

**HB**

**406**

**File 2**

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Members of House Judiciary Committee  
c/o Representative Joe Green, Chair  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

VIA FAX

RE: CSHB 406(RES) -- Subsistence Legislation

Dear Members of the House Judiciary Committee:

I have reviewed CSHB 406(RES). I served as a special counsel on subsistence to the Senate State Affairs Committee in 1985-86, when Alaska first went out of compliance with Title VIII ANILCA. For that committee I drafted most of what was eventually enacted by the Legislature in 1986. I also served on U.S. Fish and Wildlife Service staff on ANILCA in Washington, D.C. in the late 1970's when that legislation was being prepared. I am more than familiar with the intricacies of the subsistence dilemma as a set of legal, factual, and political issues.

These comments are in four parts. The first addresses CSHB 406(RES). The second lists principles which I think are useful in drafting any fish and game statute. The third states what might be a simple approach to the subsistence dilemma. The fourth comments on the importance of framing issues well and shows that CSHB 406(RES) demonstrates the danger of not framing issues well.

Under separate cover I have also sent through Chairman Green a draft paper I prepared, entitled "A Discussion of Nine Alternative Approaches To The Subsistence Dilemma and A Method Of Comparing Alternatives." It contains four sections: (A) a 70-page discussion of whether it is possible to comply with both the existing constitution and Title VIII of ANILCA, without amending the constitution or repealing "rural" from ANILCA, (B) a description of nine alternative approaches to the subsistence dilemma, (C) a 40-page critique of the Task Force proposals as they stood in the final Task Force Report of September 23, 1997, and (D) a method of comparing and ranking alternatives. There is a table of contents, and the document is in the format of legal memoranda - of a "question", a "short answer" and a "discussion".

**PART I -- OBSERVATIONS ABOUT CSHB 406(RES)**

1. Does CSHB 406(RES) Pass Constitutional Muster?
  - a. CSHB 406(RES) Creates An Unconstitutional Closed Class Every Bit As Much As Did The Rural Preference.

It is important to understand why the court in McDowell held the "rural-only" aspect of subsistence law violates the common use, equal access, and no exclusive right of fishery clauses of Article VIII of the Alaska Constitution. It did so, the court said at length because, "rural-only" establishes a "closed class".

In this respect, CSHB 406(RES) is no different. It establishes a "closed class" for "dependent use" of fish and game. This class is defined, by the proposed AS 16.16.020(c) in Section 2, as those who are eligible to receive a five-dollar resident hunting, trapping or sport fishing license under AS 16.05.340(a)(6). Under AS 16.05.340(a)(6), those who are eligible for such a license are those who receive welfare or who do not meet certain levels of income.

This is a closed class based on income and welfare, just as much as rural residency was a closed class. It would probably be unconstitutional for the same reasons that McDowell held the rural aspect of the current subsistence statutes unconstitutional.

- b. Can The Legislature Declare Constitutional Law?

Section 1 finds that the ability to take fish and game for "sustenance" is a "fundamental right" under the Alaska Constitution. This finding probably has no legal effect because under separation of powers the courts determine what the constitution means, not the Legislature or the Executive Branch.

You should ask the Department of Law or the Office of Legal Services of the Legislature about whether the Legislature can declare constitutional law.

- c. The Bill's Preference for "Dependent Use" Either Violates What the Bill Says Is A "Fundamental Right" To "Sustenance", Or The Preference For "Dependent Use" Is Meaningless.

Let's assume that Section 1, which finds that the ability to take fish and game for "sustenance" is a "fundamental right" under the Alaska Constitution, has some meaning and that a court would pay heed to this legislative finding. Apparently, all Alaskans will hold this fundamental right. Fundamental rights receive close scrutiny by the courts, so establishing a right to take fish and game as a "fundamental" right will make it tougher to uphold any alleged infringement on this right.

Careful reading of CSHB 406(RES) shows that it contains not one, but two, types of preferences in Section 2.

The first is in the proposed AS 16.05.010. AS 16.05.010(a) establishes "a preference for consumptive use of fish and game for personal or family consumption for sustenance over other uses of fish and game", and the proposed AS 16.05.010(b) assigns this the "highest preference". This "highest preference" seems to be a preference over "fish and game dependent uses".

The second is in the proposed AS 16.05.020. There, the proposed AS 16.05.020(b) allows the boards to establish "a preference for fish or game dependent uses".

If this preference for "dependent use" (by those who receive welfare or have a low income) is a preference over the fundamental right to "sustenance use" (held by all Alaska residents), then this preference for "dependent use" would violate unconstitutionally the new "fundamental" right. And if it does not -- and arguably it does not because sustenance is assigned the "highest priority" -- then this preference for "dependent use" is meaningless because it can never operate without violating the fundamental right.

So, the bill traps itself between unconstitutionality on the one hand and meaninglessness on the other. That is not good drafting, regardless of intent.

## 2. CSHB 406(RES) Invites A Host Of Constitutional Litigation Over Existing Regulations and Statutes.

By declaring the ability to harvest fish and game for sustenance a "fundamental right", CSHB 406(RES) invites constitutional litigation over existing regulations which allocate resources, regulate methods and means, regulate access, or establish size limits. For example, under the current Upper Cook Inlet Salmon Management Plan, 5 AAC 21.363, the priority use of salmon in Upper Cook Inlet after August 15 is recreational use. In order to implement that, the Board of Fisheries has closed personal use gill net coho fisheries in favor of rod and reel sport fisheries. That recreational priority will now be in jeopardy. Under the bill, a person who used coho for sustenance will have a claim that his or her "fundamental right" to harvest coho for sustenance has been infringed by elimination of the noncommercial gill net fisheries. The result will be a loss of the existing sport priority and opportunity.

Similarly, many commercial fishing regulations, catch-and-release sport regulations, trophy regulations, and potentially many other regulations governing methods and means (eg. bow hunting only, or fly fishing only), size limits (eg. antler size, or size limits on fish), no-bait, and even means of access (eg. bank only fisheries on the Kenai) could be challenged as violations of the

newly-declared fundamental right to sustenance.

This "fundamental right" also creates arguments that areas closed to fishing and hunting by the Legislature, such as the McNeil River and Walrus Island Sanctuaries, Chugach State Park, and the Alyeska Pipeline corridor, are unconstitutional.

3. CSHB 406(RES) Reduces Opportunity To Use Fish and Game.

a. CSHB 406(RES) Will Result In Losses Of Opportunity For Those Who Do Not Hunt Or Fish For "Sustenance".

Because McDowell severed the "rural" aspect of the subsistence law, the remaining statute requires that all Alaskans are eligible to participate in subsistence. This is referred to, for shorthand purposes, by the boards, by the Department of Law and by the Supreme Court in Morry v. State, as the "all-Alaskans policy."

The "all-Alaskans policy" results in many hunts which were previously permit-draw general hunts being changed to Tier II subsistence hunts. In Tier II situations, the opportunity to participate is allocated to those who score the most points for being dependent on the resource and lacking in alternatives. Although all Alaskans qualify for Tier I subsistence, there is almost no Tier I subsistence because when there is not enough resource to satisfy all harvest demand, and the result is Tier II in which only those most dependent and lacking alternatives get to participate.

Under existing law, Tier II only occurs in subsistence areas; Tier II does not occur in nonsubsistence areas. However, under Section 2 of CSHB 406(RES), the preference for sustenance (as opposed to the preference for "dependant use") will be in all areas of the state under the proposed AS 16.16.010. The result will be Tier II type situations where we do not now have Tier II in addition to Tier II type situations where we now have Tier II.

That equates to a greater loss of opportunity. CSHB 406(RES) would create many more such situations than existing law. In that sense, the bill is worse than current state law.

b. CSHB 406(RES) Lacks Criteria For Implementing The Preference For "Sustenance" And Therefore Results In Shorter Seasons And Other Losses of Opportunity.

CSHB 406(RES) contains no criteria or guidance for implementing the preference for sustenance.

The result will be shorter seasons in many situations. Under current regulations, the length of season often depends on regulations which manage harvest or mortality, such as antler regulations, no-bait regulations, catch-and-release, trophy or size

limit regulations, and access regulations. These create longer seasons and greater opportunity to participate. However, these regulations arguably are contrary to the preference for sustenance and would have to be overturned. The result will be shorter seasons and less opportunity.

The same can be said for those who prefer quality sport fisheries, such as catch-and-release or trophy trout fisheries, or quality hunts such as trophy hunts. They too will lose opportunity. Most of Alaska's best trout fisheries are now managed for catch-and-release. In the Cook Inlet drainages they are so managed because of biological reasons rather than social allocation. CSHB 406(RES) will drive them to extremely short seasons for biological reasons.

**4. Ask The Department of Law Whether The Legislature Can Enact A Statute Which Allows An Agency to Re-Delegate Its Authority To Another Agency.**

Section 13 of CSHB 406(RES) amends AS 16.05.270 to permit the boards to delegate their authorities to ADF&G or to regional boards. You need legal advice on the law of delegation.

The legislature is the constitutional source of all original authority over the conservation and utilization of fish and game. It has delegated some of its authority over fish and game to the boards and some to ADF&G.

I have not researched constitutional law concerning what is called the "delegation doctrine", which as I recall is in decline, and once was used to hold some legislative delegations unconstitutional.

What bothers me is that the Legislature would be authorizing an agency (the boards) to delegate the Legislature's original authority to another agency (ADF&G or the regional boards). This strikes me as allowing the boards to do perform a legislative function. It is unusual. You should ask the Department of Law whether this is proper.

**5. Miscellaneous Problems**

**a. The Ballot Question Misdescribes HB 406 As Doing What It Does Not Do**

Section 37 of CSHB 406(RES) puts this advisory question on the ballot:

Shall a law (HB 406) passed by the legislature which grants a preference in times of shortage for personal and family use for sustenance take effect and shall the federal law (Alaska National Interest Lands Conservation

Act) be amended to conform to state law regarding use of fish and game?

However, CSHB 406(RES) refers to "shortage" only in terms of "dependent uses" under the proposed AS 16.16.020 in section 2, and the proposed AS 16.16.095 in Section 2 defines "shortage" in terms of persons who are "dependent". CSHB 406(RES) does not refer to "shortage" in terms of the preference for "sustenance", as the ballot question says. Thus, the ballot question at least seems inconsistent with CSHB 406(RES). Implicitly, however, any time a preference for sustenance is triggered, there will be a shortage. By avoiding this fact, CSHB 406(RES) avoids acknowledging that its preference for sustenance will create many new Tier-II-type situations all over the state, particularly in areas not available for dependent use -- i.e. in the areas currently nonsubsistence areas in Southcentral Alaska.

**b. The Ballot Question Contains Two Questions**

There are clearly two questions in the ballot question: (1) shall HB 406 take effect?, and (2) shall federal law be amended to conform to state law? A person could vote "yes" or "no" depending on which he or she views as the main question. That alone will render the result of the vote rather unclear. It would be wise to separate any multiple questions as occur in this ballot question.

**c. Sustained Yield Is Defined Narrowly and Inflexibly**

Section 2 of CSHB 406(RES), in the proposed AS 16.16.095, defines "sustained yield" as "a level of ... consumptive uses ... capable of being maintained in perpetuity." Currently, the boards define sustained yield differently depending on the situation of what sort of yield is necessary to meet social and biological demands. At one extreme, are antlerless moose and cow hunts for sustained yield of meat. Other moose hunts are managed more restrictively for sustained yield of larger bulls. Similarly, the Board of Fisheries manages wild trout fisheries in Cook Inlet and Southwest Alaska to maintain "historic size and age composition" under existing trout management plans. At the other extreme are catch-and-release trout fisheries. All of these are different ways of implementing sustained yield/

However, the definition of sustained yield in CSHB 406(RES) denies the boards this flexibility.

**d. Other Drafting Questions**

**1. What Is An "Affected" Local Fish and Game Advisory Committee or Regional Board?**

Section 5 amends AS 16.05.245 to require the boards to submit proposed regulations to local advisory committees and regional

boards "that may be affected by the proposal". What is an "affected" committee or regional board? The Anchorage Fish and Game Advisory Committee, upon which I have served for 13 years, is involved in regulatory proposals all over the state because Anchorage residents use resources all over the state. I favor the idea of local and regional review, but it is not good drafting to create legal obligations based on vague language.

**2. Why Does CSHB 406(RES) Require A Maximum of Five Regions When ANILCA Requires A Minimum of Six?**

Section 12 amends AS 16.05.260 to require a maximum of "five fish and game management regions". Section 805 of ANILCA requires a minimum of six, and section 805 is one of three sections of Title VIII with which the State must comply if it is to manage subsistence on federal lands and waters.

**3. Inconsistent Findings**

Section 1(a) of CSHB 406(RES) finds in part:

(6) while Alaska's fish and game are generally still plentiful, these resources are not limited and cannot provide for every desired use, now or in the future; competition for and the level of effort on these resources have required the legislature, the Board of Fisheries, and the Board of Game to establish a preference for sustenance among the various beneficial uses of fish and game in Alaska;

(7) the fish and game resources of Alaska have adequate biological and reproductive capacity to provide an abundance of fish and game for all users[.]

These findings are inconsistent. Such generalities serve no purpose. It is more accurate to say that a few stocks of fish (such as second run Kenai sockeye or Bristol Bay sockeye) and some populations of game (such as the Mulchatna, Western Arctic, and Porcupine caribou herds) "have adequate biological and reproductive capacity to provide an abundance of fish and game for all users". However, this can never be said of many if not most stocks or populations of fish and game, such as Kenai kings (upon which we restrict commercial and sport harvest and do not allow subsistence or personal use gill net harvest), early run Kenai/Russian River sockeye (upon which we do not allow commercial and personal use gill net harvest), trout, steelhead or any resident (nonanadromous) fish population (many of which we manage for sport and not for sustenance), the Nelchina caribou herd (where we have Tier II restrictions), waterfowl, most small game adjacent to the road system, and innumerable other stocks and populations.

4. Is "Sustenance" The Same As "Personal Use" Or Different?

Currently, "personal use" appears only in the authorities of the Board of Fisheries, AS 16.05.251(a); it does not appear in the authorities of the Board of Game. "Personal use" arose as a regulatory creature in the early 1980's by which the Board of Fisheries created certain dip net or gill net fisheries in Cook Inlet and in the Copper River near Chitna to allow people who were urban and did not qualify for subsistence to continue their activity. Personal use fisheries are a form of "sport" fishery and require only a sport license. Fundamental to the creation of them was and remains a requirement that there be excess fish beyond reasonable commercial, subsistence and other sport needs. That is why personal use fisheries are on plentiful stocks of sockeye, such as the late Kenai sockeye, and why they are not on stocks such as king salmon, trout, or any game species.

CSHB 406(RES) appears to elevate "personal use" from situations involving excess fish to "sustenance" on all stocks of fish and game. This is a radical departure.

**PART B -- THE IMPORTANCE OF FRAMING ISSUES**

One problem in the subsistence dilemma is that people often do not frame issues well. Three examples demonstrate the importance of framing well the issues of law, policy and fact.

1. CSHB 406(RES) Misframes The Constitutional Issue In McDowell As A Policy Issue.

You can see that CSHB 406(RES) substitutes one closed class (based on income) for another (based on residency). You probably can see that the bill overlooks the legal issue of why the McDowell court held the "rural-only" classification scheme unconstitutional (because it created a closed class) and mistakes it as a policy issue of whether Alaska should adopt a preference for subsistence by rural residents or some other kind of preference for "dependent use" by those who receive welfare and have low income. By making this mistake, CSHB 406(RES) then proceeds to establish another closed class, which would probably be unconstitutional, too.

Misframing constitutional issues is fatal to statutes.

Here is a better statement of the policy issue: Does the Alaska Legislature want a "closed class"? If it does, then it is necessary to amend the constitution. If does not, then don't amend the constitution, and ask yourself if you still want to comply with federal law. You might be able to do so without amending the constitution, but that is a matter I address elsewhere in the materials sent under separate cover to Chairman Green.

## 2. Framing The Question Of Whether To Amend The Constitution

The issue of whether to amend the constitutional question is often framed as whether Alaskans should amend their constitution to allow a rural-only preference and comply with ANILCA. This assumes that ANILCA prohibits an urban resident from participating.

Although ANILCA defines "subsistence uses" in terms of "rural Alaska residents", it never refers to "urban" or "nonrural" residents and does not expressly bar an urban resident from participating in subsistence. Furthermore, § 815(3) saves to the State all authority over nonsubsistence uses. Arguably, the silence of ANILCA about urban residents and the savings clause at § 815(3) allow the State to view nonsubsistence for purposes of ANILCA as including participation by an urban resident in some form of "non-ANILCA subsistence". If so, then the issue becomes whether the State could permit some participation by some urban residents in "non-ANILCA subsistence" and still comply with ANILCA's preference for ANILCA-subsistence use by rural residents. If that can be done, then it may be unnecessary to amend the constitution.

No court has ruled on whether ANILCA bars an urban resident, although many people, including me, often assume that it does so.

So, the issue is better framed as whether it is legally necessary to amend the constitution in order to comply with ANILCA. You need to hear a variety of legal opinions on this question. Framing the question this way does not assume that ANILCA bars an urban resident. Framing it this way brings out the disagreements over whatever ANILCA means so that legislators can weight the risks of taking one view of ANILCA over another. That is why lawyers before courts struggle to frame issues well, so that the disagreement is sharpened and brought clearly before a court.

## 3. The Fact Issues of Fish and Game Management Differ From Situation to Situation

CSHB 406 (RES) treats all species as if they were uniform and could all sustain high levels of harvest by declaring that the highest is best use is sustenance. This will destroy many sport fisheries managed by limiting methods and means (e.g. no bait, catch-and-release, or size limits) to increase the season and recreational opportunity. In varying degrees, the current state subsistence statute, the Task Force Proposals, and ANILCA also treat fish and game as if they were a single entity, rather than innumerable diverse populations and stocks.

Any fish and game legislation needs to take into account that human use and values, as well as populations size, reproductive rates, etc., differ from situation to situation.

ANILCA's legislative history, which focused on what was

important for subsistence as part of determining what is customary and traditional was on the right course. Unfortunately, the recent federal amendment defining customary and traditional eroded the interpretative value of that legislative history by neglecting the matter of whether a resource is important to subsistence use.

#### PART C -- A POSSIBLE APPROACH TO THE SUBSISTENCE DILEMMA

I am rapidly coming to favor a simple, "stop-gap" statute and perhaps some version of a constitutional amendment which "buys time" between now and December 1.

Putting aside for a moment the question of amending the constitution, the Legislature could simply amend the authorities of the Board of Fisheries and the Board of Game, at AS 16.05.251(a) and .255(a), to say that the boards "may adopt regulations consistent or inconsistent with federal law concerning fish and game." The statutes need say no more as a legal matter.

That would shift debate to the boards and would buy time for the State, through the Joint Board of Fisheries and Game, to adopt in regulation a overall scheme which might comply with federal law. Nothing in ANILCA requires that state compliance be at the statutory level, as opposed to the regulatory level. Presently, regional councils exist only in state regulation, and prior to 1986 the rural preference existed only in state regulation. In other words, much of this debate does not have to occur before the Legislature. Except for the issue of amending the constitution, everyone could carry every other issue to the Joint Board between now and November or December, which is a lot more time than this legislature has. Then, if necessary, the Legislature could revisit the statutory issues.

The only question which has to occur before the Legislature is whether it is legally necessary to amend the constitution. If there is not now a necessary two-thirds majority in the Legislature to put a constitutional amendment on the ballot, then the Legislature needs to figure out if there is any other way to avoid a federal take-over.

The only method I can think of is to convert the urban-rural classification in state law from an impermeable barrier of law (which McDowell held unconstitutional because it created a "closed class" and therefore violated Art. VIII § 3, 15, and 17 of the Alaska Constitution) to a set of very high hurdles of fact. Use of "rebuttable presumptions" accompanied by the highest civil standards of proof (clear and convincing evidence) would accomplish this. If such an approach is pursued, then it would at least create a colorable argument that Alaska has complied with ANILCA. That would also buy time. The point is this that if the State cannot enact a barrier of law, the next closest thing is probably a set of rebuttable presumptions accompanied by the highest

standards of proof. In the discussion paper I have sent to Chairman Green, I outline what such a scheme might look like. It would also be useful to consider ways to minimize the administrative burden of individualized determinations, and I suggest several ways. That discussion paper devises six alternative approaches which do not depend on amending the constitution and which arguably could comply with federal law. I neither recommend nor oppose any of these approaches, although I think some are better than others.

I would ask the Department of the Interior whether such approaches, if very carefully drafted, could comply with ANILCA.

Finally, if an amendment to the constitution is legally necessary, it likewise could simply be: "The legislature may enact statutes consistent with or inconsistent with federal law concerning fish and wildlife." That is preferable to what the Task Force submitted for reasons stated in the discussion paper.

Passing most of the buck to the boards has advantages, particularly at this point in time. First, it avoids making the legislation a lengthy "target" about which people holding different views will find many items about which to debate and object. Instead, it focuses the debate on: (1) whether the State will or will not regain management and avoid a takeover; and (2) the legal aspects of the constitutional issue. Second, it buys time at the statutory level and may even buy time on the constitutional issue. Third, it is consistent with general administrative law principles that legislatures delegate to agencies when issues are complex and vary from situation to situation.

#### **PART D — PRINCIPLES FOR DRAFTING FISH & GAME AND SUBSISTENCE STATUTES**

Fish and wildlife statutes are often difficult to draft. They often involve situations which are dynamic, biologically inconsistent and complex factually, and accompanied by often less than a desired level of accurate information and science. The situations are dynamic in terms of biology, changes in human use, and varying natural and human-caused conditions and events. The situations are inconsistent and often lacking desired information for the same reasons. In other words, the situations facing the drafter of a fish and game statute or regulation are more complicated than those which face the drafter of many other kinds of law -- for example the drafter of a statute making it illegal to fail to pay child support, or to stop at a stop sign.

From these observations, certain principles of drafting, which are basically cautionary, may be derived.

1. **First Principle -- Avoid Assuming Facts**

- a. **Avoid Simultaneously Assuming That Certain Biological Conditions Exist Or Are Stable, Or That Biological and Harvest Information Is Uniformly Available And Of High Quality, And Then Enacting Provisions Which Undermine Sustained Yield And Conservation In Situations That Are Dynamic or Inconsistent.**

Successful fish and game statutes abide by a principle that such statutes fail if they state litany that management is subject to sustained yield but include provisions which are inconsistent with and undermine sustained yield and conservation. Instead, the entire structure of the statute -- not just litany of sustained yield -- must produce the outcome sustained-yield conservation.

CSHB 406(RES) and the Task Force package transgress this principle. Both assume that ADF&G always has excellent, up-to-date, biological and harvest data on all species. ADF&G tends to have better data on the status of commercial fish harvest and run strength and on the status caribou and moose herds. However, beyond these limited situations the quality of data used to make management decisions is of a lesser level of certainty. The Task Force package would transgress by enacting a legal presumption in favor of recommendations of unanimous regional councils. That is dangerous if the data is not of high enough quality to know whether a recommendation would violate sustained yield. The preference in CSHB 406 for sustenance held by all Alaskans creates the same danger but to a greater degree because it would apply in areas not classified for dependent use.

- b. **Minimize Assumptions That People Share Identical Values About Use of Fish And Game.**

It may surprise many, but no study indicates that the recreational fisheries which focus on salmon are Alaska's most valuable sport fisheries. Instead, three studies indicate that sport fisheries which focus on catch-and-release trout fisheries in Southwest Alaska are more valuable economically. If that is true, then you should think carefully about this preference for sustenance applying to all species. Some, such as trout, are simply not numerous enough to sustain substantial harvest, as are many salmon and caribou stocks.

The Task Force Package, the current state subsistence law, and CSHB 406(RES) all assume that for purposes of resource management, all species are of equal value, numerosity, use, scientific complexity, etc. ANILCA, prior to the recent amendments, did not go as far in assuming that all species were of equal importance to customary and traditional use. In fact, the legislative history of that term says that it was to apply to species that were important to local use and that is why Congress expressly declined to define

"customary and traditional" and opted instead for a case-by-case approach. State statute currently ignores this case-by-case approach and contains a more general, useless definition (which I feel free to criticize because I was involved in drafting it). Unfortunately, the recent amendments to ANILCA are similar.

2. **Second Principle -- The Converse Of The First Principle Is That When Fish and Game Statutes Work Well, They Create Stability By Putting Resources First And Forcing Agencies To Act Conservatively In Everyone's Long-Term Interest, Even If Against Someone's Short Term Interest And Liberal Interpretation Of The Facts.**

Everyone likes to say "err on the side of the resource". This is a good principle for drafting successful fish and game statutes. Instead of stating, litany-like, that all management is subject to sustained yield, and then making assumptions that ADF&G will always know what sustained yield is, it is better to state the litany and then design the entire structure of the statute to support sustained-yield as an outcome.

3. **Third Principle -- Avoid Assuming Legal Knowledge Of Issues Not Yet Decided By Courts**

As I have pointed out above, framing issues well requires avoiding assumptions about law that may be unclear and not addressed yet by the courts.

4. **Fourth Principle -- Seek Simplicity, Because Over-drafting Creates Unnecessary, Huge, Political Targets.**

The Task Force bills and CSHB 406(RES) create large targets because they do a lot that is unnecessary to resolving the issue of whether or not the State will or will not comply with federal law. Large targets create too much to "shoot at".

5. **Fifth Principle -- Foster Flexibility Of Agencies To Respond To Different Situations Within Legislatively-set Guidelines**

This is basic administrative law, and subsistence statutes are administrative law. Generally, clear legislative direction to agencies is preferable to relying on the appointment power. However, when clear direction cannot be stated well, then legislative bodies delegate to agencies within more general guidelines or criteria. You need to think about the differences between clear directives, guidelines and criteria. They function differently. You should also think about the differences between such tools and relying on the appointment power. Some people try to solve statutory problems by use of directives, guidelines and criteria, and other seek to solve problems by determining who or what sort of person will occupy the chair of a decision-maker and then relying on the appointment power. I think legislators are

most responsible when they figure out what they want to do and write it, rather than when they rely on appointment-power approaches, because the former rests upon substance and the latter depends upon the vagaries of who is in power.

The Task Force Package, CSHB 406(RES), and ANILCA's amendments regarding the creation of regional councils all place greater emphasis on the appointment power than on clear direction, guidelines or criteria. In effect, they all reflect a distrust of agencies and a greater trust in the shifting tides of the appointment power and who is governor or in the Legislature. That is no way to draft law.

**6. A General Principle -- Avoid Vague Terms and Over-breadth**

This is a general principle of drafting all statutes and regulations.

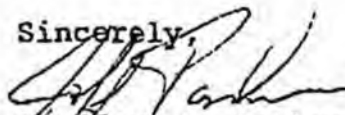
Subsistence legislation has problems with vague terms, less than meaningful definitions and over-breadth. "Customary and tradition" is was deliberately left undefined according to the legislative history of ANILCA so that it could be tailored case-by-case to what was important. That was the correct approach. Since then, the State and now Congress have reversed course to try to define the undefinable. That is a pointless approach and erodes the case-by-case design of ANILCA.

Nevertheless, the Task Force proposals, CSHB 406(RES), existing state statute and now ANILCA all try to define too much.

In practice, the regulatory criteria the boards have developed, for example as to what is "rural" have been more useful than either the Ninth Circuit's application of census data or attempts to define "rural" in statute.

CSHB 406(RES) goes further on this ill-conceived course. By trying to establish the right to sustenance as a fundamental constitutional right, it arguably creates grounds for challenging legislative and regulatory closures of hunting or fishing, whether full or partial, which occur in places such as McNeil River Sanctuary and Chugach State Park. If the Legislature wants to open those areas, it should do so directly rather than rely on someone asserting their "fundamental" constitutional right to hunt brown bears, for example, at McNeil River.

Sincerely,



Geoffrey Y. Parker



# UNITED FISHERMEN OF ALASKA

4:45 pm  
2/12/98

September 12, 1997

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Governor Knowles Subsistence Task Force  
Office of the Governor  
P.O. Box 110001  
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Dear Governor Knowles and members of the Subsistence Task Force,

United Fishermen of Alaska (UFA) commends the Subsistence Task Force for a job well done on a very complex and divisive issue. You have given all Alaskans a well reasoned proposal for the potential resolution of the long standing subsistence dilemma. UFA supports the basic construct of the proposal - technical amendments to ANILCA, constitutional amendment, and minor statutory changes - all linked together through 'effective date' provisions. Your "package" is similar to one advanced by UFA in 1992. However, we still believe there is room for improving the proposed "package", particularly in regard to the statutory provisions.

As you know, UFA has a long standing interest in the subsistence issue as it relates to the management of our fisheries. UFA has long recognized a natural linkage and compatibility between subsistence and commercial fishing. Commercial fishing is the main source of cash income in many subsistence "areas" and many fishermen are both commercial and subsistence "users". Accordingly, UFA has always supported a "rural" subsistence priority and recognized the importance of the subsistence way of life.

While supporting the concept of a rural priority, UFA also recognizes that this priority carries the "force of law" and the potential to eliminate all other uses of a given resource, including other uses by rural residents that could well be vital to their social and economic well being - e.g. commercial fishing, big game guiding, tourism related activities, etc. Noting that this potential outcome does and will exist, every word, phrase or definition needs to be carefully crafted to maintain the compatibility that we believe is possible.

UFA is also aware that since the Kenaitze decision there has been a string of federal court decisions interpreting the "meaning" of Title VIII of ANILCA. While we do not dispute the right of Congress to set "policy" for federal lands, we do feel it is perfectly reasonable to expect Congress - and not the federal courts - to tell us what this policy means.

-1-

#### MEMBER ORGANIZATIONS

Alaska Longline Fishermen's Association • Alaska Trollers Association • Bristol Bay Driftnetters Association • Concerned Area "M" Fishermen • Cook Inlet Aquaculture Association  
Cordova District Fishermen United • Kenai Peninsula Fisherman's Association • Kodiak Regional Aquaculture Association • Kodiak Seiners Association • North Pacific Fisheries Association  
Northern Southeast Regional Aquaculture Association • Northwest Setnetters Association • Peninsula Marketing Association • Petersburg Vessel Owners Association  
Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owners Association • Seafood Producers Cooperative • Southeast Alaska Seiners Association  
Southern Southeast Regional Aquaculture Association • United Cook Inlet Drift Association • United Southeast Alaska Gillnetters

Given the considerations noted above, UFA has long held that "technical" amendments to ANILCA, aimed at clarifying the meaning and extent of the priority and at defining key terms, are a vital link for any "package" concept seeking a comprehensive resolution of this long-standing "dilemma". It is in this spirit of desiring a comprehensive solution, compatible with other uses, that UFA has and will continue to comment on and support the "package" concept advanced by the Subsistence Task Force.

Prior to our comments on specific issues in the draft proposal, UFA notes that your efforts are but the first significant efforts in a process for public and legislative consideration. Our comments are, therefore, not all inclusive but address issues that we sincerely request you consider prior to forwarding any "final" package to the public and legislature.

### **UFA Comments on Specific Issues**

#### **Rural Definition**

There is a major flaw in this definition. It lacks any reference to subsistence being non-commercial and a principal characteristic of the economy. By tying subsistence to substantial dependence on fish and game for nutrition, the ability to evaluate the overall characteristics of a community or area is lost. Without the proven phrase "principal characteristic of the economy" areas like the road connected Kenai Peninsula could be right back in as a rural area. Clearly this is not the intent of the Subsistence Task Force - to go backwards from what exists now under state statutes. We request that you consider using the existing state definition of 'rural'. It's a proven and accepted definition.

#### **Rural Resident Definition**

This definition should be changed to reflect any changes you make in the definition of rural.

#### **Customary Trade Definition**

This definition is important to ensure that commercial fishing does not occur under the guise of subsistence fishing. We request that you substitute the existing state definition of "customary trade" as it 1) emphasizes "limited non-commercial" exchange, 2) has been accepted by the Legislature and 3) makes it clear that the appropriate state board - as opposed to federal regulators - may impose the restrictions.

#### **Stocks and Populations**

The proposed definitions are the existing state definitions and we support them as drafted and urge you not to amend them. These definitions add stability to the

regulatory process and in some measure eliminate extreme "ESA type" claims where any harvest of a stock or population of concern elicits calls for the elimination of all harvest.

#### Applicability to Private and State Lands

In the introduction to the draft proposal (page 3), it states that the definition of "federal public lands" will be clarified to ensure that it excludes all private and state lands. Yet, there is no such clarification in the proposed package. This is necessary in order for the State of Alaska to be able to move beyond the Katie John case. Please ensure that any state or private lands and waters, including navigable waters, are excluded from the definition of "public lands" in ANILCA.

#### Constitutional Amendment Linkage

In 1992, UFA proposed to link the effective date of a constitutional amendment to the passage of ANILCA amendments, state statutory changes and vice versa - tying them all through the effective date clause. While your proposal has the same intent, it doesn't quite close the loop on required ANILCA amendments. The linkage statements must be strengthened and clarified. The Constitutional Amendment should include a section (not just intent language) stating it will not become effective until ANILCA amendments are adopted. We support a Constitutional Amendment as one critical part of a comprehensive solution but would not be supportive unless this linkage occurs in both directions. Our interest is the same as yours - to achieve a comprehensive solution and not a partial fix.

