

**SUBSISTENCE**

**INTERIM  
HEARINGS  
(FILE 1)**



Official Business

# ALASKA STATE LEGISLATURE

F13X

## SENATE RESOURCES COMMITTEE

State Capitol  
Juneau, AK 99801

Chairman: Senator Rick Halford  
Vice Chair: Senator Lyda Green  
Senator Loren Leman  
Senator Bert Sharp  
Senator Robin Taylor  
Senator John Torgerson  
Senator Georgianna Lincoln

### AGENDA

3:30 TO 9:00 p.m.

Wednesday, September 24, 1997

Interim Hearing on Subsistence

UA Regents Conference Room  
University of Alaska, Fairbanks

#### I. Presentation of the Governor's Subsistence Task Force Proposal

Expected Witnesses:

Julian Mason, Counsel to the Governor's Task Force

Byron Mallott, Task Force Member

#### II. Native Position on Governor's Task Force Proposal

Expected Witnesses:

Rep. Albert Kookesh, Co-Chairman AFN

#### III. Public Testimony

#### NEXT MEETING

Thursday, September 25

Wasilla City Council Chambers  
290 E. Herring Ave, Wasilla

ADJOURN



Official Business

**COMMITTEE:**

SENATE RESOURCES

**DATE:**

**SIGN-IN**

**Subject of meeting:**

page one

INTERIM HEARING ON SUBSISTENCE

PLEASE PRINT!

**NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?**

David G. Kelleyhouse	P.O. Box 81452, Fairbanks 99708	455-7882	Self	Yes
CESA SAM	PO Box 70 HUSCIA, AK 99746	829-2294	HUSCIA TRIBE	YES
Patrice & Destly Samu	PO Box 53, Malheur, AK 99788	848-8212	Chalchitsk Village	Yes
MARJORIE ATILA	P.O. Box 136 GALENA, AK	656-1337	Goulen Tribal Council	Yes
Mitch Demientief	Box 251 Nenana, AK 99760	832-5401	Nenana Native Village	NO
John Lord	Box 374 Nenana, AK 99760	832-5241	SELF FRIENDS	NO
Patrick Saylor	Box 628 Healy Lake 99706	876-5018	Healy Lake Village	yes
Milly Bergman	Box 4 Allakaket AK 99730	9682237	Allakaket Tribe	Yes
Mr. Mark A. Ames	40 AEC - P.O. box 71693 Fairbanks Alaska 99707	(907) 457-5091	(1867-1979) public trust "10-41" Native born AK - American	Yes
BENEDICT JONES	P.O. Box 47 Koyukuk, AK, 99754	907 927-2205	Koyukuk TRIBAL COUNCIL	YES



Official Business

COMMITTEE:

SENATE RESOURCES

DATE:

SIGN-IN

Subject of meeting:

INTERIM HEARING ON SUBSISTENCE

page two

PLEASE PRINT!

NAME

ADDRESS (MAILING) & (ZIP)

PHONE

REPRESENTING

DO YOU WANT TO TESTIFY?

Gerald Walker	Holy Cross AK 99602	476-7168	Frubly Council	yes
Gerald Oldman	General Delivery Hughes, AK. 99745	889-2221	W. Hughes Village Council	yes
Handing Sam	PO Box 109 Allakaket, Alaska 99720	968-2254	Alutia Village Council	Yes
Randy Mays	Box 13 Stevens Village AS 99774	478-7228	Stevens Village Tribal Government	Yes
Vernon Joseph Ali	Box 07665 W. K. AK 99707	458-8747	Self	Yes
Roger Nicholas	P.O. Box 41 KALTAG, AK 99748	534-2296	KALTAG TRIBAL COUN.	Yes
Anna Pickett	P.O. Box 82354 Anchorage, AK 99508	452-8251	Self	Yes
Gideon James Gary Simple	P.O. BOX 32 Venetie, AK 99788	845-8212	the native Village of Venetie Tribal Government	Yes
WALTER FLITT	P.O. Box 232 Fort Yukon, AK 99747	662-2763	SELF	Yes
Tom Scarborough	1676 Toroka Dr. Fairbanks, AK 99709	479-3412	Self	yes



Official Business

**COMMITTEE:**

SENATE RESOURCES

**DATE:**

**Subject of meeting:**

INTERIM HEARING ON SUBSISTENCE

page three

**SIGN-IN**

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Gabe Sam	122 First Ave. Fairbanks, AK. 99701	452-8251 ext 3255	Tanana Chiefs Conference	Yes
Cecilia Joseph	First St Beaver, AK 99724	662-6112	Beaver Village Comm	Yes
David Thomas	Atukon AK 99740	662-2587	Quich'in	Yes
Curtis Tindall	276 LEANN - FBKS. 99701	452-1787	Native People	Yes
Byron Haley	1002 PIONEER RD. 99701	456-4426	Self	Yes
Dick Bishop	1555 GUS'S GRIND, FAI. AK 99701	455-6151	AK OUTDOOR COUNCIL	Yes
John Coady	Box 84612 Fairbanks AK 99702	479-8841	AK Dept Fish & Game	Yes
Bonnie Therriault Waldstad	Box 56702 North Pole, AK 99705	488-0232	Self	yes after 5pm please
Rosemarie Martell-Greenblatt	PO Box 83298 FBKS - 99708	457-7194	Self / AOC	Yes
Rose Isaac	Box 76004 TANANAKS AK	883-5929	Self / TNG	YES



Official Business

**COMMITTEE:**

SENATE RESOURCES

**DATE:**

**Subject of meeting:**

INTERIM HEARING ON SUBSISTENCE

Page 4

**SIGN-IN**

PLEASE PRINT!

**NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?**

MARY BISHOP	1555 Lewis Street Fbx 99109	455-6151	self	yes
PERCY HERBERT	PO BOX 75318 Fbks AK 99707	458 8045	"	"
JOHN A. MILLER	1260 MARCH Dr. FAIRBANKS 99709	479-3720	SELF	Yes.
Gene P. Barclay	P.O. Box K3C Fairbanks AK	221 2211	Fred Cook Fido	
Britta A. Wiseman	POX 750230 Fairbanks AK 94775-0230	474-0666 X-3587	All of our Great PEOPLE	Yes & Listen
Tracy Hopkins	3801 Erickson ST	479-9771	Self	Yes
Pete Buiist	Box 71561 Fbks 99707	457-7189	self	YES
JOE MATTIE	Box 18 ESTER 99725	471-0891	SELF	YES
Marjorie Mayn	181 Haller Fbks (99707)	452-7174	Self	✓
				1



Official Business

COMMITTEE:

SENATE RESOURCES

DATE:

SIGN-IN

Subject of meeting:

INTERIM HEARING ON SUBSISTENCE

Page 5

PLEASE PRINT!

NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?

Greg Machacek	P.O. box 56245 N. Pole 99705	488-4534	Self	✓ yes
Lynn Levenjick	1008 16th Ave SPSK	452-5196	AWCA	✓ yes
Tim Schumel	Katzevne, Ak. 99752	442-7621	Manila Assn.	YES
Stan Bloom	303 Bentley Dr FBK 99701	452-6068	CDA	YES
Bob Elias	Gen. Del.	ME 498-9102	Manito Village Co.	YES
Kathryn Richardson	Box 80766 Fbks 99708	479-2362	—	NO
Becky Hasselrode	518 SLATE DR. Fbks 99701	456-3062	—	NO
Miriam Hasselrode	518 SLATE 99701	456-3066	—	NO
Wanda Megan Lord	1471 Noble St. # B Fbks, Ak. 99781	456-5491	—	NO
				1



Official Business

COMMITTEE:

SENATE RESOURCES

DATE:

Subject of meeting:

INTERIM HEARING ON SUBSISTENCE

Page 6

SIGN-IN

PLEASE PRINT!

NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?

Table with 5 columns: NAME, ADDRESS (MAILING) & (ZIP), PHONE, REPRESENTING, DO YOU WANT TO TESTIFY?. Rows include: MAURELINE KALUHOSE, LINDA JUNE, MIKE PRAX, TIM WOLFE.



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resource  
Committee Name  
 Committee on Subsistence Dated 9-24-97  
Bill / Subject

I oppose any ~~change~~ change to the  
 State Constitution on subsistence.

SIGNED:

*Dale McE...*  
 Testifier

North Pole  
 Representing

P.O. Box 55141 North Pole Ak. 99705  
 Address / Phone Number

---

**ALASKA FEDERATION OF NATIVES, INC.**

1577 C Street, Suite 201, Anchorage, Alaska 99501  
907-274-3611 - Fax 907-276-7989

**TESTIMONY OF THE ALASKA FEDERATION OF NATIVES  
TO THE ALASKA SENATE RESOURCES COMMITTEE  
WEDNESDAY, SEPTEMBER 24, 1997**

CHAIRMAN HALFORD, MEMBERS OF THE SENATE RESOURCES  
COMMITTEE, LADIES AND GENTLEMEN:

THE GOVERNOR'S SUBSISTENCE TASK FORCE RELEASED ITS DRAFT  
PROPOSAL ON JULY 9, 1997, ASKING THAT PUBLIC COMMENTS BE  
SUBMITTED FOR ITS MEETING ON JULY 23. AFN REQUESTED THAT THE  
COMMENT DEADLINE BE EXTENDED UNTIL AFTER THE NATIVE  
SUBSISTENCE SUMMIT OF AUGUST 26 TO 28. THAT REQUEST WAS  
GRANTED. THE SUMMIT WAS HELD, THE NATIVE COMMUNITY  
EXAMINED THE PROPOSAL IN DETAIL, AND WE FORMULATED OUR  
RECOMMENDATIONS FOR CHANGES. WE PRESENTED THESE TO THE  
TASK FORCE ON SATURDAY, SEPTEMBER 13. MY TESTIMONY TODAY  
CONTAINS THE SUMMIT'S RECOMMENDATIONS, AS WE PRESENTED  
THEM TO THE TASK FORCE ELEVEN DAYS AGO. IT IS DIVIDED INTO  
THREE SECTIONS: A RECAP OF POLICY HISTORY, 12 RECOMMENDED  
CHANGES TO THE TASK FORCE PROPOSAL, AND AN EXPRESSION OF  
THE NATIVE COMMUNITY'S INTEREST IN FURTHER SUBSTANTIVE  
DISCUSSIONS.

## POLICY RECAP

THE ALASKA NATIVE CLAIMS SETTLEMENT ACT OF 1971 EXTINGUISHED ABORIGINAL HUNTING AND FISHING RIGHTS - BUT DID NOT IMMEDIATELY REPLACE SUCH RIGHTS WITH STATUTORY PROTECTIONS OF NATIVE SUBSISTENCE PRACTICES. IN ITS RUSH TO CLEAR LAND TITLE FOR PIPELINE CONSTRUCTION, CONGRESS DROPPED THE SUBSISTENCE PROTECTIONS CONTAINED IN EARLIER SETTLEMENT DRAFTS AND, BY MEANS OF THE CONFERENCE REPORT, PUT THE BURDEN ON THE SECRETARY OF THE INTERIOR AND THE STATE GOVERNMENT TO "TAKE ANY ACTIONS NECESSARY TO PROTECT THE SUBSISTENCE NEEDS OF THE NATIVES." CONGRESS WAS CLEARLY CONCERNED ABOUT NATIVE VILLAGE ECONOMIES AND CULTURES IN 1971; BUT STATUTORY PROTECTIONS HAD TO WAIT NINE MORE YEARS.

TITLE VIII OF THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT OF 1980 WAS ENACTED IN RECOGNITION OF THE FACT THAT CONGRESS'S 1971 EXPECTATION OF THE SECRETARY AND THE STATE HAD FAILED. AS EXAMPLES OF WHY CONGRESS WAS CONCERNED ABOUT, PLEASE CONSIDER THESE FACTS:

--BETWEEN 1971 AND 1980, THE PIPELINE BOOM HAD CAUSED AN ENORMOUS NON-NATIVE MIGRATION INTO ALASKA - THE PRIMARY CAUSE OF A 36% INCREASE IN POPULATION THAT CREATED FIERCE COMPETITION FOR LIMITED FISH AND GAME.

--IN 1972, CONGRESS'S MARINE MAMMAL PROTECTION ACT HAD PROTECTED NATIVE HUNTING, A POLICY THAT HAS WORKED EFFECTIVELY TO THE PRESENT DAY; THE STATE HAD DONE NOTHING ON THE ISSUE BUT TO OPPOSE FEDERAL ACTION.

--IN 1976, THE NORTHWEST ARCTIC CARIBOU HERD HAD CRASHED, CREATING A SERIOUS RESOURCE SHORTAGE; BUT WHEN THE STATE BOARDS TRIED TO ALLOCATE THE REMAINING RESOURCE SO AS TO FAVOR LOCAL SUBSISTENCE USERS, THE STATE COURTS THREW OUT THE REGULATIONS.

--IN 1978, THE STATE HAD ARRESTED THREE ATHABASKAN ELDERS IN THE COPPER RIVER AREA FOR OPERATING SUBSISTENCE FISHWHEELS DURING A PERIOD OPENED ONLY TO SPORT DIPNETTING.

--ALSO IN 1978, ALASKA HAD ENACTED ITS FIRST SUBSISTENCE LAW, MERELY GIVING A PREFERENCE FOR SUBSISTENCE USE OVER OTHER CONSUMPTIVE USES, BUT FAILING TO DISTINGUISH AMONG COMPETING USERS - WHICH WAS THE REAL POLICY QUESTION.

