well, I would assume that that was inherent in this thing. That they would not have unlimited use of the resource. It's very much like the North Pacific Fisheries Council trying to regulate the extended fishing zone. You first of all determine what they determine optimum yield. Which is different than the maximum sustained yield. Then you put the total allowable catch, then you divide that out among the catchers. The object being, of course, to Americanize the catching. And very much the same sort of thing here is once you've established in a pseudo-scientific way of what the allowable take shall be, then you set up priorities as to how much will be allocated to each potential user of the resource. And that's when the squeeze comes, of course. And that's where, when we were talking about the constitutional convention and the discussion there the four men that....Delegate Dugan gave us their names for the ones that were constantly pushing for the....giving the priorities to the subsistence use and the commercial use second and the recreational third. That's an allocation format. What...I agree with you, first of all you've got to establish...the resource has got to be managed. The resource has to be sustained. You don't allow anyone just to go in there and arbitrarily destroy the resources simply because they have a prior right established by law. But you start with that.

Taylor:

The state of Washington, Oregon and Idaho, now...between the treaty tribes and the Boldt decision are trying to figure

out what 50% of their fishing resources...now, by the way, it's also a game resource and there's unlimited hunting going on in the state of Washington, of the elk and deer populations at night using the spotlight, the spokes at night_____. They attempted to come up with something about, oh, you could take 4 elk to a family. They couldn't figure out how to distribute what a family was. They got into arguments about that, how to make them count how many elk they were killing and so on. So I think we're going to see some population decreases as far as their _____ populations down there in the near future. Probably as significant as what they've done with our salmon. But if I got...I believe this is an example of what would fit Alaska very well, we got a very long river system with villages all along that river system that have relied for years and years, throughout history practically, that we know of, on a salmon run returning into that stream and being able to take the food they needed from that stream. Now those populations are growing according to the newspaper article today and according to your testimony based on census records, they're growing and growing significantly. Is the run growing? I don't know. Only my fisheries managers can tell me that and I don't know how many _____ (wiers?) they have in there to tell us. Is it growing or declining or whatever? We got to rely on some of the local people to tell us that. My good friend Mr. Hoffman sitting down here is very concerned about the fact that his people don't think they've been getting a very good cut out of the management of that resource in this State. It's just like you indicated historically years ago that a commercial take at the mouth of that stream, seems to be so large that there aren't enough fish that make it up the stream that they get what is fair share. Well, I'm sympathetic to what he's saying there. I'm concerned about that and their livelihood depends on that. How they're going to get by the winter

maybe. The state of Washington, they decide, basically faced with kinda the same problem. Vote decision, we're allowed to take any..a 50% of our fish, we'll decide to take them half way up the river..they find they can't open up a fishing season down there, until "X" number of fish have been caught in a given area. This raises all kinds of havoc on how you're gonna manage the fishery and what you're gonna do with it. I can see very similar problems occurring right here every time we attempt to _____ . Not that the people up the river shouldn't get the fish. I don't think anybody in this legislature would deny them that or suggest that they shouldn't have that. Still what do we do with one of the largest industries in the state sitting right of the shore here and they're all sitting there with their hands folded and people out of work because we're waiting for 25 sockeye to make it far enough up the stream so we can say the fishery can now open. Maybe there's another solution. Maybe we we'll require the guy taking the commercial fish out here to certain that they get up. The next year we adjust the time opening and so on. I guess I'm suggesting that we try to work within regions upon specific resource problems with specific uses to which that resource is put as opposed to trying to paint this state with one broad brush. My theory is you paint it with one broad brush, you're going to end up with unique problems of excluding people from this all over this state, which I don't think any of us would like. If we...Will Hensley suggested this a couple three years ago and many people reacted opposed to it, other people thought it was a pretty good idea. I'll throw it out here for your consideration. What about utilizing our regional fish and game boards? By giving them a more expanded role to play other than just being advisory to our Fish and Game Board? So that those regional boards could begin to make allocation decisions at least on subsistence basis. And to determine what is a fair use and a fair

amount of caribou to be taken in a given area. What the fair use of salmon is, and how many should be taken in a given area. Would they not be better located to make those kinds of decisions than me sitting in Juneau trying to tell somebody how many caribou they can shoot on the north side of the Brooks Range? That's my suggestion. I'd like your comments on whether or not we should _____ at the same time.