#### Regional Subsistence Councils

We note that recommendations to the regional subsistence council from advisory committees are forwarded to the appropriate board even if the council does not adopt the recommendation of the advisory committee. This ensures the advisory committee's right of "due process" to the appropriate board is protected. But what happens if a citizen chooses not to go through an advisory committee and instead submits a subsistence proposal to the regional subsistence council and the council does not act or adopt the proposal? Is the citizen's access to the board then thwarted? We suggest that a similar requirement to forward on proposals to the appropriate board be included in section (g) on page 15. This will ensure that a citizen approaching the regional subsistence council will still have some recourse to the appropriate board.

We recognize that recommendations from regional subsistence councils should receive some deference in deliberations regarding specific subsistence proposals. However, the proposed language goes beyond this intent and far exceeds the 'shall consider' requirement in ANILCA. One can easily make the case that all proposals, policies, management plans etc. which address salmon also relate to subsistence. The Councils could then make recommendations on any and all commercial fisheries proposals and receive "substantial deference" and a "presumption in favor" when the

recommendation is unanimous. Unless the reach of the Councils is narrowed to specific subsistence proposals this section has the potential to create a duplicate process to the Board of Fisheries and Game and to disenfranchise users around the State. In this regard we strongly recommend that you:

- 1) amend line 11, page 15 so the authority of the Council applies to subsistence proposals only.
- 2) insert the word 'directly' in front of " relating to subsistence" - page 13, line 10
- 3) delete the reference to "existing" in line 9, page 13. This suggested change would prevent the Advisory Councils from automatically undoing the work of past and existing Boards. If the Advisory Council feels a change is necessary in an existing regulation, policy or management plan then all they need do is introduce a subsistence proposal.

The Councils are only going to work if they keep their focus on specific subsistence proposals and augment, not add to, the overload before the Boards of Fish and Game.

We also suggest that you delete the term substantial when referring to deference as this term has not been defined or tested in court, where as the term deference has been tested. Furthermore, the definition of deference is consistent with the requirements of ANILCA.

Anytime additional authority is given, there needs to be commensurate responsibility. If the Council's are to receive deference, then they should be required to support their recommendation with substantial evidence. This is the requirement in ANILCA and it should be the requirement here. We do not view the inclusion of the 'arbitrary and capricious' clause as a comparable, commensurate requirement of responsibility. Please insert the "substantial evidence" requirement into line 12, page 15 so that it reads "shall give [substantial] deference to [them] those recommendations supported by substantial evidence".

#### Advisory Committees

In section AS 16.05.260 (a), the Board of Fisheries and Game are required to set the number and terms of each of the members of the advisory committees. While we support this requirement, we suggest an additional requirement to address a problem that has occurred with some advisory committees. In the past, some committees have become "stacked" with controlling representation by one user group to the detriment of other user groups residing in the community. We suggest that the appropriate board should require that an advisory committee's composition reflect the mix of user groups residing in the respective area.

On page 11, section (d) allows the commissioner to delegate authority to advisory committees for emergency closures during established seasons. Then it goes on to empower the commissioners to make null and void *openings* set by the advisory committees. However, the advisory committees only has authority for emergency closures. This apparent oversight needs to be corrected, i.e. change 'openings' to 'closures' in line 13, page 11.

## Conclusion

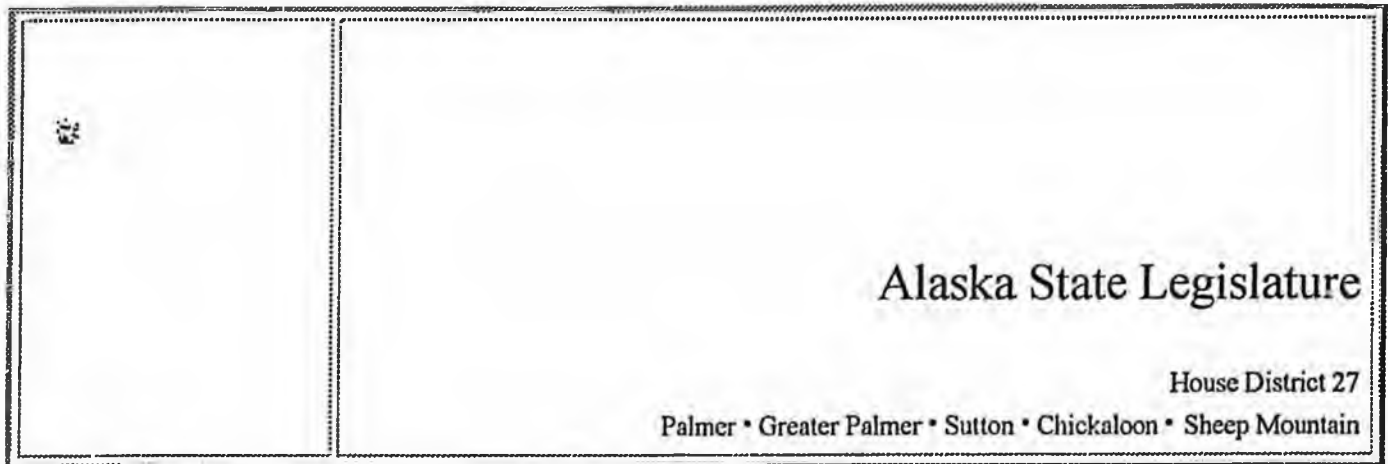
While the above comments on specific issues focused on areas where UFA sees a definite need for improvement and/or clarification, the positive contributions made by your proposed package can not be overlooked. For example, we are quite pleased to see 1) the technical amendments for ANILCA, 2) the incorporation of the concept of reasonable opportunity, 3) the reliance on past work of the Boards of Fisheries and Game, 4) the limitation of federal court oversight and 5) proposed wording for a Constitutional Amendment. But foremost, UFA acknowledges that only a "package" proposal such as this protects subsistence and returns full management of fish and game to the state and ends further encroachment by the federal government.

As requested, UFA has reviewed and comment on your draft proposal. It is our belief that it does constitute the beginning of a solution.

Sincerely,

Theo Matthews  
President

c.c.  
Senator Ted Stevens  
Senator Frank Murkowski  
Representative Don Young  
House Resources Committee  
Senate Resources Committee  
UFA Board of Directors



## Legal History of the Subsistence Issue: A Chronological Overview

To understand the subsistence preference issue, one must examine the legal history behind it. This outline will provide a concise road map to that history and will summarize the development of the legal issues.

I. **Alaska Constitution:** Adopted and ratified by the people of Alaska in 1956, the Alaska Constitution specifically addressed ownership and use of Alaska's fish, wildlife and other resources.

- A. Article VIII, § 3 states that fish and wildlife in their natural state are reserved for the *common use* of the people.
- B. Article VIII, § 4 requires that all the state's replenishable resources are to be managed on a sustained yield principle, subject to preferences among beneficial uses.
- C. Taken together, these provisions mean that the state cannot grant any group of *people* preferential use of fish and wildlife resources; the only legally acceptable preferences are among beneficial *uses*. *McDowell v. State*, 785 P.2d 1 (Alaska 1989).

II. **Alaska Statehood Act:** The Alaska Statehood Act was a compact between the people of the state of Alaska and the United States of America providing for Alaska's admission to the Union as a state. It was passed by Congress and ratified by the people of Alaska in 1958, and Alaska was formally admitted as a state by a proclamation of President Eisenhower in 1959.

- A. The Statehood Act is not just a law; it is a *compact* between the people of the state and the United States, just as the U.S. Constitution is a compact between the people and the federal government. This is important because it means that Congress cannot unilaterally pass any law that contradicts or violates the terms of the compact. In other words, the Statehood Act takes precedence over other federal laws if there is a conflict.
- B. The Statehood Act specifically accepted and ratified the Alaska Constitution as the governing document for the new state, including those provisions reserving fish and wildlife for common use of all Alaskans. (Alaska Statehood Act, § 1)
- C. The Act also transferred management of Alaska's fish and wildlife resources to the state, except for special refuges or reservations set apart for wildlife protection.

III. **Alaska Native Claims Settlement Act (ANCSA):** The Native Claims Settlement Act of 1971 was

a full and final settlement of all claims to any rights, title, interest or privilege by people of Native origin in the state of Alaska, and extinguished any claims of Alaska Natives to special hunting or fishing rights. This Act is a legal settlement in the nature of a treaty; it therefore takes precedence over any previous or subsequent laws of Congress.

- A. Declaration of Congressional Policy in § 1 states that "the settlement should be accomplished . . . *without establishing any permanent racially defined institutions, rights, [or] privileges . . .*"
- B. The settlement provided for payment by the federal government to Alaska Natives of four-hundred sixty-two million, five-hundred thousand dollars (\$462,500,000) in cash payments, and another five-hundred million dollars (\$500,000,000) in assignments of mineral royalties and lease payments received by the State of Alaska. It also granted title to millions of acres of land to regional and village Native corporations established under the Act.
- C. In exchange, the Native peoples of the state specifically waived forever any and all aboriginal claims based on previous use or occupancy (in other words, traditional use), or based on any previous statute or treaty. These forfeited claims include claims to any right, title, use or occupancy in or to land and water areas of the State of Alaska:
  - b. All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and *including any aboriginal hunting and fishing rights that may exist, are hereby extinguished.*

Alaska Native Claims Settlement Act, § 4 (b),(c) (emphasis added).

IV. **Implementation of Alaska Native Claims Settlement Act (ANCSA) and Alaska Statehood Act:** In 1980, Congress passed this Implementing Act which contains a number of clarifications and refinements of procedural and administrative issues relating to implementation of the Native Claims Settlement Act and the Statehood Act.

- A. Also establishes a new "Alaska Land Bank" program which authorizes holders of large tracks of land to place their land in a federal land bank for a ten year period, renewable in five year increments.
- B. A participating landowner agrees (among other things) to manage fish and wildlife on the land according to federal or state management plans, if any. In exchange, the federal government provides the owner with technical assistance in fish and wildlife management, as well as other benefits. The Act does not transfer management duties to the federal government, however.

V. **Alaska National Interest Lands Conservation Act (ANILCA):** This Act, passed by Congress in 1980, is often referred to as "ANILCA," and imposes a preference for uses of Alaskan fish and wildlife by "rural resident."

- A. Rural or bush residents are granted preference under ANILCA in the taking of fish and wildlife. (16 USC § 3114). While the Act tries to mask its racial preference agenda by granting the preference to rural subsistence users rather than to Natives, the true intent of congress is revealed in § 3111 where Congress invokes its constitutional authority over "Native affairs" to preserve the "economic, traditional and cultural existence" of "Native and non-Native" rural subsistence users and attempts to "fulfill the policies and

purposes of ANCSA."

- B. Defines the preferential "subsistence uses" as "customary and traditional uses" of fish and wildlife (16 USC § 3113). This is exactly the type of claims of aboriginal hunting or fishing rights based on previous use that were "extinguished" by the Native Claims Settlement Act.
- C. The Act does not authorize the federal government to manage fish and game according to this subsistence preference; it only authorizes federal judicial intervention if a subsistence user feels that he or she isn't receiving preferential treatment under the state's management plan.

## VI. Important Court Cases:

- A. In *McDowell v. State*, 785 P.2d (Alaska 1989), the Alaska Supreme Court ruled that the Alaska Constitution, which was ratified and approved by Congress in the Statehood Compact, prohibits granting a rural subsistence preference.
- B. In 1984, the 9th Circuit Court of Appeals issued an important ruling in two consolidated cases: *Inupiat Community v. U.S.*, 746 F.2d 570 (9th Cir. 1984) and *People of the Village of Gambell v. Clark*, 746 F.2d 572 (9th Cir. 1984). The Court stated that Alaska Natives' claims of subsistence hunting and fishing rights had been forever extinguished with the Alaska Native Claims Settlement Act. The United States Supreme Court refused to hear the one of the two cases when the Native communities appealed, and in the other case bypassed the issue of extinguishment of Native rights by holding that neither the Alaska Native Claims Settlement Act (ANCSA) or Alaska National Interest Lands Conservation Act (ANILCA) applied to the outer continental shelf. *Gambell v. Clark*, 480 U.S. 531 (1991).
- C. These cases clearly hold that any and all claims by Alaska Natives to subsistence hunting and fishing preferences *cannot stand* under the Alaska Constitution, the Alaska Statehood Act, and the ANCSA. Yet the federal government has taken over the management of fish and wildlife on federal lands in Alaska to forcibly implement ANILCA'S unlawful subsistence preference scheme. It was this federal management of Alaska's fish and wildlife resources--which is not authorized in any statute, and which flagrantly violates Alaska statehood compact with the federal government--that was challenged in the *Babbitt* lawsuit.

and finally,

- D. *United States v. Alexander*, 938 F.2d 942 (CA9 1991). Persons convicted of selling subsistence taken roe-on-kelp challenged their conviction.

The 9th Circuit Court of Appeals found that ANILCA does not limit customary trade to transactions involving personal or family consumption. The sale of herring roe is customary trade [up to fifteen thousand dollars (\$15,000) per person]. ANILCA allows rural Alaskans to engage in limited sales of herring roe so long as the sales are part of customary trade. State regulations cannot prohibit the sale of herring roe taken in subsistence fisheries because customary trade in fish and game is a subsistence use of fish.

The court remanded the case for a new trial. If the defendants were found, at the new trial, to have engaged in a sale of herring roe that was more than a limited cash sale then they could be convicted of unlawful selling of subsistence caught herring roe.

## Appendix . Subsistence Management Chronology

- 1925: Alaska Game Law.** Believed to provide for most subsistence hunting during territorial days, the law stated that "...any Indian or Eskimo, prospector, or traveler [can] take animals, birds, or game fishes during the closed season when he is in the need of food."
- 1960: Statehood.** The federal government transferred authority for management of fish and game in Alaska to the new state government. Both the federal and the state government recognized subsistence fisheries.
- 1971: ANCSA.** The Alaska Native Claims Settlement Act (ANCSA) extinguished aboriginal hunting and fishing rights. No law was enacted that protected subsistence, but the conference report stated Native subsistence and subsistence lands would be protected by the State of Alaska and the Department of Interior.
- 1978: State's First Subsistence Law.** The state passes its first subsistence law which, once sustained yield has been ensured, requires that subsistence uses be allowed, with a priority if necessary (Ch. 151 SLA 1978). The law defines subsistence as "customary and traditional uses" of fish and game for specific purposes such as food.
- 1980: ANILCA Passed.** Congress passes the Alaska National Interest Lands Conservation Act, creating 104 million acres of new national parks, preserves, and wildlife refuges (P.L. 96-487, December 2, 1980 [94 Stat. 2371]). Title VIII of that act mandates that the state maintain a subsistence hunting and fishing preference for rural residents, or forfeit management of these subsistence uses on public lands. If the state fails to protect subsistence as described in ANILCA, the act stipulates that the federal government will take over management of fish and wildlife on the two-thirds of the state that is federal land.
- 1982: State Law's Consistency With ANILCA is Established.** The joint Boards of Fisheries and Game adopt a regulation specifying that customary and traditional uses are rural uses (5 AAC 99.010), and the Department of Interior certifies the state's consistency with ANILCA.
- 1982: Repeal Initiative.** A statewide effort to repeal the subsistence initiative fails by a large margin at the polls (58.4% of Alaskan voters in favor).
- 1983: Subsistence Suit.** Several Alaskans file suit against the state subsistence law. In McDowell v. State, they argue that the law denies subsistence privileges to some urban residents who have long depended on fish and wildlife resources, while granting those privileges to some rural residents who do not need it, and for that reason the law is unconstitutional.
- 1985: Madison Decision.** The Alaska Supreme Court, in the Madison decision, rules that state regulations limiting subsistence to rural residents (enacted by the Joint Boards in 1982) are not consistent with the state's 1978 subsistence law. The Interior Department notifies the state that the Madison decision violates the provisions of ANILCA and threatens takeover of fish and wildlife on public lands unless the state comes up with a new subsistence law, incorporating the rural limitation.
- 1986: New Subsistence Law.** The Alaska legislature enacts a new law limiting subsistence to rural residents (Ch. 52 SLA 1986; AS 16.05.90). Rural is defined as an area where the "...noncommercial, customary and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy..." In state superior court, the McDowell suit is amended to challenge the new subsistence law. The Kenaitze Indian tribe also files a suit in federal court under ANILCA to protest the classification by the Boards of the Kenai Peninsula as an urban area (Kenaitze Indian Tribe vs. State of Alaska, No. A86-367).
- 1987: Kenaitzes Initially Denied.** A federal court judge rules against the Kenaitze Tribe, saying the state's subsistence law's definition of rural agrees with use of the word "rural" in federal subsistence law.

**1987: McDowell Initially Denied.** The state superior court holds that the 1986 subsistence law is constitutional.

**1988: Kenaitze Decision Reversed.** The ninth U.S. circuit court of appeals in San Francisco reverses the Kenaitze decision and holds that the state definition of rural is not consistent with ANILCA (Kenaitze Indian Tribe vs. State of Alaska, 860 F. 2nd 312. [9th Cir. 1988]). The court suggests that a definition of rural hinges on demographic characteristics. The U.S. Supreme court ultimately denies review

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

**1989: McDowell Decision.** On December 22, 1989, ruling in McDowell v. State, the Alaska Supreme Court found that the 1986 state subsistence law was unconstitutional because it excluded urban residents from subsistence activities. On January 5, 1990, the Alaska Supreme Court granted the state a stay in the McDowell decision until July 1, 1990.

**April, 1990: Federal Government Moves to Assume Subsistence Management.** On April 13, 1990, a Notice of Intent to propose regulations was published in the federal register. Temporary regulations establish a federal program that minimizes change to the state program, consistent with the federal government's ANILCA responsibilities. Temporary regulation were published on June 8, 1990

**May 1990: Legislature Debates Subsistence Options.** Among options discussed by the legislature was a draft constitutional amendment submitted by Governor Cowper. After lengthy hearings in the final days of the session, the House amended the Governor's proposed amendment, then rejected it by a vote of 20-20 (27 votes needed). The amendment was never voted on by the Senate.

**June 8, 1990: Governor Calls Special Session.** Negotiations with several interest groups prior to the opening of the session failed to reach an agreement on a solution. On the opening day of the session, the Governor introduced a constitutional amendment that would have required, if approved by the voters at the next general election, a vote on the issue four years later. The amendment would have prevented federal management from occurring on July 1, and would have given groups time to either sue on the constitutionality of ANILCA Title VIII, or amend ANILCA. The governor's proposal was further amended by the Senate to require a vote in two years, and together with legislation creating a Subsistence Review Commission, passed the Senate in early July. However, on July 8, the House failed by one vote (26 in favor, 14 opposed) to obtain a 2/3 majority for a constitutional amendment.

**June 1990: Cutler Decision on Severability.** The Supreme Court remanded McDowell to the lower court for implementation of their order, and in an opinion dated June 20, with two subsequent clarifications. Judge Cutler found the unconstitutional portion of the state subsistence law to be severable from the rest of the law. This left the state with a subsistence priority law on the books, with its application to rural residents severed.

**July 1, 1990: Federal Management Begins.** The federal land management agencies initiated a program that assumed management of subsistence uses on federal public lands. This included creation of a five-member federal subsistence board, representing the BLM, NPS, BIA, USFS, and USFWS.

**July 1990: New Subsistence Hunts.** The Board of Game held an emergency meeting to promulgate hunting regulations for the 1990 fall hunts. Nonresidents were excluded from many hunts, and others were put on a Tier II, individual subsistence application basis.

**October 1990: All Alaskans Eligible.** At a joint Boards of Fisheries and Game, on October 26, 1990, the Department of Law reported to the Boards that, after the McDowell decision, all Alaskans must be considered potential subsistence users of the fish and game under state jurisdiction. The boards subsequently issued a policy statement that it was impossible, under the legal decisions, to identify subsistence users.

**November 1990: New Subsistence Fisheries.** The Board of Fisheries met and established new subsistence fisheries in both upper and lower Cook Inlet. A subsequent policy stated that subsistence fishing proposals, throughout the state, would be addressed only if subsistence needs were not being met, or if there was a conservation concern that was addressed by the proposal.

**February 1991: Governor's Subsistence Advisory Council is Formed.** Governor Hickel appointed an initial subsistence advisory group early in 1991 and reorganized it in November to add public members and remove the state commissioners; in all, the groups met for over a year. The ten-member group was charged with drafting a new subsistence statute that would comply with the state constitution.

**Federal Subsistence Program Develops: 1991-92.** Publication in the Spring of 1992 of an EIS on the Federal Subsistence Program in Alaska clarified the federal government's intent with regard to managing subsistence on federal lands (mandated by ANILCA). The federal subsistence board established a staff and regular meeting schedule and began accepting public proposals. Other elements of the program included federal regional subsistence advisory councils, and a process for identifying rural areas and customary and traditional uses. The program applied to wildlife and to fishing in non-navigable federal waters.

**February 1992: Governor Introduces New Subsistence Legislation.** Governor Hickel introduced a bill to the legislature that would establish a new subsistence statute. A key feature of the bill, which was based on the work of the subsistence advisory council, was a presumption that residents of small communities would automatically meet specified subsistence criteria, in mid-sized communities that presumption was "rebuttable", and urban residents must apply for subsistence qualification on an individual basis. Also, nonsubsistence areas were authorized, and implementation would require amending ANILCA. The legislature failed to take action on the bill. Other bills also were considered during the session, but not passed, including an AFN- sponsored bill that provided a rural preference and also a second-level preference for urban residents who could demonstrate community or individual dependence.

**June 15-22 1992: Governor Convenes Special Session on Subsistence: 1992 Subsistence Law is Enacted.** Governor Hickel presented the legislature with a version of the bill that had been introduced in the previous session. Other bills also are introduced, as are motions to place a constitutional amendment on the ballot. The legislature ultimately passed a subsistence bill that provided eligibility for all Alaskans, included a definition of "customary trade" and allowed the Boards to establish "nonsubsistence areas" in places where subsistence "is not part of the economy, culture, or way of life" of an area.

**November 1992: Joint Boards of Fisheries and Game Establish Four Nonsubsistence Areas.** Meeting jointly, the boards established nonsubsistence areas around Fairbanks, Anchorage-Matsu-Kenai, Juneau, and Ketchikan. These were areas where subsistence regulations would not be established. Subsistence regulations within these areas were repealed. They issued a call for proposals for other areas also. At a subsequent meeting the following March (1993), an area around Valdez also was designated as a nonsubsistence area. Eventual public proposals for additional areas included GMU 13, all roaded areas, and an area on the Upper Holitna Drainage.

**Fall 1993: State Superior Court Finds Nonsubsistence Areas to be Unconstitutional.** Judge Fabe, in State Superior Court, found in Kenaitze v. State that the nonsubsistence areas authorized by the 1992 state law were unconstitutional because they "effectively re-establish the rural/urban residency requirement struck down in McDowell" (Kenaitze Indian Tribe v. State of Alaska, 3AN-91-4560 Civil, Order, October 26, 1993). After the Alaska Supreme Court's subsequent denial of the state's motion for a stay, the Boards met in Spring 1994 and authorized the department to enact emergency regulations that would re-establish the previous subsistence regulations for the former nonsubsistence areas. The state also appealed the ruling to the State Supreme Court.

**March 1994: U.S. District Court Validates Federal Subsistence Board Authority, Extends Federal Subsistence Management to Include Navigable Waters.** Following preliminary rulings in Katy John, in late 1993, Judge Holland issued a final ruling that interpreted ANILCA as giving the federal government broad authority to manage subsistence on federal public lands, and extended jurisdiction to include navigable waters on

federal lands. A parallel ruling in the case of State v Babbitt found that creation of the federal subsistence regulatory board did not exceed the authority granted by ANILCA. These rulings were immediately appealed to the Ninth Circuit Court of Appeals by both the state and federal governments.

**May 1994: Secretary of Interior Declares Intent to Manage Subsistence Fisheries Throughout the State.** In a letter to the Governor that urged the state to act to come into compliance with ANILCA, Secretary Babbitt stated his intention to begin management of subsistence fisheries, "pursuant to the direction of the federal courts," if the state doesn't pass a constitutional amendment. The federal subsistence board was told to prepare a subsistence fisheries management plan.

**January 1995: State Drops Babbitt Lawsuit.** Governor Knowled directed the Attorney General to drop the state's appeal of the Babbitt case.

**May, 1995: State Supreme Court Upholds State Subsistence law.** The Alaska State Supreme Court overturns the State Superior Court decision in State v. Kenaitze Indian Tribe. This validates use of nonsubsistence areas.

**1995: Appropriation Language Prohibits Preemption Actions for FY 96.** Alaska's congressional delegation inserts language in appropriations bill prohibiting expenditure of funds to preempt state management on some navigable waters. R

**October, 1995: Totemoff Case.** The Alaska Supreme Court ruled that the state had jurisdiction to prosecute Mr. Totemoff for spotlighting deer in state navigable waters. The court also ruled that the federal government has no jurisdiction in state navigable waters.

**December, 1995: Ninth Circuit Court of Appeals in Katie John Case.** The Ninth Circuit Court ruled that the Reserved Water Rights Doctrine provided authority for the federal agencies to extend their jurisdiction into some navigable waters.

**April, 1996: Advance Notice of Proposed Rulemaking.** The Departments of Interior and Agriculture published their advance notice of proposed rulemaking describing preemptive regulations to be adopted for state and private lands and waters.

**May, 1996: Appeal of Katie John Case to Supreme Court.** The U.S. Supreme Court denied the Petition for Writ of Certiorari in the Katie John case.

**1996: Appropriations Language Prohibits Preemption Action for FY 97.** Alaska's congressional delegation inserts language in appropriations bill for 1997 with expanded language prohibiting implementation of federal preemption regulations and state lands and waters.

**1996: Line Item Veto Bill Passes.** Congress passes line item veto bill which may provide mechanism for President to eliminate appropriations language protecting Alaska from preemption regulations.



# CHOGGIUNG LIMITED

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January 13, 1998

The Honorable Ivan M. Ivan, Representative  
ALASKA STATE LEGISLATURE  
State Capitol (MS 3100).  
Juneau, AK 99801-1182

Dear Representative Ivan:

I am enclosing a copy of Resolution 97-15 of the Choggiung Limited Board of Directors requesting that during this session the Legislature make subsistence the number 1 priority. All other issues and capital project needs for rural Alaska pale in comparison to the importance of preserving subsistence for rural Alaskans.

Wishing you the best for the session.

Regards,  
CHOGGIUNG LIMITED  
  
Tim Troll, CEO

DISTRIBUTED AT  
REQUEST OF  
REP. IVAN

RESOLUTION 97-15  
OF THE BOARD OF DIRECTORS OF CHOGGIUNG LIMITED  
REQUESTING THE ALASKA LEGISLATURE  
TO MAKE SUBSISTENCE A PRIORITY

WHEREAS: Subsistence is of paramount importance to the Native people of Dillingham, most of whom are shareholders of Choggiung Limited Village Corporation;

WHEREAS: Choggiung encourages the adoption of a subsistence priority in the Alaska State Constitution;

WHEREAS: In the absence of a constitutional amendment the Legislature should establish a subsistence priority;

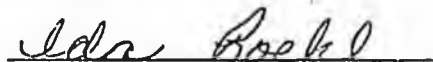
THEREFORE, BE IT RESOLVED: The Alaska Legislature shall adopt the following:

The legislature shall, consistent with the principle of sustained yield and in recognition of Alaska Native historical, traditional and customary use, provide for a priority for subsistence uses to and among rural residents in the taking of fish and wildlife and other renewable natural resources. Further, the ANILCA remain intact.

Passed and Approved by a duly constituted quorum of the Board of Directors of Choggiung Limited this 5<sup>th</sup> day of November 1997.

  
Victor Sifsof, President

ATTEST:

  
Secretary

# SOUP WITH EYES

"The blackfish (*Dallia pectoralis*) is common wherever sluggish streams and lakelets occur from Kotzebue Sound to the Kuskokwim River. Throughout this region, they are taken by means of small wicker traps, about 18 inches wide and 5 feet long, which are set in small streams, with a wicker fence leading from the mouths of the traps to the shore. By means of traps of this character, vast quantities of blackfish are taken in the waters of the low country between the Yukon and Kuskokwim rivers, where they are abundant and form one of the principal sources of supply for the people during several months of the year.

— Edward W. Nelson,  
"The Eskimo About  
the Bering Strait" (1899)

**N**ot long ago I was having a pleasant lunch in Anchorage with a friend who was fairly new to Alaska. We met at one of those new brewpub places. I ordered a smoked-turkey sandwich with sprouts, soup and a robust beer. I believe he had something with shrimp, a salad and a crisp, light ale. I was in Anchorage for the Alaska Federation of Natives convention to accompany the board of directors of the Native village corporation that employs me. Eventually our conversation came around to rural Alaska and he asked me to explain the subsistence issue.

I launched into a dissertation on the equal-protection provision of the Alaska Constitution: the special relationship of the federal government to Alaska Natives; the reasons why Alaska Natives might prefer federal control of fish and game; the reasons why federal control could be disastrous for rational management of the resources and blah, blah, blah, blah and blah.

After a while I could hear myself talking. I was just repeating all the arguments I've heard time and again. As in all those forums I've attended with panels of subsistence experts, I have allowed the issue to become a lunch topic. After we departed, I felt uneasy. Now I realize I missed the point: Subsistence isn't a lunch topic; it's a topic about lunch.

So, my friend, let me try again.

Subsistence is about soup with eyes.

My first encounter with subsistence was as a young VISTA volunteer traveling around southwestern Alaska. Invited for lunch one day by an old couple in a village on the Lower Yukon, I was treated to the soup with eyes. Blackfish soup. A thick mash of drab, green prehistoric-looking little fish all boiled together with eyes floating around like large kernels of pepper. The old couple smiled and waited with anticipation. Would I eat the soup? I looked down at the soup. Could I eat the soup? The soup looked up at me. I smiled and asked for some pilot bread. I took a deep breath, swallowed a mouthful and quickly followed that with a bite of pilot bread. The old man laughed and asked, "Do you like?" I said it was "interesting." Thankfully, he thought I was making a compliment. Then he told me that they had some "kass'aq" (white man's) food if I would prefer. "Dinty Moore?" he asked. I politely declined and finished the blackfish soup.

A few months later I visited again. While I was enjoying a lunch of Dinty Moore and pilot bread, the old man told me how he grew up on blackfish. It was a staple food of his childhood. His father made a special effort to show him how to make blackfish traps and where to set them. There would be times when the salmon were not plentiful or hunting would be hard. Blackfish could keep starvation away. He talked about the struggle his parents endured simply to avert hunger. He repeated stories they told him about the "starvation times" — years when whole villages went hungry because food was scarce — or



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worse, because sickness had so decimated the population there were no men left who could hunt.

The old couple and I formed a bond the day I ate that blackfish soup. They dared me to try their "Native" food and were delighted when I did. They genuinely loved to share — and tease. I have since had similar experiences with foods like walrus intestine, lampreys fried in their own fat, dried dog salmon dipped in seal oil (a favorite) and frozen whitefish — not dishes I would normally prefer to a smoked-turkey sandwich with sprouts, or even a bowl of Dinty Moore stew. And that is the point: Subsistence is about what we eat for lunch. It's about food — food that in many instances you and I would be quite happy to let others eat. When it does involve food we might all enjoy, like salmon or moose, Natives and rural Alaskans ask only that their needs be met

first from the food roaming in their own back yard, and then only when that food is likely to be in short supply. Not an unreasonable request.

It is easy to muddle an issue like subsistence, and I think we have muddled it. We need to put the legalities aside and approach subsistence with a little human compassion. It really shouldn't be an issue. Let's do the right thing. Let's do what it takes to make subsistence a priority. If we could view rural subsistence resources not as everyone's to take, but theirs as rural Alaskans to share, I don't think anyone would go hungry. There are still plenty of old Native couples out there ready to share little of their soup with eyes. A

■ Tim Troll writes and paints in Dillingham where he works for Chogglung Ltd., Native village corporation.

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

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February 28, 1998

The Honorable Irene Nicholia  
Alaska House of Representatives  
State Capitol, Room 409  
Juneau, AK 99801-1182

Re: CS HB 406 (Resources)

Dear Representative Nicholia:

You have asked several questions about CS HB 406 (Resources), a bill dealing with subsistence. Your questions, and our responses, are set out below.

1. Does this legislation comply with Title VIII of ANILCA and if not, why?

In Title VIII of the Alaska National Interest Lands Conservation Act ("ANILCA"), nonwasteful subsistence uses of fish wildlife are the priority, consumptive uses of those resources on the federal public lands of Alaska. 16 U.S.C. § 3112. When it is necessary to restrict harvest of those resources, subsistence uses have a preference over other uses, like sport hunting and commercial fishing. 16 U.S.C. § 3114.

ANILCA defines "subsistence uses" as uses by rural Alaska residents. 16 U.S.C. § 3113. In its present form, ANILCA defines "rural Alaska resident" as "a resident of a rural community or rural area." A "rural community or area" is defined as "a community or area substantially dependent on fish and wildlife for nutritional and other subsistence uses. Pub.L. No. 105-83 (1997).<sup>1</sup>

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<sup>1</sup> The ANILCA definitions will be repealed on December 1, 1998, if by that date the state has not adopted laws that provide for the subsistence definition, preference, and participation specified in that law. Pub.L. No. 105-83 (1997). In that event, ANILCA will not have a statutory definition of "rural."

In contrast to ANILCA, CS HB 406 does not define eligibility for the "sustenance" priority in terms of the characteristics of communities or areas. Instead, the bill sets out individual criteria for that eligibility. Under those criteria, a person must: (1) possess a hunting, fishing, or trapping license which is only available to persons who have received public assistance or who have lower income; (2) depend on fish and game for sustenance or lack an alternative means of sustenance; (3) have consumed within the past 12 months a certain number of species of fish and game; and (4) have shared or received fish and game from other households. All of the individual criteria must be met before a resident will be entitled to enjoy the "sustenance" priority. Proposed AS 16.16.020(c), section 2 of CS HB 406.