AS A RESULT OF SUCH DEVELOPMENTS IN ALASKA, CONGRESS IN 1980 WAS DETERMINED TO MAKE LAW THAT WOULD PROTECT NATIVE SUBSISTENCE RIGHTS ON FEDERAL PUBLIC LANDS. NATIVE GROUPS

WANTED A PREFERENCE OR PRIORITY FOR ALL NATIVES, URBAN AND RURAL; BUT CONGRESS ULTIMATELY ENACTED THE RURAL PREFERENCE - INCLUDING RURAL NON-NATIVES AND EXCLUDING NON-RURAL NATIVES.

CONGRESS'S PRIME MOTIVE IN 1980 WAS TO PROTECT THE SUBSISTENCE WAY OF LIFE IN NATIVE VILLAGES. RECOGNIZING THIS, THE FEDERAL COURTS RULED IN 1984 THAT TITLE VIII IS INDIAN LAW, ENACTED BY CONGRESS UNDER ITS PLENARY AUTHORITY TO REGULATE INDIAN AFFAIRS IN THE COMMERCE CLAUSE OF THE U.S. CONSTITUTION. CONCERN FOR NATIVE VILLAGES IS ALSO WHY TITLE VIII'S RURAL PREFERENCE IS BASED ON "CUSTOMARY AND TRADITIONAL" HARVEST AND USE PATTERNS ESTABLISHED OVER TIME.

NATIVE PEOPLE WERE DISAPPOINTED BY THE 1980 EXCLUSION OF NON-RURAL NATIVES FROM THE PREFERENCE - PARTICULARLY THOSE LIVING IN HISTORICALLY RURAL, NATIVE PLACES THAT, THROUGH NO FAULT OF THEIR OWN, HAD BEEN SWALLOWED UP BY NON-NATIVE MAJORITIES AND WERE NOW DEFINED AS URBAN. BUT WE DID OUR BEST TO MAKE THE RURAL PREFERENCE WORK.

THE STATE OF ALASKA DID NOT. ITS REGULATORY BODIES, DOMINATED BY SPORT AND COMMERCIAL INTERESTS, FREQUENTLY FRUSTRATED IMPLEMENTATION OF THE SUBSISTENCE PRIORITY AND REFUSED TO REGULATE IN A WAY CONSISTENT WITH CUSTOMARY AND

TRADITIONAL SUBSISTENCE PRACTICES. THE STATE NEVER FULLY FUNDED OR EMPOWERED THE REGIONAL SUBSISTENCE COUNCILS REQUIRED BY FEDERAL LAW. IN 1989, THE ALASKA SUPREME COURT THREW THE RURAL PREFERENCE OUT OF STATE LAW IN THE *MCDOWELL* CASE. THEN, FOR THE ENSUING EIGHT YEARS, STATE LEGISLATIVE MAJORITIES HAVE REFUSED EVEN TO ALLOW THE VOTERS TO CONSIDER A CONSTITUTIONAL AMENDMENT.

### THE TASK FORCE PROPOSAL

I OFFER THE FOLLOWING RECOMMENDATIONS FOR CHANGES IN THE TASK FORCE'S PROPOSAL, BASED ON DECISIONS OF THE NINE HUNDRED PEOPLE WHO ATTENDED THE NATIVE SUBSISTENCE SUMMIT AT THE END OF AUGUST:

1. ELIGIBILITY FOR THE PREFERENCE. THE TASK FORCE'S RURAL PREFERENCE MUST INCLUDE BETTER PROTECTIONS OF NON-RURAL NATIVES, PARTICULARLY OF THOSE "FORMERLY RURAL" NATIVE COMMUNITIES THAT HAVE BEEN, OR COULD BE, PULLED OUT OF THE PREFERENCE BY NON-NATIVE POPULATION GROWTH AND SOCIO-ECONOMIC CHANGE. THE OPTIMAL SOLUTION WOULD BE A NATIVE OR TRIBAL PREFERENCE - OR A "RURAL PLUS" PREFERENCE THAT WOULD INCLUDE ALL RURAL RESIDENTS PLUS ALL NON-RURAL NATIVES. SUCH OPTIONS WOULD ALSO PROTECT NATIVES WHO HAVE VOLUNTARILY MOVED FROM VILLAGES TO URBAN CENTERS. BUT, AT A MINIMUM,

"FORMERLY RURAL" NATIVE COMMUNITIES MUST GET FULL PROTECTION OF THE STATUTORY PREFERENCE AND BE ALLOWED TO PRACTICE SUBSISTENCE IN THEIR LOCAL "CUSTOMARY AND TRADITIONAL" USE AREAS. THE INCLUSION OF PROXY HUNTING AND FISHING OPPORTUNITIES FOR PEOPLE WHO HAVE VOLUNTARILY MOVED TO URBAN AREAS AND WHO PERIODICALLY RETURN TO THEIR HOME C&T AREAS IS A POSITIVE STEP FORWARD FOR THAT GROUP. BUT EDUCATIONAL PERMITS, AT THE DISCRETION OF THE STATE BOARDS, ARE INADEQUATE FOR FORMERLY RURAL NATIVE COMMUNITIES NOW AND FOR PRESENTLY RURAL NATIVE COMMUNITIES IN THE FUTURE.

2. "CUSTOMARY AND TRADITIONAL." THE TASK FORCE'S PROPOSAL CONTAINS A DEFINITION OF C&T THAT IS IN CURRENT STATE LAW. ANILCA DOES NOT CONTAIN A STATUTORY DEFINITION, BUT THERE IS A REGULATORY DEFINITION USED BY THE FEDERAL SUBSISTENCE BOARD. THE SUMMIT UNANIMOUSLY SUPPORTED ANILCA'S PRESENT REQUIREMENT THAT SUBSISTENCE REGULATIONS MIRROR LOCAL C&T PATTERNS, WITH NO STATUTORY DEFINITION. NONE OF THE SUMMIT'S 12 REGIONAL CAUCUSES SUPPORTED THE DEFINITION CONTAINED IN THE TASK FORCE'S PROPOSAL. AFN RECOMMENDS THAT THE LATTER BE DROPPED.

3. "REASONABLE OPPORTUNITY." 11 OF THE 12 CAUCUSES SUPPORTED THE PRESENT FEDERAL REQUIREMENT THAT SUBSISTENCE REGULATIONS ACCURATELY MIRROR LOCAL C&T PRACTICES - OFTEN REFERRED TO AS "LEAST ADVERSE IMPACT." ONE SUPPORTED A STANDARD THAT "MEETS THE SUBSISTENCE NEEDS OF NATIVE COMMUNITIES." NO CAUCUS SUPPORTED "REASONABLE OPPORTUNITY." AFN RECOMMENDS THAT THE LATTER BE DROPPED AND THAT THE FEDERAL STANDARD REMAIN "LEAST ADVERSE IMPACT ON C&T." THIS ISSUE IS SEEN BY NATIVES AS A CRITICAL LOSS OF CURRENT FEDERAL PROTECTIONS.

4. "CUSTOMARY TRADE." ANILCA DOES NOT DEFINE CUSTOMARY TRADE, RELYING INSTEAD ON THE FEDERAL COURTS TO ADJUDICATE INDIVIDUAL CASES OF POSSIBLE ABUSE. THE TASK FORCE'S PROPOSAL TRIES TO OFFER A STATUTORY DEFINITION OF CUSTOMARY TRADE BUT LEAVES MOST OF IT TO THE DISCRETION OF THE STATE BOARDS. NO CAUCUS OF THE SUMMIT SUPPORTED THE LATTER FORMULA - BECAUSE VIRTUALLY NO ONE THERE TRUSTS THE BOARDS. EIGHT OF THE 12 CAUCUSES SUPPORTED ANILCA'S PRESENT RELIANCE ON FEDERAL COURT DECISIONS. AFN RECOMMENDS THAT THE "CUSTOMARY TRADE" DEFINITION, WITH ITS REGULATORY DISCRETION, BE DROPPED.

5. PROTECTED HUMAN USES OF SUBSISTENCE. THE TASK FORCE'S

PROPOSAL CONTAINS A LIST OF FIVE PROTECTED USES, WHICH IS THE SAME AS IN ANILCA NOW. STATE LAW CONTAINS THE SAME LIST AND ADDS USES FOR POTLATCHES. THE TASK FORCE'S PROPOSAL ALSO CONTAINS THE REQUIREMENT THAT, AT TIER II, THE STATE BOARDS MUST ELIMINATE ALL C&T USES OTHER THAN FOOD. BASED ON THE SUMMIT'S UNANIMOUS DECISIONS, AFN RECOMMENDS THAT CULTURAL AND RELIGIOUS USES BE ADDED TO THE STANDARD LIST OF FIVE AND THAT THE TIER II LIMITATION TO FOOD BE DROPPED.

6. MANAGEMENT REFORMS. THE SUMMIT UNANIMOUSLY AGREED ON THE NEED FOR COMPREHENSIVE REFORM OF THE STATE'S REGULATORY AND MANAGEMENT SYSTEMS. IT RESOUNDINGLY ENDORSED THE FEDERAL REGIONAL SUBSISTENCE COUNCILS, RECOGNIZING THAT THEY ARE A VAST IMPROVEMENT ON THE STATE'S SYSTEM. THE CAUCUSES ALSO REQUESTED SIGNIFICANT REFORM OF THE STATE BOARDS - PROPOSING THE RESTRUCTURING OF THE BOARDS, THE USE OF A SUBSISTENCE BOARD, AND THE EMPOWERMENT OF REGIONAL COUNCILS AS REGIONAL REGULATORY BOARDS. AFN RECOMMENDS THAT THE TASK FORCE STRENGTHEN ITS PROPOSAL BY ADDING SUCH REFORMS - IN ORDER TO CREATE A LEVEL PLAYING FIELD FOR SUBSISTENCE USERS. OTHERWISE, NO MATTER HOW GOOD A STATE OR FEDERAL STATUTE MIGHT SOUND, WE WILL SIMPLY GO BACK TO BUSINESS AS USUAL - WITH SUBSISTENCE AS THE PERMANENT STEPCHILD OF THE REGULATORY PROCESS.

7. CO-MANAGEMENT. ALL 12 CAUCUSES INSISTED ON INCLUSION OF CO-MANAGEMENT AS AN ESSENTIAL ELEMENT OF ANY SUBSISTENCE MANAGEMENT SYSTEM. FOR 11 OF THE 12, THIS DID NOT MEAN MERELY THAT THE STATE SHOULD CONTRACT MINOR MANAGEMENT TASKS TO VILLAGE OR REGIONAL ENTITIES IN THE BUSH. CO-MANAGEMENT IS NOT JUST ABOUT HIRING LOCAL RESIDENTS TO COUNT SALMON OR TAKE SOIL SAMPLES. RATHER, IT IS ABOUT SHARING REAL MANAGEMENT AUTHORITY WITH SUCH PEOPLE AND THEIR INSTITUTIONS. IT IS ABOUT CHANGING THE ADVERSARIAL RELATIONSHIP BETWEEN VILLAGERS AND STATE OFFICIALS BY ACCORDING THE FORMER A TRUE SENSE OF OWNERSHIP AND RESPONSIBILITY FOR THE SYSTEM ITSELF. ONE OF THE GUIDING PRINCIPLES THAT EMERGED FROM THE SUMMIT CALLED FOR CO-MANAGEMENT IN WHICH THE STATE AND THE TRIBES ARE INVOLVED AS EQUALS. WE COMMEND THE TASK FORCE'S PROPOSAL FOR RECOGNIZING THE NEED FOR MANAGEMENT REFORM AND THE FACT THAT TRIBES HAVE A ROLE TO PLAY IN MANAGEMENT. THE PROPOSAL, HOWEVER, FALLS FAR SHORT OF WHAT IS NECESSARY TO MAKE SUBSISTENCE WORK IN ALASKA AND TO GAIN SUPPORT OF VILLAGE RESIDENTS. IT ALSO REPRESENTS FAR LESS THAN THE CO-MANAGEMENT SYSTEMS WHICH OTHER NATIONS HAVE WORKED OUT WITH THEIR OWN INDIGENOUS PEOPLES. AFN URGES THAT RESOLUTION OF THE IMPASSE CONTAIN REAL CO-MANAGEMENT REFORM.

8. EXTENT OF FEDERAL JURISDICTION WHEN THE STATE IS OUT OF COMPLIANCE WITH FEDERAL LAW. BASED ON A LARGE MAJORITY OF CAUCUS VOTES, AFN RECOMMENDS THAT, WHEN THE STATE FAILS TO COMPLY WITH ANILCA NOW OR IN THE FUTURE, FEDERAL JURISDICTION INCLUDE:

-- ALL PUBLIC LANDS, INCLUDING THE MAXIMUM EXTENT OF RESERVED NAVIGABLE WATERS - AS CURRENTLY PROVIDED IN FEDERAL LAW;

--ALL SELECTED BUT UNCONVEYED LANDS UNDER THE STATEHOOD ACT AND ANCSA - BY ACT OF CONGRESS; AND

--FEDERAL "EXTRATERRITORIAL" AUTHORITY TO IMPACT REGULATORY DECISIONS ON STATE AND PRIVATE LANDS WHEN NECESSARY TO PROVIDE FOR SUBSISTENCE HUNTING OR FISHING ON FEDERAL LANDS AND WATERS - BY ACTION OF THE FEDERAL AGENCIES.