Rogers: I think it's certainly one that we should definitely consider, because otherwise we end up with, as you _____ arbitrary definition, arbitrary decision making, which you turn a crank and a decision comes out without any human input.

Navarre: Thank you. Mr. Stewart, you have any comment?

Stewart: No, I just, ...I don't think I have any more to offer to you.

Navarre: I'd like to thank you for participating Mr. Stewart and Mr. Rogers. At this time I want to invite Jim Dugan, who is the delegate to the Constitutional Convention to offer a comment he would like with respect to the historical. _____ to adjourn as soon as we are finished here and reconvene at about 1:15.

~~Dugan~~
Dugan:

Mike had to do this since he's my nephew. I wanted to clear up...I have quite a little to say about this, but I'm only going to attempt to clear up the reason that the Constitutional Convention didn't go into this matter any further than they did. When the Natural Resources Committee and all other committees were, of course, trying to develop their particular part of the constitution, they would hold hearings within the constitutional group themselves

periodically, just to kind of straighten out their thinking and so on. In a preliminary session a couple of....Muktuk Marston, who was the commander of the Eskimo Scouts, made a very eloquent plea, to be sure that his people, the Eskimos, were treated as equal of everybody else. Not equal people, but equal under the policy that we were setting. Truman Endberg, who was the union business agent for the Commercial Fishermen in Dillingham recognized very well, and stated so, that subsistence was a necessity. Anyhow, Bill Egan, as he would do from time to time as the President of the Constitutional Convention, would step....

STATEWIDE POLL—A CLOSER LOOK AT THE ANCHORAGE AREA

POLICY ANALYSTS, LIMITED CONDUCTED A RANDOM STATEWIDE TELEPHONE SAMPLE OF 608 ADULTS. THE FOLLOWING IS A BREAKDOWN OF POLL NUMBERS IN SIX AREAS OF ANCHORAGE.

FEDERAL MANAGEMENT VS. STATE MANAGEMENT

If you could choose between letting the federal government continuing management of subsistence on most Alaska land or transferring this responsibility of managing subsistence to the State government—would you choose the federal or State government?

ANCHORAGE FINDINGS	
Federal	18.0%
State	77.0%
Don't know	4.9%

ANCHORAGE BREAKDOWNS						
	Sand Lake	Downtown/ N Midtown/ Mtn. View	East Anchorage	South Anchorage/ Girdwood	Midtown	Eagle River/ Chugiak
Federal	17.5%	20.6%	25.6%	12.3%	15.1%	15.2%
State	80.1%	75.8%	69.5%	79.3%	78.1%	84.8%
Don't know	2.4%	3.6%	4.9%	8.4%	6.8%	

VOTE OF PEOPLE OR LEGISLATIVE ACTION?

The State of Alaska has been trying to resolve the issue of subsistence for several years. Do you think the subsistence issue should be settled by a vote of the people on a constitutional amendment or by legislative action in Juneau and Washington, D.C.

ANCHORAGE FINDINGS	
Amendment	74.5%
Legislation	21.1%
Don't know	4.3%

ANCHORAGE BREAKDOWNS						
	Sand Lake	Downtown/ N Midtown/ Mtn. View	East Anchorage	South Anchorage/ Girdwood	Midtown	Eagle River/ Chugiak
Amendment	79.6%	70.7%	76.3%	72.1%	74.0%	77.9%
Legislation	18.0%	23.6%	23.7%	20.8%	15.1%	22.1%
Don't know	2.4%	5.8%		7.1%	10.9%	

STATE CONSTITUTIONAL AMENDMENT?