Under ANILCA, the state is entitled to manage subsistence hunting and fishing on federal public lands if it adopts laws "which are consistent with, and which provide for the definition, preference, and participation specified in . . ." that federal law. 16 U.S.C. § 3115(d), emphasis added. The question, then, is whether the two sets of criteria for participating in subsistence/sustenance -- the rural residency criteria of ANILCA and the individual criteria of CS HB 406 -- are "consistent."

The question can best be answered by examining the judicial treatment of an earlier "consistency" dispute. In 1988, the Ninth Circuit Court of Appeals compared the state's definition of "rural," which looked at whether traditional uses were a principal characteristic of an area, with a definition of rural that the court could derive from ANILCA.<sup>2</sup> The court concluded that the state's definition was not consistent with the common understanding of "rural," i.e., areas of sparse population. Its conclusion was based on a comparison of the geographic areas that would qualify under each. *Kenaitze Indian Tribe v. State of Alaska*, 860 F.2d 312, 316-318 (9th Cir. 1988) The court noted that the Kenai Peninsula would qualify under its interpretation of "rural," but that it did not qualify under the state's definition. Because the state's definition would exclude practically all areas that would be commonly thought of as rural, the court concluded that the definition was not consistent with ANILCA. *Id.*

We believe that a court would follow a similar approach to determine if the individual criteria of CS HB 406 are consistent with ANILCA's definition. A court could not compare geographic areas because CS HB 406 does not use a person's place of residence as a qualifier. Instead, a court would likely compare the two groups who would qualify. If the membership of the group

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<sup>2</sup> At that time, ANILCA had no statutory definition of "rural."

qualifying under the rural residency criteria differed significantly from the membership of the group qualifying under the individual characteristics criteria, it is likely that a court would find them inconsistent.

It is probable that the makeup of the two groups would be different. Under ANILCA, residents of all rural communities and areas qualify. Under the individual criteria of CS HB 406 some urban residents would qualify, and some rural residents would not qualify. Although not certain, it is likely that the number of sustenance users qualified by CS HB 406 would be fewer than the number qualified by ANILCA. Because of this probable difference in group makeup and size, we believe that a court would conclude that the bill does not "provide for the . . . participation specified in . . ." ANILCA (16 U.S.C. § 3115(d)). Thus, the two would be found inconsistent, and the state would not be entitled to manage subsistence on federal public lands in Alaska.

2. Does this legislation raise constitutional issues and if so, what are they?

CS HB 406 has a "regional area preference." Under section 2, "In a time of shortage of fish or game resources, the appropriate board may adopt a regional preference among beneficial uses of fish and game by requiring that the flesh or meat of fish and game be consumed within the region where the fish or game was taken."

Representative Ogan said that this is a key element of the bill. He believes that it is constitutional because it is a "preference among beneficial uses."<sup>3</sup>

Presumably, the "beneficial use" contemplated by the bill is the consumption of subsistence fish and game. To date, the Alaska Supreme Court has not recognized consumption as a "use" under the Alaska Constitution. The only recognized uses are commercial, sport (recreational), subsistence, and personal use. That is not to say, however, that the Court would not accept consumption as a beneficial use.

A constitutional problem arises because "consumption" must be in a particular geographic place, specifically the region

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<sup>3</sup> Article VIII, section 4, of the Alaska Constitution allows "preferences among beneficial uses." the Alaska Supreme Court has held that because those preferences do not restrict admission to a resource user group, they are permissible under that clause and the other "equal access" clauses. *Gilbert v. Department of Fish & Game*, 803 P.2d 391 (Alaska 1990).

where the fish and game are harvested. If the Boards adopted such a regional preference, it would significantly restrict the opportunity of residents living outside of a region to harvest subsistence resources in the region. For example, a person living outside a region who shot a subsistence moose would have to either: (1) remain in the region until the person or the person's family consumed the moose; or (2) give the moose away to non-family persons who do live in the region. The first option is impractical. Few persons would find it reasonable to set up a temporary household for weeks or months in a different region just to consume fish and game harvested there. The second option is contrary to the purpose of HB 406. If the harvester had to give the fish and game away to non-family members, the activity would no longer be "the harvest of fish and game for personal and family use for sustenance." CS HB 406, § 1.

Essentially, the "regional area preference" provision establishes a preference for subsistence harvest based on one's place of residence. Although it does not, on its face, exclude harvest by persons outside of a region, in its practical application, the only persons who could consume the fish and game in the region are those who live there. They would have a significant advantage, if not a monopoly, to those resources because of their closer proximity. Indeed, Representative Ogan said the purpose for the amendment is to make sure that, in times of shortage, persons are given a preference for harvesting fish and game in their own regions.

Since *McDowell*, the Alaska Supreme Court has said that, under the present Article VIII "equal access" clauses of the Alaska Constitution -- the clauses guaranteeing common use, prohibiting exclusive rights of fisheries, and requiring uniform application of natural resource laws -- the right to harvest subsistence resources cannot be based upon the location of a person's residence. Most recently, the Court, when discussing *McDowell*, said, "We both quoted and stressed language holding that people who reside near a fish or game population do not have a higher claim to that population than state residents whose domiciles are more distant. . . . Just as eligibility to participate in all subsistence hunting and fishing cannot be made dependent on whether one lives in an urban or rural area, eligibility to participate in Tier II subsistence hunting and fishing cannot be based on how close one lives to a given fish or game population." *State v. Kenaitze*, 894 P.2d 632, 638 (Alaska 1995). Under that principle, the Court struck down the Tier II proximity criterion. *Id.*

The intended purpose and the practical effect of the "regional area preference" is to give certain residents a "higher claim" to subsistence resources because they live closer to them. For that reason, it is unlikely that the preference would survive

The Honorable Irene Nicholia  
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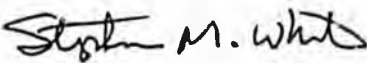
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a legal challenge under the present "equal access clauses." For the preference to be constitutional, Article VIII would have to be amended to allow a priority for subsistence hunting and fishing that is based upon a person's place of residence.

Please contact me if I can assist you further.

Sincerely yours,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:   
Stephen M. White  
Assistant Attorney General

SMW: lmt:pch  
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Comments on HR 406 - 5 pages

To: House  
Resources  
Committee -  
Scott Olson

Submitted by  
Barbara Bronwater  
Box 875082  
wasilla 99687

See 2. Dec 13-20 pg 2 is in  
conflict with current policies of  
ADF&G as stated in hunting regs.  
Because they are not adhering to  
AS 16.05 255 d in particular Unit  
14A. Our resources in 14A are  
declining due to heavy hunting pressure  
from easy access and Anchorage unable  
to hunt in their "Bowl". Cow permits  
and any Bull permits are issued to  
non-residents. Enforcement of AS 16.05.255-d  
needs to be enforced in 14A as well as  
other areas where Cow permits are issued  
Non-residents should only be issued  
harvest tickets since they are meat  
meat hunters. Many Alaska  
residents cannot fill their freezers  
due to non-residents receiving  
this priority.

pg 4 lines 9-13 add to (c).

possesses a permanent disabled  
veteran's sports license issued  
under AS 16.05.940 & AS 16.05.34

pg 5 line 2 add that a

person is entitled to  
preference under (b) and (c) of  
this section (person who  
possesses either a disabled  
sports license or \$5<sup>00</sup> license.)

Those aforementioned due to their  
disabilities, fiscal or low income  
necessities, their dependence on  
food & game for personal &  
family use for sustenance.

pg 5 lines 27-30 It seems as

though there is alot of  
bureaucracy when a final  
hearing still needs to be held,  
unless anyone disputes what the  
local advisory board determines.

pg 2 of 5

are qualified. A lot of extra funds  
will be required unnecessarily at  
a time when the State needs to  
reduce its spending and budget.  
How will this trio of boards be  
financed?

Sec 4 lines 5-9 pg 7 it is not logical  
or feasible to give added responsibility  
to ADF&G to determine the nutritional  
value or the extent of dependence on  
food acquired thru sustenance.

Reporting this information to other  
agencies or organized bodies is  
irrelevant. Just more inflated  
and increased of government!

ADF&G is not qualified to  
determine nutritional value - they  
are not nutritionalist, doctors  
or health care advisors. Their  
responsibility only is game  
management

Sec 6 pg 8 lines 25-27. add  
disabled veterans under  
AS 16.05.940, AS 16.05.341

Sec 6 pg 10 lines 7-10 How will  
this be enforced?

Sec 12 pg 13 lines 8 & 9 delete  
The governor... asks for  
additional names. Can  
lead to favoritism. The  
list submitted submitted  
by committee should stand  
as is. Line 14-15 is  
essential... subject to  
confirmation ~~by~~ by legislature.

Sec 14 pg 16 line 2. add. This  
subsection does not limit  
the right of an Alaskan  
resident who is a Disabled  
Veteran to claim an exception  
from hunting or sports fishing

license under AS 16.05.940 and  
AS 16.05.341

Sec. 14 pg 16 lines 3, 8, 9, 14  
change to age 60 as  
stated, on current hunting  
and fishing regs and also  
as stated, on pg 8 Sec 6  
lines 25 + 26

I support the basis of HB  
406

Alaska residents receive  
priority for fish and game  
for personal and family use  
for maintenance.

pg 5 of 5

# P R E P A R E



## Special Subsistence Edition

March, 1990

### My Story

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

By the time I reached 12, my great ambition was to have my very own .22 rifle.

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

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

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

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

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



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

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

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

### Culture & Tradition

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

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

*under the Native land claims act. Before that time, when I was brought up in the culture of my people, it's always been 'our culture' and 'our land'. You cannot break out subsistence or the meaning of subsistence or try to identify it, and you can't break it out of the culture. The culture and the life of my Native people are the subsistence way of life. It goes hand in hand with our own culture, our own language, and all our activities.*<sup>1</sup>

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



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

### The Land

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

For European immigrants, on the other hand,

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

This is not to suggest that the Europeans simply occupied and appropriated the land of Native Americans. The Puritans, for example, believed that the confiscation of property was wrong whether boundary markers existed or not. Roger Williams, among others, proposed that the land be purchased from the Native Americans for a reasonable price. This approach, as much as his theological ideas, perhaps, contributed to his banishment from Plymouth! <sup>3</sup>

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

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

### ANCSA

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

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

### Subsistence

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

### ANILCA

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

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



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

### Conclusions

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

*statewide subsistence protections, structured in significant part to protect Native subsistence interests.*

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



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

*receive additional support through federal enforcement. Particularly when faced with competing state interests, the courts have also concluded that this long and continuing history of federal protection constitutes statutory acceptance of a trust responsibility for the maintenance of subsistence culture.<sup>9</sup>*

### The Conflict

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

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

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

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

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

As Representative Eileen Panigeo MacLean of Barrow wrote recently,

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

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

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

**Alaska IMPACT Advocates**

Alaska IMPACT adds its voice

to those who advocate for the Native Alaska subsistence way of life. As has been demonstrated time and again in the "South 48" and in Hawaii, it is easy for a dominant majority to ride roughshod over minority cultures and their rights and traditions.

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

*Perhaps in Alaska, in the waning days of the twentieth century, we will at last find one place where the relationships between immigrant and aboriginal Americans can be structured so that each may enrich the other, and thereby ensure the diversity that is the hallmark of a free society.*<sup>11</sup>

### Towards a Solution

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

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

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

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

### Senator Stevens



In his address to the Joint Session of the 16th Alaska Legislature on January 17, Senator Ted Stevens pointed out that a federal solution would risk serious losses to the state. "I would urge you not to think that the federal solution is the one that is easiest," he said, "because we will lose more than we gain."

### Governor Cowper

Governor Steve Cowper has stated that,

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

*Court has dropped in our laps.*<sup>12</sup>

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

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

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

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

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

If you have information, questions or suggestions, please write or phone:

Richard K. Heacock, Jr.  
Alaska IMPACT  
3012 Riverview Drive  
Fairbanks, Alaska 99709  
(907) 474-0700

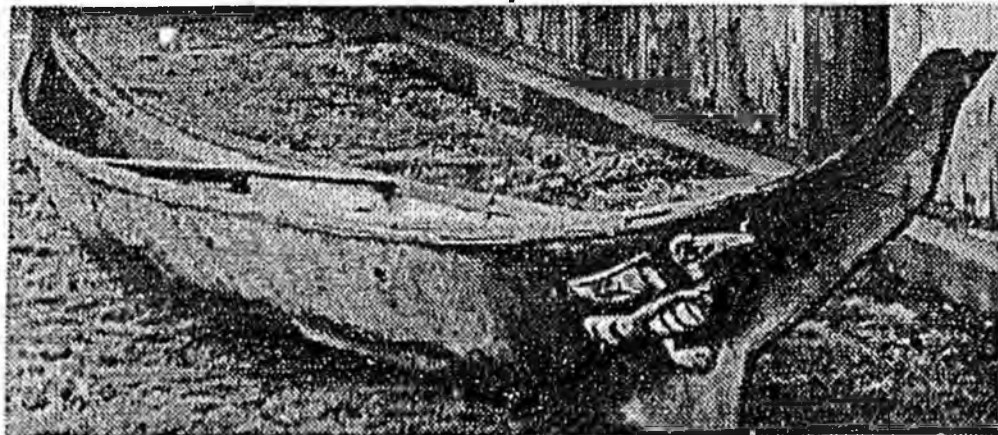
### Notes:

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

This edition of Prepare has been researched and written by the Executive Director of Alaska IMPACT with the assistance of its Board of Directors and members.

Graphics courtesy of:

- Alaska Federation of Natives; Salmon Drying, page 1  
 David Lindstrom's Sketchbook; Caribou & Walrus Drawings, page 3  
 Alaska Federation of Natives, Ice Fishing, page 3  
 Bishop's Museum, Halibut Meats, page 4  
 Northwest Art, Tlingit Canoe, page 4



**Judith M. White**  
P. O. Box 630, Chugiak, AK 99567  
(907) 688-4547  
E-Mail: JudyWhite1@compuserve.com

*Distributed by*  
Rep. Patricia Barnes

January 31, 1998

Republican Party of Alaska  
1001 W. Fireweed Ln.  
Anchorage, Alaska 99503

Last week I received from the Republican Party of Alaska its *1998 Critical Issues Survey*. I'm sure I was only one of thousands who received this survey. However, since you asked about my positions, I am taking the time to write you about the subsistence issue.

First let me tell you about myself -- I'm 54 years old, live in Chugiak, have two grown children, grew up in a Democratic family in very rural Oklahoma, have lived in Alaska for 22 years. I'm an Episcopalian, a state employee, and occasional fisherman (I caught a 178 pound halibut once!). I'm also a conservative Republican. And I care passionately about subsistence.

For me the subsistence issue is a fundamental matter about what kind of principles we will uphold. I am just horrified by the arguments for the rural priority, and I put the blame for the terrible mess we are in on our Republican leaders, especially Senator Stevens. I think Senator Murkowski was wise to pass up a run for the governor's race; although I admire him for many of his stands, I think there was a distinct possibility that he might not even have won the Republican primary. Undoubtedly, subsistence will be a major issue in the governor's race, and there is a real possibility that the winner of that primary will be totally at odds with the position taken by Senator Stevens. What an embarrassment that will be.

I have listened to Senator Stevens on many occasions when he admonishes the Alaska legislature that they must address the subsistence issue. The most absurd argument he fervently made was that, after all, this priority would only go into effect when there is not enough game for everyone. So let me see if I understand this -- it's only when there's not enough to go around that the rules go into effect, and then those rules provide for the insufficient resources to go not to the needy but rather to the rural—including the rural rich. And it's just "Tough!" for the urban poor.

The second most absurd argument is the one most usually put out by Governor Knowles and Lt. Gov. Ulmer. They want us to solve the subsistence issue "like a family" and therefore grant a rural preference. The family they're referring to sounds like a very dysfunctional one to me. Their "family" reminds me of the Old Testament Bible story about Joseph. His coat of many colors signifying his father's favor resulted in his brothers' casting him into a pit and selling him into slavery. Whatever else that story is about, it certainly points out that there can be great perils associated with favoritism. Can you

really imagine a family that doesn't have enough of something for everyone and decides to give what it does have not to the family member who needs it most but rather to the one who lives in a certain locale? Forgive me, but I just never heard of such a family.

But the most offensive argument for the rural priority to me is the one most often repeated by Senator Stevens – the argument that we must have a rural priority because if we don't the Federal Government will take over management of our resources. It's ironic that in the survey you sent out, the final question was, "Should Republicans continue to press for ethical government . . . ?" Senator Stevens' argument for subsistence is that whatever we think about the morality of a rural priority, we should just give in to avoid Federal management. I'm generally proud to be a member of the Republican Party, but I really hate it when Republicans take the position that the end justifies the means. Let's leave that argument to our current disgraceful President. Most of us work hard to try to build character in our children. I can't remember how many times as my own children were growing up that I told them, "You know what's right. Don't give in to pressure to do something that you believe is wrong. You know right from wrong, and I expect you to do the right thing." For me, if the end result is going to be an unprincipled rural priority anyway, then I say let the Feds do it and let us continue to oppose it; that's a much more honorable role than for us to participate in this unprincipled position. Totally aside from the rural priority issue, when it comes to professional game management, I suspect that however the Feds performed 40 years ago bears little relationship to how they're likely to perform today, and, furthermore, they'll end up paying for it.

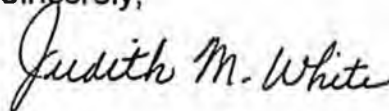
Ironically, this terrible fight is likely to work against the well being of rural Alaska in the long run. The vast majority of Alaskans are honorable, decent people who want to help their neighbors and who generously assist those who are in need—look at the reaction to the Miller's Reach fire. A rural priority does not appeal to our best instincts to help those in need, and it will engender a long lasting resentment. For many years, urban legislators and both Republican and Democratic governors have given rural Alaska much more than its fair share when it came to capital projects, school funding, energy grants, etc. I believe that the subsistence resentment will spill over to all these other areas.

The sad thing is, a rural priority doesn't even guarantee that the truly needy who get the priority will even get "enough." The only thing the rural needy –along with the rural rich—will get is just more than urban folks get. In the end, that's what the priority is – just a preference but not necessarily "enough" in any individual case. So the preference will probably cause enough resentment that it will work to the harm of many who got a preference but still didn't get "enough." Tell me – who will want to give them "enough"?

I also find Senator Stevens arguments that it would be impossible to change the federal law requiring the rural priority simply not credible. First, every time he told us we couldn't get the moratorium extended, when push came to shove, it got extended. Then, he never tells us the names of the other Senators who would insist on a rural priority; what Senator from what other state would want to be confronted with such a stand in his own state.

Of course I hope that the courageous state legislators – Masek, Halford, Kohring, and Barnes, just to name a few – who are standing for equality under the law for all Alaskans will continue to stand firm. But more than that, I keep hoping against hope that Senator Stevens will clean up the mess he created. Yes, the subsistence issue should be solved, and Senator Stevens should do it!

Sincerely,

A handwritten signature in cursive script that reads "Judith M. White".

Judith M. White

cc: Senators Ted Steveris and Frank Murkowski  
Senator Rick Halford  
Representatives Beverly Masek, Vic Kohring, Ramona Barnes  
Anchorage Times

## **An Open Letter To The Alaska State Legislature:**

**(First half of letter follows)**

**Whereas; 1) Each action of an Alaska state resident is either inherent right, or government-granted privilege. And, Whereas, 2) Government, when asked, must grant opinion. Therefore: The inquiry; is subsistence, a) a right (to be protected by government) or, b) mere privilege (granted by government to those who it declares worthy)? Wherefore, 3) Should the Alaska State Legislature grant opinion that subsistence is a right (naturally inherent within the individual), then should that activity not be addressed distinctly as a right and be respected and protected as such by government? Likewise, should government rather opine that subsistence is mere privilege, then too, it shall be handled distinctly - as a privilege - (contingent upon, perhaps, the place of individual residence or other arbitrary classification).**

**Under presently-proposed federally-granted privilege, fish and game would be taken by Alaskan residents in the fashion of subjects of the king of yore; privilege (permission) to take a deer from the royal forest dependent merely upon whether the subject is one of the kings chosen few.**

**The Alaska State Supreme Court has correctly ruled that subsistence (as addressed by the Alaska State Constitution) is an activity available to all eligible residents - as an individual right. (The State administration, congressional delegation, and others, however, are now suggesting that a vote be allowed to amend the State constitution). Why would one who is now protected by recognized right choose to agree to allow others a vote, thereby allowing possible change of right to a privilege?)**

**The feds have announced their list of the chosen; with hammer-in-hand they have threatened to force (if necessary) official state recognition of federal desire to grant privilege to these favored few. (Caveat; enrollment in the federal eligible-for-subsistence club is always subject to change: residents being thrown on and off as they gain or lose favor with the King of**

2/2

Washington).

The State court has determined that subsistence is a right; The feds refuse to exercise the worm which wends through their head... whispering the mistaken belief that subsistence is a mere privilege and the king, in fact, is clothed. The worm whispers, too, the mistaken belief that Alaskans will buckle under federal intimidation.

Subsistence is a natural activity - an inherent individual right. The importance of retaining individual right over the allure of privilege evades some Alaskans. These neighbors have forgotten that rights are the means by which government is kept under control of the individual; and that privilege is the means by which the individual is kept under the often oppressive authority and dominion of government.

The Alaska State legislature is presently, again, addressing the long-suffering "subsistence dilemma". The final solution, however, may not come from government. Rather, the solution may come through the actions of the individual.

(Second half of letter to follow)

Jack Polster  
1508 Ocean Drive  
Homer, Alaska 99603

907 235 2298

- 235-8777 store

TO: TAMARA MOORE

c/o REP. SCOTT DEAN

Fax 1-907-465-3265

- 1) PLEASE ACKNOWLEDGE RECEIPT OF THIS FAX
  - 2) PLEASE MAKE A COPY FOR EACH MEMBER OF HRC AS WELL AS ~~REP.~~ TORRESON  
SEN
- & REP. PHILLIPS

Theresa AP

H + S Resources Committee  
H a S State Affairs Committee  
H Fisheries Committee  
Subsistence: State of Alaska to license subsistence fishermen.

Governor Knowles Tele-Conference

2/11/98

I wish to address subsistence fishing. A subsistence plan for hunting may develop on a similar format.

Subsistence fishing could be a third category of licensed use of the fisheries resource, with commercial fishing and sports fishing being the first two groups.

As land uses entails the subdivision of lots for private use, so too may fish resources be subdivided.

Sports fisher persons are licensed to catch seasonal daily limits.

Commercial fishermen are licensed by limited entry permits to harvest a collective estimated quota during timed openings of derby fishing.

High seas fisheries are allotted Individual Fishing Quotas for halibut and cod. Quotas are based on an average of X number of year's catches for the vessel.

It follows that subsistence fisheries permittees of a newly created fisheries allotment entity, should be licensed to harvest a seasonal limit, quota, or allotment based on their historical catch whether it be for individual, family, village or region. Permittees would be subject to appropriate subsistence regulations, necessary documentation and monitoring of their catches.

Regulations have been modified many times to accommodate participants in commercial and sports fisheries. Subsistence fisheries need adapt to modern management technology, with reasonable consideration given to historical catch and traditional uses, and forget the rural preference arguments. Times have changed. Constitutional amendment not necessary.

Relative to subsistence fishing, dipnetting provisions need be expanded throughout the state, for balance and harmony in subdividing the fisheries resources.

KenHubbardBox 1703PallmerAK99645-907-745-3136

Subsistence Fishing:

Governor Tony Knowles Tele-conference

2/11/98

This Chart for Demonstration Only. SAMPLE (May not be accurate)

Example of fishing groups entries.

Type	Licensed	Limits	Quotas	IFQ's	Shares	Barter
Sport	Yes	Yes				
Commercial	Yes	Yes	Yes	Yes		
Coastal	Yes	Yes	Yes	Yes		
Maritime	Yes	Yes	Yes	Yes		
Subsistence Now	?	?	?	?	?	?
Subsistence New	Yes	Yes	Yes	Yes	?	?

This Chart for Demonstration Only. SAMPLE

SAMPLE ONLY

Ken Hubbard Box 1703 Palmer AK 99645-907-745-3136

Letter to the Editor

TRUTHS - SUBSISTENCE - Anchorage Daily News Editorial - 2/15/98

Rep. Scott Ogan cannot:

(1) nor any other legislator, place on the ballot, UNTITLED PROPERTY RIGHTS, namely fish, wildlife and waters, which are held in COMMON, in TRUST by all Alaskans, the BENEFICIARIES. "Colorado Supreme Court", -- "Alaska Supreme Court, Pullen v. Alaska, 1996."

(2) nor any other legislator, propose or pass legislation that will award specific exclusivity to specific USERS, harvesting fish and wildlife within Alaska. "Alaska Supreme Court, Metlakatla Indian Community V. William A. Egan, 1961", -- "Owsichek v. Alaska, 1988", -- "McDowell v. State, 1989."

(3) nor any other legislator, propose or pass legislation that promotes PRESCRIPTION, (def. the acquirement of the title or right to something through its continued use or possession from time immemorial or over a long period). "Alaska Supreme Court, Madison v. Alaska, 1985." -- "Morry v. Alaska, 1992." -- "Payton v. Alaska, 1997."

(4) nor any other legislator, propose or pass legislation that abrogates "Police Powers", the legislators SOVEREIGN RIGHT to manage fish, wildlife and waters for USERS. In other words, licensing, protection, seasons and bag limits, means and methods and all other management decisions for fisherman, hunters, trappers or other USERS are an EXCLUSIVE RESPONSIBILITY of the State of Alaska and it's TRUSTEES, the legislators. "Alaska Supreme Court, Michael Totemoff v. Alaska, 1995."

(5) nor any other legislator, propose or pass legislation that removes PROPRIETARY RIGHTS of ownership, or the rights of management, administration, and development of Alaska's lands and natural resources. Federal Law, "Federal Submerged Lands Act, 1953."

I commend Representative Ogan for being knowledgeable of these truths and walking side by side with the Supreme Court of Alaska on Public Trust and Public Trust Doctrine.

  
Warren E. Olson



# Alaska State Legislature

## Written Testimony Form

Please enter into the record my testimony to the House Resources Committee  
 (committee name)  
 committee on Fish and Game dated 2/28/98  
 (bill/subject)

I am against HB 406. This does not provide a rural priority that we need to avoid a Federal Take-over. The non-local or state-wide harvest potential in this bill is not right. This Bill would put an unfair obligation on the local advisory committee members. The redistricting of Fish & Game Regions smacks of political reapportionment (changing boundaries to exert influence outside local areas). Please don't

Signed: John K. Renner  
 Testifier Name

JOHN K.  
 RENNER

Representing (Optional)

Bx 756 Cordova AK 99574  
 Address

474-7573  
 Phone Number

put a unfair burden on your volunteer local advisory committee.

Phone Number

TO: HOUSE RESOURCES COMMITTEE,

Feb.28,1998

CHAIRMAN: SCOTT OGAN  
MEMBERS

SUBJ.: HB406


My name is Cliff Judkins. I am a 36 year resident of Alaska. I live in Wasilla. I am testifying today as the President of the Alaska Boating Association. The Association members are ,mostly, hunters and fishers living in both urban and rural areas. Many of us hunt and fish for food.

First, I would like to commend the time, effort, and courage that you have put forth in putting together this bill. We certainly support your intent. We hope that the bill will not be rushed through the legislative process. The more people that review and comment on it, the more thought and discussion that goes into it , the better chance it has of gaining the confidence of the many Alaskans that are angered and frustrated over the subsistence issues that are presently being contemplated throughout the state. It would be nice to not have yet another law suit.

We feel that Alaska can, equitably and fairly, deal with the subsistence needs of all Alaskans within the frame work of our constitution; and HB 406 is a sound beginning in that direction.

We are solidly against amending the Constitution of the State of Alaska concerning the allocation of Fish and Wildlife Resources. We feel that HB 406 may provide an alternative to a constitutional amendment and the ever looming "federal takeover"

Again we would like to thank Chairman Ogan for his continual front line efforts on this issue. We know that many of you folks are working to get this job done. Scott has been the one in the kitchen. Again we say thanks.

  
Cliff Judkins, Pres,  
Alaska Boating Association



# Alaska State Legislature

Please enter into the record r. y testimony to the House Resources  
 committee name  
 committee on HB 406, dated Feb 28, 1998.  
 bill/subject

*I read this letter into the record of the House Resources Committee hearing this AM (2/28) ~~over~~*

*Katie Hurley*

*I have permission from both Mary Nordell & Speaker Phillips to distribute this letter.*

Signed: \_\_\_\_\_

Testifier

Katie Hurley

Representing (Optional)

PCB

870157

Wasilla

99687

Address

(907)

376-5736

Phone No.

MARY A. NORDALE  
100 Cushman Street, Suite 311  
Fairbanks, Alaska 99701

February 12, 1998

Hon. Gail Phillips  
Speaker of the House of Representatives  
Alaska State Legislature  
State Capitol, Mail Stop 3100  
Juneau, Alaska 99801-1182

Dear Gail:

The apparent refusal of the Legislature to deal substantively with the subsistence issue dismays me. Those of us who lived under federal dominion in Territorial days and those of us old enough to remember the politics of that era have done a dismally poor job of teaching the latecomers and afterborns our history.

My mother was a member of the Constitutional Convention. During the Convention, I was overseas at school, so when I returned home, my mother sat me down one Sunday afternoon and went over the constitution section by section, sentence by sentence, to explain to me why the document was written as it was.

Subsistence was not an issue. The population was small, the pressure on subsistence resources was slight and the big problem facing the delegates was insuring that all Alaskans, regardless of race, had access to those resources. The delegates were well aware that in many respects, the federal government had worked to exclude Alaskans from utilization of the Territory's resources and they determined that exclusion on account of race would not occur. You may recall the virtual enslavement to the fur seal trade of the Natives resettled on the Pribilofs. You may also recall the prohibition enforced by the federal government of Native-owned power boats in the Bristol Bay fishery. That prohibition was based on the peculiar theory that Alaska Natives could not efficiently operate power boats and that, therefore, they should be restricted to sail boats.

The Fouke Fur Company had a very sweet deal with the Fish & Wildlife Service and the Bureau of Indian Affairs in harvesting fur seals. The Aleuts on St. Paul and, to a small extent, on St. George were required to harvest the seals for almost no wages and it took an Act of Congress to allow them to utilize the meat from the slaughtered animals. The Alaska Canned Salmon Industry

Hon. Gail Phillips  
Speaker of the House of Representatives  
February 12, 1998  
Page 2

controlled the Bristol Bay fishery and the sail boats to which the Natives were restricted meant that the catch went almost exclusively to the Brindle canneries. Nick Bez controlled almost all of the salmon in Southeastern Alaska and his fish traps were placed at the mouth of almost every major spawning stream in that region. The military use of caribou herds as strafing targets was, perhaps, not so well documented, but it was known.

With Statehood, Alaska's population has exploded well beyond what even the most dedicated dreamer among the constitutional delegates hoped. Moreover, its concentration in the Anchorage area has led many Alaskans to remain ignorant of the lives and lifestyles of people living in the bush. The availability of supermarkets and clothing stores in all of Alaska's towns and villages over 1,000 in population has disguised the need for reliance on subsistence for the many Alaskans, Native and non-Native alike, who live in areas where foodstuffs, clothing and other materials are very expensive and cannot be well maintained. Most of Alaskans have no idea what it means to live in a nearly cashless society.

We, who should know better, have failed to tell the stories and have failed to impress those who resist the granting of a rural priority with the realization that had subsistence been an issue when the constitution was written, subsistence would have been incorporated in the constitution for the benefit of those who must depend upon local resources for their very lives.

The delegates to the constitutional convention were deeply concerned by the racial divisions that beset the lower 48 states. Alaska's constitution contains many bars against racial discrimination for the reason that the delegates envisioned creating a society that treated everyone equally. The delegates intended provisions insuring equal access to fish and game to prohibit discrimination against Alaska Natives and to guarantee that Alaska Natives would never be denied the opportunity to maintain life. On its face, granting a rural priority for subsistence would seem to fly in the face of that principle of equality, but it was never the intent of the delegates to limit access to resources upon which Alaska Natives depend for their lives.

It is time now for us to grant that priority. It is wrong to elevate sport hunting and fishing to the level of or over hunting and fishing that supplies the necessities of life. It is wrong to say that the sport hunter's need for game is equal to the need of a person who must rely on game to survive. It is wrong to say that commercial interests must be served at the expense of people's very lives.

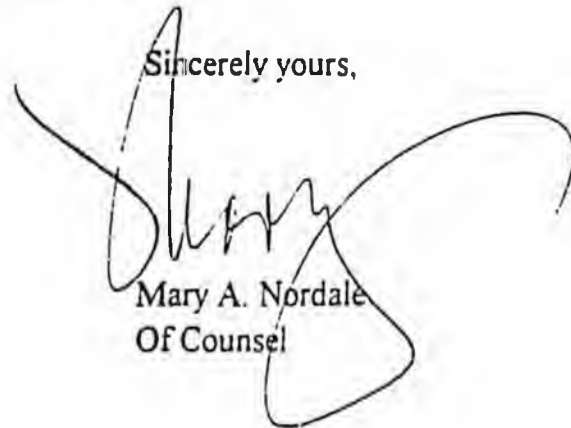
Hon. Gail Phillips  
Speaker of the House of Representatives  
February 12, 1998  
Page 3

Granting a rural priority for subsistence will have little, if any, appreciable effect on the vast majority of Alaskans. Allowing a federal takeover of management of Alaska's fish and game resources will, however, wreak havoc on those resources. There is simply no way that the federal government can resist the political pressures exerted by various special interest groups, they commercial or environmental. We know that from our own history and from observation of current federal fish and game management techniques, and federal management of other resources as well. Management of fish and game should not be political, it should be scientific, with information developed not only by academic specialists, but also from the acute observations of the people who live with those resources.