9. FEDERAL COURT AND AGENCY OVERSIGHT. ALL 12 CAUCUSES OF THE SUMMIT AGREED THAT NO CHANGES SHOULD BE MADE TO ANILCA WHICH REDUCE THE POWERS OF THE FEDERAL COURTS AND AGENCIES TO ENFORCE THE STATUTE. FEDERAL LAW AND OVERSIGHT ARE THE ONLY REASON WHY NATIVE SUBSISTENCE PRACTICES SURVIVE IN THE PRESENT DAY. ANY STATUTE MAY SOUND WONDERFUL ON ITS SURFACE, BUT TO THE EXTENT THAT IT CANNOT BE MADE TO WORK IN REALITY, IT IS A LIE. AFN RECOMMENDS THAT

THE TASK FORCE DROP FROM ITS PROPOSAL THE LIMITATION OF THE FEDERAL COURTS TO "ARBITRARY AND CAPRICIOUS" AND "ABUSE OF DISCRETION," THE REQUIREMENT OF DEFERENCE TO STATE BOARD DECISIONS, AND THE ELIMINATION OF SECRETARIAL AUTHORITY WHEN THE STATE IS IN COMPLIANCE.

10. CONSTITUTIONAL AMENDMENT. BASED ON THE DECISIONS OF THE SUMMIT'S CAUCUSES, AFN RECOMMENDS MANDATORY LANGUAGE ("THE LEGISLATURE SHALL...") AND RECOGNITION OF THE POLITICAL STATUS OF ALASKA NATIVES IN THE TASK FORCE'S CONSTITUTIONAL AMENDMENT.

11. ANILCA AMENDMENTS. SEVEN OF THE 12 SUMMIT CAUCUSES OPPOSED ANY AMENDMENT OF TITLE VIII'S CURRENT PROVISIONS; THREE FAVORED ONLY AMENDMENTS THAT MIGHT STRENGTHEN, RATHER THAN WEAKEN, CURRENT FEDERAL PROTECTIONS; AND ONE SUPPORTED AN AMENDMENT TO RECOGNIZE TRIBAL SUBSISTENCE RIGHTS. NO CAUCUS SUPPORTED THE WEAKENING AMENDMENTS PRESENTLY CONTAINED IN THE TASK FORCE'S DRAFT. AFN RECOMMENDS THAT SUCH PROVISIONS, ENUMERATED ABOVE, BE DROPPED.

12. SUBSISTENCE JUDICIAL DEFENSE. ALL 12 CAUCUSES SUPPORTED THE POSITION THAT FEDERAL AND STATE LAWS MUST

RECOGNIZE AND PERMIT A SUBSISTENCE DEFENSE IN COURT, AND AFN SO RECOMMENDS.

MR. CHAIRMAN, I WANT TO CONCLUDE THIS LIST OF RECOMMENDATIONS ON A SERIOUS NOTE OF CAUTION:

ALL 12 REGIONAL CAUCUSES OF THE SUMMIT REITERATED THE STRENUOUS OPPOSITION OF THE NATIVE COMMUNITY TO ANY ATTEMPT TO OPERATE A SUBSISTENCE PREFERENCE BY MEANS OF INDIVIDUALIZED, NEEDS-BASED PERMITTING. SUCH A POLICY WOULD LITERALLY DESTROY THE ECONOMIES AND SOCIAL STRUCTURES OF NATIVE VILLAGES. BASING SUBSISTENCE ON THE LACK OF CASH WOULD TURN IT INTO A WELFARE PROGRAM: WHAT THE STATE WILL GIVE YOU IF YOU DON'T HAVE A JOB. IT WOULD SEPARATE THE TWO COMPONENTS OF RURAL ALASKA'S MIXED ECONOMIES (CASH AND SUBSISTENCE) INTO MUTUALLY EXCLUSIVE ALTERNATIVES, FORCING VILLAGERS TO CHOOSE ONE OR THE OTHER - FOR THE SIMPLE REASON THAT SOMEBODY ELSE WANTS THEIR FOOD. IT WOULD BECOME A DISINCENTIVE TO TAKING ANY CASH JOB IN THE VILLAGE FOR FEAR OF LOSING SUBSISTENCE PROTECTIONS. TAKEN TO ITS LOGICAL CONCLUSION, IT WOULD ISSUE ANNUAL SUBSISTENCE PERMITS BASED ON APPLICANTS' IRS RETURNS OF THE PREVIOUS YEAR. IT WOULD DAMAGE SOCIAL COHESION BY REACHING INTO THE MIDDLE OF EVERY NATIVE COMMUNITY AND FAMILY AND SETTING UP TWO ARTIFICIAL

CLASSES OF PEOPLE ("TRADITIONALS" WITH SUBSISTENCE AND "MODERNS" WITH CASH EMPLOYMENT), BASED ON A PIECE OF PAPER ISSUED BY NON-NATIVE FUNCTIONARIES. IT WOULD CREATE A COSTLY BUREAUCRATIC NIGHTMARE THAT WOULD MAKE LIMITED ENTRY LOOK LIKE CHILD'S PLAY. IT IS A POLICY DESIGNED TO LIMIT SUBSISTENCE USERS IN ORDER THAT NON-SUBSISTENCE USERS CAN GET A LARGER ALLOCATION OF FINITE RESOURCES. I CANNOT OVEREMPHASIZE HOW STRONGLY THE NATIVE COMMUNITY WILL RESIST ANY SUCH DEVELOPMENT.

#### FURTHER DISCUSSIONS AND NEGOTIATIONS

HAVING ENUMERATED SO MANY DIFFICULT ISSUES OF POLICY, LET ME ADD A HOPEFUL NOTE. AT THE END OF ITS DELIBERATIONS, THE SUBSISTENCE SUMMIT ADOPTED A GENERAL RESOLUTION; ITS WORDS CONVEY THE SPIRIT IN WHICH THE ALASKA NATIVE COMMUNITY WISHES TO GO FORWARD FROM HERE.

THE 900 PARTICIPANTS EXPRESSED THEIR "...APPRECIATION FOR THE HARD WORK AND DEDICATION OF GOVERNOR KNOWLES AND THE MEMBERS OF THE GOVERNOR'S TASK FORCE IN DEVELOPING ITS PROPOSAL..." THEY LIKewise COMMENDED THE EFFORTS OF ALASKA'S CONGRESSIONAL DELEGATION.

BUT, TO ME, THE MOST ENCOURAGING STATEMENT WAS THIS: "THE

DELEGATES TO THE NATIVE SUBSISTENCE SUMMIT EXPRESS THE WILLINGNESS OF THE ALASKA NATIVE COMMUNITY TO WORK FOR THE DEVELOPMENT OF A CONSENSUS ON A PACKAGE TO ADDRESS SUBSISTENCE." THEY ADDED THAT THIS PROCESS MUST INVOLVE THE FULL PARTICIPATION AND ENDORSEMENT OF THE NATIVE PEOPLE AND THEIR TRIBES. THEY AUTHORIZED AND DIRECTED AFN, AI-TC AND RURALCAP TO CONTINUE TO WORK "...WITH GOVERNOR KNOWLES, THE MEMBERS OF THE GOVERNOR'S TASK FORCE, THE MEMBERS OF THE ALASKA LEGISLATURE, THE MEMBERS OF THE ALASKA CONGRESSIONAL DELEGATION AND OTHER INTERESTS...TO DEVELOP A RESOLUTION TO THE SUBSISTENCE IMPASSE CONSISTENT WITH THE GUIDING PRINCIPLES ADOPTED BY...THE SUMMIT."

THAT CONCLUDES MY TESTIMONY, MR. CHAIRMAN. I WOULD BE HAPPY TO RESPOND TO ANY QUESTIONS THE COMMITTEE MAY HAVE. THANK YOU.



# ALASKA OUTDOOR COUNCIL, INC.

Date: 9/30/97

To: \_\_\_\_\_

Senator Halford  
attn: Brett  
699 0549  
Cover + 2 pp.

Testimony from 9/24  
Resources Comm. hearing  
for Comm. records.

Sorry I couldn't get to Anchorage

---

From: Dick Bishop

AOC

455-6151 (h)

455-4262 (office)



## Alaska Outdoor Council

PO Box 73902

Fairbanks, AK 99707-3902

Tel./FAX: (907) 455-4AOC (4262)

e-mail: outdoor@polarnet.com

www2.polarnet.com/~outdoor

### Alaska Outdoor Council Testimony Alaska Senate Resources Committee Hearing on Subsistence Fairbanks, AK -- September 24, 1997

by

Richard H. Bishop, AOC Subsistence Spokesman

Mr. Chairman, Committee Members:

I am Dick Bishop, Alaska Outdoor Council spokesman on subsistence. The Council appreciates your waiting until after the peak of fall hunting to commence these hearings on yet another effort to find a way out of the devil's club thicket called subsistence.

The Outdoor Council does not support the Task Force proposal without substantial revision, although it contains a number of improvements, particularly definitions of terms in ANILCA.

Paradoxically, proponents of a discriminatory rural or racial priority have brushed out the trail through the devil's club by stating "Subsistence is a basic human right."

The Alaska Supreme Court made that point 8 years ago in the McDowell case. The Court said that subsistence is an important value running to every Alaskan; too important to discriminate on the basis of ZIP code. One Justice went on to say that "this is an equal protection case, and an easy one at that."

The Outdoor Council has repeatedly stated that subsistence uses and lifestyles are integral values of Alaska. But a law that says they are only good for some Alaskans, that no one but those of an arbitrary, closed class group can hope to qualify for those "important values", -- can hope to qualify for those "basic human rights" -- such a law is wrong.

This is a civil rights issue. It's not about food, it's not about culture, it's about whether the law of the land should continue to ratify discrimination against the majority of Alaskans, and indeed, against the majority of Americans, regarding the use of fish and game and other natural resources.

It is scary to realize how politically seductive is the idea of discriminating just a little bit in order to slide past the compromise politically unscathed.

Sure -- it's a tough issue -- and in Washington, DC, few people know much about it. Bruce Babbitt is blowing political smoke. Alaska's delegation has passed the buck back and forth, trying to avoid the heat; and saying on this issue "Gosh, we are powerless..."

But do you suppose that if the Chairman of the Senate Appropriations Committee stood up and proclaimed that "Subsistence is a basic human right" and "Subsistence is an important value running to every Alaskan", and the opportunity to pursue it should not be discriminated on the basis of ZIP code -- do you think if Senator Stevens said this Congress would listen? I think so. I would like to hear him say it.

The Governor's Task Force subsistence proposal ignores the premise that "subsistence is a basic human right". It says it's a basic human right only for a privileged few. The proposal attempts to make a rural priority palatable by some much-needed tightening up of the "sideboards".

But it begs the Alaskan public and Alaska's Legislature to vote for discrimination and against equal protection before the law -- against subsistence as a "basic human right."

**The Outdoor Council urges the Alaska Legislature to look beyond the present subsistence political dilemma. It is possible to adequately accommodate the needs of people who rely on personal consumptive use of fish and wildlife for their livelihoods without compromising the common use and equal protection provisions of Alaska's Constitution.**

We have suffered through nearly 20 years of bad political compromises on subsistence. Adding one more will only make matters worse. It's time to start the ball rolling the right direction. And the ball is in the Legislature's court once again.

Someone, someone among elected public officials, must stand up for the values and rights of all Alaskans' use of our common property fish and game resources, or our Congressional delegation will keep on dodging the issue.

There is no real difference in the long-term results of voluntarily buying into the federal law or having it stuffed down our throats.

The last time Alaska agreed to a hasty political compromise on subsistence we got into this mess. It's time to get out.

GTF ⊖

Barker

September 29, 1997

Senator Georgianna Lincoln  
Member Senate Resources Committee  
State Capitol  
Juneau, AK 99801

RECEIVED  
OCT 02 1997  
Ais'd.....

Dear Senator Lincoln,

I am writing to you about the Governor's Subsistence Plan to restore fish and game management to the State of Alaska. I am against the changes proposed by the Governor's plan because the plan changes the practice of subsistence from a dedication of fish and game to the Native community to practicing subsistence as a seasonal non-native hunt.

I believe this is unfair to the Alaska Natives because it makes it impossible for them to maintain their traditional connection to the land, a connection acknowledged through ANILCA, and seen as a matter of equity of law, which states that the "continuation of the opportunity for subsistence... by Alaska Natives ... is essential to ... Native cultural existence."

The only way to fairly recover state control of fish and game resources is for the state to acknowledge that the Alaska Natives need and deserve a priority to fish and game in Alaska.

Thank you for an opportunity to be heard on this issue.

*Edward D. Barker Jr.*

Ed Barker  
Box 80267  
Fairbanks, Ak 99708  
ffedb@aurora.alaska.edu  
(907)479-2794



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the SENATE RESOURCES  
 Committee on SUBSISTENCE Committee Name  
 Dated 4/24/97  
 Bill / Subject

Please do not change our Alaska Law  
 We do not need a discriminatory Law on  
 this Issue

FRED BAST

SIGNED:

Testifier

self

Representing

601 Fidsler Rd. FBKs Alaska 99507

Address / Phone Number

907-457-7543



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subcommittee Committee Name  
Dated Sept 24,  
 Bill / Subject

I am against denying the people of the State by this measure. Calif.'s Prop. 209 comes to mind for Alaska. Stay with our st. constit. + allow all resources to be used equally by everyone. Do not sell out to the gods for your own political gain, present or planned for later.