Do you favor or oppose a state constitutional amendment transferring federal control over subsistence to the State of Alaska?

ANCHORAGE FINDINGS	
Favor	73.8%
Oppose	18.9%
Don't know	7.2%

ANCHORAGE BREAKDOWNS						
	Sand Lake	Downtown/ N Midtown/ Mtn View	East Anchorage	South Anchorage/ Girdwood	Midtown	Eagle River/ Chugiak
Favor	80.1%	77.2%	67.3%	74.9%	74.0%	70.3%
Oppose	12.1%	17.4%	27.8%	13.3%	15.8%	29.7%
Don't know	7.8%	5.4%	4.9%	11.84%	10.2%	

PEOPLE'S CHOICE VS. FEDERAL CONTROL?

Which of the following two approaches would you rather see?

A. A comprehensive constitutional amendment which would place the State of Alaska in complete charge of subsistence and would take effect after a majority of Alaskan voters approved the proposal in a statewide election, or

B. Action by the Alaska Legislature which would have the state and federal governments share control over Alaska's subsistence program, and require additional action in both Washington, D.C. and Juneau?

ANCHORAGE FINDINGS	
A	74.0%
B	20.6%
Don't know	5.3%

ANCHORAGE BREAKDOWNS						
	Sand Lake	Downtown/ N Midtown/ Mtn. View	East Anchorage	South Anchorage/ Girdwood	Midtown	Eagle River/ Chugiak
A	79.6%	76.0%	76.6%	61.4%	80.8%	82.9%
B	20.4%	20.4%	21.9%	25.7%	15.8%	10.3%
Don't know		3.6%	1.5%	12.9%	3.4%	6.8%

IS THE FEDERAL GOVERNMENT DOING A GOOD JOB?

The federal government currently manages resources, including hunting, fishing, and subsistence, on the 220 million acres it owns in Alaska. How good a job is the federal government doing? Would you say the federal government is doing a very good job, somewhat good job, somewhat poor job, or very poor job of managing its Alaskan land?

ANCHORAGE FINDINGS	
Good	36.2%
Poor	41.3%
Neutral	9.4%
Don't know	13.0%

ANCHORAGE BREAKDOWNS						
	Sand Lake	Downtown/ N Midtown/ Mtn View	East Anchorage	South Anchorage/ Girdwood	Midtown	Eagle River/ Chugiak
Good	37.1%	37.7%	37.6%	34.7%	37.0%	32.3%
Poor	35.2%	44.5%	42.2%	46.0%	22.6%	48.3%
Neutral	20.4%	2.2%	13.0%	5.5%	15.1%	4.2%
Don't know	7.3%	15.6%	7.1%	13.9%	25.3%	15.2%

SUBSISTENCE

Until December of 1990 (two and one-half years ago), Alaskan law defined subsistence use as providing a priority for rural Alaskans, over urban Alaskans, in the taking of fish and game for personal consumption as food, clothing, fuel, or tools.

Do you favor or oppose amending Alaska's State Constitution to allow a priority for rural Alaskans in the taking of fish and game for subsistence use?

ANCHORAGE FINDINGS	
Favor	55.0%
Oppose	33.1%
Don't know	11.9%

ANCHORAGE BREAKDOWNS						
	Sand Lake	Downtown/ N Midtown/ Mtn View	East Anchorage	South Anchorage/ Girdwood	Midtown	Eagle River/ Chugiak
Favor	49.2%	58.5%	62.4%	47.0%	66.4%	49.8%
Oppose	34.7%	30.7%	28.3%	41.2%	19.2%	39.2%
Don't know	16.1%	10.8%	9.3%	11.8%	14.3%	11.0%