Alaskans have been remiss in allowing the Department of Fish & Game to rely almost entirely upon academically trained scientists and technicians. We should long since have incorporated in our management programs the observations of the people who live with the managed resources and whose observations are based on techniques honed by centuries of experience.

The day the federal government takes over all rural management of Alaska's fish and game resources will be a day that will live in infamy. It is difficult for me to believe that Alaskans could, in less than 40 years, forget the dreadful lessons we learned from federal management of our fish and game resources so that we willingly submit ourselves again to that regime. I hope that the Twentieth Legislature will exercise the generosity of spirit, recognize the need for development of a community of all Alaskans and pass the necessary resolution that will allow all of us to vote to amend the constitution to grant the rural priority for subsistence.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mary A. Nordale", with a large, sweeping flourish extending to the right.

Mary A. Nordale  
Of Counsel

cc: Hon. Tony Knowles  
Burke Riley  
Katie Hurley



Fax 467

# ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE \_\_\_\_\_  
COMMITTEE NAME

COMMITTEE ON HB 406 DATED 2/28/98  
BILL SUBJECT

Sp. Chairman & Senate Resource Committee,

Thank you for listening to our testimony today

I was especially impressed with Sidney Huntington's testimony & Mary Nordala's letter. As always, elders have much wisdom to pass to us.

For myself, I have lived a rural subsistence lifestyle in Alaska for more than seventy years & elsewhere prior to that. I would just like to bring to your attention the depth to which subsistence interweaves in our lives & especially for native Alaskans who have thousands of years of history involved in this lifestyle. It is literally who we are as well as what we do.

I am concerned that your bill as it stands is not in compliance w/ ADWCP, Title VII. I am concerned about applying for a permit to a local governing body who are my peers. I find this an unnecessary embarrassing & humiliating exercise which would make us feel "poor" when we do not while having the right to put food on our tables as things are now.

I am also concerned about the definition of "shortage" - we need the funds whether there is an abundance or not. Thank you for your consideration of all our testimony.

SIGNED Dorrie Friend  
TESTIFIER

REPRESENTING (OPTIONAL)

Box 724, Tok, AK 99780 (907) 883-4732  
ADDRESS/PHONE NUMBER

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 465-2075

March 2, 1998

The Honorable Scott Ogan, Co-Chair  
House Resources Committee  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Representative Ogan:

We understand that at the House Resources Committee hearing on Saturday, February 28, the question of the Governor's position on HB 406 - An act relating to fish and game was raised.

We are writing today to make it clear that the administration cannot support CS HB 406 (Res) for several reasons. First and foremost, it does not address the important goals stated by Governor Knowles when he appointed the Task Force on Subsistence last summer: 1) to ensure effective state authority over fish and game management on all lands and waters of Alaska; and 2) to recognize the paramount importance of the subsistence way of life to Alaskans. The bill does not fix what is broken, and it introduces several new problems that make it unacceptable to the administration.

The administration has serious concerns about several essential elements of the bill, among them the following:

- The bill does nothing to stop the federal takeover of fish and game management. Its definition of who will qualify for "sustenance" would exclude many who would qualify as "rural" residents under ANILCA. Because the two are inconsistent, the bill would require that ANILCA's rural resident priority be significantly amended. But, as Senator Stevens said in his recent speech to the legislature, any more amendments to ANILCA are very unlikely.

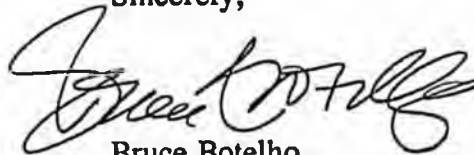
- An income-based program would be inconsistent with ANILCA. It would be an administrative, fish and game management, and enforcement nightmare.
- The bill introduces a set of burdensome government requirements and administrative steps to get a permit to hunt and fish for sustenance (a person is allowed to fish and hunt only if he or she earned or took in a certain amount of income, took a certain number of species, ate a certain amount of wild foods, and shared wild food with a certain number of others). This is big government at its worst.
- The bill would establish an individual eligibility system based on need, not a system that recognizes the traditional patterns of community cooperation and sharing that are the hallmarks of Alaska's subsistence economies.
- HB 406 would limit subsistence taking of fish and game to people on welfare or with annual family incomes of less than \$8,200 and require them to reveal personal financial and lifestyle details to a local advisory council in order to qualify.
- The bill would diminish the power of the Boards of Fish and Game and, at the same time, would add to their duties. It would do this by transferring their power to newly created regional boards and local advisory committees and, at the same time, by creating an extensive new, quasi-judicial governmental structure to handle the applications for a sustenance priority. The final administrative decision for each contested application would be made by the statewide boards, who are already overburdened with their rule-making duties.
- The bill allows a "regional area preference" that, by requiring that fish and game be eaten in the region where they are taken, effectively establishes a preference for residents who live in that region over residents who live outside of it. This would require amendment of the Alaska Constitution. The Alaska Supreme Court has said that "people who live near a fish or game population do not have a higher claim to that population than state residents whose domiciles are more distant." Thus, the "regional area preference" would require an amendment to Article VIII's common use and other "equal access" clauses.
- The bill says that sustenance is a "fundamental right" under the Alaska Constitution. However, our courts have called subsistence only a "highly important interest" - one that does not deserve the same constitutional protection as, say, freedom of speech or freedom of religion. If sustenance is established as a "fundamental right," any attempt by the legislature or the boards to distinguish between residents who are and who are not qualified to participate in the priority will require a higher level of scrutiny by the courts and will have to pass more rigorous tests to satisfy our equal protection clauses.

The Honorable Scott Ogan, Co-Chair  
House Resources Committee

March 2, 1998  
page 3

As you are aware, the basic elements included in the proposal submitted by the Task Force on Subsistence are critical to Governor Knowles and to this administration. Ensuring effective state authority over fish and game management on all lands and waters of Alaska is one of our two main goals. HB 406 will not do this, and for that reason we cannot support the legislation in its current form.

Sincerely,



Bruce Botelho  
Attorney General



Frank Rue, Commissioner  
Alaska Department of Fish and Game

cc: Members, House Resources Committee  
The Honorable Gail Phillips, Speaker, House of Representatives  
Pat Pourchot, Legislative Director, Office of the Governor  
Geron Bruce, Legislative Liaison, Department of Fish and Game  
Chrystal Smith, Legislative Liaison, Department of Law  
Steve White, Assistant Attorney General  
Mary Pete, Director, Subsistence Division, Department of Fish and Game

507 233 4008 PAGE

(Suggested language)

Hello...

My name is Patrick Church. I have been asked by Jack Polster of Homer to read his following words. Mr. Polster had a scheduling conflict which prevented his attendance at this teleconference hearing today but non-the-less<sup>he</sup> felt that what he had to say should be placed on the record

THE FOLLOWING IS  
" (Please ~~read~~ An Open Letter To the Alaska State Legislature) "

~~As requested by Homer...~~  
"Last Tuesday I had occasion to sit here in the Homer Teleconference Office and listen to Mr. Greg Cook explain to the committee the Public Trust Doctrine. You will recall that Mr. Cook explained to you your duties under that doctrine, including loyalty to the public, dealing impartially with the beneficiaries, and not to delegate your responsibilities.

You will recall that Mr. Cook also stated that one of your fiduciary responsibilities was to provide information to the beneficiaries when requested.

For the last four years I have asked state government if it considers subsistence a right or a privilege. And never have I received an answer. And now I ask you. The question is significant. And the answer is awaited. Is subsistence a right or a privilege?

You will recognize that a substantial number of individuals within the borders of Alaska hold common-

law freeman-status. These individuals have no contracts of adhesion with government...they hold not license or permits from government...they live not because of government, but in spite of it.

In lines 9 through 12 on page number 4 of the 23 page CS406 working draft we find the following....

(c) A person is dependent on fish and game for personal and family use for sustenance if the person

(1) possesses a \$5 resident hunting, trapping, and sport fishing license issued under AS 16.05.340(a)(6)

I repeat my assertion; Subsistence Is A Right: Subsistence Is Not A Privilege. To ask for a license to exercise a right is ~~NOT IN ORDER~~. For example; if Teddy Kennedy and his kind had their way, I would be required to request a government permit or license to bear arms. By requesting and accepting the permit I would automatically destroy the right which I now hold. A person cannot exercise a right under permit or license.

Subsistence is a right, but the committee, through its language in 406 has indicated its belief that subsistence is a mere privilege. One cannot accept a license from government, which would be considered necessary to exercise subsistence, and retain the right which he held up until that point. I would like the committee to revisit that point in lines 9 through 12 of page 4 of CS406 and amend the bills language so that it will clearly state that subsistence is a right.

TO: REP. BILL HUDSON, CO-CHAIR  
 REP. SCOTT OGAN, CO-CHAIR

RE: TESTIMONY FOR HOUSE RESOURCES  
 PUBLIC HEARING HB 406

T/C # 80341

FEB 28, 1998

Date	2/28/98	# of pages	1
To	H RES	From	Homer LIO
Co./Dept.		Co.	
Phone #		Phone #	235-7878
Fax #	465-2273	Fax #	235-4008

DEAR MR. HUDSON OR MR. OGAN:

THANK YOU FOR YOUR RESPONSE TO THE QUESTION  
 BY MR. FOSTER, IL. — IS SUBSISTENCE A RIGHT OR  
 A PRIVILEGE? (TESTIMONY FINISHED DURING HEARING)

THE TEXT OF YOUR ANSWER WAS MISSED!

PLEASE SEND THE ANSWER IN WRITTEN FORM  
 FOR HIS EDIFICATION.

HIS ADDRESS: JACK FOSTER  
 1506 OCEAN DRIVE  
 HOMER, ALASKA 99603  
 (907) 235-2273

THANK YOU FOR YOUR COURTEOUS ATTENTION.  
 SINCERELY,  
 FIC 2/28/98

Perry Mendenhall's HB 406 testimony, SNC, Nome, Alaska

## HB 406 Testimony given on Feb 28, 1998 pg 1/2

Perry T. Mendenhall  
via Nome Legislative Office Hearing

Sitnasuak Native Corporation finds this HB 406 to be a "bandaid bill" to fix a complex rural Alaskan lifestyle of dependency on fish and game for all seasons. This bill will not heal the wound of our good conscious in rural Alaska made on subsistence since 1979.

Over the years since 1959 my mother, Mrs. Dolly Spencer of Homer, said many times that she regretted she voted for "statehood". For they made the promise that rural subsistence lifestyle would not be lost if rural Alaskans voted for statehood then.

We feel that HB 406 helps state leadership in losing subsistence today, for my parent's generation, now to my generation and our children, and today to our grandchildren and their future families.

The Bering Straits region is truly a "economic depressed" area ever since statehood and dependent upon a subsistence menu: be it hunting, trapping, and fishing, as well as gathering both sea and land plants. *(With the growth of population and the lack of jobs has been referred to by the profile provided by the State Department and Community Regional Affairs. A recent "Economic Links" study also strongly puts rural regions subsistence dependency into perspective.*

Under State management, the Nome area rivers and shore waters' subsistence chum fisheries have been closed for the past ten years. This illustrates state commercial fisheries in another region (Area M) had priority impact on another region's subsistence chum fisheries (Northern Norton Sound - Nome area). This does not take

into account other high sea commercial fisheries which may also impact subsistence fisheries on chums and cohos in the Nome area. Today we are looking into Tier II for the Nome subsistence fisheries. My grandma said that Eskimos would take as much as they can during years of plenty in preparation for years of shortage. (In this manner we would also share with those who don't have much.) When our people try to do this with either game or fish, they are severely penalized by the system.

Another example is another village/region had a poor marine mammal winter hunt to date due to weather, and I had to send moose meat to that family so that they can eat.

HB 406 does not address issues like these, which are customary and traditional to Eskimos' economic and dietary lifestyle.

We find fault with HB 406 in these sections:

*Section 2*: in its entirety, *Section 5*: Procedures, *Section 12*: on Advisory committees and Boards (due to past practices of not really listening to local advisory committees), *Section 19:37* "Fish and Game dependent uses" definition in its entirety. As well as the actions taken on definitions in *sections 32- 36*.

We also feel that HB 406 :

1. Is not consistence to ANILCA for "rural perference"
2. Favor commercialism over subsistence lifestyles.

And with *Welfare Reforms* coming into enforcement, this forces rural Alaska to look closer to land, rivers, and sea subsistence activities in order to put customary and traditional food on our regional tables and fill our subsistence store houses with fish and game in preparation for times of shortage, as well as sharing.

2 pages-HB 406,

pg.2  
*Richard J. Jankowski*

## Perry T. Mendenhall's Testimony

with attachments

I'm representing the Nome Village Corporation on behalf of the Sitasuak Native Corporation's shareholders, as well as other Nome Subsistence users who are impacted by Area M and False Pass high sea Chum Salmon intercepts. The Nome subsistence chum fisheries have been closed since 1991 to 1997.

With the advent of "welfare reforms" coming into effect, our people will definitely become more dependent upon subsistence Chum fisheries. Also the Dept. of Labor recent report shows a Nome June 1997 unemployment rate of 13.7%, up from the Dept. of Regional Affairs Community Overview report for 1990 of 11%. More than twice the statewide rate of unemployment of 6.9%. In the same DCRA report, on page 2 and 4 are subsistence statements of dependency for our Nome people.

A multi-regional analysis recently done for rural Alaska make statements on subsistence, cost of living, purchasing power and the cost of services delivery, of which these two pages are attached from the "Alaska Economic Link". (pgs. 31-32)

The Nome Area and the rivers have shown customary and traditional use of Chum Salmon. We have been experiencing climatic changes during the sea mammal hunts to where it is shortened and unpredictable. Thus some families have not been able to procure the needed marine mammals meat needed to make dried meat and seal oil for the coming Winters. This forces us to look at the Chum Salmon to add to our local diet.

The State Commercial Fisheries, Management and Development Division have produced observed Chum Salmon escapement by aerial survey for 1961-97 for the following rivers, showing "poor aerial surveys" and "acceptable aerial surveys":

Sinuk River	Snake River	Nome River	Flambeau
River	Eldorado River	Bonanza River	and Solomon River

The numbers for 150,000 chum subsistence salmon is not showing up for our rivers and our subsistence users. The past seven years of Chum subsistence closures for the Nome area is not acceptable.

As a village native corporation we have tried to enhance our subsistence Chum fisheries, by having our shareholders and subsistence fisheries:

- abide by the past seven years of closures.

- work with state fish and game, federal agencies and other local groups in providing fish counting towers, incubators boxes for chum eggs

sending our subsistence users to Board of Fish meetings to testify, as well as sending SNC board members to this meeting in defense of subsistence fisheries for the Nome area.

To date, Sitsasuak Native Corporation show on record 342 subsistence fish camps in the Nome area. On our land, we even closed campsite selection surrounding Eldorado and Flambeau Rivers to reduce the competition of natural resources, especially the chum salmon.

We would like for the Board of Fish to enact a Area M and False Pass commercial chum cap intercept as a conservative management plan so that the Chum Salmon can be returned to the Northern Norton Sound area for subsistence purposes.

Attachments:           Sept. 1997 Alaska Economic Trend, pg. 28  
                              DCRA 1990 Nome overview, pages 2 and 4  
                              Alaska Economic Link, page 31-2  
                              Commercial Fisheries/Observed Chum Salmon Escapement graphs  
                              Sitsasuak Native Corporation's subsistence land brief

Rep. Ogan, Rep. Hudson, members of the House

Resource Committee, my name is Donne Harris-Fleagle,

Vice President of Tanana Chiefs Conference) and <sup>I am</sup> a

resident of McGrath. I am testifying this morning

on Committee Substitute House Bill 406. The issue is

a very important and very dear to those of us who

continue to practice an ancient and honorable

way of life. The outcome of this crisis will

shape and define fish and game resource

management for the future while attempting to

meet <sup>the</sup> Rural Priority Clause of ANILCA Title 8.

Our position remains to protect the intent of Title 8

and that speaks directly to a measurement

that protects rural Alaskans should a shortage

occur. It only makes common sense to us to have

such a provision. House Bill 406 does not accomplish that goal. Subsistence is defined by Alaska Native culture as a way of life, one that was practiced by our ancestors long before the appearance of the western culture in Alaska and a way of life that continues and will continue regardless of any attempts to sever that relationship. We will preserve that way of life and will continue to teach our children the ways to do so. By replacing the word "subsistence" with "sustenance", <sup>and clearly defined by cultural values foreign to ours.</sup> the meaning is eroded! Subsist in the Dictionary means "to remain in existence", or "to support or maintain WITH provisions". "Sustenance" in the Dictionary means is "something ESPECIALLY food, that

sustains life or health." Please consider how just a few changed "words" in a sentence can alter what is being said. The subsistence lifestyle will never by any stretch of the imagination be replaced with a sustenance lifestyle. By replacing the cultural-based tie to the land and its resources this becomes instead the classic western thinking description of what animals mean. By creating a system based on

4)

thereby  
need, opening subsistence to all Alaskans, regardless  
of ~~place~~ of residence; ANILCA Title 8 is not  
recognized or satisfied and with the passage of this  
bill, we would arrive back here to start over,  
an "unacceptable" solution. I spoke to a cab  
driver the other day when in Anchorage. He's been  
a resident for 43 years. He doesn't like moose  
meat. I wonder, how anyone can categorize this  
man as a "subsistence user." I urge you to  
consider the ramifications of such a solution  
that does not validate the cultural, traditional  
nutritional, medicinal & spiritual needs of  
Alaska's indigenous peoples. I urge you to  
consider voting against this bill. The  
issues facing Alaskans are diverse. It seems

5) that somewhere in all the "progress," as I look to the new millennium, moral responsibility has shifted to individual responsibility and rights. Decisions that will affect our families, I propose are decisions that should require Alaskans to set policy on. The one size fits all approach that is being advanced is not realistic or workable. Neither is it a sign of an advanced society finding ways to creatively and collaboratively form partnerships for the populace which reflect local and regional factors that are different but have historically been strengths. It is ordinary people that realize change is a process and not an event. Accommodating diversity is a strength. Where in all of this is an ethical

6) framework to dialogue and build a dignified reality? Lets work on a solution that meets the intent of federal law & truly provides for Alaska's rural subsistence needs and allow <sup>the</sup> People of Alaska to decide by voting on a constitutional amendment that would create a true Rural Priority of Fish & Game Allocation in times of shortages for local users. Perhaps then we can begin to work towards maintaining healthy populations of fish and game resources through sustained-yield & high levels of harvest principles and hopefully never actually have to find ourselves in times of shortages. Thank you for the opportunity to testify before you

7) today on this important issue. I wish you good luck in your endeavors to find an acceptable solution.

Feb 17 1998

The Alaska Resources Committee

Subject H13 406

Eventually there comes a point in time when it must be declared that enough is enough. After nearly 20 years of the insidious deceit of ANILCA Title VIII, the fraudulent singularized federally mandated inequalities against Alaska as an orphan state and Alaskans as second class citizens, must be obliterated.

Alaska's Constitution is proudly and honestly democratic. While ANILCA is politically designed to dictatorially discriminate; by imposition of a scheme that creates an exclusionary class of priority USEFS of Alaska's public trust common property fish, wild life and water resources.

To change Alaska's Constitution is not an honest option. To indicate that it is easier to subjugate the common use, no exclusive right or special privileges, uniform application and equal protection clauses of the State constitution and the equal footing, privileges and immunities, state's police powers,

equal protection and due process doctrines of the United States Constitution; then it is to eliminate the federal mandated inequalities of ANILCA, it is the ultimate hypocrisy.

It is always politically propogandized that it can be easier to voluntarily surrender the State's and peoples equal constitutional protected rights than to oppose dictorial federal oversight; but this is totally false in fact and purpose. To destroy the fundamentals of democracy one only needs to submit to tyranny; but to protect human equality the battle must never end. If any generation fails it's responsibility to the present it leaves even less for the future.

Any legislative or executive action or inaction that will prejudice the fundamental rights assured under the Alaska and US constitutions, and impinges upon the public trust common property resources' broad and equally open access for all personal consumptive USFRS, will be judicially challenged. This is not a threat but a fact.

Whenever the executive and or legislative branches of our democracy fails in their

their responsibilities and obligation, the

Judicial avenues are the public's only

answer. The Alaska Supreme Court has

repeatedly found that these political

schemes to circumvent constitutional

equality will not fly. The Court recently

by-passed these politically motivated

non responsive branches; and in *Plyton*

*v. Alaska*, directly remanded their findings

to the more immediate public's voice,

the Board of Fisheries.

The Courts' frustration was explicitly

voiced as follows. "Despite repeated legal

challenges to and multiple revisions of

the subsistence laws, "subsistence uses

have long been defined in terms of

customary and traditional uses" Accord-

ingly, we consistently have interpreted

"customary and traditional" to refer to

"uses" rather than to "users";

The case of *Totemoff v. Alaska*, the

Court was even more blunt but still

equally ignored. The Alaska Supreme

Court stated: "For a number of reasons..

.. the federal government has no

authority to regulate hunting and

fishing in Alaska's navigable waters."

Even more explicitly the court further stated: "We are not obligated to follow (the 9th Circuit Court's ruling) since this court is not bound by decisions of federal courts other than the United States Supreme Court."

Responsible state executive and/or legislative branches would have accepted this Alaska's highest legal opinion and then taken immediate and direct action to assume Alaska's sovereign police power's management over the State's public trust common property fish, wild life and water resources. Such actions would force federal authorities to either accept Alaska's sovereign management authority or pursue final judgement in the United State Supreme Court.

Instead the Governor refuses, by stating he did not accept the Alaska Supreme decision; and instead continues to demand voluntary capitulation to deny Constitutional equality of All Alaskans

His continuous rhetoric to deny the total public's due process protection and strip individual equal rights, is an

improperly addressed subject to be based on the out come of a vote. Any such State and/or federal attempted fraudulent vote will also be immediately challenged in court to seek and win injunctive relief.

The only acceptable answer is equal consideration for All personal consumptive USERS of Alaska's public trust common propert fish, wildlife and water resources. The present Alaska court challenge must be responsibly supported and pursued by the legislature and/or public to a fair and honest solution; because a political decision will never be accepted by those who claim equality.

Submitted by

Nale Bandurant

H.C.-1 Box 1197

Soldotna AK 99669

**JUNEAU ANB CAMP 2**

**LEGISLATIVE INFORMATION OFFICE**

**320 W. Willoughby Avenue**

**Juneau, AK 99801**

**Phone (907) 586-3706**

**Fax (907) 586-3301**

DATE: March 2, 1998

TO: Mr. Ogan

FAX NO.: \_\_\_\_\_

Mr. Hudson

HB 406

FROM: Robert Willard, Jr.

Number of Pages: 9 (including cover sheet)

As you requested, copy of statement  
attached. I was asked for section by  
section report. That will be done by  
Wednesday. Thank you for hearing  
from us. RW

**STATEMENT OF ROBERT WILLARD, JR.  
BEFORE THE HOUSE RESOURCES -  
HB 406 SUBSISTENCE USES**

FEBRUARY 28, 1998

Thank you Mr. Chairman. My name is Robert Willard, Jr. ; I am from Angoon, but I reside in Juneau where I am employed by the Juneau Camp of the Alaska Native Brotherhood. I also serve on the Executive Committee of the Southeast Native Subsistence Commission, to which I served as President from 1989 - 1993.

When speaking of Subsistence, permit me to put things into perspective:

The Southeast population is set at:

74, 118

Of that number, 14, 481 are Alaska Natives. The Urban population of the Southeast (Juneau & Ketchikan), is set at 44,252 total.

There are 5,628 Alaskan Natives that live in the urban Southeast.

In the Rural Southeast, there are 29,876 people.

The Rural Southeast is comprised of:

Non - native - 20,331

Native - 8,851

That means, rural Natives in the Southeast are out - numbered by Non - natives close to 3 to 1. So when the Alaska Population is reported, the news reports, and also by people in responsible positions, they make it sound as if only Alaska Natives live in Rural Alaska. On a Statewide basis, the Rural Native is outnumbered by Non - natives, by a ratio of about 5 to 1. So when you hear a Rural Subsistence Preference, it is not a native preference, therefore it is not a racial issue.

On a Statewide basis, subsistence users take less than 4% of the wild renewable resources. Here now are the Southeast harvest of Salmon - on an annual basis; in one calendar year;

Commercial Harvest;	Sports/ Personal;	Subsistence;
29,880,800	158,800	40,100

Also on a Statewide basis, there are 38,865 Alaska Natives that are denied subsistence opportunity because they reside in an urban community area. This is from the records of the Alaska Department of Fish & Game.

To address the "Rural Preference", in Title VIII of the Alaska National Interest Lands Conservation Act, or ANILCA. The Congress intended that the rural preference be invoked only when the fish or wildlife population is declining. Since 1980, when ANILCA was implemented in Alaska, in the Southeast, the "Rural Preference", has never been invoked. Never! There has never been a time when commercial, sport, personal users were closed and only subsistence harvest allowed to continue. When an opening of the season occurs, all harvests are in common. In the event a Rural Preference is invoked, such a preference would apply to both Native and Non - native. And, we'd have it no other way. And while we are not authorized to speak for them we are aware that the rural residents in Point Baker, Port Alexander, Pelican, Meyers Chuck and other rural Southeast communities also depend on uses of the wild renewable resources, and we don move to protect their needs.

Of primary interest to the Southeast Alaska Native Tribes is the subsistence harvest and subsistence uses have upon the cultures. any allocation include amount you should know that this for cultural purposes subsistence fight that we are engaged in is

known to us as "Cultural Survival", and, more importantly, our concern is our children and grandchildren. The next generation, is foremost in our minds and our endeavors. In the final analysis, it is our Cultural Existence that is imperiled when we examine proposed subsistence legislation. I will address now, at cultural events, our own natural foods are served, and we never think of serving turkey, ham, or Campbell soup. House Bill No. 406 that is before you.

If HB 406 is enacted and implemented, it will sound the death knell of the Subsistence lifestyle and the subsistence culture that Congress designed to protect in the enactment of Title VIII of ANILCA.

I address first, page 2, Chapter 16, Sec. 16.16.020 (1), which would impose income or economic considerations.

"The policy also requires that regulatory systems which employ income requirements NOT be imposed upon rural residents. Income requirements are by their very nature capricious classifications in rural Alaska, and consequently can be invidious destructive to the Alaska Native Cultures."

I didn't say that, Congressman Morris K. Udall did. Mr. Udall was the Chairman of the Interior and Insular Affairs Committee that marshalled Title VIII of ANILCA in Congress until it passed.

HB 406, page 4 has a number of criteria that a person would have to prove to be eligible for subsistence. Chairman Udall addressed this as well. Subsistence opportunity be on a community basis, and not individually. If done on an individual basis, it would have a destructive effect on the knowledge that kept our cultural existence

alive all these thousands of years. You must understand that we have the tribal obligation to pass the knowledge of our subsistence lifestyle on to the next generation.

As regard to references to the Local Advisory Committees and the Regional Councils, we feel that under Sec. 801 (5) and Sec. 805, these local persons serving there, were to participate in the actual management of the resources. Congress saw the value of having persons serving in these capacities because of their personal knowledge of local conditions and requirements to have a meaningful role in management of fish and wildlife and of subsistence uses on the public lands in Alaska. We do not feel that a person who has applied for a subsistence permit need ~~not~~ go through to process of attaining approval of the local advisory committee, the Regional Advisory Council, the Board of Fish, the Board of Game and meet whatever other criteria the Boards may adopt pursuant to page 6.

We believe that changing the term subsistence to sustunance is wrong; We believe that customary and traditional should remain in any State legislation and direct dependence in any form removed.

We believe that Title VIII of ANILCA has been misinterpreted from the very outset on the meaning of Rural Preference. Federal and State managers believe that it meant subsistence eligibility. Because of that interpretation, Juneau and Ketchikan were determined to be ineligible. And when William P. Horn, Assistant Secretary of the Interior agreed, when he appeared before the State Senate Resources Committee in March 1986. We believe that Juneau and Ketchikan are eligible for subsistence, albeit without a preference when the resource declines.

This means that the Native child born in 1975 or the period, grew - up without knowledge of where to fish; where to hunt for deer, seal, ducks or geese; where to go dig for clams; where to pick blueberries, salmon berries, thimble berries, or other berries; more than that, when to do all these vital things that must be passed on to their children. More than that, even if we harvest the deer, seal, or other resource, the proven methods of preparation and/ or preservation is against the Law in the City & Borough of Juneau; we are unable to teach that Juneau Native child what type of wood is to be used, or the temperture in the smoke/ drying process/ to maintain. In short, the Cultural Existence of the Juneau and Ketchikan is being systematically destroyed by the public policy.

House Bill 406 as written, or even amended, will certainly destroy the Cultures of the Southeast Native tribes.

There is no provision for hunting or fishing permits for a widow with children; or an eligible family without a water craft.

Mr. Chairman, if it is your intent to destroy the cultures of the Alaska Native, you should state so - publicly.

Let the people vote.

Senate Resources Committee  
March 5, 1986  
1:30 p.m.

SENATE RESOURCES COMMITTEE MEMBERS PRESENT

Senator Arliss Sturgulewski, Chairman  
Senator Bettye Fahrenkamp, Vice Chairman  
Senator Jack Coghill  
Senator Rick Halford  
Senator Vic Fischer  
Senator Fred Zharoff  
Senator Dick Eliason

OTHER LEGISLATORS PRESENT

Senator Mitch Abood  
Representative Adelheid Herrmann  
Representative Kay Wallis  
Representative Peter Goll  
Representative Roger Jenkins  
Representative Drue Pearce  
Representative Jack Fuller  
Representative Alyce Hanley  
Representative Mike Davis  
Representative Steve Rieger  
Representative Virginia Collins

COMMITTEE CALENDAR

Testimony by William P. Horn, Assistant Secretary,  
Department of the Interior on Subsistence, with reference  
to SCS for HB 288 "An Act relating to the taking of fish  
and game for subsistence and personal use"

Senator Sturgulewski called the meeting to order in the Senate Finance Room. In introductory remarks, the chairman stated she feels it is vital to take a sensible approach to subsistence to protect the people who are dependent on fish and game, the rights of all Alaskans to hunt and fish, and to ensure retention of state control of our own resources. She stated the bill is fair, constitutional, enforceable, and in compliance with ANILCA. She noted that Bob Gilmore, Regional Director of the U.S. Fish & Wildlife Service, and David Gayer, attorney with the solicitor's office in the Department of the Interior, were present in the audience.

understanding is that you don't have committee reports the way the Congress does, that without it, it would be very hard for us to accept that type of a declaratory statement. Now, we would need the facts to go with it. Now, the State Board of Fish & Game, if my recollection is correct, in 1982 adopted a regulation much like that, but in the process, tended towards a lot of information about how they came to that conclusion, and we could accept it, not because of the declaration, but because of the facts.

Senator Halford: You accepted that and it was within the certified plan that was approved and operational under the Department of the Interior, was it not?

Mr. Horn: Yes, my recollection is that they did have that regulation.

Senator Halford: If, for example, that was provided and based upon the findings of fact that were included in the legislation, it would then be permissible, probably.

Mr. Horn: We certified it in '82 and the facts haven't materially changed at least in the direction of some of those communities moving in a rural as opposed to an urban direction. We probably could, but it would require us to have those findings of facts accompanying the measure.

Senator Halford: The current status under Alaska law under Madison is that, basically, all Alaskans who need it, have a subsistence preference. The conflict with that in the federal law is that there has to be a tier above that which says that all rural subsistence users before you get into the subgroup of rural dependent, subsistence users.

Mr. Horn: Well, it's not all rural. It's rural and customary and traditional use. I think that's an important distinction that needs to be made. Yes, the problem was that when you create this group, Section 803 says to establish this category of rural, customary and traditional subsistence users. Those are the areas and those are the people who are supposed to get the preference. Of course, the difficulty with Madison is that Madison permits urban residents to qualify to get into this particular box. That's violative of 803.

Senator Halford: So, the problem is that there is no distinction between rural and non-rural subsistence users?

Mr. Horn: Under the present state law in the wake of Madison, that is correct.

Senator Halford: Is there any prohibition in the federal law in providing that there be a distinction between rural and non-rural subsistence users and thereby maintain the current framework of Madison?

Mr. Horn: From the federal perspective, once the State of Alaska has, basically, provided for the 803 group and taken care of the rural, customary and traditional users, how the state cares to array all other user groups and whatever preference they want is immaterial institutionally to the federal government. Our obligations are very focused, just to the 803 group. When you take all the other using groups, personal users, urban subsistence, non-rural subsistence, commercial fishing, sport, trophy, non-resident, you array that whole list of users out there, how the state cares to array those users in any other order is totally immaterial to us. I mean that our obligations don't speak to that at all.

Senator Halford: The state then could maintain the condition of Madison as long as it has provided some distinction between rural and non-rural subsistence users in the framework of existing law and the Madison decision?