SIGNED: Burt B. Beard  
 Testifier  
myself  
 Representing  
1721 Emmons Trail, Box 470-3640  
 Address / Phone Number

Senate Resources Committee Hearing on Subsistence  
Testimony by Mary Bishop  
September 24, 1997

Thanks for coming and listening to us after the major hunting seasons.

Suggested process for your action:

A. You, the State Legislature, decide what's best for Alaska. Don't be moved to act by dire threats from those who don't live in this State.

B. Decide if you want any kind of statutory preference for any kind of individual or group.

If the answer is NO then don't do it -- and start some type of legal action against the federal government.

If the answer is YES then decide:

1. Should that preference be based on individual characteristics related to need --thus probably consistent with our State constitution (See McDowell decision).

2. Should it be a group preference -- thus requiring an amendment to the State Constitution.

3. Decide "who's in and who's out" -- make it clear so that voters know and federal judges know. Don't leave this job to people appointed to make fish and game regulations.

4. Should it be a preference for "customary and traditional use". If there is no indication of what "customary and traditional use" means, the argument regarding whether it provides for "a reasonable opportunity" or "least adverse impact" on "c & t use" is irrelevant. See Judge Holland's decision in the 1989 Bobby case. Holland required that he, as federal judge, approve any season or bag limit imposed by the Board of Game; he finally allowed something like an 11 month season for caribou and moose. In the decision he ruled:

*"...the Board of Game must in the future proceed with scrupulous care and caution in imposing seasons and bag limits on subsistence hunting...Need is not the standard. Again, it matters not that other food sources may be available at any given time or place. The standard is customary and traditional use of game." (emphasis added)*

If the Legislature uses words in a statute, a court of law rightly assumes they have a meaning and reason for being there. I know what "customary and traditional" means. If I were a federal judge, I would assume State Legislators knew what the words mean -- and what Judge Holland had ruled they meant.

"Customary and traditional" methods and skills were necessary to bush Alaskan survival 75 years ago. Knowledge of those methods and skills is valuable today, especially for those who may on occasion need the survival skills. They are NOT appropriate for general use today by any people who have accepted Remington, Winchester, Evinrude, nylon nets, Yamaha, and Honda into their cultures.



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Sen. Res.  
 Committee on Subsistence Committee Name  
 Dated 9/29/97  
Bill / Subject

- See attached -

SIGNED:

Pete Buist

Testifier

My family

Representing

Box 71561, Fairbanks, AK 99707

Address / Phone Number

(907) 457-7189

Mr. Chairman, members of the Committee

My name is Pete Buist, Box 71561, Fairbanks. I am testifying only for myself and my family, not any group or agency.

I am holding photographs of four generations of Buists obtaining moose meat for the family table. The oldest photo was taken in 1910.

I come from an unbroken line of hunters who have taken wild resources for sustenance. While I have the utmost respect for Native Alaskans, I resent the implication by the Governor, his hand-picked Task Force and AFN that my cultural heritage is not as important as someone else's.

*find it reprehensible*  
I ~~am dismayed~~ that any Alaska legislator would even consider voting in favor of the institutionalized discrimination inherent in the proposal to strike the concept of equal rights and common use from our State Constitution.

And I must add that if you capitulate to the pressure to "manage" fish and wildlife by federal dictates, that is not really regaining state management.

Thank you.



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subsistence 9-25-97 Dated 9-25-97  
 Bill / Subject

I have been an Alaskan resident since 1964, and have hunted & fished for recreation and as a way to supplement my income by reducing my annual food bills by using the fish and game that I have been fortunate enough to harvest. I oppose the governor's subsistence plan, or any change to our state constitution. I believe the only fair (just) plan, is NONE at all. If we are giving <sup>priority</sup> access to fish & game to any group or class of people we are violating our constitution. all Alaskans must have equal access to our resources. Why should a resident of Unit 13 who works for the State (DOT) making 60,000. + a year have priority over me, to harvest unit 13 moose & caribou? IT DOES NOT MAKE SENSE!

SIGNED: Wm B Childers  
 Testifier

Self  
 Representing

PO Box 82075 Fairbanks, AK 99708 Ph. 479-4959  
 Address: / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subsistence Committee Name Dated 9-24-97  
Bill / Subject

Please note that although your efforts are not wasted or thought of that way. It is imperative that you understand the timeliness of these hearings in the Fairbanks area excludes possible testimony from All those hunting during this time - the need for wild game + fish is important not only to the natives of Alaska but also Alaska Natives. As a third generation Alaskan - involved in collecting resources from the land for diet, housing etc. ~~should not~~ these resources should not be limited unless

SIGNED: Aoni Clayton limited equally NO  
 Testifier Self preference.  
 Representing 4634 Ruth Estates Rd Everyone chooses  
 Address / Phone Number Fairbanks, AK 99712 to live where they  
907-457-3416 live in the  
State.



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
Committee Name  
 Committee on Subsistence Dated 9-25-97  
Bill / Subject

I oppose the governors plan and I strongly support the alaska outdoor councils recommendations.

also I oppose any change to the alaska constitution,

Hunting and fishing is the way of the land in a alaska all people should have the same rights

I have done both for over 20 years here to feed myself and family both of my kids were born here that should also made them what you would call a alaska Native

SIGNED:

Ronald Dumas  
 Testifier

Myself  
 Representing

310 steelhead Road FBX 99209 479 45-90  
 Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee Name  
 Committee on Subsistence Dated 8-25-97  
 Bill / Subject

First, I feel there is no need to be changing the Constitution in any way. The Alaska Outdoor Council has the right direction in mind. I hunt with my son every year, and we do use all the meat we take. We look forward to spending time together doing something we love. I have been in Alaska for 19 years, and my son and wife were born here. My family and I feel we have just as much right to hunt and fish Alaska lands and waters as anyone! Thank you for your time.

SIGNED: DARRIN MEDSON Darrin M Edson  
 Testifier

Self + Family  
 Representing

PO Box 61106 Fairbanks AK. 99706  
 Address / Phone Number  
(907) 455-6624

Frank ✓



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the SRC  
 Committee on Subsistence Committee Name  
 Dated 9-24-97  
Bill / Subject

- 1) Hold hearings in rural areas; especially near navigable waters where the federal government would assume mgt.
- 2) Allow Alaskans to vote on the issue.
- 3) I favor a Yup'ik; Inuit; Aleut; Athabaskan Tlingit; Haida subsistence tradition cultural taking of subsistence resources.

SIGNED: Oscar Frank Sr  
 Testifier  
SELF - no one else.  
 Representing  
1302 21st Ave Fbxs, AK 99701  
 Address / Phone Number 458-0708



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subsistence Dated 9/25/97  
Committee Name/  
Bill / Subject

I oppose the Governor's Plan and I strongly support the Alaska Outdoors Council's recommendations

I very strongly oppose any changes in the Alaska Constitution

Hunting, fishing, berry picking and mushroom gathering are essential to my ~~Family's~~ Family's well being. I have lived in Alaska for 27 years. My daughter was born here. I consider her and my self and wife (resident of 30 years) to be ~~Alaska~~ natives of Alaska.

I hunt every year for up to a month and my family fishes every year.

SIGNED: Wade Kinard  
 Testifier

Representing  
P.O. Box 81810 455-4721  
 Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subsistence Committee Name  
 Dated 9-25-97  
Bill / Subject

I was born & raised in Fairbanks and have lived here 53 years. I consider myself a Native Alaskan. My family hunts & fishes in Game Units 20 and 13 annually.

I oppose any change to the Alaska Constitution.  
 I support the Alaska Outdoor Council's recommendations.

SIGNED:

Henry W. Grant  
 Testifier

Representing

604 Cambridge DR, Fairbanks, AK 99709-6758  
 Address / Phone Number 907-479-2623



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the \_\_\_\_\_

Committee on Subsistence Committee Name  
Dated \_\_\_\_\_  
Bill / Subject

Dear Representatives Hudson and Ogan:

I support the following principles regarding subsistence:

- Full state management *without* federal oversight
- No racially or culturally based preference
- Individual needs-based subsistence eligibility
- Effective regulation and no commercial sales
- No erosion of state constitutional protections
- \_\_\_\_\_

Thank you for your help in protecting all Alaskan's privileges to hunt and fish.

Sincerely,

Signature  
Printed Name  
Address

Henry W Grant  
HENRY W GRANT  
604 Cambridge Dr  
FAIRBANKS, AK 99703-6158  
 907-479-2623

SIGNED:

\_\_\_\_\_  
Testifier

\_\_\_\_\_  
Representing

\_\_\_\_\_  
Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subsistence Committee Name  
 Dated 9-25-97  
 Bill / Subject

1. I oppose the Governor's plan.
2. Strongly endorse Alaska Outdoor Council.  
Recommendation.
3. Oppose any change in Alaska Constitution.
4. Subsistence coastal fishing is a important supply of meat for my family.
5. I've been here 8 years

SIGNED:

Joe Greenwood

Testifier

Self.

Representing

41.08 Port mouth Fairbanks AK, 99709 907-474-2047  
 Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subsistence Dated 9-25-97  
Committee Name  
Bill / Subject

I oppose the governors plan and  
 Support the Alaska Outdoor  
 Councils recommendations.

I oppose any change to the  
 Alaskan Constitution. I use hunting  
 and fishing to support our  
 food needs. I've lived in  
 Alaska for 18 years. One of the  
 great joys of being in Alaska  
 is the right to hunt and fish  
 for food.

SIGNED: Tina D. KA  
 Testifier

Representing

1233 Raspberry Flks AK  
 Address / Phone Number

455-7236

Heimer

Leghearing Bullets

September 1997

To: Legislative Hearing Record

From: Wayne E. Heimer  
1098 Chena Pump Road  
Fairbanks, AK 99709

Re: Governor's Task Force Position on Subsistence

Testimony: Personal credentials

My name is Wayne Heimer; I live at 1098 Chena Pump Road in Fairbanks. I am speaking for myself. I have been a careful observer of, and a participant in events leading to passage of ANILCA and its effects on management and conservation of Alaska's wildlife since the beginning. From 1971 to 1997, I was employed by the Alaska Department of Fish and Game. My initial exposure to the ANILCA controversy resulted from my assignment as a Dall sheep specialist. Since much of ANILCA land involved sheep habitat, the potential impacts on Dall sheep management in Alaska were a major concern. During the early stages of the ANILCA debate, I published three technical/historical papers on ANILCA's effects on Dall sheep management by the state. Because of this background, I was assigned to provide biological and management background for the Babbitt case during the Hickel administration.

My specific job was to research and document management case histories where federal management harmed state interests. I received this assignment because Judge Holland challenged the state to show it had been harmed by the federal takeover of wildlife management before he would hear the Babbitt case. The product produced during the first year of this assignment was a 250-page volume titled "DUAL STATE AND FEDERAL MANAGEMENT OF FISH AND WILDLIFE HARVESTS; Examples of problems and related issues," was appended to the state's filing in the Babbitt suit over federal and Native objections. Subsequently, Judge Holland ruled the state had been harmed by the federal takeover of wildlife management. This finding of harm precluded dismissal of the state's case against federal takeover of wildlife management as requested by federal and Native attorneys. Subsequently, I prepared seven additional case histories which were presumably to be used in further litigation. These additional case histories were never released by the Department because of philosophical changes which accompanied the Knowles administration appointments in the Department of Fish and Game. In the course of preparing these ten case histories over the 4.5 years I was assigned to the ANILCA program, I was forced to become familiar with the legislative history and content of ANILCA as passed by Congress. I have included an annotated outline of the history of ANILCA with respect to the myth of a mandatory federal take over for your use.

My testimony:

The direct purpose of this letter is to inform you of my considered opinion of the Governor's Task Force plan. I've studied the draft plan, and tried to keep abreast of modifications. I oppose the plan, and encourage you to resist its implementation. Here's why:

1. ANILCA does not now, nor did it ever mandate a federal takeover of state wildlife or fisheries management of subsistence harvest allocation. In fact, Sec. 807 excludes the possibility of federal takeover.
2. The reason the feds took over wildlife management and are now preparing to take over fish management is because they chose (and are choosing) to do so. *(If they are not required to, they must be doing it because they elect to do so. Right?)*
3. The only authority the feds have to sustain their takeover of wildlife management is Judge Holland's ruling that, even though ANILCA doesn't call for a federal takeover because takeover language was 'amended out' on the Senate floor, he couldn't imagine Congress didn't have a federal takeover in mind when it passed ANILCA. This decision, which amounts to making law 'from the bench' stands unchallenged because then-candidate Knowles promised to drop the state's challenge to Holland's opinion to secure a political advantage (endorsement by the Alaska Federation of Natives) in the gubernatorial election of 1994. Governor Knowles obtained the advantage, won the election, and kept his promise to AFN.
4. The only justification for a federal fisheries takeover is the reserved water rights count of the Katie John litigation, *(the only count in the Katie John suit to be upheld by the Ninth Circuit Court)*. The perversely broad federal application of reserved water rights to management of subsistence fishing in Alaska's navigable waters has not been challenged by the state.
5. In seven years of federal management of wildlife, the federal government has probably spent at least \$50,000,000. The results in terms of benefits to federally recognized subsistence users (rural residents) are nebulous. Of the 794 federal subsistence regulations on the books in 1996-97, only 176 customary and traditional use findings provided for exclusive use by 'local' rural residents. Whether these federal 'local use' restrictions have actually provided subsistence harvest opportunities which would not have been provided by the state in the absence of a federal program takeover is arguable.