*Wild Biology
Alaska Outdoor Council
6/16/92*

Ref: conamdmnt.mss

CONCERNS WITH A CONSTITUTIONAL AMENDMENT ON SUBSISTENCE

- EQUAL RIGHTS AND COMMON USE -- Equal rights and common use of fish and game protected by the constitution must NOT be compromised. There is no assurance that any proposed constitutional amendment will not compromise those protections.
- RETURN OF STATE MANAGEMENT -- Amending the state Constitution to comply with ANILCA does not return state management authority. It ratifies management by federal rules (ANILCA) enforced by federal courts. State management is not returned until state regulations are enforced through state court proceedings.
- "RURAL", "NATIVE", "NO NET LOSS/RURAL PLUS" priority options -- Any of these discriminatory criteria can be promoted as the basis for a priority if any constitutional amendment is proposed. All are unacceptable and inconsistent with the interests of the majority of Alaskans. Discrimination based on local or rural residency will lead to "Indian country" status--tribal governments in control of regulations and tribal members exempt from state/borough taxation.
- CONSTITUTIONALITY OF GOVERNOR'S SUBSISTENCE BILL -- A constitutional amendment is not needed to "legalize" SB 443/HB 552.
- SUBSISTENCE AND SOVEREIGNTY -- Consistent with their "no net loss" policy, AFN will undoubtedly oppose any ANILCA amendment that does not protect a "community/group based" priority and federal court oversight. Both points are related to their quest for "Indian country" status.
- ANILCA AMENDMENTS before CONSTITUTIONAL CHANGE: A LEVERAGE FOR ANILCA CHANGE -- A constitutional amendment acceptable to the majority of Alaskans will not be acceptable to AFN, nor will it persuade them to support ANILCA changes. A constitutional amendment opposed by AFN but acceptable to the majority of Alaskans MAY encourage our Congressional delegation to support amending ANILCA in spite of AFN objection. Do we have any commitment from them?
- COST/BENEFIT ANALYSIS -- With regard to any proposal that would link constitutional change to ANILCA change: A cost/benefit analysis balancing potential loss of constitutional protection against beneficial changes to ANILCA must be kept foremost in mind. Principles of individual rights and equal protection must never be

sacrificed. Group (community) rights must never supersede individual rights. Group rights and federal court intervention both argue for Indian country status and both must be eliminated through amendment to ANILCA.

- PUBLIC PARTICIPATION -- Unlike the Governor's bill, proposed constitutional amendments and ANILCA amendments circulated by the Governor's office were not developed through broad public participation.
- CHANGING ANILCA -- There is no guarantee that Congress will "fix" ANILCA if Alaska's Constitution is changed. It would be outrageous to compromise Constitutional protection of Alaskans' equal rights and common use of fish and game by amending the Constitution in a future hope of getting ANILCA changed. Nonetheless, ANILCA must be changed to remove the discriminatory rural priority, to remove its inherent arguments for "Indian country", to correct bad resource management provisions, and to eliminate unconstitutional judicial oversight.
- SUBSISTENCE IS NOT "...essentially a native issue" as stated by AFN. If subsistence has a priority over all other uses, then everyone who uses fish and game or their habitats is affected. When a "rural" priority leads to "Indian country", as the 9th Circuit made clear would be the case, then every current or future tax paying citizen is affected.

PROPOSED AMMENDMENT

ARTICLE I; SECTION 24: SUBSISTENCE

THIS CONSTITUTION DOES NOT PROHIBIT THE STATE FROM GRANTING PREFERENCE ON THE BASIS OF LOCATION OF RESIDENCE WITHIN ALASKA REGARDING ALLOCATION OF FISH + GAME + FLORA HARVESTING RIGHTS + PRIVELEGES + RESPONSIBILITIES.

THIS PROPOSED AMMENDMENT IS BASED UPON ARTICLE I; SECTION 23: RESIDENT PREFERENCE

SUBMITTED BY
WILL HALE
WILLOW, ALASKA.



Integrity, Pride in Heritage, Progress

ALASKA FEDERATION OF NATIVES, INC.