Mr. Horn: It would have to, basically, ensure that first, the priority of the preference went to the rural, customary and traditional users, and then, of course, the 804 subgroup in case there wasn't enough to take care of that particular group. Then, basically, a line was drawn. That is all that the federal government's interests relate to. That is all that Title 8 directs us to look at. We are not interested in meddling in any form in what the state cares to do once it takes care of those two. If you want to put other subsistence folks second, or personal users third, or commercial fourth, or sports fourth, I mean, you pick the pecking order, whichever. That pecking order is immaterial to the Interior Department of the federal government.

Senator Halford: A final question on implementation of a federal program. We tend to look at that in the worst case scenario. What would happen in southeast Alaska, for example, if there were no legislation passed? What would federal management entail in southeast Alaska?

Mr. Horn: In a hypothetical sense, I've never really looked at southeast, and I'd have to go talk to my good friends from the forest service, but I'll try to give you at least my first impression. I'd like to attach lots of caveats because I haven't talked to the forest service, and they are the federal land manager, by and large, in southeast. Essentially, related to fisheries, we'd have to identify what the rural, customary, and traditional communities were and what their level of use and subsistence uses were on particular fish runs, and then we would have to set up a regulatory regime that would ensure that those particular groups get the subsistence level of fish that they need. If that required us to preempt in large degree some of the state commercial fish regulations

"Mr. Burle Beard

"1721 Moose Tr

"Fairbanks AK, 99709 479-3640

"Non Constituent

"BILL#:

"SUBJECT: SUBSISTENCE

"MESSAGE: PLEASE HONOR YOUR OATH OF OFFICE TO DEFEND OUR STATE CONSTITUTION. SUE THE FEDS FOR OUR STATE'S RIGHT TO GOVERN OURSELVES. EACH OF YOU WILL BE LONG REMEMBERED AS HAVING SUPPORTED OUR CONSTITUTION, OR HAVING SOLD OUT TO FEDERAL THREATS. SUE ON EVERY ISSUE OF FEDERAL SEIZURE REGARDING STATE'S RIGHTS.

"DISTRIBUTION: 60

*letter 3/13  
D/B*

"Ms Marilyn Wilson

"P O Box 871706

"

"Wasilla AK, 99687 495-7700

"

"Non Constituent Supports

"BILL#: HB 406 SUBSISTENCE USES OF FISH AND GAME

"SUBJECT:

"MESSAGE: I SUPPORT THIS BILL WHOLEHEARTEDLY. WE NEED THIS BILL VERY BADLY. I HOPE YOU ALL WILL SUPPORT IT ALSO.

"DISTRIBUTION: 60

"

"

"Mr Ron Wilson

"P O Box 871706

"

"Wasilla AK, 99687 373-6700

"

"Non Constituent Supports

"BILL#: HB 406 SUBSISTENCE USES OF FISH AND GAME

"SUBJECT:

"MESSAGE: I STRONGLY SUPPORT THIS BILL. VOTE IT IN. PASS IT. WE WANT IT.

"DISTRIBUTION: 60

"

"

*letter 3/13  
DB*

Author: bspearman@customcpu.com (Wm. J. Spearman) at CC2MHS1  
Date: 3/2/98 5:54 PM  
Priority: Normal  
TO: Representative Scott Ogan at LAA\_TRANS  
Subject: Re: subsistence  
3910 Malaspina, #1  
Anchorage, AK 99517

*letter*  
*DB*

Representative Scott Ogan wrote:

> Thank you for your message, please send us your mailing address.  
> We  
> would like to mail you more information.  
>  
> Representative Ogan's Office  
>  
> \_\_\_\_\_ Reply Separator  
>  
> Subject: subsistence  
> Author: bspearman@customcpu.com (Wm. J. Spearman) at CC2MHS1  
> Date: 3/1/98 3:14 PM  
>  
> I am writing to let you know that you and your fellow legislators are  
> on  
> the right track in challenging federal authority to take over fish and  
>  
> game management in the State. When the Anchorage Daily News (1Mar98)  
> invests in a feature smear article that is devoid of journalistic  
> substance and written to discredit your efforts, you know that you are  
>  
> doing something right.  
>  
> The tactics being used to promote the federal takeover are clearly out  
>  
> of the Communist textbook on psychopolitics. The federal government  
> introduces a problem that creates conflict, chaos and confusion,  
> special  
> interest groups then agitate for resolution creating the illusion of  
> popular support, and the people then ask the federal government to  
> step  
> in with a solution, not realizing that the poison and the antidote  
> were  
> prepared in the same kitchen. Of course, opponents of their agenda  
> are  
> demonized through the news media. To further neutralize opposition,  
> the  
> Alaskan people are being divided against one another on this issue.  
> preventing us from presenting united opposition to the federal  
> takeover. As a result, State powers are being further eroded and  
> federal powers are being further expanded. Joe Stalin would be  
> impressed with the implementation of this unfolding strategy.  
>  
> How can a federal law override a state constitution in an area where  
> the  
> federal government has no Constitutional jurisdiction and is in clear  
> conflict with Amendment 10?!! It is unsettling that the federal  
> government continues to claim jurisdiction where there is none  
> according  
> to the U.S. Constitution. And it is not only with this issue, e.g.,  
> there is no authorization for federal involvement in education,  
> welfare,  
> health, U.N. 'peace keeping', child care, etc. Clearly, the federal  
> government has jumped the Constitutional fence and is now roaming  
> without  
> constraint, that is, without being bound down by the "chains of the  
> Constitution".  
>  
> I think that it is time for the Alaska State Legislature to stand on  
> Constitutional principle and assert our State's rights. It is time to  
>  
> herd the federal government back inside the confines of the  
> Constitutional fence.  
>

Mr. Bernard G Johnson  
2410 Foxhall Dr

Anchorage AK, 99504 333-5225

✓ Letter 2/28

Non Constituent

BILL#:

SUBJECT: SUBSISTENCE

MESSAGE: ACCORDING TO FEDERAL LAW WEALTHY NATIVES AND OTHERS IN RURAL AREAS WILL BE ENTITLED TO SUBSISTENCE PREFERENCE, WHEREAS POOR NATIVES AND OTHERS IN URBAN AREAS WILL NOT BE ENTITLED TO SUBSISTENCE. IS THIS CORRECT?

DISTRIBUTION: 03

"Mr William Thomas

"P O Box 3627

"Palmer AK, 99645 000-0000

Letter 3/13  
DB

"Constituent

"BILL#:

"SUBJECT: SUBSISTENCE

"MESSAGE: I WOULD LIKE TO EXPRESS MY OPINION ON THE SUBSISTENCE ISSUE. MOST OF US WHO HAVE LIVED IN THE BUSH KNOW HOW IMPORTANT GAME IS TO THE PEOPLE INVOLVED. PLEASE MAKE EVERY EFFORT TO GET THIS PROBLEM CLEARED UP. THERE WILL BE MANY UNHAPPY PEOPLE IF THE FEDS TAKE OVER. THANK YOU.

"DISTRIBUTION: 02

# Alaska State Legislature

Please enter into the record my testimony to the House Resources  
committee on Draft CSHB 406 (RES) version P (committee name), dated 3-5-98  
bill/subject

1.) I believe that this bill is going down the right track. It is the approach we need to make the situation fair to all.

2.) HOWEVER the individual preference based on income should be changed to preference for every permanent year-round resident of the dependent use area.

3.) The question of the constitutionality of the bill under Alaska's constitution seems to be dicey enough so that passage of this bill should be accompanied by a constitutional amendment that makes the bills' provisions clearly constitutional.

Signed: Eric Muench ERIC MUENCH Phone: 225-5372

Testifier Self

Representing (Optional)  
P.O. Box 10811, Ketchikan 99901  
Address

Fax transmitted from Ketchikan Legislative Information Office  
Phone: 225-9675 Fax: 225-8546

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 269-5100  
FAX: (907) 276-3697

KEY BANK BUILDING  
100 CUSHMAN ST., SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

P.O. BOX 110300-DIMOND COURT HOUSE  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 465-6735

February 27, 1998

The Honorable Jean Nicholia  
Alaska House of Representatives  
State Capitol, Room 409  
Juneau, AK 99801-1182

Re: CS HB 406 (Resources)

Dear Representative Nicholia:

You have asked several questions about CS HB 406 (Resources), a bill dealing with subsistence. Your questions, and our responses, are set out below.

1. Does this legislation comply with Title VIII of ANILCA and if not, why?

In Title VIII of the Alaska National Interest Lands Conservation Act ("ANILCA"), nonwasteful subsistence uses of fish wildlife are the priority, consumptive uses of those resources on the federal public lands of Alaska. 16 U.S.C. § 3112. When it is necessary to restrict harvest of those resources, subsistence uses have a preference over other uses, like sport hunting and commercial fishing. 16 U.S.C. § 3114.

ANILCA defines "subsistence uses" as uses by rural Alaska residents. 16 U.S.C. § 3113. In its present form, ANILCA defines "rural Alaska resident" as "a resident of a rural community or rural area." A "rural community or area" is defined as "a community or area substantially dependent on fish and wildlife for nutritional and other subsistence uses. Pub.L. No. 105-83 (1997).<sup>1</sup>

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<sup>1</sup> The ANILCA definitions will be repealed on December 1, 1998, if by that date the state has not adopted laws that provide for the subsistence definition, preference, and participation specified in that law. Pub.L. No. 105-83 (1997). In that event, ANILCA will not  
(continued...)

In contrast to ANILCA, CS HB 406 does not define eligibility for the "sustenance" priority in terms of the characteristics of communities or areas. Instead, the bill sets out individual criteria for that eligibility. Under those criteria, a person must: (1) possess a hunting, fishing, or trapping license which is only available to persons who have received public assistance or who have lower income; (2) depend on fish and game for sustenance or lack an alternative means of sustenance; (3) have consumed within the past 12 months a certain number of species of fish and game; and (4) have shared or received fish and game from other households. All of the individual criteria must be met before a resident will be entitled to enjoy the "sustenance" priority. Proposed AS 16.16.020(c), section 2 of CS HB 406.

Under ANILCA, the state is entitled to manage subsistence hunting and fishing on federal public lands if it adopts laws "which are consistent with, and which provide for the definition, preference, and participation specified in . . ." that federal law. 16 U.S.C. § 3115(d), emphasis added. The question, then, is whether the two sets of criteria for participating in subsistence/sustenance -- the rural residency criteria of ANILCA and the individual criteria of CS HB 406 -- are "consistent."

The question can best be answered by examining the judicial treatment of an earlier "consistency" dispute. In 1988, the Ninth Circuit Court of Appeals compared the state's definition of "rural," which looked at whether traditional uses were a principal characteristic of an area, with a definition of rural that the court could derive from ANILCA.<sup>2</sup> The court concluded that the state's definition was not consistent with the common understanding of "rural," i.e., areas of sparse population. Its conclusion was based on a comparison of the geographic areas that would qualify under each. *Kenaitze Indian Tribe v. State of Alaska*, 860 F.2d 312, 316-318 (9th Cir. 1988) The court noted that the Kenai Peninsula would qualify under its interpretation of "rural," but that it did not qualify under the state's definition. Because the state's definition would exclude practically all areas that would be commonly thought of as rural, the court concluded that the definition was not consistent with ANILCA. *Id.*

We believe that a court would follow a similar approach to determine if the individual criteria of CS HB 406 are consistent

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<sup>1</sup> (...continued)  
have a statutory definition of "rural."

<sup>2</sup> At that time, ANILCA had no statutory definition of "rural."

with ANILCA's definition. A court could not compare geographic areas because CS HB 406 does not use a person's place of residence as a qualifier. Instead, a court would likely compare the two groups who would qualify. If the membership of the group qualifying under the rural residency criteria differed significantly from the membership of the group qualifying under the individual characteristics criteria, it is likely that a court would find them inconsistent.

It is probable that the makeup of the two groups would be different. Under ANILCA, residents of all rural communities and areas qualify. Under the individual criteria of CS HB 406 some urban residents would qualify, and some rural residents would not qualify. Although not certain, it is likely that the number of sustenance users qualified by CS HB 406 would be fewer than the number qualified by ANILCA. Because of this probable difference in group makeup and size, we believe that a court would conclude that the bill does not "provide for the . . . participation specified in . . ." ANILCA (16 U.S.C. § 3115(d)). Thus, the two would be found inconsistent, and the state would not be entitled to manage subsistence on federal public lands in Alaska.

2. Does this legislation raise constitutional issues and if so, what are they?

CS HB 406 has a "regional area preference." Under section 2, "In a time of shortage of fish or game resources, the appropriate board may adopt a regional preference among beneficial uses of fish and game by requiring that the flesh or meat of fish and game be consumed within the region where the fish or game was taken."

Representative Ogan said that this is a key element of the bill. He believes that it is constitutional because it is a "preference among beneficial uses."<sup>3</sup>

Presumably, the "beneficial use" contemplated by the bill is the consumption of subsistence fish and game. To date, the Alaska Supreme Court has not recognized consumption as a "use" under the Alaska Constitution. The only recognized uses are commercial, sport (recreational), subsistence, and personal use. That is not to say, however, that the Court would not accept

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<sup>3</sup> Article VIII, section 4, of the Alaska Constitution allows "preferences among beneficial uses." the Alaska Supreme Court has held that because those preferences do not restrict admission to a resource user group, they are permissible under that clause and the other "equal access" clauses. *Gilbert v. Department of Fish & Game*, 803 P.2d 391 (Alaska 1990).

consumption as a beneficial use.

A constitutional problem arises because "consumption" must be in a particular geographic place, specifically the region where the fish and game are harvested. If the Boards adopted such a regional preference, it would significantly restrict the opportunity of residents living outside of a region to harvest subsistence resources in the region. For example, a person living outside a region who shot a subsistence moose would have to either: (1) remain in the region until the person or the person's family consumed the moose; or (2) give the moose away to non-family persons who do live in the region. The first option is impractical. Few persons would find it reasonable to set up a temporary household for weeks or months in a different region just to consume fish and game harvested there. The second option is contrary to the purpose of HB 406. If the harvester had to give the fish and game away to non-family members, the activity would no longer be "the harvest of fish and game for personal and family use for sustenance." CS HB 406, § 1.

Essentially, the "regional area preference" provision establishes a preference for subsistence harvest based on one's place of residence. Although it does not, on its face, exclude harvest by persons outside of a region, in its practical application, the only persons who could consume the fish and game in the region are those who live there. They would have a significant advantage, if not a monopoly, to those resources because of their closer proximity. Indeed, Representative Ogan said the purpose for the amendment is to make sure that, in times of shortage, persons are given a preference for harvesting fish and game in their own regions.

Since *McDowell*, the Alaska Supreme Court has said that, under the present Article VIII "equal access" clauses of the Alaska Constitution -- the clauses guaranteeing common use, prohibiting exclusive rights of fisheries, and requiring uniform application of natural resource laws -- the right to harvest subsistence resources cannot be based upon the location of a person's residence. Most recently, the Court, when discussing *McDowell*, said, "We both quoted and stressed language holding that people who reside near a fish or game population do not have a higher claim to that population than state residents whose domiciles are more distant. . . . Just as eligibility to participate in all subsistence hunting and fishing cannot be made dependent on whether one lives in an urban or rural area, eligibility to participate in Tier II subsistence hunting and fishing cannot be based on how close one lives to a given fish or game population." *State v. Kenaitze*, 894 P.2d 632, 638 (Alaska 1995). Under that principle, the Court struck down the Tier II proximity criterion. *Id.*

The Honorable Jean Nicholia  
Alaska House of Representatives  
Re: CS HB 406 (Resources)

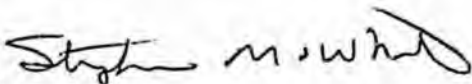
February 27, 1998  
Page 5

The intended purpose and the practical effect of the "regional area preference" is to give certain residents a "higher claim" to subsistence resources because they live closer to them. For that reason, it is unlikely that the preference would survive a legal challenge under the present "equal access clauses." For the preference to be constitutional, Article VIII would have to be amended to allow a priority for subsistence hunting and fishing that is based upon a person's place of residence.

Please contact me if I can assist you further.

Sincerely yours,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:   
Stephen M. White  
Assistant Attorney General

SMW:1mt:pch  
J:\WHITE\NICHOLIA.WPD

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

February 26, 1998

**SUBJECT:** CSHB 406(RES); Consistency with ANILCA (CSHB 406(RES))

**TO:** Representative Irene Nicholia  
Attn: Paula Terrel

**FROM:** George Utermohl *GU*  
Legislative Counsel

You have asked whether CSHB 406(RES), version H, if enacted, would satisfy the requirements of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) for resumption of state management of subsistence uses of fish and game on federal public lands.

The short answer is no.

Under 16 U.S.C. 3115, as amended by P.L. 105-83, sec. 316(e)(6), the State of Alaska "may immediately assume management for the taking of fish and wildlife on the public lands for subsistence uses" if the Secretary of the Interior and the Secretary of Agriculture certify that the state has "enacted and implemented laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in [16 U.S.C. 3113, 3114, and 3115]".

CSHB 406(RES) does not provide for either the definition, preference, or participation necessary to satisfy the current requirements of Title VIII of ANILCA.

**DEFINITION.** ANILCA defines "subsistence uses" as the customary and traditional uses by rural Alaska residents of wild renewable resources for certain specified purposes.

CSHB 406(RES) provides for the use of fish and game for personal and family use for sustenance (fish and game dependent uses). Such uses are available to all Alaska residents without regard to whether they reside in rural areas or urban areas. Even in times of shortage, use of fish and game for fish and game dependent uses is not limited to rural residents.

Representative Irene Nicholia

February 26, 1998

Page 2

ANILCA provides that subsistence uses of fish and game include customary trade. CSHB 406(RES) does not authorize customary trade of fish and game taken for fish and game dependent uses.

PREFERENCE FOR SUBSISTENCE USES. ANILCA provides that subsistence uses shall be accorded a priority over the taking of fish and game for other purposes. ANILCA also provides that, when necessary to protect fish and game populations or to protect continued subsistence uses of fish and game, access to the fish or game by subsistence users be limited in accordance with the subsistence user's customary and direct dependence on the fish or game population as a mainstay of livelihood, local residency, and the availability of alternative resources.

CSHB 406(RES) does not accord a preference for fish and game dependent uses of fish and game over all other uses of fish and game. In the event of shortage of fish or game, such that there is not sufficient fish or game to reasonably provide for the sustenance needs of persons who are dependent on fish and game for personal and family use for sustenance, then the Board of Fisheries or the Board of Game, as appropriate, may reserve a portion of the resource for fish and game dependent uses of fish and game and establish a preference to provide a reasonable opportunity to satisfy the need for fish and game dependent uses. Under CSHB 406(RES) the establishment of a preference for fish and game dependent uses is discretionary with the boards and would apply only in a situation that is considered to be a Tier II situation under ANILCA. The criteria for determining who may benefit from the establishment of a preference for fish and game dependent uses is tied to the person's financial or economic status and the person's recent dependence upon and use of fish and game for personal and family use for sustenance. Unlike ANILCA, eligibility for fish and game dependent uses is not tied to rural residency, customary dependency on fish and game, or proximity of residence to the resource.

LOCAL AND REGIONAL PARTICIPATION. ANILCA provides for the establishment of at least six subsistence resource regions. Each region is to have a regional advisory council of ten members. Four of the members of the council are to be residents of the region who have been nominated by tribal councils in the region. The remaining six members are to be nominated by local governments and local advisory committees in the region. Three of the remaining six members are to be subsistence users who reside in the region and the last three members are to be sport or commercial users who may reside in any subsistence resource region in the state. ANILCA also provides that there should be as many local advisory committees as the Secretary of the Interior and the Secretary of Agriculture determine necessary to assist the regional advisory councils in performing their duties.

CSHB 406(RES) provides that a maximum of five fish and game management regions be established in the state. Each region is to have a regional fish and game board consisting of nine members. Each of the members of the regional boards is to be appointed by the governor, subject to confirmation by the legislature, from lists of persons submitted by the

Representative Irene Nicholia

February 26, 1998

Page 3

local fish and game advisory committees. The members of the regional boards are not required to be from specific areas of the state or region or to be members of particular user groups. CSHB 406(RES) provides that there be a maximum of nine local fish and game advisory committees in each region.

There are also many additional details regarding local and regional participation that are addressed by ANILCA and CSHB 406(RES). In some matters the two pieces of legislation agree, in other matters they take different approaches, and in still other matters one or the other pieces of legislation is silent on.

In conclusion, there are such differences between what CSHB 406(RES) does in regard to fish and game dependent uses of fish and game and the requirements imposed under ANILCA as prerequisite for resumption of state management of subsistence uses of fish and game on federal public lands, that CSHB 406(RES) does not provide a basis on which the state may resume management of fish and game on federal public lands. Either CSHB 406(RES) or ANILCA, or both, would have to be changed before HB 406 could provide a basis on which the State of Alaska could resume management of fish and game on federal public land in Alaska.

If I may be of further assistance, please advise.

GU:glc  
98-107.glc



P.O. Box 20761, Juneau, Alaska 99802

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Phone/FAX (907) 789-2399

September 22, 1997

Senator Rick Halford, Chairman  
Senate Resources Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801

and

Representative Scott Ogan, Co-chair  
Representative Bill Hudson, Co-chair  
House Resources Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801

Dear Senator Halford and Representatives Ogan and Hudson:

Both the Senate and House Resources Committees have scheduled hearings around the state to address the escalating "subsistence crisis." Although we were unable to testify at the Ketchikan hearing, the Territorial Sportsmen intend to testify at future public hearings on this issue.

The Territorial Sportsmen Board of Directors met September 16, 1997 to review our organization's position regarding solutions to the subsistence conflicts. Our major focus has been on the Governor's Subsistence Task Force proposal and the various positions being adopted by organizations on both sides of the debate.

We have attached for the information of your committees, our position sent to Governor Knowles concerning the Task Force's proposal. It is our understanding that there may have been some modifications to that proposal based on their stakeholders meeting on September 13, 1997. However, our Board has decided, at this time, to essentially maintain the position reflected in our July 18, 1997 transmittal.

As you can see from our position paper, our organization is dedicated to taking whatever steps necessary to develop a rational solution to this crisis. Although we have always

opposed a Constitutional Amendment discriminating against Alaskan residents, we have reluctantly agreed under some conditions, an Amendment to our Constitution may be crafted which does not completely dismantle the other equal protection and common use provisions of our Constitution.

The Territorial Sportsmen have consistently supported state management of our fish and wildlife resources and are strongly opposed to any provision which provides federal agency or federal court oversight over state management programs on state and private lands and waters. We concede that federal oversight over federal lands and waters is inevitable.

One of the major purposes of this transmittal is to encourage the legislative leadership and the Governor to immediately prepare a course in preparation for intense litigation. Our Board of Directors are convinced, after examining the positions of the Regional Native Subsistence Committees and the results of the recent Subsistence Summit that there is no conceivable possibility of an acceptable consensus position on this issue. Continued delays in hopes of finding a magic solution are only playing into the hands of those who are committed to complete preemption of state management.

We have in fact concluded, that the so called "middle ground" keeps moving farther and farther away from a position that we feel is in the best interests of everyone in our state. We also want to make it clear that we are not willing to accept "a solution at any cost." If a subsistence compromise cannot be developed which returns effective state management without federal oversight and provides a nondiscriminatory mechanism to meet the needs of "true subsistence users", then we fully support a massive litigation effort to protect the management rights of our state.

In light of the obvious stalemate and because of the grave consequences of federal management, the Territorial Sportsmen urge the Legislature and The Governor to immediately establish a "States Rights" litigation fund of at least \$25 million designed to protect the rights of every citizen of our state from federal preemptive regulations now set for adoption soon after October 1, 1997.

It is our opinion that the state has not exhausted its litigation options and in fact may have an excellent chance of succeeding in court once the federal regulations are in place. It is imperative that Alaska get its case before the U.S. Supreme Court. The Territorial Sportsmen still maintains that the Alaska Native Claim Settlement Act extinguished aboriginal claims, including hunting and fishing rights, and Congress provided no authority for federal preemption of state management on state and private lands and waters, including navigable waters.

We advocate aggressively pursuing a Supreme Court ruling on these issues and, if necessary, litigate federal violations of the State Compact and Statehood Act. To wait any longer in hopes that a possible solution could be crafted which is acceptable to all sides is irresponsible. Regardless of our personal feelings about the issue, the only

alternative available to the state is to protect its interests and the interests of all its citizens. We support doing whatever necessary to accomplish that task.

We all agree that the issue of state management of its fish and game resources was the motivation behind the statehood battle just under 40 years ago. It is time to defend that principle with every resource at our disposal.

Sincerely



Dr. Steve Messerschmidt  
Secretary/Treasurer

Attachment

cc: Senator Ted Stevens  
Senator Frank Murkowski  
Congressman Don Young  
Governor Tony Knowles  
Senate President Mike Miller  
House Speaker Gail Phillips



---

Alaska Boating Association \* PO Box 871310 \* Wasilla, Alaska 99687 \* 373-3591  
E-Mail to .....cljudkins@customcpu.com Fax -376-6390

---

2/23/98


TO: ALASKA LEGISLATORS  
FROM: THE ALASKA BOATING ASSOCIATION  
SUBJECT: LEGISLATIVE AFFAIRS OFFICER

ON FEB. 23, 1998 THE ALASKA BOATING ASSOC. APPOINTED JUNE AND ROY BURKHART TO ACT AS LEGISLATIVE AFFAIRS OFFICER FOR THE 1998 SESSION.

JUNE & ROY BURKHART  
PHONE 1-907-459-6337  
FAX; 1-907-459-6338  
E-MAIL; rjburk@alaska.net

PLEASE INCLUDE THEM IN YOUR CIRCULATION OF BILLS AND HEARINGS THAT MAY BE OF INTEREST TO OUR ASSOCIATION. WE ARE SERIOUSLY CONCERNED ABOUT LEGISLATION AND ADMINISTRATIVE REGULATIONS THAT EFFECT BOATING SAFETY, BOATING AND ALL MOTORIZED ACCESS, HUNTING, FISHING, AND RECREATIONAL USE BY MOTORIZED EQUIPMENT, AND OR COURSE SUBSISTENCE ISSUES.

THANK TO ALL OF THEM THAT CONTINUE TO REPRESENT THE CAUSE OF KEEPING ALASKA LANDS AND WATERS OPEN TO ALASKANS.

  
CLIFF JUDKINS  
PRESIDENT

Jim Rearden  
413 E. Lee Drive  
Homer, Alaska 99603

Phone/fax: (907) 235-8543

Member, American Society  
of Journalists & Authors

Feb. 20, 1998

Representative Gail Phillips  
Room 208  
Alaska State Capitol  
Juneau, Alaska 99801

Dear Gail:

You are on the wrong track on the subsistence issue. The Governor's plan, if implemented and accepted by the voters (a change in our constitution), would not give us control over our fish and game. The feds would oversee our every move, and our management programs would suffer endlessly.

The true significance of the subsistence issue is not who gets to hunt/fish, but whether our fish and game dept. can concentrate on scientific biological management -- instead of wasting time as a quasi-welfare agency trying to determine who gets what, which it has been doing for the past 20 years.

A good example of how we would be treated if the governor's plan were implemented is the way the feds treated us under the Marine Mammal Act when management of walrus was returned to the state. I was on the Game Board at the time, and the "overseeing" by the feds was so impossible that the board had virtually no management control -- and eventually said to hell with it and returned management to the feds.

Rep. Scott Ogen is on the right track. He's fighting an uphill battle, and I'd sure like to see you support him. The only way Alaska will ever regain full control of our fish and game management will be to eliminate the rural priority provision of Anilca.

Sen. Stevens met with the Game Board several times when I was a member. (I spent 12 years on the board). Each time we asked him to attempt to modify Anilca. "Impossible," he told us. Yet within months he did just that. In fact, Anilca has been amended 23 times and he has been involved in every one of those changes. But, to my knowledge, Stevens has never attempted to amend the rural priority provision.

You swore to uphold Alaska's Constitution when you took office. Now you are supporting an attempt to undermine one of the most significant parts of the constitution. It seems to me you have changed parties or philosophies.

Talk with Rep. Ogen about his plans. You might be surprised at what you learn.

Sincerely,

Jim Rearden

Blind copy to Ogen

Tanana Tribal Council  
PO Box 130  
Tanana, Alaska 99777  
Phone: (907) 366-7170 or 7160  
Fax: (907) 366-7195

March 10, 1998

House Resource Committee  
State Capital  
Juneau, Alaska 99801

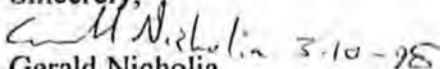
#### Subsistence Dilemma

This situation for rural residents is no better with urban minded coalitions having more say in an issue that is generally considered Rural. What Representative Scott Ogan is proposing is not in the context of ANILCA title VIII, and is trying to make an amendment to ANILCA Title VIII. Senator Stevens stated to the Alaskan Legislature that it is not acceptable by the Congressional Delegation in Washington DC for ANILCA to be amended. The general Alaskan public should be allowed to vote on this issue. It was by the vote of the Alaskan public that the legislation was voted in. The rural preference in Title VIII is the only means that rural residents have to compete with other user groups for depleting wildlife resources in certain areas of Alaska. With both State and Federal regimes fighting for control of management the wildlife resources in many areas may not be addressed and may be in jeopardy. Another factor of no control, how are both the State and Federal management regimes going to co-manage wildlife resources when they hardly comply with each other's regulations and laws. With the Alaskan Legislature as it is now it looks like Alaska's wildlife resources are going to be managed from Washington and if that is going to happen, then why even have a Alaskan Legislature.

With urban-minded ideology many rural Alaskans are not fully represented by the Alaskan Legislature. With Alaskan politicians being led by sport hunting and fishing coalitions and righteous groups (animal rights) who is really going to understand the situation today's legislative body put rural Alaskans in. It is not right for urban Alaskans to manipulate rural Alaskans. The city has never been the same as the country and it will never be.

For too long native Americans have been dealt a losing hand when it comes to native lands and their distinct way of life. No one can understand the life Native Alaskans are living to date and it is only getting worse. Our livelihoods are not being considered by the Alaskan legislature, our way of life is blatantly being disrespected by ignorance of our voices. To say that Alaskan native's livelihoods are fully being represented by the Alaskan Legislature would be a flat out lie. Thank you for hearing my concerns for my people.

Sincerely,

  
Gerald Nicholia 3-10-98  
Realty Director

Jim Sykes  
338-5551

TapeAlaska Transcripts, PO Box 240001, Anchorage, AK 99524-0001

## HOLDING OUR GROUND

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"SUBSISTENCE--A WAY OF LIFE"

(Part 3 Of 15)

[Nelson Frank] The relationship between the native population and the resource of the land and sea is so close that an entire culture is reflected.

[Jonathon Solomon] I share what's on my table with you. When I share with you my heart is happy, so is yours, and this is the way of subsistence way of life.

[Narrator] 'SUBSISTENCE' MEANS MORE TO ALASKA NATIVES THAN HUNTING AND HARVESTING. IT IS AN INTRICATE BOND BETWEEN PEOPLE AND THE LAND THAT CONTINUES TODAY. AS THIS ANCIENT WAY OF LIFE CHANGES, IT FACES AN UNCERTAIN FUTURE. IN THIS PROGRAM ALASKA NATIVES TELL WHAT SUBSISTENCE MEANS TO THEM AND WHY IT IS ESSENTIAL. THIS IS HOLDING OUR GROUND.

FUNDING FOR HOLDING OUR GROUND IS PROVIDED BY THE ALASKA HUMANITIES FORUM, THE NATIONAL ENDOWMENT FOR THE HUMANITIES, RURAL ALASKA COMMUNITY ACTION PROGRAM, THE NORTH SLOPE BOROUGH, AND ZIONTZ-PIRTLE LAW FIRM.

I never heard the word subsistence until 1971 under the Native Land Claims Act. Before that time, when I was brought up in the culture of my people, it's always been our culture and our land.

THE WORD MAY BE NEW, BUT TO JOHNATHON SOLOMON, CHIEF AMONG THE GWITCHEN PEOPLE OF THE YUKON FLATS, SUBSISTENCE REACHES BACK THOUSANDS OF YEARS TO SPIRITUAL BELIEFS, COMMUNITY TRADITIONS, AND SURVIVAL SKILLS.

Subsistence living was not only a way of life, also a life- enriching process. (NELSON FRANK) Conservation and perpetuation of subsistence resources was part of the way of life and was mandated by the traditional law and custom. The traditional law was passed from

generation to generation, intact through the repetition of legends and observance of ceremonials which were largely concerned with the use of land, water, and resources contained therein.

THOSE SAME KINDS OF TRADITIONS AND SKILLS WERE LEARNED AMONG THE SIBERIAN YUPIK ESKIMOS ON WINDSWEPT ST. LAWRENCE ISLAND. EDNA APATIKI LEARNED MANY SKILLS THE TRADITIONAL WAY .....

I am so thankful that I have knowledge I have gained from listening. That was my way of education from my family. We were first naturalists, scientists, environmentalists, natural healers, conservationists, survivors, and philosophers, and many more, way before non-natives who studied to acquire our skills. We have our own ethnicity, a knowledge and conscience of what we see as reality as native people.

THAT REALITY INCLUDES A SUBSISTENCE ECONOMY WHICH IS NOT EASILY UNDERSTOOD BY OUTSIDERS. CANADIAN JUDGE THOMAS BERGER VISITED OVER SIXTY COMMUNITIES AROUND ALASKA, AND HE LISTENED TO HUNDREDS OF DESCRIPTIONS OF VILLAGE LIFE. BERGER SAYS WITHOUT LISTENING, ONE HAS FEW CLUES TO THE COMPLEX BOND BETWEEN PEOPLE AND THE LAND.