Certainly, any benefits could have been provided more promptly and cost-effectively through application of the judicial enforcement provision (Sec. 807) which ANILCA actually specifies to address grievances by subsistence users.

Recognition of the fact that the state and federal subsistence laws are designed to do the same thing, and that the state's Tier II mechanism selects in favor of local users, drives me to suggest that actual benefits produced by the federal system have been negligible for rural residents.

6. The feds project taking over fisheries management and expanding federal wildlife management to state lands will cost another \$116-\$120,000,000 per year.
7. Since Title VIII of ANILCA is very costly and provides no actually measurable benefit to Alaska's rural residents, my first suggestion is that it simply be repealed. If this is politically or socially unacceptable, Alaska should simply say "NO" to federal management (which is based only on Judge Holland's opinion and NOT on the text of ANILCA).

That is, Alaskans should simply refuse to recognize any attempt at federal takeover; let the feds sue us if they really want it. What could the feds really do if the legislature just said "NO" to the feds? Here we should note that the legislature is the representative branch of government...not the Governor's office. If the Governor won't assert Alaska's right to manage, why shouldn't the people do it through their elected representatives?

8. We have tried for 20 years to 'solve the subsistence problem' to keep the feds from a takeover to which they have no legitimate claim. This approach has only exacerbated the problem of division among Alaskans...not the subsistence problem. Only when we get the feds out of the picture, will it be possible for the state to resolve the problem--if an actual problem exists. The state's history of local preference hunting and fishing regulations shows this is certain to happen again in the absence of the feds.
9. My final "compromise position" is that if we can't or don't have the collective will to "Just say NO!" we could survive rather nicely if we'd simply insist that the feds abide by the language of ANLCA rather than the "legislative intent" they established in House committee hearings, but couldn't get into the law on the floor of Congress. That would not be a disaster. It worked well in the cases of Kilbuck caribou and Lime Village moose up until the time of federal takeover. Under state management as actually prescribed in ANILCA, we may have some litigation from time to time, but the feds would be out of the management picture, and the division among Alaskans could begin to heal.

I regret that I cannot be present to share these ideas with you. However, your meeting was scheduled at a most inappropriate time for me. I am pursuing my customary and traditional fall activity, moose harvest to feed my family today. Had I known your schedule in advance, I would have rearranged mine, but alas, your schedule was not available when I had to make plans and commitments.

Do not accept the Governor's plan, it will make things worse rather than better (see attached reprint from Fairbanks Daily News-Miner). Just say "NO" to federal management.

# Alaskans don't like the 'Alaska solution'

By WAYNE A. HEIMER

Recent News-Miner articles suggest the so-called "Alaska solution" proposed by Sen. Ted Stevens and Gov. Tony Knowles to solve "the subsistence problem" is unacceptable to Alaskans. Proponents of the governor's plan don't seem to be getting the message.

Most recently, Sen. Stevens purposely chose not to block a federal fisheries take-over this fall. The senator's reason was to apply pressure for an "Alaskan solution" to the subsistence problem. Stevens justified increasing the risk of a "federal solution," by reading a letter from Interior Secretary Bruce Babbitt, who—brace yourself—doesn't approve of state management or a smaller budget for his department. (July 23, 1997 News-Miner.)

In the July 22 News-Miner, I read the governor was "Coated with a fine layer of dust....eating smoked salmon, feeding the mosquitoes and listening" as he made a riverboat trip down the Yukon to talk to villagers about his proposed "Alaskan solution." Villagers the governor encountered seemed more interested in "flushing than fishing" as road construction and maintenance, public sewer and water systems were above subsistence when they spoke with the governor.

While the governor was feeding the mosquitoes, task force member Charlie Cole was on local radio mistakenly misrepresenting the impact of the hunting proxy provision of the governor's plan. Mr. Cole was dead wrong in his understanding of the restrictions existing in state proxy hunting regulations. The task force's proxy hunting

## Guest Opinion

section would be more accurately titled "An exemption allowing urban residents with rural connections to hunt."

In the July 18 News-Miner, Fred Pratt pointed to specific failures of the governor's "Alaskan solution." He faulted the proposal because it fell short of fairness to all, a difficult task when discriminating to allow preference.

Earlier, the July 13 editorial had suggested we try to consider the governor's "Alaskan solution" as a positive step toward solving the subsistence problem, but that "the devil was probably in the details."

The July 13 editorial was polite and kind, but missed two major issues. "Preventing" a federal take-over by transferring unworkable federal laws to the state's books gives only the illusion of state authority unless the feds are completely excluded from state management. This exclusion is pointedly not the case in the governor's plan.

The other issue is that the governor's "Alaska solution" calls for legally institutionalized discrimination. I realize the official term, "preference" is less abusive; but the fact is that "preference" is a politically correct way of saying "discrimination." It is logically impossible to give preference to some without discriminating against others. For this most basic reason, the governor's "Alaska solution" (which Ted Stevens plans to force on us) should be abhorrent to Alaskans.

The governor is pushing this unsatisfactory "Alaska solution"

at "warp-speed" because of a mistake he made while campaigning for office. In his quest to secure the endorsement of the Alaska Federation of Natives, Gov. Knowles dropped the Babbitt suit. This litigation would have settled the issue of federal involvement in Alaska's resident fish and game management. Because of his campaign choice Gov. Knowles now tells us that we must deal hastily with a "crisis." The "crisis" is destabilization of our commercial fishing industry.

To protect the commercial fishing industry, the governor says we must establish another, more radically "privileged" class: rural subsistence users. (Commercial fishermen may be considered a sort of "privileged class" because they're the only ones who can fish commercially.)

I can't see how the governor's plan will solve the commercial fishing problem. The only way we could use the very laws the feds will enforce upon takeover to stabilize our commercial fishing industry would be to ignore (or amend) them once the feds are gone. What's the difference if the state or the feds enforce laws which prohibit commercial fishing until all upriver subsistence users are satisfied? Ignoring or even amending the governor's new (presently federal) laws can't be a long-term fix because the governor's task force plan makes it easier than ever to re-involve the feds through the courts.

It's time we gave up trying to solve the subsistence problem to get or keep the feds out of fish and game management. We've been at it for 17 years with no success. Only when the feds are completely out of fish and game

management in Alaska will we be able to solve the subsistence problem. This is because the federal recipe is the subsistence problem.

It is becoming progressively clearer that the "Alaskan solution" proposed by lawyers and politicians is unacceptable to Alaskans. This is, after all, the second time around for the governor's plan. I think it is time Alaskans call on our governor and congressional delegation to give up trying to amend the "sow's ear" of ANILCA into a "silk purse." It's also time for them to listen.

Acknowledgment of a federal role in the function of fish and wildlife management is counterproductive. The state has a better record of producing wildlife and fisheries abundance than the feds. Additionally, Native rights not withstanding, Alaska Natives have been better treated by the state than the feds. Most of the historic grievances kept alive by Native folklore and traditions have federal roots, having been committed in territorial days or as a result of federal policies which took a while to rectify after statehood.

Alaska is not anti-Native. The divisiveness we see has in fact, been primarily generated by federal government intrusion into state affairs. A truly Alaskan solution must be based on good faith and equality as set forth in our present constitution. Aren't good faith and equality really the Alaska values we should pursue at the exclusion of discrimination and its handmaiden, preference?

Wayne Heimer is a recently retired state wildlife biologist who spent the last 4.5 years of his career comparing state and federal wildlife management programs and functions following the partial federal take-over in 1990.

AN ANNOTATED CHRONOLOGICAL SUMMARY OF EVENTS LEADING TO  
THE PRESENT STATE/FEDERAL SUBSISTENCE IMPASSE

by Wayne E. Heimer  
1098 Chena Pump Road  
Fairbanks, Alaska 99709

*Dear Reader:*

*It has been said that the first requisite of a democratic society is an informed citizenry. At the present time, Alaskans are being asked to amend their state constitution and accept federal laws as state statutes in a proposal which proponents say will reestablish state authority for fish and wildlife management. If Alaska is to manage the state's fish and wildlife, it will be necessary to reestablish this authority because it was usurped by the federal government through a series of events of which the public was never well informed.*

*Basic to the actual federal take-over of wildlife management on federal and some state lands in 1990 was the federal assertion that the Alaska National Interests Conservation Act (ANILCA) mandates a federal take-over if the state does not provide subsistence preference based on "rural residence." This is not now, and since passage of ANILCA in 1980, has never been true. ANILCA, as passed by Congress never contained a federal take-over provision, and still doesn't. Still, most Alaskans believe it does, and that federal take-over is mandated by ANILCA if the state doesn't provide rural subsistence preference.*

*In an effort to explain how this widely held misconception was generated, I offer the following list of events I consider important to generation and evolution of "Alaska's subsistence problem." I have bracketed and italicized inclusion of ancillary facts together with my analysis so you will know when I have departed from events directly related to the history I'm trying to share with you.*

*I prepared this list as a "roadmap" to navigate among key elements of the ANILCA controversy during the 4.5 years I spent as a "dual management" researcher, analyst, and historian assigned to the Alaska Department of Fish and Game's then-existing ANILCA Team. Initially, my team assignment was to provide evidence of harm to the state's wildlife management programs as a result of the federal take-over of wildlife management in 1990. This assignment was in support of the Lujan/Babbitt suit contesting federal assumption of wildlife management in Alaska. This assignment lasted from 1992 through 1994 when there was a change in Governors. After the present Governor was elected and*

*dropped the Babbitt suit, my function became that of cr. ANILCA-related subsistence issue historian rather than a partisan in litigation. Nevertheless, objective documentation without comment continued to be my guideline. I emphasize that I have departed from that guideline here, providing ancillary facts and some personal analysis identified in bracketed, italicized text in an effort to render this arcane information more understandable to the general Alaskan public. I'm sorry I could not make it simple.*

*I hope this annotated historical review of events leading to the Governor's Task Force recommendations provides you with a sufficient historical perspective to make an informed decision regarding your position on how to resolve "Alaska's subsistence problem." Most reviewers of this manuscript were uncomfortable with my selection of events and some with my analysis. Where I was demonstrably wrong, I have changed my views and conclusions. The opinions I include are, of course, my own and subject to change as further facts requiring a change in opinion are documented. I'd rather be right than consistent. So, if you find errors of fact, please let me know. If you simply don't like my analysis or opinions, I'd be interested in trying to reconcile them with yours.*

*Wayne E. Heimer*

Wayne E. Heimer  
1098 Chena Pump Road  
Fairbanks, AK 99709

## **IMPORTANT EVENTS IN THE HISTORY OF SUBSISTENCE MANAGEMENT PROBLEMS**

--Prior to the 1960s, Native claims throughout the U.S. had been variously filed, considered, set aside, and scheduled for reconsideration without any real settlement.

--In the 1960s Indian tribes in the Northeastern U.S. were successful in getting court judgments requiring the government to honor terms of existing federal treaties.

--General interest in aboriginal claims increased along with social awareness of past Native American grievances (remember the "Wounded Knee" demonstrations and a spate of grievance books such as "Bury My Heart at Wounded Knee," and later films such as "He Dances With Wolves").

--During the 1960s, Alaskan Natives filed such claims, sometimes claiming specific use areas, sometimes the entire state. Nothing much happened other than these claims began to grind their way through the courts.

--In the mid-to-late 1960s the environmental movement began to define and achieve its agenda. Many historians date "Earth Day" 1967 as the beginning of environmental political power. The first major impact this agenda had on Alaska was passage of the Marine Mammal Protection Act. This act took Marine Mammals management from the state, placed it in the hands of the federal government, and limited use of marine mammals on the basis of race.

--Also in the late 1960s, oil was discovered on Alaska's north slope.

--After running one ice breaking tanker through the Northwest Passage, it became obvious that getting the oil to market was going to require a pipeline.

--Not everyone thought the pipeline was a great idea. The increasingly influential environmental community opposed it because it would transect what the community saw as the untrammled, pristine Brooks Range. It was clear that the pipeline would require a road, and the North Slope Natives also opposed it because it would bring "outsiders" into what they saw as "their" country...even though they did not "own" it by any conventional definition.

--In order to meet their common goal, opposition to the pipeline, the environmental community and Alaska Natives formed an alliance in spite of their obviously disparate views on human use of animals. Cynics (or prophets) of the day asserted a devious, anti-hunting agenda drove the environmentalists to form the "unholy alliance" to limit the total amount of hunting opportunity in the future. Whether the cynic/prophets were right in their assertion, federal wildlife management through the Federal Subsistence Board has certainly had that effect. Nevertheless...

--Alaska Natives were the dominant legal force in this alliance because the pipeline could not be built until title to the pipeline right-of-way was secure. This meant the Native land claims had to be settled before the pipeline could be built.

--The alliance was successful. Using the Native land claims as the major issue, and with the support of the environmental community, pipeline construction was delayed until the Alaska Native Claims Settlement Act (ANCSA) was passed in 1971. Alaska Natives got 44 million acres of land and approximately 1 billion dollars, half of which the state had to pay out of oil and gas development revenues. The state paid this debt "up front;"-(which is one reason permanent fund dividend checks are not even larger than they are) it is no longer owed.