PRESS RELEASE

FOR IMMEDIATE RELEASE

CONTACT: Jeff Silverman, 274-3611

NR92-17

STATEWIDE NATIVE COMMUNITY CALLS FOR CONSTITUTIONAL AMENDMENT

More than 500 representatives of the statewide Native community voted unanimously to oppose the current draft of Governor Hickel's subsistence bill Tuesday and demanded a constitutional amendment to preserve subsistence users' priority.

Alaska Natives, who gathered for a two-day Subsistence Summit sponsored by AFN and RurAL CAP, also adopted a comprehensive package of guiding principles and directives on the subsistence issue, including the appointment of a new subsistence steering committee with representatives from all of Alaska's twelve Native regions. The new committee will present a unified Native voice in dealing with the state and federal governments, using the newly adopted principles as a guide.

Village leaders attending the Summit have sent a clear message that the Native community is unwilling to take any more losses on the subsistence issue. A "No Net Loss" addendum to the guiding principles outlines in detail the protections that presently exist for subsistence users.

Following is the package of principles adopted at the Summit and the "No Net Loss" addendum.



Official Business

Alaska State Legislature

Alaska Legislature

Pouch V
State Capitol
Juneau, Alaska 99811

NEWS RELEASE

FOR IMMEDIATE RELEASE
May 6, 1992

Contact: Sandra Borbridge
465-3732

BUSH CAUCUS INTRODUCES SOLUTION TO SUBSISTENCE CRISIS

JUNEAU--Legislation today was introduced in both houses of the legislature by the members of the Bush caucus addressing Alaska's subsistence crisis. The bills propose an amendment to Alaska's constitution, comply with the Alaska National Interest Lands Claim Act (ANILCA), regain state management of fish and game resources and create a subsistence board to set subsistence regulations and policies.

"Alaskans are becoming increasingly polarized by the subsistence issue," said Sen. Al Adams, D-Kotzebue. "It's time to face the fact that the only way for Alaska to regain management of its resources on federal lands is a constitutional amendment permitting statutory protection of subsistence hunting and fishing. Otherwise, the impasse will continue."

Under the Senate-House plan, there would be a new subsistence board appointed by the Governor from a list of three names submitted by each of the 12 regional councils. The board would determine which areas of the state are rural, which fish and game populations are subject to subsistence uses, how much may be harvested, which stocks and populations are appropriate for urban subsistence uses and set other regulations pertinent to subsistence resources.

"This legislation responds to concerns raised by people in my district as well as the AFN Subsistence Summit," said Rep. Georgianna Lincoln, co-chair of the Bush caucus. "It has always been our feeling that we cannot adequately address a single management system without a constitutional amendment."

Unlike the subsistence plan submitted to the legislature by the Hickel

MORE-

administration, the plan introduced by lawmakers does not require amending the Alaska National Interest Lands Claim Act. It provides subsistence uses by rural and urban residents, allowing all eligible users to participate near their residences. The Hickel plan provides for subsistence uses by rural and urban residents, but does not allow urban residents to participate near their residences.

"I think everyone agrees that subsistence users need guaranteed protection," said Sen. Lyman Hoffman, co-chair of the Bush caucus. "This subsistence legislation is the most direct way of accomplishing that, as well as eliminating the confusion caused by the dual management system we now have. If you are in favor of protecting subsistence and states' rights, then this bill is for you. The bottom line is that subsistence must be protected."

The plan by Bush lawmakers includes all fish stocks and game populations which have been customarily and traditionally used for subsistence. The Hickel plan eliminates those fish stocks and game populations which have been customarily and traditionally used in urban areas.

The plan introduced today protects subsistence use by requiring that regulations be consistent with customary and traditional patterns in ways which cause the least adverse impact on subsistence users. The plan requires the boards to provide for subsistence uses when harvestable surpluses exist.