When a white stranger visits a village in Alaska for a short time he can no more recognize the subsistence economy on which it is based, than a village person entering a major city for the first time can understand how its economy can work. The stranger to the village will see only the equipment used for subsistence; the snowmobiles, skiffs, nets, sleds, snowshoes, oildrums, and so on. And of course the products of subsistence, racks of drying fish, skins being scraped, smokehouses full of meat. He might guess that the villagers are busy because he probably would find very few of them at home.

VILLAGERS USUALLY TRAVEL WITH THE SEASONS TO GATHER AND PREPARE THEIR FOOD. THE HARVEST IS DIFFERENT IN EVERY PART OF ALASKA. BUT THE WORK IS ALWAYS DEMANDING.

In our Eskimo way of life, getting food was a daaaay-ly effort. It had to be done every day, it could be bad weather, it could be a nice day, but it was an everyday effort that Eskimo had to go out and gather his own food so he could survive.

Just like, you know, making an earning, like a white man works, he makes his earning he feeds his family. The native people for a long time have survived from the land, it's just like having a job. That's what they know and they can teach it to their kids.

JASPER JOSEPH AND MICHAEL ACOVAK SENIOR LIVE IN WESTERN AND SOUTHWESTERN ALASKA VILLAGES, WHERE SALMON RUNS MEAN CONSTANT WORK AT SUMMER FISH CAMPS. IN THE ARCTIC VILLAGE OF ALAKAKET NEAR THE BROOKS RANGE PEOPLE LIKE LINDA DUNTON ARE ALSO AT WORK.

In the spring time we had our spring camps where we hunt ducks and got the fish in the springtime and the muskrats and then to another place later in the summer to go fishing salmon and then in the fall time you go to another place to get your moose and set up your camp for the winter.

My people in the summer time (MICHAEL HUNT OF KOTLIK) they go out to their fish camps, they put up fish for the wintertime make dryfish and they put them away in the barrels. They do their subsistence way of life, and then they go out and pick salmonberries, prepare for the winter as their subsistence. In wintertime they put out sheefish nets and put out blackfish traps.

THE CYCLE OF SEASONS DEMANDS DIFFERENT SKILLS THROUGHOUT ALASKA'S RUGGED TERRAIN. SPRING IS A TIME OF RENEWAL AND CELEBRATION. IN SOUTHEAST, THE HAIDA PEOPLE CELEBRATE THE RETURN OF THE SALMON--WHICH MEANS MORE THAN A TIME TO FISH.

In the spring months, when the salmon return home, (WOODROW MORRISON) the first ones, when we see them jump, we holler, "Aiyoo! Aiyoo!" That's a celebration, our relatives have returned again. The Creator is making it possible for us to continue our life in that same cycle.

LUCY WESTLOCK FROM EMMONAK

In the springtime we hunted and gathered food from the tundra including most food which are special roots gathered underground. We gathered food from the lakes, the plants that grow there. We gather wood from the area to cook our food. I'm still practicing those things that are practiced to get food for my children.

THE CLIMATE IS HARSH, BUT THE LAND PROVIDES FOOD, CLOTHING, SHELTER, AND EVEN TRANSPORTATION. JUDY BAUMAN OF FAIRBANKS REMEMBERS A GIFT HER GREAT UNCLE MADE....

When I was young my great uncle came to live with us and he asked my mother, "what would you like me to make for you." And she said, "I'd like a dog sled." And he went outside and chopped some trees down and he didn't even use an electric drill. He showed me how he made it with a stick, a stick with a nail on the end of it and a little bow. And he put it in his mouth and he moved that bow and it would drill a hole. He made everything that he worked on that sled with, he made everything that he used from nothing. I mean he could go out, ninety-six years old, he could go out in the woods and he could make whatever he wanted to. He didn't have to go to the store and buy anything.

PEOPLE LIVING IN COASTAL COMMUNITIES DEPEND LARGELY ON MARINE LIFE FOR SUBSISTENCE FOODS. ALICE KULOWIYI LIVES IN GAMBELL ON THE NORTHWEST TIP OF ST. LAWRENCE ISLAND. MUCH OF HER FOOD COMES FROM THE BERING SEA.

We St. Lawrence Islanders, are just like those farmers on the outside. We eat from the plants of the sea just like farmers eat from their farm. We collect the plants that grow on the water and we collect them when they are washed up on the shore.

The Bering Sea and the Chukchi Sea are our gardens...

FOR JONAH TOKIENNA, THE BOUNTY OF THOSE GARDENS IS THE GREAT BOWHEAD WHALE. PEOPLE ALONG THE ARCTIC COAST HUNT BOWHEADS TWO TIMES A YEAR. ALICE SOLOMON DESCRIBES IN HER INUPIAQ LANGUAGE HOW TRADITIONAL WHALING BOATS ARE MADE IN THE SPRING.

The hunters who catch bearded seal, that women prepares the skin, cuts it up, butchers it. And this is the role of the women. And when they return she takes care of them, working very hard because there are so many skins that have to be put together into a boat, to make a boat.

IN RECENT YEARS, ALUMINUM BOATS HAVE BEEN USED, BUT SOME HUNTERS STILL PREFER BEARDED SEALSKIN. FOR CENTURIES THE PEOPLE OF THE ARCTIC COAST HAVE DEPENDED ON THE WHALE FOR SURVIVAL...THEY KNOW ITS MIGRATION AND BEHAVIOR PATTERNS. BURTON REXFORD IS A MEMBER OF THE ALASKA ESKIMO WHALING COMMISSION. HE SAYS A WHALING CAPTAIN RELIES ON THE KNOWLEDGE HANDED DOWN FROM GENERATIONS OF EXPERIENCE.

A whaling captain is faced with great responsibilities; his number one priority is of course the immediate concerns of safety while out on the hazardous and icy Arctic waters. It is his knowledge and preparation that the people depend upon for their daily food. If a village did not catch a whale, then we knew, beyond the shadow of a doubt, that we would experience extreme hardship and fear the oncoming hunger that would strike us. We know that when we caught a whale we then would be able to sleep easily and eat well.

ON THE FIRST DAY OF A WHALING FESTIVAL, THE PEOPLE TRADITIONALLY BRING THE WHALING CAPTAIN'S BOAT ASHORE AND ALL THE PEOPLE ARE FED INCLUDING THOSE UNABLE TO TAKE PART IN THE HUNT. NO ONE GOES HUNGRY, BECAUSE SHARING IS A STRONG PART OF THE TRADITION.

The people are happy, they're smiling, they're excited and you think about it. Boy they caught a whale. They get really excited and the happiness extends all the way from the deep inside. And when you go into the house that caught a whale, that happiness, that excitement, that crying for joy and because they are glad that they have been given that gift.

LORI KINGIK OF POINT HOPE.

We the Inupiaq people have always shared and divided our food, and that is our way of life. We have practiced our whaling traditions and we are still using them today. When they catch one whale everybody in Point Hope has a share of the muktuk the whale and everybody is fed.

JOE HOTCH IS A TLINGIT FROM THE SOUTHEAST COMMUNITY OF KLUKWAN.

Klukwan interpreted in Tlingit means 'always a community.' We share our subsistence foods with one another.

It's more than food, it's the ingestion of the spirit of that animal, also, or that fish (WOODROW MORRISON) and also those fish and the other game, are a gift that was given to us. And therefore, when any person would come into my house, and I had fish, I had meat, whoever came in was also entitled to that. And so we give to each other. People never kill anything, they go out and they catch a moose, they don't go out and kill a moose. They catch some birds. The animal has a spirit of its own. And many times, the old way, people would say to that animal, after they had shot it, "I thank you for giving up your spirit so that my family could live." And then they would treat it with respect.

THE GWITCHEN PEOPLE OF THE YUKON FLATS PAY THE SAME RESPECT TO THE CARIBOU.

The Caribou, as my people believe for many years, is part of the Gwitchen people religion. (JONATHON SOLOMON) We eat it, we use their parts of their fur and stuff for our own clothing. But we also believe that the population of the Gwitchen people in the Yukon Flat goes up and down with the numbers of these animals... This is why it is very important to us when we talk about the Porcupine Caribou Herd, that it be protected for our generations to come, because this is our belief... We are not a visitor upon these lands, we are in the same ecosystem as the animal on these lands.

WHETHER IT'S CARIBOU, SEAL OR SALMON, PEOPLE ARE ALWAYS AWARE OF FUTURE NEEDS. BONNIE MCCORD OF TYONEK,

The people down here know how much fish they have to take for the year to carry themselves thru the winter...we've been taught that by our elders. So we never take any more from the sea or the land than what we can use.

FURTHER NORTH, ON THE KOYUKUK RIVER, WILSON SAM OF HUSLIA USES THE SAME PRINCIPLES WHEN HE HUNTS.

My parents always used to say--make sure you try to get the male, if you're going to go out and get a bird, don't try to get the female because they take care of the eggs and then they have the young ones. So make sure you get the male. That's the way you preserve your country.

We hold in trust for our children (ANTOINETTE HALMER) the use of mother earth's garden. If we do not tend to our garden with nurturing strokes, she will not produce for our survival. That is the supreme law.

NURTURING STROKES ARE NO LONGER ENOUGH. FEW PEOPLE MAKE THEIR LIVING EXCLUSIVELY FROM THE LAND. THE LAND BASED ECONOMY IS NOW MIXED WITH THE CASH ECONOMY. IT TAKES SEVERAL HUNDRED DOLLARS TO PAY FOR TRANSPORTATION, AMMUNITION, MOTORBOATS AND OTHER SUPPLIES, WHETHER THE HUNT IS SUCCESSFUL OR NOT. BUT MONEY IS HARD TO COME BY IN MOST VILLAGES, BECAUSE THERE ARE FEW REGULAR JOBS. THE VILLAGE SCHOOL, POST OFFICE, STORE, AND SOMETIMES LOCAL GOVERNMENT EMPLOY A HANDFUL OF

PEOPLE. FISHING, FIREFIGHTING, AND OCCASIONAL CONSTRUCTION PROVIDE TEMPORARY CASH-PAYING JOBS. PEOPLE STILL DEPEND ON THE LAND FOR MANY BASIC NEEDS. SHIELA AGA THEIRIAULT LIVES ON KODIAK ISLAND.

Our economic stability in villages is very bad. The unemployment is extremely high, there's no place else in the United States and maybe in the world where you are going to find such unemployment statistics as you will in villages. I look out here in the bays we go out there and we fish, we go out among the bays and we hunt. We get our food there. We depend on the food that we get for ourselves.

ANUSKA PETLA ESTIMATED THE CASH VALUE OF THAT FOOD. SHE PRESENTED HER FINDINGS TO JUDGE THOMAS BERGER WHEN THE ALASKA NATIVE REVIEW COMMISSION VISITED THE VILLAGE OF NEW STUYAHOK.

All the meat and all the fish that we eat every year per household, it would come to about six to seven thousand dollars. I know most of us we can't afford it because there's no jobs in the villages for everyone

Are hunting and fishing important here? (ANDREW KELLY OF EMMONAK) That question shouldn't even be asked, without hunting and fishing we cannot live, we cannot expect to feed our families.

VILLAGE STORES AND SOCIAL SERVICES HAVE PROVIDED A FEW BASIC NEEDS THAT USED TO COME ONLY FROM THE LAND. THERE ARE FEWER SUBSISTENCE ACTIVITIES IN SOME VILLAGES. THESE DEVELOPMENTS HAVE NOT REDUCED THE IMPORTANCE OF SUBSISTENCE ACCORDING TO JUDGE THOMAS BERGER.

Even in villages where subsistence activities appear to have declined people speak of subsistence with the same passion as they do in villages where it is flourishing. In Alaska, native societies, large and small were erected on a subsistence base. Today subsistence gives continuity to village life, and Alaska natives still regard subsistence as their birthright. Even those not engaged in subsistence regard it as essential to their future wellbeing.

URBAN DWELLERS LIVING IN A CASH-BASED ECONOMY, MIGHT SUPPLEMENT THEIR STORE-BOUGHT FOODS WITH FRESH CAUGHT FISH AND GAME. IT IS THE OTHER WAY AROUND FOR THOSE WHO LIVE MAINLY IN A LAND-BASED ECONOMY, WHERE CASH IS A SUPPLEMENT. ACCORDING TO ANTOINETTE HALMER OF CRAIG, SUBSISTENCE LIVING IS NOT A MATTER OF CHOICE. IT IS A NECESSITY.

Living off the land and sea is not only traditional, but owing to the scarcity of cash income, it is required for our families to survive.

#### GLADYS DERENDOFF OF HUSLIA

I'd like to quote this one Eskimo lady. She said if we ever lose our subsistence ways, the older people, they wouldn't be able to eat store-bought food. They're so used to living on seal-oil. She said that if they don't get to have seal oil and things like that, you know, they'd probably die early or something. She also said that seal oil is the blood of their life, she said.

CONGRESS ABOLISHED SUBSISTENCE RIGHTS IN 1971, AS A PART OF ANCSA, THE ALASKA NATIVE CLAIMS SETTLEMENT ACT. IN 1980, CONGRESS PASSED A LANDS BILL, CALLED ANILCA, THAT APPEARED TO RESTORE SOME OF THOSE RIGHTS. BUT THE STATE MAINTAINS CONTROL OF MOST FISH AND WILDLIFE SPECIES. PERMITS ARE REQUIRED IN AREAS WHERE PEOPLE ONCE HUNTED FREELY. THE LAND CLAIMS ACT ALSO REDUCED THE LAND AREA TO ABOUT ONE-TENTH OF THE TRADITIONAL SIZE. ANCSA GAVE THOSE LANDS TO CORPORATIONS. ALTHOUGH ALASKA NATIVES CAN HUNT EXCLUSIVELY ON THIS CORPORATE PROPERTY, THE STATE OF ALASKA STILL SETS THE SEASONS AND THE LIMITS.

Those laws,(JUDGE BERGER) coming from a different tradition, have the effect of undermining the Native society founded on subsistence, because those laws don't take into account the fact that there is a whole web of moral, and spiritual, and economic relationships founded on subsistence that a whole society is dependent on. So it seems to me that the issue of subsistence is not one of competition for resources, not simply a question of allocation of resources, it is rather an issue of a different order of magnitude: the survival of village Alaska.

BERGER HAS URGED NATIVE PEOPLES TO TAKE CONTROL OF SUBSISTENCE RESOURCES AS MUCH AS POSSIBLE. TRADITIONAL LAWS COULD THEN BE IMPLEMENTED. FORMER DIRECTOR OF THE ALASKA ESKIMO WHALING COMMISSION MARIE ADAMS.

There are traditional subsistence laws within the communities. They have their own laws, basically their own structure on how they hunt, what is acceptable, what is not. What's been happening the last several years, several decades, is with the new federal government, the state government coming in and basically imposing laws without clearly understanding or going

out to see what is out there has created a lot of confusion. Many times we had to clarify what is meant by which law.

STATE SUBSISTENCE LAWS HAVE ALREADY BEEN TESTED. A STATEWIDE VOTE PRESERVED RURAL PRIORITIES FOR FISH AND GAME IN 1982, BUT NEW COURT CHALLENGES AND PRESSURE FROM URBAN HUNTERS IS AGAIN FORCING THE SUBSISTENCE WAY OF LIFE INTO ANOTHER HEATED POLITICAL BATTLE. KOTZEBUE HIGH SCHOOL STUDENT BOBBY WELLS ...

I remember our fathers, our forefathers, how they survived in this world, in strong winds, in cold temperatures, because they knew how to survive. They were taught to share, they were taught to help each other, for thousands of years. And today we are in this same situation, but this time we're not surviving against nature. We're in a time where we're searching, we're fighting to survive among different people in this Western civilization.

WHEN THE UNITED STATES TRIED TO STOP BOWHEAD WHALE HUNTING IN 1977 WHALING CAPTAINS IN NORTHERN ALASKA FORMED THE ALASKA ESKIMO WHALING COMMISSION. MARIE ADAMS RECALLS WHAT HAPPENED IN BARROW.

People were deeply hurt, when they were asked to stop whaling, it was incomprehensible. I remember listening to the meeting and listening to it, people were very upset. Men and women were all crying after the whaling commission got together. One of the things that we ran across were people did not believe that we were still whaling traditionally, the way we were and still carrying on the traditions that we did.

THE ALASKA ESKIMO WHALING COMMISSION HAS FINALLY PREVAILED. THEIR MANAGEMENT PLAN IS NOW RECOGNIZED BY THE U.S. GOVERNMENT AND SEVERAL FOREIGN NATIONS. ALASKA NATIVES HAVE ALSO CREATED MANAGEMENT PLANS TO REGULATE CARIBOU, WALRUS AND MIGRATORY BIRDS. LATER IN THIS SERIES WE LOOK AT HOW PEOPLE VIEW THE STATE, FEDERAL AND TRADITIONAL LAWS THAT AFFECT SUBSISTENCE; THE POLITICAL CHALLENGES, AND WHAT ALASKA NATIVES ARE DOING TO MANAGE SUBSISTENCE RESOURCES. PLEASE JOIN US. FOR HOLDING OUR GROUND, THIS IS ADELINE RABOFF.

THIS PROGRAM WAS PRODUCED BY JIM SYKES, WRITTEN BY JEFF BERLINER, EDITED AND RESEARCHED BY SUE BURRUS. MARY KANCEWICK IS OUR SCRIPT CONSULTANT. SPECIAL THANKS TO THE COMMUNITY OF GAMBELL FOR DANCING AND SINGING, AND ALSO SPECIAL THANKS TO THE INUIT CIRCUMPOLAR

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Jim Sykes  
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HOLDING OUR GROUND

"SUBSISTENCE AND THE LAW"

(Part 8 of 15)

[Jasper Joseph] We do not put the limit on how many cattle or how many cows or how much food should outsiders have. We do not make any regulations on that. When we try to hunt and provide ourselves and feed our family, our children, somebody comes around and tells us, "If you catch birds, if you catch moose, or if you gather food, we will put you in jail." We have been promised punishment for trying to survive.

[NARRATOR] THE SUBSISTENCE WAY OF LIFE CONTINUES TO BE VITAL TO VILLAGES ALL OVER ALASKA. MONUMENTAL CHANGES IN LAW CAME WITH ALASKA STATEHOOD. AND THEN IN 1971, CONGRESS PASSED ANCSA, THE ALASKA NATIVE CLAIMS SETTLEMENT ACT, WITH MORE REGULATIONS. NOW ALASKA'S NATIVE PEOPLES ARE TRYING TO DEVELOP LAWS THAT MEET THEIR NEEDS. THIS IS HOLDING OUR GROUND.

[Peter Goll, Juneau]

The people would go out to a certain area, they would harvest the abalone. In would come the divers from the commercial vessels and they would move into this area and clean it out. The people went to the Department of Fish and Game and they said "We are going to our traditional area to get abalone and we are being com- peted with unfairly by people with more elaborate equipment", and they were told to get some diving equipment themselves. Well, the solution isn't to get some diving equipment themselves, the solu- tion is to develop a legal mechanism to protect the local indi- genous use from outside intervention, if you will, or outside ex- ploitation. And the issue that's raised is, whose resource is it? Is it the public's resource? Is it the States resource? Is it the Nation's resource?"

NATIVE PEOPLES NEVER HAD TO CONSIDER SUCH QUESTIONS UNTIL RUSSIA SOLD ALASKA TO THE UNITED STATES. THERE IS PLENTY OF EVI- DENCE SUGGESTING THE RUSSIANS THOUGHT THEY WERE SELLING ONLY TRADING RIGHTS AND A FEW FORTS. THE AMERICANS THOUGHT THEY BOUGHT ALL OF ALASKA AND ITS RESOURCES. TOM LONNER.

With the coming of American dominion over the land, and without the consent or knowledge of Alaska Native people, their wealth had been usurped by the American government. Lands, waters, fish, wildlife, minerals, and forests all passed into government hands and were converted into common property resources, that is, wealth held by the government on behalf of all Americans. Over the last two centuries, millions of immigrants from Europe and elsewhere have come to America and were awarded citizenship. To my knowledge, none have been required to surrender at their point of entry into the country, all of their wealth to the government for common use in order to obtain citizenship. That seems to me to be the unwritten contract: an exchange of great wealth for simple citizenship.

AS MORE IMMIGRANTS CAME TO ALASKA, LANDS WERE USED LESS AND LESS FREELY BY THE NATIVE PEOPLES. THE MOST DRAMATIC CHANGES CAME WITH STATEHOOD IN 1959. A YEAR LATER, THE STATE TOOK CONTROL OF FISH AND GAME MANAGEMENT FROM THE FEDERAL GOVERNMENT. IN 1971, CONGRESS PASSED ANCSA, THE ALASKA NATIVE CLAIMS SETTLEMENT ACT. THAT ACT EXTINGUISHED ABORIGINAL LAND TITLE ALONG WITH ABORIGINAL HUNTING AND FISHING RIGHTS. ALASKA NATIVES WERE LEFT WITH ABOUT ONE-TENTH OF THE LAND THEY HAD TRADITIONALLY USED AND OCCUPIED. BUT THE LAND WAS NOT GIVEN TO INDIVIDUALS OR TRIBAL GROUPS, IT IS HELD INSTEAD BY PROFIT-MAKING NATIVE CORPORATIONS, CREATED BY THE CLAIMS ACT. TWO MAJOR FORCES ACCELERATED THE LAND CLAIMS SETTLEMENT ACT. ALASKA WANTED TO SELECT STATEHOOD LANDS AND OIL COMPANIES WANTED NORTH SLOPE OIL. THERE WAS A GREAT DEAL OF PRESSURE TO SETTLE.

The purchasing party, the United States was interested primarily in extracting resources from the land, not settling on the land. TOM LONNER. The compensated party, Alaska Natives, was relinquishing rights to the rewards of that extraction, but did not intend to relinquish rights to chase and harvest the wild resources which traversed or inhabited all the lands.

NATIVE CORPORATION LANDS ARE NOW TREATED AS PRIVATE PROPERTY IN THE EYES OF THE LAW. THE CORPORATION DECIDES WHAT HAPPENS ON NATIVE LANDS. BETTY THOMAS-DENNY OF TANACROSS ...Because of the land claim I think it restricted the land use to many of our people. I know that currently people can't trap, hunt, fish, or even pick berries anywhere because they have this fear of trespassing.

We cannot live without our land, without trapping, without fishing, without hunting. KATHERINE ATTLA OF HUSLIA. If they ever tell us where not to go or where not to trap that's

when it's it's going to get tough, because we've been living like our ancestors all these years and if we cannot do that no more it's going to be a lot of unhappy people, unhealthy mostly.

MARIE ADAMS OF BARROW ... There are traditional subsistence laws within the community and they have their own laws, basically their own structure, and how they hunt, what is acceptable, what is not. And what's been happening the last several years is with the new federal government, the state government coming in and basically imposing laws without clearly understanding or going out to see what is out there has created a lot of confusion.

SUBSISTENCE IS MORE THAN HUNTING, FISHING, AND GATHERING. IT IS THE WORK OF MANY PEOPLE IN THE VILLAGES, AND IT CARRIES WITH IT CULTURAL AND SPIRITUAL TRADITIONS. CHIEF JONATHON SOLOMAN OF FORT YUKON:

We are not a visitor upon these lands, we are in the same ecosystem as the animal on these lands. The caribou is part of the Gwitchen people religion, but we also believe that the population of the Gwitchen people in the Yukon Flat goes up and down with the numbers of these animals. This is why it is very important to us when we talk about the Porcupine Caribou herd that it be protected for our generations to come, because this is our belief.

WHEN THE CLAIMS ACT EXTINGUISHED SUBSISTENCE HUNTING AND FISHING RIGHTS, THE STATE WAS LEFT TO HANDLE IT. ALASKA NATIVES WORKED VERY HARD TO GET SUBSISTENCE ACTIVITIES RECOGNIZED BY STATE AND FEDERAL LAW. CALEB PUNGOWIYI OF NOME.

This extinguishment should not have been accepted. It is surprising though, that after the Alaska Native Claims Settlement Act there were several acts that were passed by the Congress that either provided for protection or provided for provisions of subsistence hunting and fishing for Alaska Natives.

PUNGOWIYI REFERS TO ANILCA, THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT, PASSED BY CONGRESS IN 1980. IT DEFINES SUBSISTENCE USERS AS RURAL RESIDENTS AND DEMANDS THEY GET PRIORITY. THE STATE OF ALASKA KNEW ANILCA WAS COMING, AND IN 1978, THE STATE LEGISLATURE PASSED A SUBSISTENCE PRIORITY ACT WHICH GAVE SUBSISTENCE USERS PREFERENCE IN TIMES OF SCARCITY. ASSISTANT ATTORNEY GENERAL LARRI SPENGLER.

Before 1978, as long as you caught it and ate it, basically, it was subsistence, it was personal use. But now subsistence use was defined as customary and traditional use.

THE STATE HAS TROUBLE DEFINING CUSTOMARY AND TRADITIONAL USE, THE LANGUAGE USED IN THE ANILCA LAW. TOM LONNER WAS THE FIRST TO HEAD THE ALASKA FISH AND GAME SUBSISTENCE DIVISION, WHEN IT WAS CREATED IN 1979.

While it talks about customary and traditional uses, it very rapidly reduces those to economic uses only, and then proceeds to limit those.

LONNER'S SUBSISTENCE DIVISION CREATED REGULATIONS TO DEFINE SUBSISTENCE CRITERIA, BASICALLY A LONG TERM PATTERN OF CONSISTENT RESOURCE USE NEAR THE USERS HOME, TRADITIONAL METHODS OF HANDLING AND PRESERVING, ALONG WITH SHARING THE RESOURCE AND THE TRADITIONAL KNOWLEDGE HANDED DOWN THROUGH GENERATIONS.

We were trying to get back into patterns of tradition and custom and so on and get off of this purely economic mode that the State had adopted in its very protective subsistence law. Laws that were used to control subsistence prior to the State's subsistence law were done essentially without any specific recognition for subsistence and what would be meant by customary and traditional use, or just the basic necessities of life in rural Alaska.

SOME URBAN HUNTERS DISAGREED WITH THE STATE REGULATIONS. IN 1982, AN INITIATIVE TO REPEAL THE STATE SUBSISTENCE LAW WAS BROUGHT BEFORE ALASKA VOTERS AND SOUNDLY REJECTED. STATE REGULATIONS REMAINED INTACT. SOME URBAN SUBSISTENCE USERS HAD ALREADY BEEN ACCOMMODATED UNDER THE EXISTING RULES, BUT IN 1985, THE STATE'S HIGHEST COURT BROADENED THE SUBSISTENCE USE CATEGORY TO MORE URBAN RESIDENTS. THAT DECISION DID NOT COMPLY WITH THE FEDERAL ANILCA LAW, WHICH CLEARLY STATES SUBSISTENCE IS DONE BY RURAL RESIDENTS. STATE SENATOR MITCH ABOOD MADE SURE NO ACTION WAS TAKEN IN 1985 ON NINE SUBSISTENCE BILLS INTENDED TO CORRECT THE LAW.

Yes, I guess you could call it my fault. I said those bills are going to stay right in this committee until someone will come to their senses and come together from all walks of this thing, this problem, and sit down and discuss it and each one give a little bit.

IN THE ABSENCE OF A NEW LAW EMERGENCY REGULATIONS WERE PUT IN PLACE BY THE FISH AND GAME BOARDS, REGULATIONS THAT EMPHASIZE HISTORICAL USE AND LOCAL RESIDENCE. SOME URBAN HUNTERS FELT SLIGHTED BY THOSE

EMERGENCY REGULATIONS, AND RURAL SUBSISTENCE USERS FEARED INCREASED COMPETITION. ASSISTANT SECRETARY OF THE INTERIOR, WILLIAM HORN, NOTIFIED THE GOVERNOR THAT ALASKA'S OUT OF COMPLIANCE WITH FEDERAL LAW REGULATING SUBSISTENCE BECAUSE IT HAS BEEN EXTENDED TO URBAN HUNTERS AND FISHERS. UNLESS THE STATE COMES BACK INTO COMPLIANCE BY JUNE 1, 1986, THE FEDERAL GOVERNMENT WILL TAKE OVER FISH AND GAME MANAGEMENT. SENATOR ABOOD SAYS HE WILL INTRODUCE A SUBSISTENCE BILL EARLY IN 1986 TO COMPLY WITH THE FEDERAL LAW.

CUSTOMARY AND TRADITIONAL USE MUST BE DEFINED BY THE STATE, ALONG WITH A SYSTEM THAT RECOGNIZES DIFFERENT SITUATIONS. SUBSISTENCE DIVISION CHIEF BEHNKE SAYS THAT SUBSISTENCE USERS CAN BE PROTECTED ON A PRIORITY BASIS AND THERE WILL BE PLENTY OF OPPORTUNITY FOR OTHER HUNTERS AND FISHERS AS WELL. SOME URBAN HUNTERS DISAGREE AND SAY THEY WILL TAKE THEIR CASE OF EQUAL ACCESS TO STATE AND FEDERAL COURTS. IN SEVERAL OTHER STATES WHERE INDIANS LOST SUBSISTENCE RIGHTS, THEY HAVE BEEN REINSTATED.

STATE, FEDERAL, AND CORPORATION RULES DON'T ALWAYS MAKE SENSE TO PEOPLE LIVING IN THE VILLAGES. WHILE MOST NON-NATIVE HUNTERS ARE ACCUSTOMED TO GETTING A PERMIT FOR ONE ANIMAL, TRADITIONAL CUSTOMS ARE QUITE DIFFERENT. DARRYL TRIGG OF NOME.

It has always been our custom to allow the good hunters to catch more than the current limits and share with people who are berry pickers or green pickers or fishermen, who in turn would share their crop and catch with the hunters. The lands that were to be ours are now controlled by a Board of Directors with restrictions on the use of that land by about every Federal and State agency that exists. Now, they don't seem to recall that the Eskimo has lived and survived up here for thousands of years without scarring the land. Before they came with their laws and regulations, there was always a good balance of game to feed our people. It is proven that the Eskimo has never hunted themselves out of game, and probably never will.

Subsistence is a living, breathing, dynamic human activity. TOM LONNER. Regulatory regimes tend to place the steel web of exactness on the activity, in the form of exact definitions, exact locations, exact numbers. This exactness cannot respond to the ever-changing human needs or ever-changing environmental conditions which comprise subsistence.

THE ARBITRARY SETTING OF SEASONS BY THE STATE IS SOMETIMES SEEN AS INAPPROPRIATE. THE TRADITIONAL REASON FOR HUNTING AT A CERTAIN TIME IS

DIFFERENT THAN THE STATE OR FEDERAL GOVERNMENTS REASON FOR A SEASON.  
JIMMY WALKER OF HOLY CROSS.

The fish and moose we eat, that's pretty much our diet, like up north they got to have their whale. Same thing you know, that's our regular diet. If we're restricted to hunting seasons, you know, and that's making it hard on the village. We'd like to see more local control. For the elders and middle aged, it's really a problem. Some went out and got arrested when they had nothing, nothing to eat. They were just scrounging for the next meal. What are you going to do? You going to leave your family hungry when there's a big healthy moose running by and somebody else tell you what you can eat, can't eat, when to eat that meat? Our culture is not based on beef. It's not based on corn. SHELDON KATCHETAG OF UNALAKLEET. It's based on those resources which have gotten us from primitive times to where we are today. And even now, in this very modern age, we still derive approximately 70% of the food we need from the land and not from the supermarket.

THE CASH ECONOMY IS NOW PART OF REMOTE ALASKA, BUT TO A LIMITED DEGREE. ELDERS TEND TO DEPEND MORE ON SUBSISTENCE THAN YOUNGER PEOPLE WHO ARE MORE ACQUAINTED WITH WESTERN FOODS. FOOD IS ONLY ONE PART OF SUBSISTENCE LIVING AFFECTED BY RELATIVELY NEW REGULATIONS. ELLIE STICKMAN OF NULATO.

Before the land claims came, my people before me used to go out into the woods and get whatever they want from the land for free. It's there to use, the wood, the fish in the river, the moose, the berries, tea, everything. It was there to be used. And now the way it is, we have to find out whose land it is first before we can do anything, before we can go out and get logs, before we can even go out and get wood to burn for our winter heat.

JUDGE THOMAS BERGER TRAVELLED TO VILLAGES IN ALL REGIONS OF ALASKA TO ASK PEOPLE ABOUT THE EFFECTS OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT. BERGER RECOMMENDED THAT TRIBAL GOVERNMENTS SHOULD HAVE EXCLUSIVE JURISDICTION OVER FISH AND WILDLIFE TAKEN ON NATIVE LANDS, AND SHARE MANAGEMENT WITH THE FEDERAL AND STATE GOVERNMENTS ON OTHER LANDS.

In Alaska, Native societies large and small were erected on a subsistence base. Today subsistence gives continuity to village life, and given the limited opportunities for wage or salaried employment in rural Alaska, it is seen to be the key to the survival of village life in village society. Although ANCSA extinguished aboriginal hunting and fishing rights, Alaska

natives still regard subsistence as their birthright. Even those not engaged in subsistence regard it as essential to their future well-being.

We're really concerned about our lifestyle in the villages, due to no development and jobs for our young people, (JIMMY WALKER) in this immediate area, it looks pretty glum. So it's, getting back to the issue of subsistence, we've got to have that, otherwise we're not going to survive.