--Included in ANCSA was Sec. 17 (d) (2) which was what the environmental community got out of the deal for supporting Native claims interests. This section created the vast new national parks, refuges, forests, and wild and scenic rivers under the National Interest Lands Conservation Act (ANILCA) in 1980. ANILCA was primarily a land-control act generated by the environmental community and the federal land-management agencies

which wanted more Alaskan land. Their ties to Alaska Natives were sufficiently strong that Title VIII (which, as originally drafted in the House of Representatives, included not only legal recognition of subsistence on a racial basis (like the Marine Mammals Act) but also provision for a federal management takeover). *These committee draft provisions did not make it into the final bill (as amended by the Senate) which was ultimately passed by Congress.*

--These positions were objectionable to many Alaskans. In an effort to keep Congress from including Title VIII (as drafted and presented in ANILCA during committee hearings) our Congressional delegation (primarily Ted Stevens) recommended to the Alaska Legislature that it should pass a state subsistence law as a preemptive measure. Acting on this advice, the legislature passed the state's first subsistence law.

--In spite of the state's subsistence law (which antedated ANILCA by 2 years), Congress included Title VIII (the subsistence provision) in ANILCA anyway.

--In 1980, ANILCA finally made it to the floor of congress (after Pres. Carter forced the issue by creating huge, strategically placed National Monuments which tied up Alaska's economic future so tightly that Senators Stevens and Gravel were willing to compromise).

--On the floor of Congress, two important aspects of Title VIII were changed. The first was pointed elimination of the racial designator for subsistence preference in Title VIII.

*[Ancillary Fact: ANILCA, as originally drafted, went through the House without significant modification, containing both the racial preference and federal take-over provisions in Title VIII. However, two important amendments occurred on the Senate floor. The first was elimination of racial preference. It has long been common knowledge that the term, "rural residents," and repetitive use of the term "non-Native" in the FINDINGS, POLICY, and DEFINITIONS sections of ANILCA were specific to elimination of race as the definer of subsistence preference in the Senate (which became the final) version of ANILCA.*

*The second important amendment was substitution of "judicial oversight" (Sec. 807) for "federal take-over" as the "enforcement teeth" which would assure the state provided the Congressionally mandated subsistence preference on federal public lands.*

*These two changes by the Senate were never formally challenged by the House, but neither were they ever really accepted as valid by ANILCA's original sponsors.*

*Analysis: This is why we have controversy over federal take-over today.*

Ancillary fact: The Senate version of ANILCA (which substituted "rural" for "racial" preference and judicial enforcement for the threat of federal take-over) passed a Democrat-controlled Congress during a Democratic administration (President Carter's) at the 11th hour before Congress adjourned in the fall. Passing legislation which contains differences in detail between House and Senate versions is common. Usually, differences in details are resolved by joint House-Senate conference committee and the committee's compromise version goes on to become law. If a conference committee cannot agree on compromises, the legislation is usually returned to the floor of the originating house for the further action.

Analysis: From our vantage point (15 years later, and in the midst of an unprecedented federal administrative take-over of fish and wildlife management) this difference between Senate and House versions doesn't look at all like it was a "detail!" Major policy differences are probably too important to simply work out in conference committee. Perhaps this one was. Still, by not asking for conference, the House passively accepted the Senate version.

Ancillary fact: The House tacitly accepted the Senate version so it became the law of the land.

Analysis: Perhaps there were political reasons why the House didn't protest the Senate's amendments. If a conference committee had failed, there was no recourse but to reintroduce the bill (in the House) during the next session. Considering the passion of those dedicated to saving "the crown jewels of Alaska" (a commonly used phrase during the emotionally charged ANILCA debates), it is logical to suggest House sponsors planned to get the racial preference and federal take-over language back into ANILCA by amending it during the next Congressional session. Attempting resolution of differences of this significance in a conference committee would have certainly been a major undertaking, and probably would have precluded President Carter (and Democratic Congressmen) from taking credit for "saving the crown jewels of Alaska" during the upcoming campaign.

Ancillary Fact: As a result of the election, the balance of power changed. President Carter lost to President Reagan, and Democratic control of Congress eroded. This meant the Democratic House leadership (whose specific "federal take-over" provision had been replaced by the Senate's "judicial oversight") would have to face a decidedly less friendly group during the next session (not to mention a sitting Republican President who favored state's rights, and would probably veto the bill). With these realities facing them, the House ANILCA sponsors didn't balk

*at sending the Senate version to President (Carter) who signed it into law (even though it didn't contain the federal take-over language they wanted). Apparently accepting the "imperfect" (as they saw it) subsistence enforcement provision for a year was preferable to risking loss of what they had secured with respect to saving Alaska's "crown jewels."*

*Analysis: As passed and without the sort of fine tuning which typically occurs in conference committees, ANILCA is unusually vague and internally inconsistent. This vagueness has allowed interests favoring federal take-over the opportunity to achieve federal management through administrative means even though it appears to be precluded by the language of ANILCA (which has persisted for the last 17 years.)*

*Ancillary Fact: The Senate's "judicial oversight" provision (which replaced the House's "federal take-over language") was Sec. 807. This section of the law demonstrates the difficulty of working with ANILCA. Finding out just what Sec. 807 actually says is difficult because readily available copies of ANILCA are said to contain a version of Sec. 807 which has since been amended. This amendment allegedly took place almost 15 years ago, but has never gotten into common circulation. I've not been able to obtain a copy of the "real" bill— if a "real" bill exists. (I've made a reasonable effort, but must admit I've not made it my life's work). Still, the readily available version of ANILCA Sec. 807 provides aggrieved subsistence users (who don't think the state gave them sufficient opportunity or allowed them to meet their needs) access to federal court (after they've exhausted the administrative appeal process). If these users prevail in federal court, the court can direct the state to provide increased subsistence use opportunities. Because the Sec. 807 process in the commonly available version of ANILCA was followed exactly in the Lime Village moose and Kilbuck caribou management before federal take-over, I question the existence of an amended version of Sec. 807.]*

--Once ANILCA was passed, some unknown person or entity in the Interior Department in Washington DC selected "rural residence" as the "litmus test" of whether the state subsistence law was "of general applicability."

--The Secretary of the Interior immediately threatened a take-over if the state's subsistence law didn't operate according to the federal (rural residence) litmus test.

--Instead of insisting that the federal agencies live by the letter of ANILCA Sec. 807 (the only means the act recognized for addressing the grievances of rural residents against the state for failure to provide subsistence preference on federal lands, the Hammond administration attempted to pacify the federal insistence of rural preference to prevent the federal take over which had been amended out of ANILCA in the Senate as though it were still in the text of ANILCA.. The first attempt was administrative.

--The Joint Boards of Fish and Game tried to pacify the Secretary of the Interior by administratively linking rural residence with subsistence preference through state fish and game harvest regulations (1981).

*[Analysis: Governor Jay Hammond and his Attorney General failed, at this point, to assert the state's right to manage indigenous wildlife. For some unknown reason they failed to insist that the feds stick to the letter of Title VIII as passed by Congress and the subsequently negotiated master memoranda of agreement and accompanying specific agreements negotiated by the state under Hammond's direction for each refuge, park, national forest, and wild and scenic river.]*

--In what came to be known as the Madison case (1985), this administrative (through regulations) linkage of subsistence preference with rural residence was found to be illegal.

--The Secretary of the Interior immediately notified the State of Alaska, through the Undersecretary for Parks and Wildlife, that it was out of compliance with ANILCA, and threatened another federal take-over.

--To avoid a second federal take-over threat the legislature passed our second subsistence law, which legally linked preference to rural residence. Once this was done, the Undersecretary for Parks and Wildlife, Bill Horn, notified Alaska that it was once again in compliance (1986) with ANILCA; and that a federal take-over would not occur.

--The second subsistence law was challenged by a citizen named McDowell.

--In ruling on the McDowell case (1989), the Alaska Supreme Court said it was unconstitutional to discriminate among Alaskans on the basis of residence.

--Based on the Interior Secretary's judgment that Alaska was again out of compliance (having failed the residence litmus test again) the federal government took over subsistence harvest allocation.

--To accomplish this take-over the Secretaries of Agriculture and Interior used the administrative federal rulemaking procedures to establish an administrative structure (the Federal Subsistence Board) for this function (1990). Federal rulemaking was the vehicle for establishing the Federal Subsistence Board because ANILCA (as passed by Congress) contained no provision for federal take-over (see compromises above).

*Analysis: Congressional compromises produce vague laws. ANILCA may be the grandest compromise ever produced by Congress, even though it never underwent joint House-Senate conference resolution). Looking at what has happened 17 years after ANILCA passage, it appears the forces*

*behind the House version simply decided to save Alaska through federal administrative means instead of risking legislative compromise.*

*Ancillary Fact: When Congress passes a vague law, Congress tacitly refers implementation of the law to the responsible agencies (in the case of ANILCA Title VIII, the Depts. of Interior and Agriculture).*

*What the agencies do is refer the job of interpreting the vague law to its solicitors. Typically, the solicitors refer to committee testimony to determine legislative intent. This apparently happened with respect to federal take-over relating to ANILCA Title VIII.*

*Analysis: The "subsistence problem" relating to ANILCA stems from the fact that the committee intent was different from the law Congress passed on the floor. When federal solicitors went to committee hearing records to establish legislative intent, they couldn't help but come up with stuff which was not in the law as passed on the floor of Congress because the Senate "amended out" the committee intent from the final version of the law. Still, these solicitors gave the "committee intent" greater weight than the text of the bill which passed out of the Senate and into law.*

--Because of the changes made in the Senate, the Depts. of Interior and Agriculture no longer had take-over language in the bill. Consequently, they had to use administrative means, federal rulemaking, to establish the machinery, called the "administrative structure," (the Federal Subsistence Board) for federal take-over.]

--This Federal Subsistence Board was composed of the regional directors of the federal land-management agencies in Alaska plus the director of the BIA. In addition to discharging their specific agency responsibilities and mandates, these directors are supposed to manage subsistence harvest allocation by passing suitable regulations for subsistence harvest allocations on federal public lands.

--Actions of the Federal Subsistence Board were unsatisfactory to the state in many cases.

*[Analysis: To me it seems obvious the two responsibilities, achievement of agency agenda and subsistence management, conflict for some federal land management directors (most notably the National Park Service.) The record shows the Regional Directors on the Federal Board are not above furthering their agencies' agendas through use of what they call, "ANILCA-mandated (rural) subsistence management authority" inferred from ANILCA committee intent language.*

***Ancillary Fact:** When it has suited any individual director, each has placed his agency's agenda regarding control of federal land above allowing subsistence uses.*

***Analysis:** For this reason, I suggest land-control (the primary job of a land-management agency regional Director) is a primary cause of the symptoms which define "the dual management/subsistence problem." Remember, ANILCA was not a subsistence law, but a federal land-control law, which occurred at the behest of federal land-management agencies and the national environmental community. Subsistence is a secondary priority for ANILCA.]*

--Creation of the Federal Subsistence Board to take over subsistence harvest allocation as well as the cumulative effects of "agency interest" actions by individual agencies through the Federal Subsistence Board, eventually led to sufficient state dissatisfaction that legal action was undertaken.

--Governor Hickel initiated litigation against Secretary of Interior Lujan, and subsequently Secretary Babbitt (1992), in an effort to reestablish state management of indigenous wildlife (as guaranteed in ANILCA) rather than implementation of regulations (driven by *ex post facto* interpretation of committee intent rather than what Congress actually passed). It was particularly onerous to the state because federal management was established by federal agencies through the federal rulemaking process rather than through legislation.

--As managed by Hickel's Attorney General, Charlie Cole, and the Federal District Court Judge, H. Russell Holland, this suit evolved into a challenge of "the standing" of the federal government to manage indigenous wildlife when it was on federal public land as defined in ANILCA. Judge Holland eventually narrowed the focus of the Babbitt case to what he called the "who" question.

*[Analysis: I don't know whether Attorney General Cole had any control of the direction this suit took, but what started out as an attempt to make the feds abide by the text of their own law, ANILCA, got to be a much larger question. The results of management of the case in this manner (whether it involved the Attorney General or not) were disastrous.]*

--Alaskan Natives saw this litigation, the state's effort to regain state management of wildlife, as a threat.

*[Analysis: Native opposition was understandable given the racial preference objectives of record by the Alaska Federation of Natives (AFN). After all, if the state were to prevail, the federal agencies which had been currying favor with Alaskan Natives through permissive*

*subsistence regulations would no longer be capable of doing so. Also, if the federal system gave way to the state system, "trust responsibility" could no longer provide the prospect of Native preference. [Note: Native interest in establishment of "trust responsibility" associated with sovereignty issues (repudiated four times by Judge Holland in 1995) is still seen as a means to racially based subsistence preference. Further note: There is a common confusion of prepositions when the feds discuss or fall back on trust responsibility to justify their takeover of wildlife and fish management. It should be noted that the federal government has a trust responsibility FOR Alaskan Natives not TO Alaska Natives. There is a significant difference as discussed by Holland in his judgment on the Venetie case where he cites Black's Law Dictionary regarding wardship.]*

*Ancillary Fact: State management was unacceptable to Alaska Native power brokers. The official AFN position of record still favors maximal federal management in lieu of race-based Native preference.*

*Analysis: Recalling the racial basis of marine mammal use illuminates the rationale of this position. These facts form the basis of my suggestion that race-power is a conceptual cause of the symptoms we call the dual management/subsistence problem.]*

--The initial ruling in Federal District Court (Alaska v. Babbitt) was unsatisfactory to the state. The state appealed to the Ninth Circuit Court of Appeals (1994).