The Hickel plan provides wide discretion to the boards to regulate subsistence uses in ways which may not reflect customary and traditional patterns. It also provides wide discretion to the boards to decide when to find that harvestable surpluses exist and, therefore, when to provide for subsistence uses.

A new subsistence board ensures more attention to subsistence and reduces the impact from competing uses. It also ensures provides greater authority and more direction to local users through regional councils.

The Hickel plan maintains the existing board system, which places subsistence uses in competition with other uses.

The plan by lawmakers is endorsed by the Alaska Federation of Natives representing more than 200 communities in Alaska. In addition, Commonwealth North, the public policy think tank created in part by Gov. Hickel, has endorsed the concept of a state constitutional amendment. The Anchorage Chamber of Commerce voted in support of the Commonwealth North resolution approving a constitutional amendment.

The Anchorage Times

"Putting Alaska first"

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TIME FOR DECISIONS

Floundering on subsistence

SUBSISTENCE HASN'T been making the headlines in recent weeks, but that doesn't mean it has fallen off the list of urgent priorities facing Alaska. If anything, the urgency for action increases substantially with each passing day.

Time is running out for the Alaska Legislature to take action. Time is drawing near for the permanent federal regulation of fish and game management.

Federal fish and game managers, councils, regulations and restrictions are about to permanently replace the state's management policies — not only within the 60 percent of the state that is federal land, but possibly reaching onto state and private lands as well. Lawsuits now pending in federal courts challenge the state's authority to manage fish, especially migrating salmon, on any Alaska waterway.

The special lifestyle considerations afforded Alaskans under unique federal land management laws are going to be challenged more and more as federal managers rule the domain. Prohibitions on hunting, as well as restrictions on commercial and subsistence fishing, won't be far off. The potential consequences are devastating for commercial, sport and subsistence users of Alaska's fish and game resources.

THE SOLUTION to the subsistence dilemma can be as simple or as complicated as Alaskans want to make it. Following the Alaska Supreme Court ruling two years ago that threw out the state's subsistence preference law as being unconstitutional, the cleanest solution that presented itself was to amend the Alaska Constitution.

Alaskans were denied the opportunity to vote on that option because some members of the Legislature and other state leaders believed there would be a better way — one that involved compromise among all affected parties. That plan entails a new set of subsistence regulations and potential changes to both the state constitution and federal law — possible only if there exists a consensus among the different Alaska interests.

A few weeks ago, following completion of many months of work by the governor's subsistence advisory council, there was reason for optimism that such an alternative was possible. However, as the plan undergoes public

scrutiny, its shortcomings draw more attention than the merits of the process that produced it.

Today, the two sides of the debate that had come together under the governor's guidance in a fragile truce to work things out appear to be retrenching into their former positions.

GOV. HICKEL deserves much credit for pushing the process along for the alternative solution. But as the time runs shorter, and the laudable goal of compromise remains no closer, perhaps Alaskans best begin considering the original option for resolving the issue.

The Alaska Federation of Natives is holding a subsistence summit in Anchorage Monday and Tuesday to assess the current situation and make its recommendation. The governor should listen closely. Legislators, already burdened with a fiscal crisis and an election year, must contemplate the consequences of their action — or inaction — on subsistence this session.

As each day passes, it appears more and more obvious that the best action may be to involve the whole state in the decision-making process, to ask Alaskans what they want to do. The best way to accomplish this would be to propose a constitutional amendment, put it on the ballot and let the people decide.

SPEAKING OUT



Norris



Brown



Johnson

Q: Should there be a constitutional amendment to provide subsistence preference for rural residents?

• "I definitely think so, because I'm an Alaskan. I live here."

—Robert Norris, Girdwood

• "Yes. They're out there living off the land. They're out there in the bush and they've got to live. It's not like they can go to restaurants or Safeway stores."

—Tyrone Brown, Anchorage

• "That's a tough one. It's an urban/rural question. But, yes, I do think so. People choose a rural lifestyle and subsistence is part of it."