THROUGHOUT THE WORLD, NATIONS HAVE TAKEN STRONG MEASURES TO PROTECT THE SUBSISTENCE LIFESTYLES OF INDIGENOUS PEOPLES. CANADA HAS GIVEN EXCLUSIVE RIGHTS TO FUR-BEARING ANIMALS AND SHARED JURISDICTION OF MOOSE AND CARIBOU TO THE NATIVES OF QUEBEC AND THE WESTERN ARCTIC. IN ALASKA, NATIVES HAVE TAKEN THE LEAD TO PROTECT SEVERAL SPECIES THAT ARE USED FOR SUBSISTENCE. IN 1977, THE INTERNATIONAL WHALING COMMISSION SUPPORTED BY THE UNITED STATES GOVERNMENT, BANNED BOWHEAD WHALING. MARIE ADAMS.

When they were asked to stop whaling, it was incomprehensible, and people were deeply hurt.

BURTON REXFORD IS A BARROW WHALING CAPTAIN ...In spite of the Native people's knowledge of the great bowhead whale, the Eskimos have been repeatedly put on a chopping block by the world scientists and regulatory government agencies.

ESKIMO WHALING CAPTAINS FORMED ALASKA ESKIMO WHALING COMMISSION AND CONVINCED THE U.S. GOVERNMENT THEY SHOULD HAVE SOME WHALES. A STRINGENT QUOTA SYSTEM WAS DEvised BY THE INTERNATIONAL WHALING COMMISSION. IN 1981, THE FEDERAL GOVERNMENT SIGNED OVER MANAGEMENT AUTHORITY TO THE ALASKA ESKIMO WHALING COMMISSION. THE NORTH SLOPE BOROUGH SET UP A SCIENTIFIC ADVISORY COMMITTEE AND HELPED COORDINATE RESEARCH ON THE BOWHEAD WHALE. IN 1985, THE INTERNATIONAL WHALING COMMISSION RECOGNIZED THE WHALING CAPTAINS REQUEST FOR AN ENLARGED BOWHEAD QUOTA.

IN 1975, OIL DEVELOPMENT ON ALASKA'S NORTH SLOPE BROUGHT NATIVE PEOPLES TOGETHER ON BOTH SIDES OF THE ALASKA-CANADA BORDER. THE ALASKANS NEGOTIATED A POSITION TO SECURE THE ARCTIC WILDLIFE RANGE, AND THEN GOT TOGETHER AGAIN WITH THE CANADIANS FROM EIGHT VILLAGES IN 1982. JONATHON SOLOMAN.

Indigenous people met in Arctic Village and we formed what is known today as the International Porcupine Caribou Commission. And we filed it with the United Nations. We did not file it with the United States, we filed it with the United Nations under their agreement in Stockholm.

VICTOR MITANDER IS A LAND CLAIMS NEGOTIATOR FOR THE COUNCIL OF YUKON INDIANS.

We want to ensure that there is cooperation in terms of the management of the herd and its habitat, and to first of all insure that there is conservation of the herd itself with the view of providing ongoing subsistence needs of the Native users. Secondly is to provide for the Native users to participate in the Porcupine Caribou management. Thirdly is to recognize and protect certain harvesting rights of the Porcupine Caribou for the Native users, while at the same time acknowledging that there are other users, non-Native users of the herd itself. Also to provide communication amongst governments and government to Native users and amongst Native user communities.

THE STATE OF ALASKA HAS WORKED DIRECTELY WITH THE INTERNATIONAL PORCUPINE CARIBOU COMMISSION AND IT LED TO A MEETING WITH THE ALASKA GOVERNOR IN OCTOBER OF 1983. JONATHON SOLOMAN.

The governor of the state of Alaska called us into his office and said "You guys been working on this caribou treaty for many years" he says, "It's about time we move on with it" and he formed a task force. And today with the Fish and Game of State of Alaska we have worked out the wording.

THE REMAINING STEPS WILL BE WORKED OUT WITH THE U.S. FISH AND WILDLIFE SERVICE, AND THEN THE U.S. STATE DEPARTMENT WILL NEGOTIATE THE TREATY WITH THE CANADIAN GOVERNMENT.

IN 1984, NATIVES LIVING IN THE YUKON-KUSKOKWIM DELTA DEVELOPED INTERNATIONAL AGREEMENTS TO PROTECT GEESE POPULATIONS. HAROLD SPARCK HEADS NUNAM KITLUTSISTI, A NONPROFIT CORPORATION WHICH REPRESENTS NATURAL RESOURCE ISSUES FOR 56 VILLAGES IN SOUTHWEST ALASKA.

The federal Fish and Wildlife Service showed up and said, "the sky is falling, the sky is falling" and the Native people of the Yukon-Kuskokwim Delta are responsible for it, solely responsible for the loss of all these geese. The first thing that came out of several of the elders

mouths was "Wait a minute, they're talking about these animals that we eat. Now, when we were young, when these animals were strong in numbers, the little birds that fly around like clouds were very strong too. Nobody eats them, how come they are very few in number too? They go to the very same places that these big birds go. And maybe what these guys are saying is that they're looking for somebody to blame all this problem on. So our concern is number one, we gotta make sure we're not stuck with the onus of being responsible for this whole thing, but number two, we have to watch out for our children.

THE VILLAGERS DISCOVERED THERE WERE PROBLEMS IN DIFFERENT PARTS OF THE FLYWAY.

[Harold Sparck] We linked take in the Yukon Delta to conversion of wetlands in the Central Valley of California to the take by gringos out of Los Angeles going down into Mexico and hunting without any enforcement whatsoever.

HELICOPTER INTERFERENCE WAS STOPPED AT ONE FEEDING GROUND IN ALASKA, CALIFORNIA BOUGHT BACK WETLANDS IN CALIFORNIA'S CENTRAL VALLEY, AND THE MEXICAN GOVERNMENT AGREED THEY WOULD PAY ATTENTION TO HABITATS AND RECORD THE TAKE OF WATERFOWL THERE.

[Harold Sparck] Our villages voluntarily agreed to lay down their guns and to stop taking eggs, in exchange for California reducing their take by 50 per cent. So we went around the federal government in order to get this taker-to-taker agreement, and then California supported our habitat concerns. Lo and behold, our villages complied, California's complied and again the guiding principle was birds at the turn of the century, that's what they wanted, our villages wanted.

PEOPLE ARE WATCHING CLOSELY TO SEE IF THIS TAKER-TO-TAKER AGREEMENT WILL ALLOW GEESE POPULATIONS TO INCREASE FOR PEOPLE WHO DEPEND ON THEM. SUBSISTENCE USERS SAY THAT STATE AND FEDERAL AUTHORITIES SHOULD RELY MORE ON THEIR KNOWLEDGE AND EXPERIENCE IN GAME MANAGEMENT. WOODROW MORRISON JR. OF HYDABURG.

The people's lives are governed by these natural cycles, that seasons do change, sometimes you have an early winter here in Anchorage, sometimes you don't. Well, the animals' lives are geared to those changes, rather than to dates on the calendar. And if people are going to be able to live in a time-honored way,

and be able to pay respect to their relatives in a proper way, then they could be able to follow those cycles.

WHILE THE STATE SUBSISTENCE LAW IS CURRENTLY IN TURMOIL, THERE ARE SUCCESS STORIES TO BE FOUND WHERE SUBSISTENCE USERS HAVE MADE THEIR CASE TO THE STATE GAME BOARD. FRED BISMARCK IS CHAIR- MAN OF THE FISH AND GAME BOARD FROM TYONEK.

This year, I spent 21 days at the hearings and we finally got our winter moose hunt, but the winter moose hunt depends on the snow. We have a different herd of moose that live up on the hills. They don't come off the hills until there is heavy snow. The board made it flexible for us. If the heavy snow came in November, they could of had their season in November, but if the snow don't come 'til January, then we got the last fifteen days in January for the January moose hunt.

NON-SUBSISTENCE HUNTERS HAVE ACCESS TO THE SAME MOOSE DURING A REGULAR FALL SEASON. LOCAL CONTROL OF RESOURCES IS IMPORTANT TO PEOPLE WHEREVER THEY LIVE. NEXT WEEK A LOOK AT HOW ALASKA NATIVE PEOPLES EXERT THOSE GOVERNMENTAL POWERS IN A PROGRAM CALLED SOVEREIGNTY: HOW IT WORKS. PLEASE JOIN US. FOR HOLDING OUR GROUND, THIS IS ADELINE RABOFF.

[PRODUCTION AND FUNDING CREDITS]

THIS PROGRAM IS PRODUCED BY JIM SYKES, WRITTEN BY BILL DUBAY AND SUE BURRUS. ALSO EDITED AND RESEARCHED BY SUE BURRUS. SPECIAL THANKS TO THE COMMUNITY OF GAMBELL FOR DANCING, SINGING, AND DRUMMING. AND ALSO TO THE INUIT CIRCUMPOLAR CONFERENCE. FOR MORE INFORMATION ABOUT THIS AND OTHER PROGRAMS IN THE SERIES, WRITE TO WESTERN MEDIA CONCEPTS, P.O. BOX 215, ANCHORAGE, ALASKA 99510. HOLDING OUR GROUND IS A PRODUCTION OF WESTERN MEDIA CONCEPTS WHICH IS SOLELY RESPONSIBLE FOR THE CONTENT.

FUNDING FOR HOLDING OUR GROUND IS PROVIDED BY THE ALASKA HUMANITIES FORUM, THE NATIONAL ENDOWMENT FOR THE HUMANITIES, RURAL ALASKA COMMUNITY ACTION PROGRAM, THE NORTH SLOPE BOROUGH, AND ZIONTZ-PIRTLE LAW FIRM.

[Western Media Concepts no longer exists. Please Contact TapeAlaska, P.O. Box 240001, Anchorage, AK 99524-0001 for information about Holding Our Ground.]

Noel & Jean Woods  
Mar. 1, 1998

Ph: (907) 745-3027  
Fax: (907) 745-5019

To: Scott Ogan  
Fax: (907) 465-3265

Re: H.B. 406

In spite of the Anchorage News Sunday article, we agree that the great majority favored a solution that keeps the Feds out of Alaska.

Thank you for bringing forward a bill to work with that intends to do that very thing. All intelligent people in this area are very concerned we keep equal access to our natural resources in our constitution.

As changes occur to your draft of H.B. 406 please keep us up-to-date.

We appreciate very much your work on this.

Noel

Jean Woods

copy/kathleen

Dec 3 1948  
Dr.

THOMAS PITZKE  
1408 HYDER ST. APT.  
ANCHORAGE, AK. 99501.

Dear Representative Egan,

First of all I would like to thank you for your stand taken on the subsistence issue in your committee, and the sell-out some members of the legislature want to take to the Federal Government. The elected government officials of Alaska take an oath to uphold the Constitution of the State and anyone who doesn't support the lawsuit against the Federal Government is violating his or her oath to defend it. (Constitution). Any kind of preference should only be set on need and no other criteria because how about the "Natives" that live in the tundra areas, or the many poor of all ethnic stripes that live in the big cities as well. Mr. Sweetser are some folks that live out in the "Bush" what are better off financially than

(2)

So why should I be penalized  
for living in Anchorage etc.  
The only way I would consider  
supporting some kind of preference  
is if the Rural Residents hunted  
and did fishing the Old-fashioned  
way before the White-man came.  
With Spears, Bow, Arrow and by  
Sled Dog. Because you can't have  
one foot set in the Rural Lifestyle  
and one in the modern world. You  
can't have it both ways.

Sincerely Yours,

Thomas J. The

Testimony from Mary Bishop, 1555 Gus's Grind, Fairbanks, AK 99709 – 907-455-6151  
Thursday, March 5, 1998.

To the House Resources Committee Re HB406 Version P

I'm sorry I could not stay to testify. However I do want to leave you with these comments before your final committee deliberations. Even though I have only had about two hours to contemplate this bill, I've spent two decades working with the issue.

1. The bill looks like an acceptable vehicle for working toward an Alaskan solution. I particularly feel it is important to have a public vote and I'm pleased that addition has been made.
2. Your bill appears to provide what Alaskans probably wanted and thought they had all along:
  - a preference for resource dependent people
  - in times of shortage.
  -

Many people insist that is what ANILCA gives us right now – but most of us here in this room know differently – the federal law gives ALL rural residents a strong priority for customary and traditional use ALL THE TIME.

Back when the state was in compliance, one village had a 6 month moose and 8 month caribou season. The federal judge in this 1989 Bobby case, ruled that was not consistent with the <sup>original</sup> law. He required the Board of Game to submit new regulations. The judge finally allowed almost year round, no bag limit seasons because – (quote) "Need is not the standard. Again, it matters not that other food sources may be available... The standard is customary and traditional use of game". (unquote) And customary and traditional use meant opportunistic year round hunting.

We cannot continue to have a law that allows that type of judicial interpretation.

In summary, I like the direction, I like the public vote. It would be okay by me to add a refutable presumption for all members of very small communities that have limited job opportunity to have the preference. This was done in the Hickel bill – but it gave it to too many larger communities.

I have problems with the idea of Regional Boards and the "eat-it-where-you-shoot-it" provisions – I've got to think a lot more about that.

It may not be necessary to change the Subsistence Division – although you might consider putting that division in Community and Regional Affairs rather than in the Fish & Game Department. Senator Lincoln often says, and I agree with her, that subsistence is far more than just hunting and fishing. I can't exactly say what subsistence is – I just know that the concept is very important, and almost spiritual. I know it involves more than just hunting and fishing.

But what we are debating is a priority for hunting and fishing – not all of subsistence. I agree, subsistence is a basic human right – and I don't want to take it away from anyone. I certainly don't want to take it and give it on the basis of ZIP code.

But I am perfectly willing to realistically limit those people who have a hunting and fishing priority to those who are truly resource dependent,

Thank you – you're moving in the right direction.

*Mary L Bishop*  
3/5/98

Matilda K. Kushnick  
Rt. 2 Box 7 Saxman  
Ketchikan, Alaska 99901  
Ph. (907)247-2059  
Fax (907)247-2058

DATE: March 5 1998

TO: COMPANY House Resources Comm.

ATTENTION Ramona Burns + Bill Williams

FAX# 465-4265

FROM: SENDER Matilda Kushnick

FAX# 907-247-2058

NUMBER OF PAGES TO FOLLOW: 8

MESSAGE: Call back if you miss any pages

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September 11, 1997

## Three Choices *To Honor Resource Commitee*

The Native Peoples of Alaska (the Indigenous Peoples only), have three choices to make. Only the Indigenous Peoples can make these choices and no one else can make it for them. The choices have everything to do with your "Traditional Tribal Lands, Waters and Resources." You will choose who controls and manages everything. The three choices are:

1. You and your Tribe can stay just as everything is now with the state of Alaska with it's agencies and the United States Government and it's agencies controlling everything and telling you what to do.
2. You and your Tribe can choose to become like the Commonwealth of Puerto Rico where all the people run their country just like the United States of America with no Tribal control of any kind. You and your Tribe will have no right to manage any agreements with any other nations and the United States of America is still in control and the big boss.
3. You and your Tribe can choose to completely control everything in your Traditional Lands, Waters and Resources. No outside people can tell you and your Tribe what to do. This third choice completely gets rid of any control, rules, laws and regulations from both the state of Alaska and the United States of America. All of their powers will be returned to you and your people and no one else. This third choice is for Total Independence - Sovereignty.

The right for the Indigenous Peoples of Alaska to make any of these choices is guaranteed by INTERNATIONAL COVENANTS, AGREEMENTS AND LAWS.

- ◆ Article 27 of the International Covenant on Civil and Political Rights.
- ◆ GAR 1514 (XV) of 14 December 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples (2) "All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."
- ◆ Convention on the Elimination of all Forms of Racial Discrimination Protects rights to the utilization of their resources from the land and waters.
- ◆ Draft Convention and Declaration on the Rights of Indigenous Peoples.

To add power and strength to the Covenants given above, the Indigenous Peoples of Alaska also have copies of the "SMOKING GUN." This document from the United States archives in Washington D.C. clearly says that Russia never owned the Region of Alaska. Therefore, Imperial Russia could not sell what it did not

*Mailda Kushnick*

own. You and your Traditional Tribe still own all of your Traditional Lands, Waters and Resources.

The Smoking Gun consists of a series of letters and documents from the United States archives in Washington, D.C. created between 1821 and 1824 during the negotiation of a convention between the US and Russia brought about by an edict published by the Tsar of Russia in 1821.

What are the next steps to take?

1. All of the Indigenous Peoples will have to make a choice by voting. Only they can vote, no immigrants will be allowed to vote or campaign for or against these three choices.
2. A special time for voting will be set aside. Maybe in a year or so, it will depend on you and your Traditional Tribal Leaders and or your Traditional Tribal Elders Councils.

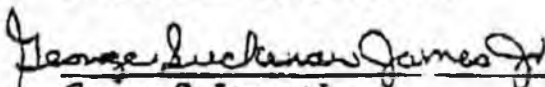
Dear Tribal Brothers and Sisters.

The immigrant peoples and their governments and agencies are causing a lot of trouble and problems for a lot of our People. It is no use to list them, because all of you know terrible the things that are happening. These problems can be taken care of and swept away by choosing to take complete control of all of your Lands, Waters and Resources. We urge you to choose INDEPENDENCE! Only you and no one else can make the needed changes. Feel free to make copies of this document and make sure that all of our Peoples know that they have a right to choose how they and their future generations are going to live.

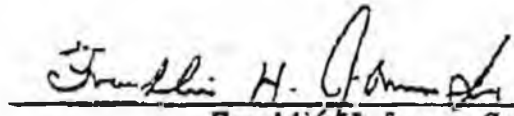
Kindest Regards,



Rudy James, Spokesman  
Kuiu Kwaan Tribal Council



George S. James, Jr.  
Tribal Council Member



Franklin H. James, Sr.  
Tribal Council Member

For additional information, you may contact the KUIU KWAAN TRIBAL COUNCIL: Ph/Fax 425-483-9251 or Ph/Fax 206-362-7725 or 425-778-0560.

Get your copy of the *Smoking Gun* video featuring Atty James P. Bailey speaking before an Indigenous Tribunal. Please send \$15.00 (which includes video, postage and handling) with your request to: Kuiu Legal Research Office, PO Box 1546, Woodinville, WA 98072.

Contributions are welcome.

# Diplomatic Communique from the Thleenadih Tlingit Nation Kuiu Tlingit Nation

January 29, 1998

Federal Subsistence Commission  
Meeting in Ketchikan 29 January 1998

The Members of the Board,

We, the Tribal Members of the Kuiu Kwaan and the Thleenadih, attest that the following statements are correct and true:

- We are not happy or have any measure of contentment with the state of Alaska exercising control of the fisheries resources.
- Since the inception of statehood the Indigenous Peoples have suffered grievous harm principally because of the policies of the Limited Entry Fisheries Commission of the state of Alaska.
- Before statehood approximately 90% of the commercial fishermen were Indigenous Alaskans. Presently, 10% or less of the commercial fishermen are Indigenous and 90% are non-Native, significant numbers non-Alaska residents and many non-U.S. citizens.
- The stated preference of the Thleenadih and the Kuiu Kwaan is for complete Tribal control of all of our traditional lands, waters and resources.
- Of the two non-Native governments (ie: the state of Alaska and the United States) we suffered less harm and fewer human rights abuses with the United States government.
- The ultimate goal of our two tribal nations is for complete control of our traditional lands, waters and resources.
- We have repeatedly challenged the U.S. government to produce a valid title to the region of Alaska. To date, they have not been able to produce a valid title.
- Documents exist in the U.S. Federal Archives which we call the Smoking Gun. These documents prove that Imperial Russia never owned Alaska. They cannot sell what they did not own. Allodial title rests solely with the Indigenous Peoples of Alaska.

The attached document further clarifies the official position of the Thleenadih and Kuiu Tribal Governments and the bank of Tribal and International attorneys who work with our Nations for the continuation of our peoples.

Dated this 29th day of January, 1998.

*Franklin H. James, Sr.*  
 Original, Franklin H. James, Sr.  
 Spokesman of the Thleenadih  
 Tribal Council

*Thlau Goo Yallth Thlee  
 Rudy James*  
 Thlau Goo Yallth Thlee, Rudy James  
 Spokesman of the Kuiu Kwaan  
 Tribal Council

*Charles M. James, Sr.*  
 KooGhaith, Charles M. James, Sr.  
 Tribal Council Member

*George Suckinaw James, Jr.*  
 WhatStaw, George Suckinaw James, Jr.  
 Tribal Council Member

*Matilda Kushnick*

**Diplomatic Communiqué and Position Paper  
Kuiu Thling-git Nation, Kuiu Island, Alaska  
and  
Thleenadli Nation, Shakan, Alaska  
Indigenous Holders of Allodial Title**

**Date: January 29, 1998**

**Re: Federal Subsistence Meeting  
In Consultation With:**

**Dr. Y.N. Kly, Specialist in International Law  
Dr. James P. Bailey, Kuiu Kwáan Attorney**

It is the position of the *Kuiu Kwáan* and the *Thleenadli* that our cultural identity must be preserved and that the continuation of our *Thling-git' People* as a people be insured. Our cultural rights are protected by Article 27 of the International Covenant on Civil and Political Rights, which has been ratified by the US, and our right to self-determination, is protected by Article 1 of both International Covenants, which must be interpreted to include our right to control our resources. We again assert and insist upon our Human Rights and the right to utilize the resources from our ancestral lands and waters to which we own absolute title. The *Kuye'di* and *Thleenadli* have already initiated proposals designed to do just that. We continue to strive to notify the world's peoples of our ownership. Under *Traditional Kwáan Law*, no one can speak for the *Kuiu Kwáan* or the *Thleenadli* except their respective Tribal Councils and chosen Spokesmen.

The *Kuiu Kwáan* and *Thleenadli* call on all of the *Thling-git People* of Southeast Alaska to also assert their rights to their ancestral lands and waters, guaranteed to them under the Law of Nations. The title to the lands and waters of Southeast Alaska is in the *Thling-git People*. We urge the People to unite and assert title to their lands.

We urge them to adopt the position that in any solution to the current problems in Alaska, that the Indigenous Peoples be recognized as having equal status to the Government of the United States in any negotiations. Any deal must preserve Indigenous rights to the utilization of their resources from the land and waters of Southeast Alaska, as guaranteed and recognized in Article 1 of both United Nations International Covenants which must be interpreted in relation to the draft Convention and Declaration on the Rights of Indigenous Peoples.

Prior to Alaska statehood, the US Government "assumed" management over fish and wildlife of the region of Alaska and recognized the inherent rights of every Indigenous person to continue fishing for subsistence and customary trade. After statehood was assumed, the migrants created the Limited Entry Commission, which has been nearly successful in cutting the Alaska First Nations out of the commercial

fisheries and violating their fundamental Human Rights. The state of Alaska has nearly reached its' obvious goal of completely denying us "Customary Use and Trade."

We quote from *Kuye'dl* Tribal Attorney, Mr. James P. Bailey:

"The efforts of the state of Alaska to obtain management authority over the resources of Southeast Alaska have one clear objective - the denial of any priority rights of the Natives to the resources, including the Right of Customary Trade. The historical preservation of the Alaska *Thling-it* is, without a doubt, dependent on the utilization of resources from the land and sea in particular."

Dr. Y.N. Kly, Specialist in International Human Rights Law, states "this also means that failure to provide priority rights or what is called Special Measures in International Law to the *Thling-it* Nations, leading to their extinction would be a grave violation of International Criminal Law, particularly as it relates to the Genocide Convention, to which the US is also a party."

Mr. Bailey explains, "If the United States supports the idea that "public lands" does not include the waters and lands of Southeast Alaska Indigenous Peoples, the *Thling-it* are doomed, because that is where they get their subsistence and where they engage in customary trade. They will perish, as will all species of fish and game that live in the sea, which the *Thling-it* historically husbanded for thousands of years.

"The historical conflict over the lands and waters, all of which initially belonged to, and still belong to the Indigenous Peoples of Southeast Alaska, began with Alaska Native Claims Settlement Act.

Dr. Kly adds that, "if this act violates the Human Rights of the Indigenous Peoples, ANCSA must be seen as illegitimate." In relation to this point, Mr. Bailey further explains that the legislative history of the struggle has been to place the Natives in second class citizenship at the mercy of the greed of those who would arrogate unto themselves the power and right to utilize and distribute the resources of the waters and lands of Southeast Alaska.

"Look at the record of the US in dealings with Natives. The federal government abandoned the Natives with statehood. Whenever the US got into situations involving land and resources it wanted to open to settlers, they would cut a deal and the Natives would lose more. The dealmakers will always come forward to cut a deal that will cut your throats. That is the history of the United States, the history of White Man versus Native.

**"The Kuye'dl are in the courthouse because they were entitled to subsistence priority and Customary Trade under ANILCA and the state of Alaska denied that right. Lavina Boe's case (A91-013 Criminal) and before that, the Katy John situation (A90-484 Civil Consolidated), clearly demonstrate that there has been a concerted effort on the part of the state of Alaska to deny the priority rights of nations to resources to which they are entitled and to deny them completely. The Boldt Decision is the only reason the Indians in Washington state received access to a percentage of the fishery stocks. The state of Alaska is cutting another deal because they want the resources. I predicted six years ago that they would come forward to offer deals. Unless the Thling-git retain their priority right, they will perish."**

**Mr. Bailey continues: "The state of Alaska has taken the position that it cannot apportion resources on a racial basis - that they cannot prefer Natives over regular people. But what they really mean is that they want to cut you out. The Thling-git do not occupy the same position as non-Natives. "Rural preference" is the state of Alaska's way of saying all people stand on the same footing. That is not true. You stand on a different plateau. The Thling-git are entitled to priority because what you do, you do by necessity. What the non-Native does, he does by choice. For the Thling-git there is no other way to preserve the traditional life, unless you have access and priority to your traditional lands, waters and resources without being forced to integrate into White Man's society."**

**Dr. Kly adds that "the argument used by the state of Alaska has been used over and over by the US in relation to its resistance to the accession to UN conventions including the Convention on the Elimination of all Forms of Racial Discrimination and most of the UN efforts dealing with the rights of minorities. However, on no occasion were they able to limit the international legal interpretation of discrimination to equality before the law and non-discrimination, and on all occasions the majority decision called for non-discrimination to include the requirement of special measures, special rights and self-determination in situations where they were warranted."**

**We urge the Subsistence Commission to consider that apart from the inherent fundamental rights of the Thling-git to their resources and self-determination as recognized in International Law, Dr. James Bailey also discovered the *Smoking Gun*. He reported to the Tribunal in Anchorage in January 1997 that a series of documents exist in the archives of the United States which demonstrate that the *Thling-git Peoples of Southeast Alaska* have absolute title (sometimes called *Allodial Title*) to the lands and waters of Southeast Alaska. We will be happy to make the documents and a videotape of James Bailey's presentation available to anyone interested in the upcoming subsistence negotiations.**

**We urge the Alaska Native Brotherhood, Alaska Native Sisterhood, Alaska**

Federation of Natives, Central Council of Tlingit and Haida Indians of Alaska, and others to deeply study the principles of International Human Rights as well as the legal significance of the *Smoking Gun* so that they can become fully aware of the international legal responsibilities of the US Government in relation to *Tlingit Peoples*: the rights of the Indigenous Peoples in and to the lands and waters of Southeast Alaska. We can give you the location and/or copies of the documents. Dr. Kly is willing to be available for consultation. Our attorney, James Bailey, is also willing to discuss his findings with anyone interested. We invite you to visit our WebPages and see our Coastal Management Plan.

We want to take this opportunity to warn our brothers and sisters that if they deal with the White Man, they must insist on their right to priority use as it pertains to their right in International Law and their rights to self-determination. Fairness is the issue, the recognition of the right of Indigenous Peoples to exist as a society. It has nothing to do with race. The United States and Alaska must recognize that Indigenous Peoples have the right to maintain their cultural identity and control over their resources. From the United States speeches before the Human Rights Commission, they appear to be aware of these rights in relation to other states. So therefore, it is time now for the US to dialogue with the Indigenous Peoples on an equal status basis as opposed to talking down to them as if they did not know what their international legal rights were.

It is interesting to note that the Indian Tribes of Puget Sound of Washington state lament the fact that they gave up 50% of the fish resources to non-Natives and the Indians now are left with insufficient fishery stocks to provide a way of living for their young people and for future generations. We appeal to all the Alaska Indigenous Peoples and organizations to not let that happen in Southeast Alaska.

We trust that the best interests of our Peoples motivate you. But we must all take care that the welfare of our future generations is safeguarded.

Professor Orlan Svingen, of Washington State University, who specializes in Indian History, predicts that the US government would do everything it can to avoid a legal wrangle over the land ownership issue. "Let's face it, the last thing they will want to do is delve deeply into that issue," he said. "Call it predestination, superior soil rights, or territorial imperative, big countries have taken land from Indians and others for years with little justification. If James (Rudy James) is correct, stolen land is stolen land and cannot be sold." (Cleveland Plain Dealer, 01/04/97)

Dr. Kly notes that 'the issue of Indian land ownership has become a difficult issue for Americans to deal with in international fora. If the US can quietly deal with such issues in Alaska, they have less risk of international condemnation.

From the Desk of

Now that the Convention on the Rights of Indigenous People is in progress and the fundamental rights of Indigenous Peoples have been recognized world wide, and with regards to the *Thling-it' People* in particular, the *Smoking Gun* has been exposed, the cat is out of the bag. What is to be done? The *Kulu Kwáan* and *Thleenadih* goals include self-determination, strengthening tribal governments, reestablishing tribal control over the land, waters and resources, and preserving traditional spirituality, culture, heritage and traditional life style of the Indigenous nations.

As Justice Berger concluded in his report about the Alaska Natives, "Alaska Natives now realize that ANCSA has failed them and that its goals are at cross-purposes with their own. Today they are trying to strengthen their subsistence economy and to restore their tribal governments...It is their profound desire to be themselves, to be true to their own values, that has led to the present confrontation. Far from deploring their failure to become what strangers wish them to be, we should regard their determination to be themselves as a triumph of the human spirit."

Signed this 29<sup>th</sup> day of January 1998

*Thlau Goo Yaiith Thlee*  
*Rudy James*

**Thlau Goo Yaiith Thlee, Rudy James,**  
**Spokesman for the Kuye'di Tribal Council**  
**Thleenadih Council Member**

*Ongi, Franklin H. James, Sr.*

**Ongi, Franklin H. James, Sr.**  
**Spokesman for the Thleenadih**  
**Tribal Council**

*Kan Ghaich, Clerk of Council*  
*What Star Dates & Jan 29 1-29-98*

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MANILAQ ASSOCIATION  
TESTIMONY ON CSHB 406

Good morning Mr. Chairman and committee members. My name is Barbara Janitscheck. I am providing testimony on behalf of Maniilaq Association and its member villages.

Our region speaks in opposition to Committee Substitute HB 406.

As you are aware, this region supported a federal takeover. HB 406 only adds to our justification why we believe a federal system is the system for us.

Soon after ANCSA, rural Alaska experienced enormous problems created by urban users – thus the reason for the federal act of ANILCA Title 8, which in our view Congress did the right thing.

We believe that HB 406 will bring us right back to this issue for the protections rural Alaska enjoyed in Title 8 of ANILCA are not found in HB 406.

This bill does not include customary and traditional use of fish & game resources. Food from the land is a everyday mainstay of our families. Local hunters continue to provide food for their families, extended families and community. The food that is caught is always shared. Cultural sharing is one of the most important function for maintaining healthy families and communities. The reduced level of participation, lack of language for customary & traditional use and its definitions and the lack of a rural preference are enough reasons for our area to conclude that HB 406 does not satisfy the current requirements of Title 8 of ANILCA.

In times of shortage, HB 406 fails to address a clear solution for rural Alaska. The proposed language, “if the boards determine there is a shortage then they may establish a preference”, are not adequate to ensure that rural Alaska has a preference.

HB 406 is clearly a needs based system, the bureaucracy proposed is huge, it does not take into consideration our cultural use of fish and game, it will only bring damage to our culture and is also inconsistent with ANILCA Title 8.

HB 406 proposed management structure is not set-up for effective "hands-on" management by local people. Only recommendations are expected from an advisory board who will submit their recommendations up the ladder to a regional board for their review. The regional board will consider the advisory board's recommendations and in turn submits its own recommendation to the Boards of Fish & Game. Finally, only the Boards of Fish & Game will have the authority to make a decision.

Our villages already face major problems such as challenges to welfare reform, lack of enough jobs, lack of economic development, cuts from the State in a lot of service areas and/or access to funding and services. HB 406 will only add to these hardships, making it more difficult to provide healthy meals to families (Native and non-Native) alike. These families will begin to suffer again like they did before ANILCA Title 8 was passed.

HB 406 is not the solution and should not go further than this committee. We ask that you not support this bill. I'll be happy to entertain any questions from the committee.

## **The Alaska Outdoor Council**

**P.O. Box 73902  
Fairbanks, Alaska 99707-3902**

**March 3, 1998**

**Honorable Gail Phillips / Speaker of the House  
Room 208 State Capital  
Juneau, Alaska 99801**

**Dear Speaker Phillips,**

**We would like to request that the House Resources Committee hold hearings on the subsistence issue in Fairbanks on March 14<sup>th</sup> at our annual meeting. As you know the interest is high on this issue and your leadership in keeping our members informed is most appreciated.**

**Please advise as soon as practical of your decision in this request so that I may make the necessary arrangements and provide the notification to all our members throughout the Interior and South Central Alaska.**

**Thank you so much for your timely consideration in this important endeavor.**

**Sincerely,**



**Rod Arno**

**President of the Alaska Outdoor Council**

Oganbill

Feb. 24, 1998

To: Rep. Scott Ogan  
Juneau

From: Wayne E. Heimer  
1098 Chena Pump Road  
Fairbanks, AK (907)-457-6847 email: weheimer@alaska.net

Re: Proposed subsistence solution

To really fix the subsistence mess we have to deal with the federal program.