*[Ancillary fact: In this ruling, Judge Holland reviewed the history of ANILCA passage. In fact, most of the facts about amendments on the Senate floor at the 11<sup>th</sup> hour come directly from his opinion. He found that the Senate had, in fact, "amended out" federal take-over from ANILCA, but rendered his opinion that Congress surely must have meant to provide federal take-over responsibility so that the answer to his "who" question about who should manage on federal land was, "the feds." It is no wonder the state appealed the case to the next higher court, the Ninth Circuit Court of Appeals.]*

--Governor Hickel retired from the Governorship.

--In the course of a very close campaign for the Governorship, the Knowles-Ulmer ticket sought endorsement of the Alaska Federation of Natives by promising to drop the state's litigation against Secretary Babbitt. The Knowles-Ulmer ticket won the endorsement of AFN, and eventually the election.

--Immediately upon election, Governor Knowles canceled the Babbitt suit because he said "many Alaskans" thought it was anti-subsistence.

--About this time, President Clinton's newly appointed Bureau of Indian Affairs Secretary, Ada Deer, appointed an activist lawyer with a background in ANILCA-related Native interest litigation, (Robert Anderson) to the post of BIA solicitor. Shortly after this appointment, the Federal Subsistence Board received a pointed solicitor's opinion from Mr. Anderson (1995). This opinion essentially told the Federal Board that it could not deny any proposal offered by a Regional Subsistence Advisory Council without explaining why according to criteria described in ANILCA Sec. 804 (*which deals with state--not federal--management*). Sec. 804 says:

The state rulemaking authority may choose not to follow any recommendation which it determines is not supported by substantial evidence presented during the course of its administrative proceedings, violates recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs. If a recommendation is not adopted by the State rulemaking authority, such authority shall set forth the factual basis and reasons for its decision.

--Federal land-management directors on the Federal Subsistence Board lacked the courage or management experience to apply these criteria at their April 1995 meeting. Notable results were the Kenai moose hunting crisis, closure of the pipeline corridor to bowhunting (later reversed upon public outcry), and elimination of caribou hunting on the Bristol Bay side of the Alaska Peninsula (presumably so caribou would migrate unimpeded to the Pacific side-which is not really satisfactory caribou habitat, though caribou sometimes pass through there). Additionally, there was the Dall River access controversy, the Arctic Village Subsistence Management Area expansion, and so on.

*[Ancillary fact: Accountability to documentable fact or empirical scientific data were not compelling factors in these decisions. Proposal by a Regional Subsistence Advisory Council (buttressed by what has come to be known as local knowledge or "traditional ecological knowledge") was all that was required.]*

--After canceling the Babbitt litigation, Governor Knowles appointed Lt. Governor Ulmer to come up with a "consensus plan" to solve the dual management/subsistence problem (1995). Lt. Governor Ulmer used "quiet diplomacy" to derive her "consensus plan." The plan failed.

--In a case related to the Babbitt suit, Judge Holland set out to solve the "where" issue of federal management. This was called the Katie John case. Alaska Native plaintiffs in this case had asked Federal District Court Judge (Holland) to rule that navigable waters are federal public lands upon which the federal government has subsistence management jurisdiction. Holland ruled in favor of the Natives. The state appealed.

--Upon appeal, the Ninth Circuit Court of Appeals overturned Holland, but did find that the federal government has reserved water rights for federal installations.

*[Ancillary Fact: This means that any federal installation which the federal government may establish has (automatically) reserved, for it, enough water to serve the functions of that installation. Typically these rights assure the conventional water needs for federal facilities such as military bases or federal holdings which may require irrigation water.]*

--In its ruling, the Ninth Circuit Court found that because subsistence fishing occurs in some navigable waters, and the federal government has reserved water rights, the federal government has some responsibility for subsistence preference provision in some navigable waters.

--Based on the finding that federal facilities are assured enough water for their intended function, the federal government proposed, through expanded rulemaking, a plan to assume fisheries management in the navigable waters of Alaska (1996). Under the proposed regulations, the federal government could regulate subsistence (as well as conflicting) harvests of fish and wildlife throughout the state of Alaska.

*[Analysis: Reserved water rights is a concept from irrigation law, which basically says an upstream user cannot deprive a downstream user of water to which the downstream user is legally entitled. Federal reserved water rights assure Federal agencies of enough downstream flow to fulfill the purpose for which any federal facility may be established. The actual relevance of enough water to flush toilets at a National Park headquarters may be only distantly related to what is coming upstream e.g. salmon allocation. That is, in their expansive application of the Ninth Circuit Court of Appeals finding that federal reserved water rights are guaranteed, the federal government is in the interesting position of using a guarantee that they'll get enough water coming downstream to allow function of the conservation units established by ANILCA lands, to manage what is coming upstream, i.e. salmon allocation for subsistence. If the federal mandate were for salmon conservation, this might make some sense, however, the mandate cited by the feds is not the continued conservation of a viable salmon resource, but continued human use of salmon by rural residents. The two mandates are not inherently complimentary.]*

*[Analysis: Until withdrawal of the Babbitt suit and the reserved water rights decision in Katie John, neither the state nor the federal government took dual management all that seriously. Both figured the courts would decide the issue. Had Governor Knowles not intervened on behalf of AFN, the courts would have decided the issue. Now that court decisions are no longer an option, both state and federal governments appear to be rethinking their approach to dual management.]*

--The feds are moving to take over fisheries based on the claim that they don't want to, but are forced to by ANILCA mandate.

[Analysis: *This is not a credible claim.*

Ancillary Fact: *ANILCA as passed by the Congress of the United States, does not now, nor has it ever contained a mandate for federal take-over. The feds wanted one, but they did not get it in the final bill. They never went to conference, and they never amended the ANILCA to include this language.*

Ancillary Fact: *The Babbitt suite as decided by Judge Holland's opinion represents, to date, the substance of the federal claim that they have standing as managers of wildlife and fisheries on federal (and adjoining state) lands and navigable waters.*

Analysis: *This situation resulted directly from the Knowles administration's dropping the Babbitt suit, and its reluctance to appeal the Katie John decision to a higher court for definition of the extent to which reserved federal water rights define the "where" question defined by Judge Holland.*

Ancillary Fact: *Federal take-over should not be "blamed on" ANILCA in any way.*

Analysis: *If the feds choose to take over, they should clarify the basis of their action. They are not forced to take over management for subsistence preference by any language in ANILCA.*

Personal opinion which goes beyond analysis: *I think the feds are simply taking over because they want to, and Judge Holland said he couldn't imagine that Congress didn't intend for them to do so. Title VIII of ANILCA appears to be a distraction which serves as a more noble justification than the fact that the feds simply don't think Alaskan's can be trusted to wisely manage and conserve Alaska's natural resources.*

*I think this "federal feeling" is generated by national guilt generated, and continually kept before Americans by the environmental community. It may be a well deserved guilt resulting from over exploitation of natural resources in the contiguous 48 states by earlier developers. This national mood is maintained by the media successes and political viability of guilt management by the environmental community.*

*Additionally, federal reference to a manufactured ANILCA mandate to provide preference for "the last indigenous people" by linking "rural preference" to federal trust responsibility "TO" not "FOR" Native Americans facilitates federal take-over by playing on the emotion of a national guilt resulting from the way American Indians were subjugated 100 years ago*

*I think these emotional ties to Alaskan management of Alaska's resources make rational discussion almost impossible. I also think this arena is no place for a decision to be based on emotion or vaguely referenced "facts." If we understand that ANILCA's Title VIII, as written, is not directly tied to these issues, there may be hope for informed discussion and decision.]*

--This imminent federal take-over of fisheries is clearly linked to Knowles administration decisions to withdraw the Babbitt suit and acceptance of the Ninth Circuit Court decision on the Katie John case instead of appealing it to a higher court in an attempt to frame reserved water rights in their traditional legal context.

--The his further incursion of federal management (into fisheries management as well as wildlife) precipitated designation of the fisheries issue as a crisis by the Governor.

*[Analysis: The crisis appears to be driven by the understanding that federal enforcement of the rural preference will destabilize the commercial fishing industry. An alternate explanation is that Governor Knowles is using this divisive issue as a wedge in an effort to fracture the majority coalition in the legislature so his veto returns power to the executive branch of government.]*

--To deal with this crisis, the Governor appointed a Subsistence Task Force on the subject.

--This Task Force has prepared a plan involving amendment of the Alaska Constitution to allow preference and discrimination based on rural residence by a variety of methods, state adoption of ANILCA Title VIII language as law, and some amendments to ANILCA.



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the SENATE RESOURCES  
Committee Name  
 Committee on SUBSISTENCE Dated 9/25/97  
Bill / Subject

- I STRONGLY OPPOSE THE PLAN SET FORTH BY TONY KNOWLES BECAUSE IT IS RACIALLY BIASED WHICH DOES NOT PROVIDE EQUAL OPPORTUNITIES AND ACCESS TO ALL THE PEOPLE IN ALASKA.
- I SUPPORT THE RECOMMENDATIONS MADE BY THE ALASKA OUTDOOR COUNCIL.
- MY FAMILY HAS HUNTED & FISHERD IN ALASKA FOR 20+ YEARS, HUNTING & FISHING IS MUCH MORE THAN A SOURCE OF FOOD, RECREATION, OR INCOME SUPPLEMENT, IT IS A LIFESTYLE, TRADITION, AND AN ESSENTIAL PART OF A PERSON'S SOUL, AND A FAMILY'S TRADITION OVER GENERATIONS, EVEN FOR NON-NATIVE FAMILIES!

SIGNED:

*Robby David Harrington, Sr.*  
 Testifier

Representing

1333 GOLD RUSH DR. - FBKS, AK 99709 - 907-458-0300  
 Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Natural Resources  
 Committee on Subsistence Committee Name  
 Dated 9-29-97  
 Bill / Subject

Thank you for the opportunity to comment. I have first hand knowledge of how native indians ruined steelhead salmon fisheries in Washington and Pike, Muskey and bass fisheries in Wisconsin and Minnesota. Changing the States Constitution to allow one race of people to rape and pillage our fish and game will ~~destroy~~ destroy Alaskas uniqueness. To me traditional means and need are equated with ~~the~~ the way it was done 1000 years ago, with only hand made everything. As for subsistence very few Alaskans live a truly subsistent lifestyle and from what I've ~~observed~~ <sup>observed</sup>, particularly with spring waterfowl hunting, it is sport not subsistence. The average cost per bird must run around \$200 and once the two wing breasts are filleted out the cost per pound rises to \$3.40. They also use lead shot and gumdown birds while chasing them with boats. All is illegal and flies in face of international agreement that ~~legally~~ protect waterfowl.

- I oppose any change to the Alaska State constitution
- I oppose the proposed plan
- I support the Alaska Outdoor Council recommendations

SIGNED: Scott Heidorn Scott Heidorn  
 Testifier

Self and family  
 Representing

PO Box 84591 Fairbanks AK 99708  
 Address / Phone Number  
907-474-8711

My testimony before the Legislature's Senate Resources Committee at the Butrovich Building, U.A.F. September 24, 1997.

RECEIVED  
OCT 03 1997  
LSD

Thanks for staying, being patient, and listening to so many people. This Subsistence issue is such an emotional one for folks, it means so many different things to so many different people. I have lived in Fairbanks with my husband and our 2 sons for over 32 years. Our sons were born here, this is the only life they grew up with. A major part of their heritage is that of Alaska. Like so many others who spoke, my father and his father before etc. were hunters, my husband's father and grand father etc. were even more avid in their hunting pursuits. Needless to say, Hunting is a major part of our son's upbringing, with a tremendous emphasis on respect for the land, the game, and sharing with others when times are good and receiving from others when times were not so good. We fish, pick berries and use all the bounty we are privileged to be able to gather; and, yes, our ties to the Land and its harvest and beauty are also Spiritual in nature.

There will always be subsistence around the remote villages, if for no other reason than it gets cold, and who is on patrol? For my family that lives in Fairbanks, however, there is a distinct possibility of them to loosing their hunting opportunity due to where we live. That doesn't mean they won't be able to hunt. One can always hunt. The problem is being able to hunt where there is the possibility of legal animals. When I was a little kid I asked my mom in I could fish in a certain mud puddle in our driveway. Mom replied, "sure, go ahead, just don't expect to catch anything." I am afraid that is what our hunting rights are about to turn into. "Sure, go ahead and hunt, just don't expect to shoot anything."

I listened to a lot of people testify tonight, I believe they are sincere in their words. Alaskans do work together for mutual good, and for the good of the land. We do need to regulate ourselves, because some folks get a bit over zealous in their harvest. I believe if our leaders would listen to us, the citizens of Alaska, and Do what needs to be done, we could come out of this O.K. "What needs to be done?"---ACTIVE fish and game MANAGEMENT---predator control---bag limits for everyone---seasons etc.; we would still need to keep tabs on ourselves, but bountiful game makes

a tremendous difference. We seriously need to take note of the addresses and longevity in Alaska, of the people we listen to when making management decisions. Money in the East cannot be allowed to rule Alaskan decisions so that we are no longer free to be who we are.