—Nancy Johnson, Anchorage



MAY -1 REC'D

April 29, 1992

The Honorable Georgianna Lincoln
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Rep. Lincoln:

Commonwealth North is deeply concerned about the issue of subsistence and the divisions it creates among the people of Alaska. We have engaged in substantial discussion and debate on the issue and strongly conclude that this issue must be resolved with all due haste. To this end, the Board of Directors, acting as a representative body of the membership of Commonwealth North, passed the enclosed resolution.

We urge you, and all your fellow legislators, to do all in your power to effect the necessary compromises and take the actions outlined in the resolution this year.

Sincerely,

Richard F. Barnes
President

Enclosure

*Founding Co-Chairmen Governor Walter J. Hickel and the late Governor William A. Egan
Richard F. Barnes, President • Judith M. Brady, Vice President • Dr. Lee Gorsuch, Vice President
Jeff Lowenfels, Vice President • Susan Ruddy, Secretary • Michael E. Stone, Treasurer • Bill Allen • Robert B. Atwood
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Marc Langland • Loren H. Lounsbury • Stephen McAlpine • Bill McHugh • Governor Bill Sheffield
William J. Tobin • Dr. F. Thomas Trotter • Robert M. Walp*

A COMMONWEALTH NORTH RESOLUTION
ON
THE ISSUE OF SUBSISTENCE

WHEREAS, the state of Alaska needs to regain unitary management authority over fish and game resources from the Federal Government and the citizens of Alaska need to develop a consensus on the issue of access to fish and game resources for subsistence purposes; and

WHEREAS, the Governor and the Subsistence Advisory Council, along with other groups in the State, have worked diligently to address the unique issues faced by Alaska regarding access to resources for subsistence; and

WHEREAS, the Alaska Legislature has before it numerous proposals which seek to resolve the issues surrounding subsistence;

BE IT RESOLVED, that Commonwealth North strongly supports the efforts of the Governor, his Council and others who are addressing the subsistence issue and commends all those who have undertaken the effort to resolve the subsistence problems facing the State.

BE IT FURTHER RESOLVED, that the Alaska State Legislature take immediate steps to ensure passage during this session of:

1. A Constitutional Amendment to go before the voters which designates subsistence as the priority use of Alaska's fish and game resources, and which specifically confers on the Legislature the necessary authority to grant a preference to and among Alaska residents in the taking of fish and game for subsistence use based upon criteria such as customary and traditional use, direct dependence, local residence, availability of alternative resources, or some combination thereof; and

2. An appropriate subsistence bill to implement the Constitutional Amendment which contains the intent expressed by HB 552 and SB 443, in order to protect all Alaskans whose survival depends most directly on the continued harvest of fish and game resources; and

3. Whatever actions are necessary to ensure unitary state management of all fish and game resources, upon adoption of the above described Constitutional Amendment and State statute.

BE IT FURTHER RESOLVED, that Commonwealth North takes this action with the goal of creating unity among Alaskans, so we can channel all of our efforts towards the development of a productive future, unencumbered by regional or ethnic division.

May 5, 1992

To: The Honorable Governor Walter J. Hickel & Members of the
Alaska State Legislature
From: The Anchorage Chamber of Commerce
Re: The Issue of Subsistence

**Anchorage Chamber Of Commerce
Support For Commonwealth North Resolution
On The Issue Of Subsistence**

During the Anchorage Chamber of Commerce board meeting of May 1, 1992, after review of the Commonwealth North resolution and discussion the board voted to support the resolution on the issue of subsistence recently passed by Commonwealth North.

The board views subsistence as an issue vitally important to all Alaskans. The Subsistence issue has the potential to divide Alaskans. The Chamber feels an equitable and speedy resolution of the issue is in the best interest of all Alaskans.

The Chamber feels the steps outlined in the Commonwealth North resolution are appropriate and should be acted upon.