To deal with the federal program, we have to identify its practical and philosophical failures. It's important that we don't confuse one with the other. I fear your draft plan may do that. It makes a good start at dealing with the *practical failures* of the federal system. Movement from "subsistence" (which is a lifestyle, not a beneficial use) toward "human consumptive use" (an actual use) is a great step forward. However, I find use of "sustenance" a problem because it simply sounds too much like "subsistence." I fear this potential confusion will cause problems. After all, if it's been possible to argue for religious and cultural subsistence, it will be equally viable to argue for religious and cultural "sustenance." I suggest clearly "locking in" what we mean, *wildlife use for human consumption*, will limit the damage and further distance us from the demand for some sort of group rights.

Also, I can't get behind any sort of regional or hyper-local control. Abuse of local control is one of the most striking, but unappreciated, flaws in the federal system. I'd avoid any replication of it in an actual solution. Abuse of local input, in fact its conversion from input to management, is an emerging problem in resource management. When the federal system elevated the function of the Regional Subsistence Advisory Councils from "advisory" to "managerial" we got the Kenai C&T mess. When Frank Rue and ADF&G elevated the planning advisory team for the Fortymile caribou herd to managerial status we ended up with wolf sterilization. Hence, I think regionalizing anything is a dangerous road to travel.

This takes me to the philosophical deficiency I infer in your draft plan. Discrimination is never a good thing. Hence, we should not be in the preference i.e. the discrimination business. Your draft plan not only regionalizes preference in times of shortage, it remains discriminatory. . . just not quite as frequently discriminatory. . . as the federal system. I'd recommend staying away from this because it seems to stem from regionalization.

If we are to come together as a people, Alaskans must share the responsibility for managing wildlife to abundance. This means we all share when we've done well, and we

all pay the price of inaction or failure. Allowing a local (or on a broader scale-a regional or on an even broader scale a "rural" preference) preference for those who have to be most involved in rehabilitating a mismanaged wildlife or fish population (the local people) decreases their incentive to push for restoration of the population. After all, why should they get out and trap wolves or push for predator management just to provide use opportunity for folks they really don't want "in their area" in the first place.

I think Alaskan unity is the key, both to resisting the feds, and making management work. Regionalizing and providing preference are both counterproductive to good conservation.

I fear there will doubtless be a melding of your preliminary ideas with those of the intensive wildlife management bill. These bills are, as I see it, at cross purposes. One seeks to provide abundance, the other fosters local reluctance to manage.

You've made a good start, but I don't think you're quite "there" yet.

I suggest simply redefining the highest priority use of wildlife as human consumptive use and working with local input as advisory (and functional when predation must be managed) will go further than any sort of graded system of discrimination.

Keep up the good work, and stand fast under the pressure from Interior, Stevens, and AFN. We're all supporting you in the very best way!

*Wayne E. Hein*



March 10, 1998

**Executive Director**

Rev. Richard K. Heacock, Jr.

**Board of Directors**

Brian Brubaker, Disciples of Christ

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Marianne Mills, United Methodist

Edward R. Niewohner, Evangelical Lutheran

Elaine Ponchione, Secy.-Treas., Quaker

Anne Wenrick, Chair, Episcopal

Alaska Christian Conference Hop., Ex-officio

**Organizational Members**

Alaska Missionary Conference  
The United Methodist Church

Alaska Synod  
Evangelical Lutheran Church in America

Chena Ridge Friends Meeting

Episcopal Diocese of Alaska

Presbytery of Yukon

The Richard R. Gay Trust

Western Dominican Province

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Rev. William S. Still, Superintendent  
Alaska Missionary Conference  
The United Methodist Church

Rev. Wesley Veitch, Representative  
Disciples of Christ

Dear Member of the Twentieth Alaska State Legislature:

You know the old saying *How time flies when you're having fun?* Well, it is also true, apparently, *when you're procrastinating.*

Since a serious legislative effort to solve the Subsistence conflict remains the most needed work before the Alaska State Legislature, I recently went back to see what our organization has been saying over its 9-year existence.

It was exactly 8 years ago that our first major background paper addressed the very important issue of Subsistence. In that *PREPARE*, I did my best honest research and experiential recollection in giving a *Raven's-eye view* of the big picture. That paper has been reprinted and accompanies this letter.

Very little has changed since that paper was written. Many, many bills have been introduced; and a hard-working Task Force, established by Governor Tony Knowles and Lt. Governor Fran Ulmer, produced a serious proposal for resolving the destructive conflict over the use of Alaska's fish and game.

Recently the work of the Task Force has been snubbed by those who support the greedy effort to secure equal access to all these bountiful resources in Alaska for urban as well as rural residents. If they are ultimately successful, of course, the historic and traditional lifestyles of Alaska's Native and Rural peoples will become only memories; and one more broken promise will be added to the long string of promises made to the first inhabitants, and then broken, by European immigrants to this Great Land (and their descendants).

In the interest of fairness and fundamental decency, I hope you will read this historic paper. And then communicate your own honest convictions about Subsistence to your fellow legislators. If you need any assistance along the way from Alaska IMPACT, please ask and it shall be given!

All the best as you work to provide for the best possible life for ALL Alaskans!

Faithfully,

Richard K. Heacock, Jr.

CS FOR HB 406

An Act Relating to fish and Game

Summary Points

2/27/98

1. Establishes that the ability to take fish and game for personal and family use for sustenance is a fundamental right under the Constitution of the State of Alaska.
2. Establishes that the harvest of fish and game for personal and family use for sustenance by residents is the highest and best use of fish and game.
3. Authorizes the Boards of Fisheries and Game to establish fish and game dependent use areas where dependence on fish and game for personal and family use for sustenance is the principal characteristic of the economy and way of life of the area.
4. Authorizes the Board of Fisheries or Board of Game, after determining that a shortage exists, to establish a preference for fish and game dependent uses.
5. In times of shortage, the Boards may require that the flesh or meat of fish and game must be consumed within the region where the fish or game was taken.
6. Defines a dependent fish and game user as one who:
  - possesses a \$5 resident hunting, trapping and sport fishing license.
  - is dependent on fish and game for personal and family use for sustenance or has no alternative means of sustenance or has decided to adopt a fish and game dependent life style.
  - has consumed a variety of species of fish and game as decided by the Boards
  - has shared fish and game with a minimum number of households as established by the Boards
7. Provides for Local Advisory Committee participation in the individual eligibility for a preference within their area.
8. Establishes 5 Regional Boards consisting of 9 members appointed by the Governor and confirmed by the legislature.
9. Requires regulation proposal to go through Local Advisory Committees and newly established Regional Boards.
10. The Regional Boards are required to give deference to Local Advisory Committee recommendations and the Statewide Boards of Fisheries and Game are required to give deference to recommendations of the Regional Boards. Several

criteria are established to guide when and how recommendations of the Advisory Committee's and Regional Boards can be overturned or rejected.

11. Provides for non-commercial bartering .
12. Provides a two year transitional period.

Author: frenesa@ktn.net (Mar French) at CC2MHS1  
Date: 2/7/98 5:01 PM  
Priority: Normal  
TO: Representative Scott Ogan at LAA\_TRANS  
Subject: Re: Rights and Sovernty  
PO box 1591  
Ward Cove, Ak 99928

*Letter 2/10/98*

Representative Scott Ogan wrote:

> Please send us your mailing address and we will send you information.  
> Thank you,

> \_\_\_\_\_ Reply Separator \_\_\_\_\_

> Subject: Rights and Sovernty  
> Author: frenesa@ktn.net (Mar French) at CC2MHS1  
> Date: 2/5/98 9:00 AM

> The subsistence issue should be named "Rights and Sovernty". It is not  
> subsistence since none of us subsist. We augment our existence, but we do  
> not subsist. It is not about race since this bill pits Sitka against Ktn  
> and East against West Saxman. I want to encourage you to not ammend our  
> constitution or the States Rights. Thanks for taking a stand. Grussendorf  
> said, We must avoid "slamming head on into the Great iceberg of Federal  
> Management". I say " I would rather take the risk of dieing in frigid  
> water under the Titanic than to stand on the rail and put a bullet in my  
> head. You have a chance of survival if you ride it out (of the people who  
> ended up in the water, 7 lived). You greatly diminish your chances of  
> survival if you elect to pull your own trigger. Pulling your own trigger  
> =ammending our constitution.

> (Much of this letter are issues I hit while testifying)

> I identify with the concept of "rural subsistence priority"  
> I am for preserving the fish and the game for generations to come.

> The feds idea clumped under the above label is not what it sounds like.

> Here is a scenerio:. maybe some can identify with this and draw a  
> correlation between this and what Federal involvement is doing to us.  
> I went to school with a native buddy from grade school through college.  
> We had no real differences. In college, I got loans and he recieved  
> grants and free money. We applied to Vet school together. After the  
> results came out, and he was accepted and I wasn't, we compared our  
> scores. The significant difference that seperated us was the points  
> given to him for being a native. No merit, just skin color. We are still  
> friends, and he feels what was done is wrong. It is kind of a joke  
> btween us, however we would be together as colleagues if it weren't for  
> the Government driving a wedge between us. Our friendship has survived,  
> however others don't.

> We must avoid more of this sort of friction here in Ak---Fed programs  
> have done this and we know it. Why would we choose to welcome more of  
> it?

> We are one Nation --- and one alaska--- and one people--- We have the  
> same Father.

> I testified at the hearing here. I heard native proponents refering to  
> the USA and me as "They". This is wrong. The right for him to calmly  
> testify was given to him by OUR nation. I also heard pple say that it  
> really doesn't effect us b/c of the lack of stream fishing we have here.  
> This is wrong, I dip net in the Karta regularly. The idea was that it  
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> Alaskan and I will fight for ALL.

> My parents were ran out of England. I hold no grudge. If we choose to  
> live together, we may as well get along.

> If we want to work through these problems we must be one. A divided  
> house will not stand.

> AS I mentioned earlier:

This hearing serves no purpose other than allowing us to vent our frustrations.

- >
- > Could be billed as a conspiracy: The ambiguous document brought here. No
- > definition of terms---no solid comment---ktn is not informed enough to
- > comment.
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- > I don't see this as a conspiracy at all.
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- > This is an example of what you get with a big bueaurocracy
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- > Will we elect to accept more of this?
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- > Value of this hearing: What the men say in their debriefing to their
- > superiors when they return to Anch. The bulk of testimony will not be
- > read. Not enough time in a day.They will say: "Well this is what Ktn
- > said, and if you want the "jist" of the atmoshpere in Ktn listen to
- > this testimony.
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- > What I want you to say in your debriefing:
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- > The document was found ambiguous (wording). There was nothing to comment
- > on---Ktn is united on opposing more division caused by the federal
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- > Ktn will not condone anything that erodes each citizens rights granted
- > by the Constitution or the Statehood compact.
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- > Ktn wants to do the deciding and arm wrestling and debating within the
- > State to insure fish and game for longevity.
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- > Ktn wants to set an example for the other Western States who are being
- > oppressed and bribed by the Feds
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- > Ktn says we oppose any ammen'tment and solely say to the Feds that you
- > will have to take us over. We will not do it to ourselves. Let the chips
- > fall.
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- > Ktn says to bring a managable document next time, but even if you do we
- > will not elect to shoot ourselves in the foot.
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- > Lastly "I am an Alaskan like those in Ktn. I do not support this. (The
- > two men administering testimony said they opposed this) I see myself as
- > someone who is using his body against my will for monetary gain .
- > Therefore, I am requesting that you transfer me out of this position by
- > "\_\_\_ " date or you will see my resignation.
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- > I encourage your " Superior" to debrief his "superior" in the same
- > manner. I don't want to have any more part in this process.
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- > I reminded our pple in Ktn that Rep.Williams could have participated
- > in sending a resolution to the national contingent if he would have used
- > his deciding vote properly. (Masek ammendment)
- > Mark French
- > Ketchikan

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Date: 2/5/98 9:00 AM  
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TO: Representative Scott Ogan at LAA\_TRANS  
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*Good  
message  
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Ketch.*

*Acknowledged*

*Sent e-mail  
Re: 11/11/98*

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Mark French  
Ketchikan

Author: frenesa@ktn.net (Mar French) at CC2MHS1

Date: 2/10/98 10:28 AM

Priority: Normal

TO: Representative Scott Ogan at LAA\_TRANS

Subject: Subsistence

Please don't ammend our constitution for this. Let them(Feds) take us over if it comes to that. I would rather they take us over than we do it

to ourselves.

Mark French

PO Box 1591

Ward Cove, Ak 99928

# DOWNES MACDONALD & LEVENGOOD-

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

1008 16<sup>th</sup> AVENUE • SUITE 200  
FAIRBANKS, ALASKA 99701

ROBERT B. DOWNES  
MICHAEL A. MACDONALD  
LYNN E. LEVENGOOD

TELEPHONE: (907) 452-5196  
FAX: (907) 456-7058

JULIAN C. RICE  
OF COUNSEL

December 31, 1997

Representative Scott Ogan  
600 East Railroad Avenue, #1  
Wasilla, Alaska 99654

Re: *Consensus Points of Expert Wildlife Resource Panel*

Dear Representative Ogan:

I was indeed honored when asked to serve as a member of your expert resource panel. I was certainly humbled by the vast expertise and knowledge contained on the panel which collectively represented over 300 years of policy-making experience dealing with Alaska's wildlife resources. As the assigned scribe for our discussions, below you will find, briefly stated, the unanimous consensus points reached by the panel:

1. First and foremost, the panel agreed that Alaska's Constitution should not be changed in any way that would violate the equal rights of Alaskans.
2. That the highest and best use of the wildlife resources of Alaska is to put food on the tables of Alaskans (A.S. 16.05.255 and .251 should be amended to reflect this change.).
3. Alaskans sustenance and the ability to put food on one's table is an inalienable right of all Alaskans.
4. That Alaska should not compromise on Alaskan State lands in any manner which would provide either federal court oversight over Alaskan lands or subject State lands to the wildlife management/harvest priorities mandated on federal lands.
5. That the cash sale of any resources harvested for subsistence uses should be prohibited and that it only extremely limited barter of subsistence resources should be allowed.

6. That the management of Alaska's wildlife resources should be changed to provide greater efficiency in the regulatory process, as well as to provide an enhancement of local advisory committee participation and authority. One suggestion to create greater efficiency, is to require all proposals to be addressed by either the Board of Fisheries or Board of Game, to have been passed by at least one local advisory committee before consideration. (This would require amendment to A.S. 16.05.255.) Another suggestion was that the Game Board could/should make and consider regulations on a regional basis.

7. That expansion of the ability of Alaskans to hunt/fish via proxy may be advisable, however, it should not be expanded based on race, residency nor place of up-bringing or family relationships.

8. That the issue as to whether Alaska should allow for or provide special treatment for wildlife management and/or harvest on Alaska Native Claims Settlement Act lands should not be addressed until after the U.S. Supreme Court decides the Venetie lawsuit.

9. That when the Board of Game establishes a Tier II subsistence season, that the customary and traditional reliance be established and once that harvest level has been met or exceeded or the game population recovers such that reasonable opportunity exists, the subsistence season be automatically curtailed. (This requires amendment to A.S. 16.05.258.)

10. That the customary and traditional terminology/criterion for subsistence uses or harvest preference should be non-expanding and limited (i.e., no "traditional" use of transplanted/introduced wildlife populations).

11. That any subsistence preferences, as they apply to the preferential harvest of fish and game resources, must be predicated by insufficient wildlife resource to allow for all consumptive uses.

12. Subsistence consumptive use preferences should be limited to fish and wildlife resources and not include other renewable resources.

13. That Alaska's wildlife resources must be managed for an abundance of wildlife allocated to human consumptive uses (requires change to A.S. 16.05.255).

14. That there not be permitted under Alaska law, any co-management, dual management, or cooperative management of Alaska's wildlife resources.

15. That any preference permitted for the harvest of wildlife resources should occur only in times of shortage. Whether a shortage of a wildlife population exists, should be determined only when a wildlife population is nominated/designated by a local advisory committee

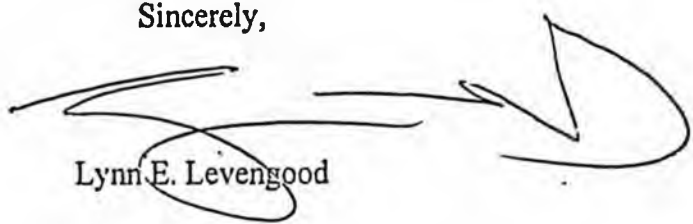
with the support of biological data and then approved by the appropriate Board and/or Commissioner.

16. That "reasonable opportunity of expectation of success" to harvest should be the single requirement to satisfy subsistence uses, not an actual allocation of a wildlife population and not determined by customary and traditional expectations/language.

17. That "subsistence" be defined as the inalienable right of all Alaskans to sustenance and the ability to put food on their tables, through the consumptive use of Alaska's wildlife resources (Requires change to A.S. 16.05.258 and .940).

Once you receive this correspondence, should you have any questions or concerns, please call me at your convenience.

Sincerely,



Lynn E. Levensgood

LEL:nan

I apologize if you have already received this participant list, but I am not receiving any moderator printouts.

Ron Long wishes to testify

Thank you.

Seward LIO

Reggie, Mary - OTZ Co called

KOT ZEBUS, Business, Name &

OTHER LID'S had people sitting

in front of them waiting

likely - called you on 1/15/15

and that was it

then we thought that they

hadn't called on us the first

time they had a time constraint

SITE	= ON LINE	# TO SPEAK	NAME OF FIRST FEW TO SPEAK
Anaktuvuk Pass no computer			
Anchorage	✓	2	
Barrow	✓	2	
Bethel	✓		
Cordova			
Dillingham			
✓ Dot Lake no computer	✓	1	<del>Bill Miller</del>
Fairbanks	✓	3	BONNIE THE RIAULT-WOLDSTAD
Glennallen			
Homer	<del>✓</del>	<del>1</del>	<del>Jim Beardson</del>
Kenai			
Kodiak	✓	1	NICK SZABO
Kotzebue	✓	1	BARBARA JANITSEK - MANILA
Ketchikan	✓		ERIC MUENCH
Mat-Su	✓	16	CHIEF JUDKINS
Nome TOK	✓ ✓	4	Leona Kenick CONNIE FRIEND
Petersburg			
<u>Call-In (no computer)</u>			
KOTZ Radio 9 - 9:30	✓		also McGrath Radio
Unalaska Kiet			Weiver-Raymond IVANOFF Stanton Ketchitag NUT
Quinahawk 9:30-10 am			Joshua Clevelan
✓ Allakaket		10	<del>Millie Bergman</del>
* Galena	✓	1	S. Huntington
10-10:30			
Hughes			Gerald Oldman *
Kwethluk			Raymond Nikolai
10:30-11			
Anvik			Carl Jeruc
Sheevak (Chevak?)			R.B. Slats

\*See List

\*see list \*

\*see list \*

\*see list \*

02/28/98  
09:50:37

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
PARTICIPANT LIST (ALL PARTICIPANTS)  
TCN:80341 SCHEDULED FOR:02/28/98 09:00 TO 13:00  
PUBLIC HEARING HOUSE RESOURCES

LTN1150  
BY:COR  
FOR:COR

LOCATION: CORDOVA

HB 406	<del>MR. VICTOR</del>	<del>JONES</del>	<i>not there</i>
HB 406	<del>MR. MIKE</del>	<del>BOWEN</del>	
HB 406	<del>MR. JOHN</del>	<del>RENNER</del>	<i>not there</i>

OBSERVE  
TESTIFY  
TESTIFY

02/28/98  
10:54:19

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
PARTICIPANT LIST (ALL PARTICIPANTS)  
TCN:80341 SCHEDULED FOR:02/28/98 09:00 TO 13:00  
PUBLIC HEARING HOUSE RESOURCES

LTN1150  
BY:HOM  
FOR:HOM

LOCATION: HOMER

HB 406	<del>MR. JIM</del>	<del>REARDEN</del>	SELF
HB 406	<del>MR. PATRICK</del>	<del>CHURCH</del>	JACK POLSTER

TESTIFY  
TESTIFY

UD PAT ?

02/28/98 11:00:05 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
MESSAGE FROM: LIOCDEB IN JUNEAU

LTN1120  
JNU

RE TCN: 80341 SCHEDULED FOR: 02/28/98 09:00 TO 13:00  
SPONSOR: HOUSE RESOURCES PURPOSE: PUBLIC HEARING

MESSAGE TEXT: \*CALL-IN\* EMMONAK: TED HAMILTON

NOTE: CORDOVA PARTICIPANTS HAD TO LEAVE

02/28/98  
09:41:28

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
PARTICIPANT LIST (ALL PARTICIPANTS)  
TCN:80341 SCHEDULED FOR:02/28/98 09:00 TO 13:00  
PUBLIC HEARING HOUSE RESOURCES

LTN1150  
BY:BET  
FOR:BET

LOCATION: BETHEL

HB 406  
HB 406

DAVID  
MYRON

AMIK  
NANENG

SELF  
AVCP

TESTIFY  
TESTIFY

~~Hubert~~

~~ENDAK~~

02/28/98  
11:26:29

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
PARTICIPANT LIST (ALL PARTICIPANTS)  
TCN:80341 SCHEDULED FOR:02/28/98 09:00 TO 13:00  
PUBLIC HEARING HOUSE RESOURCES

LTN1150  
BY:BET  
FOR:BET

LOCATION: BETHEL

HB 406  
HB 406  
HB 406

DAVID  
MYRON  
HUBERT

AMIK  
NANENG  
ANGAIK

SELF  
AVCP  
SELF

TESTIFY  
TESTIFY  
TESTIFY

NEW

02/28/98  
11:00:22

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
PARTICIPANT LIST (TESTIFIERS ONLY)  
TCN:80341 SCHEDULED FOR:02/28/98 09:00 TO 13:00  
PUBLIC HEARING HOUSE RESOURCES

LTN1150  
BY:JNU  
FOR:MAT

LOCATION:MATSU

HB 406	MR	<del>CLIFF</del>	<del>JUDKINS</del>	TESTIFY
HB 406	MR	<del>NOEL</del>	<del>WOODS</del>	TESTIFY
HB 406	MR	<del>CLARENCE</del>	<del>FURBUSH</del>	TESTIFY
HB 406	<del>MS</del>	<del>KATIE</del>	<del>HURLEY</del> <i>Testified</i>	TESTIFY
HB 406	MR	RON	WILSON	TESTIFY
HB 406	MR	DONALD	BROADWATER BROAD WATER	TESTIFY
ALL ITEMS	MR	<del>BRUCE</del>	<del>KNOWLES</del> <i>Testified</i>	TESTIFY

*next →*  
*en*

02/28/98  
11:18:37

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
PARTICIPANT LIST (ALL PARTICIPANTS)  
TCN:80341 SCHEDULED FOR:02/28/98 09:00 TO 13:00  
PUBLIC HEARING HOUSE RESOURCES

LTN1150  
BY:MAT  
FOR:MAT

LOCATION:MATSU

HB 406	MR	CLIFF	JUDKINS	TESTIFY
HB 406	MR	NOEL	WOODS	TESTIFY
HB 406	MR	HAS LEFT	F	OBSERVE
HB 406	* MS	KATIE	HURLEY	TESTIFY
HB 406	MR	HAS LEFT	W	TESTIFY
HB 406	* MR	ROBERT	HALL	TESTIFY
ALL ITEMS	* MR	BRUCE	KNOWLES	TESTIFY

*\* UPDATE*

02/28/98  
09:09:01

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
PARTICIPANT LIST (ALL PARTICIPANTS)  
TCN:80341 SCHEDULED FOR:02/28/98 09:00 TO 13:00  
PUBLIC HEARING HOUSE RESOURCES

LTN1150  
BY:KTN  
FOR:KTN

LOCATION: KETCHIKAN

HB 406	<del>MR. ERIC MUENCH</del>	SELF	TESTIFY
HB 406	<del>MR. RICHARD ANDREW</del>	SELF	TESTIFY
HB 406	<del>MS. KAY ANDREW</del>	SELF	TESTIFY

02/28/98  
09:22:08

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
PARTICIPANT LIST (ALL PARTICIPANTS)  
TCN:80341 SCHEDULED FOR:02/28/98 09:00 TO 13:00  
PUBLIC HEARING HOUSE RESOURCES

LTN1150  
BY:NOM  
FOR:NOM

LOCATION: NOME

HB 406	<del>MS. LEONA KENICK</del>	SELF	OBSERVE
HB 406	<del>MR. CALEB PUNGOWIYI</del>	KAWERAK	TESTIFY
HB 406	<del>MR. PERRY MENDENHALL</del>	SITNASUAK	TESTIFY
HB 406	<del>MS. LORETTA BULLARD</del>	KAEWRAK	TESTIFY

*opposed to this bill.*

*Rural Family rate issues +  
have notes.*

02/28/98  
09:09:29

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
PARTICIPANT LIST (ALL PARTICIPANTS)  
TCN:80341 SCHEDULED FOR:02/28/98 09:00 TO 13:00  
PUBLIC HEARING HOUSE RESOURCES

LTN1150  
BY:FBX  
FOR:FBX

LOCATION: FAIRBANKS

<del>HB 406</del>	<del>MS. BONNIE THERRIault-WOLDSTAD</del>	TESTIFY
<del>HB 406</del>	<del>MR. GABE SAM</del>	TESTIFY
<del>HB 406</del>	<del>MR. LYNN LEVENGOOD</del>	TESTIFY

*Home out documents  
Deleted*

*Ms. Sakuma  
Mr. [unclear]*

*Mr. [unclear]*  
*[Handwritten box]*

02/28/98 09:35:15 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1120  
MESSAGE FROM: LIOCDEB IN JUNEAU JNU

RE TCN: 80341 SCHEDULED FOR:02/28/98 09:00 TO 13:00  
SPONSOR: HOUSE RESOURCES PURPOSE: PUBLIC HEARING

MESSAGE TEXT: ALLAKAKET: MILLIE BERGMAN  
~~ALEX SIMON, SR.~~ \*CALL-IN\*

*Millie Bergman*

02/28/98 10:33:17 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1120  
MESSAGE FROM: LIOCDEB IN JUNEAU JNU

RE TCN: 80341 SCHEDULED FOR:02/28/98 09:00 TO 13:00  
SPONSOR: HOUSE RESOURCES PURPOSE: PUBLIC HEARING

MESSAGE TEXT: ~~\*CALL-IN\*~~ CHEVAK ~~RICHARD SLATS~~

02/28/98 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150  
13:02:48 PARTICIPANT LIST (ALL PARTICIPANTS) BY:KTN  
TCN:80341 SCHEDULED FOR:02/28/98 09:00 TO 13:00 FOR:KTN  
PUBLIC HEARING HOUSE RESOURCES

LOCATION:KETCHIKAN

HB 406	MR.	ERIC	MUENCH	SELF	TESTIFY
HB 406	MR.	RICHARD	ANDREW	SELF	TESTIFY
HB 406	MS.	KAY	ANDREW	SELF	TESTIFY
HB 406	MR.	DONALD	WESTLAND	SELF	TESTIFY

*is the  
turning  
a point  
to (KAY)*

02/28/98 14:04:53 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1120  
MESSAGE FROM: LIOCJAS IN ANCHORAGE JNU

RE TCN: 80341 SCHEDULED FOR:02/28/98 09:00 TO 13:00  
SPONSOR: HOUSE RESOURCES PURPOSE: PUBLIC HEARING

MESSAGE TEXT: ONE LEFT IN ANCH DALE BONDURANT TO  
TESTIFY

✓

02/28/98  
09:44:36

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
PARTICIPANT LIST (ALL PARTICIPANTS)  
TCN:80341 SCHEDULED FOR:02/28/98 09:00 TO 13:00  
PUBLIC HEARING HOUSE RESOURCES

LTN1150  
BY:ANC  
FOR:ANC

LOCATION: ANCHORAGE

HB 406  
HB 406  
HB 406  
HB 406

~~JIM SYKES~~  
~~DON SHERWOOD~~  
✓ ~~CHARLES MCKEE~~  
✓ ~~DONNA LMC HARRIS~~ - ANAPA cheys conf.

TESTIFY  
TESTIFY  
TESTIFY  
TESTIFY

UPDATE\*?

02/28/98 13:44:51 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
MESSAGE FROM: LIOCJAS IN ANCHORAGE

LTN1120  
JNU

RE TCN: 80341 SCHEDULED FOR:02/28/98 09:00 TO 13:00  
SPONSOR: HOUSE RESOURCES PURPOSE: PUBLIC HEARING

MESSAGE TEXT: 4 LEFT IN ANCH TO TESTIFY

02/28/98 13:49:06 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
MESSAGE FROM: LIOCJAS IN ANCHORAGE

LTN1120  
JNU

RE TCN: 80341 SCHEDULED FOR:02/28/98 09:00 TO 13:00  
SPONSOR: HOUSE RESOURCES PURPOSE: PUBLIC HEARING

MESSAGE TEXT: BART AHSOGEAK IS ON LINE FROM BARROW ✓  
THIS IS AN OFFNET CALL-IN

*only one F & W. person in Barrow.?*

02/28/98 13:55:19 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
MESSAGE FROM: LIOCJAS IN ANCHORAGE

LTN1120  
JNU

RE TCN: 80341 SCHEDULED FOR:02/28/98 09:00 TO 13:00  
SPONSOR: HOUSE RESOURCES PURPOSE: PUBLIC HEARING

MESSAGE TEXT: ELUSKA JOHN JR. IN SHAGELUK IRA ✓  
IS ON LINE CALL-IN OFFNET

*Phillip Arab: ✓*

TO: Committee Members  
From: Rep. Nicholas

Please replace the version  
handed out with this corrected/  
revised version.

Faint, illegible text at the bottom right of the page, possibly bleed-through from the reverse side.



# UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112  
Juneau, Alaska 99801  
907/586-2820  
Fax: 907/463-2545

September 26, 1997

Senator Rick Halford  
Chair, Senate Resources Committee  
P.O. Box 670190  
Chugiak, AK 99507

Subject: State/Federal Subsistence Issue

Dear Senator Halford:

The United Fishermen of Alaska (UFA) is celebrating its 25th year and has always been active in subsistence issues. Since 1992, UFA has held a position calling for technical amendments to ANILCA, a constitutional amendment, and minor statutory changes - all linked together through 'effective date' provisions.

Every year, in anticipation of some possible breakthrough in this long standing dilemma, UFA has renewed this position, only to be told by one 'side' or the other that either ANILCA amendments were impossible or a constitutional amendment was impossible. Now that the Governor has convened a special Subsistence Task Force and the Legislature is holding hearings on this issue, UFA has been and will continue to be active.

Attached to this letter you will find a copy of the comments UFA submitted to the Governor's Subsistence Task Force in Anchorage on September 13, 1997. On page 2, we stated that:

"UFA notes that (their) efforts are but the first significant efforts in a process for public and legislative consideration. Our comments (to the Task Force) are, therefore, not all inclusive but address issues that we sincerely request you consider prior to forwarding any "final" package to the public and legislature."

The Task Force accommodated some, but not all of our concerns. At this time UFA respectfully requests that the legislature consider what we have termed the "package" concept advanced by the Task Force as the basis for building a solution to the current state/federal impasse.

UFA looks forward to working with the legislature on this issue.

Sincerely,

Theo Matthews, President  
United Fishermen of Alaska

TM/ra

#### MEMBER ORGANIZATIONS

Alaska Longline Fishermen's Association • Alaska Trollers Association • Bristol Bay Drifters Association • Concerned Area "M" Fishermen • Cook Inlet Aquaculture Association  
Cordova District Fishermen United • Kani Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association • Kodiak Seiners Association • North Pacific Fisheries Association  
Northern Southeast Regional Aquaculture Association • Northwest Bortners Association • Peninsula Marketing Association • Petersburg Vessel Owners Association  
Prince William Sound Aquaculture Corporation • Puro Sea Vessel Owners Association • Seafood Producers Cooperative • Southeast Alaska Seining Association  
Southern Southeast Regional Aquaculture Association • United Cook Inlet Drift Association • United Southeast Alaska Gillnetters

February 27, 1998

Page Two

In conclusion, UFA finds that while this legislation may indeed "revolutionize" our current process, it creates many new problems and resolves none that we can identify.

UFA respectfully requests that the legislature consider what we have termed the "package" concept as the basis for building a solution to the current state/federal impasse. i.e.

- a) Technical amendments to ANILCA that clarify the intent of the federal law and make it as similar to state law as possible, and
- b) a rural constitutional amendment, linked to the passage of the agreed technical amendments in ANILCA.

To further clarify our positions on subsistence related issues we have attached to our comments:

- 1) UFA's comments to the Senate Resources Committee, September 26, 1997, and
- 2) UFA's comments to the Governor's Subsistence Task Force, Sept. 12, 1997.

If you have any questions regarding UFA's comments, please contact me at (907) 283-3600. We appreciate the opportunity to comment.

Sincerely,

*Theo Matthews CA*  
Theo Matthews, President  
United Fishermen of Alaska

Attachments: Letter dated 9/26/97 to Senator Rick Halford, Chair, Senate Resources Committee  
Letter dated 9/12/97 to Governor's Subsistence Task Force

cc: Senator Ted Stevens  
Senator Frank Murkowski  
Representative Don Young  
Governor Tony Knowles  
Senator Mike Miller, Senate President  
Representative Gail Phillips, Speaker of the House  
Senate Resources Committee members  
House Judiciary Committee members  
Alaskan's Together  
Charlie Cole

TM/ra