I respect people who are remote, who choose that lifestyle, and who do truly "subsist". As has been quoted over and over again, however, Subsistence is a basic human right, it is an Alaskan right, not just a rural Alaskan right. My son's heritage is just as valuable as someone else's son's heritage.

You know, where we live use to be a lot more rural than it is now! I could tell you some stories, but that is another issue. Thank you very much for reading my letter, and for at least making me feel like you were willing to hear what I had to say.

Sincerely,



Linda G. Hull  
2181 Twinflower Drive  
Fairbanks, Alaska 99709

P.S. My husband is out hunting, I expect him back this weekend.



## ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Subsistence Task Force

Committee on \_\_\_\_\_ Dated 9/24/97  
Committee Name

Bill / Subject

my name is ROSE ISAAC. I am from Tanacross Alaska where I lived most of my life. My parents had 16 children. We lived totally off the land. My parents fished, hunted and gathered food. They did not rely on any type of federal or state benefits.

Subsistence, to me, is not only a way of life. It is also economy. The moose / Caribou which provide food also provided the skin which is used to make moccasins, mukluks, and all kinds of other beaded material which is sold. There are various ways to utilize all of the animal in order to feed and clothe our children.

It saddens me to see that this State Legislature is not holding hearings in our villages as we are the ones who will feel the impact more than anyone else. You deliberated decided amongst yourself not to hold hearings in the villages which is not fair. That says

SIGNED:

\_\_\_\_\_  
 Testifier →

\_\_\_\_\_  
 Representing

\_\_\_\_\_  
 Address / Phone Number

alot. You are not representing all of Alaska. By your action, you are representing only a certain group of people. Furthermore, I feel that you, the Alaska State Legislature already failed to resolved this. This should have been resolved years ago. It seems to me that you are just passing the buck. You would rather blame and hold the Alaska Native people responsible when in reality, subsistence can be and always have been utilized by all ~~the~~ Alaskans regardless of race.

I would love to see the Federal Government take over. Perhaps we should give them a chance as the Alaska State Legislature already failed many times.

These hearings should have been held months ago and in the villages too. You all need to realize that RURAL Alaska does exist and you are suppose to be representing all of Alaska? Your actions the past few years is proof that all of Alaska is not fairly represented. Please take every Alaskan in consideration regardless of race.

Thank you

Cosby [Signature]



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources Committee  
 Committee on Propose / Subsistence Committee Name Dated 9-24-97  
Bill / Subject

Support Federal Management  
Take over.

SIGNED:

David L. James  
 Testifier

Christina  
 Representing

714 Lakes AK 99545  
 Address / Phone Number

SEPT. 24, 1997

**ARCTIC VILLAGE / VENETIE****RE: Subsistence Testimony**

My name is Gideon James and I'm from Arctic Village, Ak. - I believe everyone knows where Venetie and Arctic Village are located. "I hope". I work for Native Village of Venetie Tribal Government, as a Human Resource Director, and I've traveled to many places in the last few years. - I have worked in many positions for my tribe, this includes first chief position several times. So I'm very familiar with the issue I'm about to testify on, which is subsistence. And I'm very grateful that I have an opportunity to do this.

Each area for occupancy for the subsistence use has been in existence for many generations of our Native people. And it always provides a way of life for each community in rural Alaska. The state of Alaska and its legislature need to understand that this existence of way of life in Rural Alaska is where Alaska Native raise their family and it's a continuous cycle. And there is no alternative method at present time. Alaska Native are citizen of Alaska and we should remember that it is only 2 percent of game resource in Alaska we are addressing. I believe Alaska Native did no harm to the game resource to date.

Instead of attacking our way of life, the state need to control the existence of unfair ratio of, hunters come to certain areas of Alaska. Many places goes unchecked and these private aircraft lands just about any place they wish. - This disturbance of game goes on mainly on the animal

migration route. -

The high cost of items in rural village make impossible for families to depend solely on cash economy in area of arts and crafts and winter clothing.

This unfair political attack on our way of life is a matter of State of Alaska intent to ignore our Native existence on at all level. So finally in state agenda clearly focus on denying our tribal recognition at the same time. Therefore I strongly recomend Alaska Native fully support the principles listed at Alaska Native Subsistence Summit.

I live in Arctic Village most of my life, if everyone was to get along . we need to respect each other every time. I come to the city I comply with everything they have in the city. It should be the same way with city people when comes to rural area. They need to respect what we have out there. We can make this a very simple issue, the State government should considerate on more pressing issue like building schools for our kids, better sanitation, and health service delivery to the villages. - You cannot solve anything by attacking the core of our live hood. This only create disappointment and anger among families who make there living out there.

The present economic structure in Alaska is to weak because state has very few instate process of its resources. Up to 80 percent of cash income leaves the state in state businesses has very small success against the influx of larger firm like K-Mart and Fred Meyers. - I'm saying this because state government need to get a better use of its resources, and its not happening. Again utilizing games as food sources in the rural areas is the Alaska Native tradition in vital source of nutritional diet.-

The subsistence task force need to hold hearings in the Villages. A lot of times laws are passed with very small input from the people who will have the most impact.

The directions and principles layed out at Alaska Native Subsistence Summit also warned against compromising anymore of our cultural life style. I think Alaska Native stands together and listen to our elders.

Submitted By:

Gideon James  
Venetie / Arctic Village

A handwritten signature in black ink, appearing to read "Gideon James", written in a cursive style.



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resource  
 Committee on Subsistence Committee Name Dated 9-24-97  
Bill / Subject

This subsistence issue is a very discriminatory issue. We all are entitled to hunt and fish in the State of Alaska on state & federal lands. People choose to live where they live and special preference for rural residence is not right. I feel this law should be challenged to the Supreme Court based on discrimination. A bad federal law should be challenged.

SIGNED: David Jones  
 Testifier

Myself  
 Representing

504 C Street FBk. AK 99701 907-452-2597  
 Address / Phone Number

Members  
Senate Resources Committee

P.O. Box 81452  
Fairbanks, AK 99708  
(907) 455-7882 phone/fax  
September 22, 1997

Dear Committee Members:

U.S. Supreme Court Justice Antonin Scalia in a majority opinion wrote that "the federal government may not compel the states to enact or administer a federal regulatory program" (Printz and Mack vs. United States) based on 10th amendment protections of state sovereignty over intrastate affairs. Nevertheless, this is precisely what our unresponsive congressional delegation and the Clinton and Knowles administrations are attempting to force us to do with the discriminatory rural subsistence preference.

As the former director of wildlife conservation for Alaska and a citizen sincerely concerned with fair allocation and conservation of Alaska's fish and game resources, I urge the Alaska Legislature to make the following changes to the subsistence task force's proposed subsistence "solution". I believe changes are necessary to ensure social harmony and adequate resource protection in the future. The changes address racial neutrality throughout the proposal, fish and game conservation protections and practical consequences of the proposal.

#### Constitutional Amendment

If the legislature sends a constitutional amendment to the voters, that amendment should provide for a preference rather than a priority, and the consideration of eligibility factors such as personal nutritional need and regional economics in addition to simple rural residency. It should also specifically prohibit the consideration of race, either directly or indirectly, as a basis for subsistence preference.

#### Statutory Changes

The terms "customary and traditional" should be deleted from state and federal definitions of reasonable opportunity proposed by the task force. Federal Judge Holland has ruled that "customary and traditional" is the standard for providing a subsistence preference, and that has been applied to mean essentially no seasons, bag limits or individual harvest reporting requirements. It has led to instances of localized overharvests, unacceptable harvesting practices and other abuses. Examples include excessive seasons and harvests of moose and caribou near Lime Village and herd shooting at concentrations of wintering deer from boats in Southeast. Jacklighting deer at night, road hunting, shooting swimming animals and running animals down with snowmachines have also been described as "customary and traditional" practices. It has also been argued that obtaining harvest permits and reporting of harvests are not "customary and traditional" and should not be required for subsistence hunters. Clearly, seasons, bag limits, restrictions of methods and means and harvest reporting are necessary conservation tools and must not be jeopardized by including "customary and traditional" in definitions of what constitutes reasonable opportunity for subsistence taking.

In Section 16.05.258 the definers "human consumptive" should be inserted before "subsistence use" wherever used to clarify that the subsistence preference is only for human nutrition and not for dog food or other intangible or lesser uses. It would be grossly unfair to

restrict one group of Alaska hunters or fishermen from harvesting for personal consumptive use so that other Alaskans can have a preference for other uses.

The role and composition of the new unnecessary regional subsistence councils are egregious. No new quasi-regulatory bodies are needed and certainly should not have the power to keep regulation proposals generated by the public from being presented to the Boards of Fisheries and Game. Mandating that 7 of the 10 members of such councils represent subsistence and tribal council interests is grossly unfair and racially discriminatory.

If needed at all, I suggest the councils be named simply regional fish and game advisory councils, their role be limited to resolving and considering intra-regional issues, and their members be the chairmen of all local fish and game advisory committees within each region. Funding for these federally required councils should be provided by the federal government, certainly not from state fish and game and Federal Aid in Sportfish and Wildlife Restoration funds needed for sportfish and game management.

Consideration of liberalizing already liberal provisions for proxy taking of fish and game is inappropriate at this time and changes are not needed to bring state law in compliance with federal law. The entire proxy section should be deleted from the task force's proposal and debated later if necessary. New section (g) is particularly alarming, extending subsistence hunting and fishing opportunities to urban members of rural families, and allowing proxy taking for people regardless of age or physical ability to harvest for themselves. Current laws adequately address real compelling needs for proxy taking. The task force members agreed not to include issues not needed to restore state management. This section clearly violates that pledge.

Allowing continued federal bureaucratic oversight of Alaska's fish and game management programs and extending that, along with federal judicial authority, to all lands and waters in Alaska is an invitation to future disaster. This isn't state management as accorded to the other 49 states, but, rather, Alaska state government managing according to ever changing federal dictates. Amendments to ANILCA must include specific provisions for extinguishing federal oversight and judicial intervention in Alaska's affairs if Alaskans pay the great price of weakening our constitutional protections. Otherwise, Alaska will have gained nothing of lasting value for our sacrifice.

Any solution package must include changes in federal laws to ensure Alaska does not become ineligible to receive Pittman-Robertson, Dingall-Johnson and Wallop-Breaux federal funds currently supporting a majority of sportfish and game management programs in Alaska. Alaska receives about \$20 million annually in such funds. If the federal government is requiring compliance with federal subsistence laws, it should also hold Alaska harmless from withholding of our traditional federal matching funds.

These are important issues I have identified. There will be others I have overlooked. If you find merit in these suggestions, I would be pleased to provide more detail.

Respectfully,

David G. Kelleyhouse



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the \_\_\_\_\_  
 Committee on \_\_\_\_\_ Dated \_\_\_\_\_  
 Bill / Subject

Dear Representatives Hudson and Ogan:

I support the following principles regarding subsistence:

- Full state management *without* federal oversight
- No racially or culturally based preference
- Individual needs-based subsistence eligibility
- Effective regulation and no commercial sales
- No erosion of state constitutional protections
- \_\_\_\_\_

Thank you for your help in protecting all Alaskan's privileges to hunt and fish.

Sincerely,

Signature  
 Printed Name  
 Address

*Jack Kness*  
 \_\_\_\_\_  
 Jack Kness  
 \_\_\_\_\_  
 1500 Airport Way  
 \_\_\_\_\_  
 FBKS, AK 99709  
 \_\_\_\_\_

SIGNED:

*Jack Kness*  
 \_\_\_\_\_  
 Testifier  
 \_\_\_\_\_  
*Self*  
 \_\_\_\_\_  
 Representing  
 \_\_\_\_\_  
 FBKS, AK 456-5317  
 \_\_\_\_\_  
 Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subsistence Committee Name  
Dated 9-25-97  
 Bill / Subject

I oppose the Governor's plan on subsistence as it gives preferential use of the fish and wildlife resources of Alaska which belong equally to all the residents of Alaska to individuals based on place of residency, culture, and/or ethnic background.

I oppose any change to the Alaska State Constitution concerning the management and use of fish and wildlife resources which would give any individuals or group preferential treatment over others.

I have hunted and fished all of my life and I consider this activity to be a customary and traditional part of my lifestyle every bit so as that of Alaskan Natives. My father hunted and fished all of his life, as did his father before him, and his father before him, and so forth. I sincerely hope that my son will be able to carry on the family tradition of hunting and fishing.

I have lived in Alaska for 29 years and fish and game make up a good portion of my family's diet. As a resident of the State of Alaska I believe I should receive the same treatment under the law as any other resident of the State of Alaska. I and my family should not be discriminated against based on race, culture, or place of residency in the state.

Dennis A. Knutson

SIGNED:

*Dennis A. Knutson*

Testifier

Dennis A. Knutson Family

Representing

844 Baggins Rd., Fairbanks, AK, (907)457-3113

Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Commit Resources  
Committee Name  
 Committee on Subsistance Dated 9-24-97  
Bill / Subject

as alaskans we are all equal.  
 no matter where we live.  
 I appose any change to our  
 constitution.

SIGNED:

Dennis Lewis  
 Testifier

Fairbanks  
 Representing

1371 Woll Rd. North Pole AK 99705  
 Address / Phone Number 488-8987



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources

Committee on Subsistance Committee Name Dated Sept. 24, 1997  
Bill / Subject

To change the current laws to give a preference to ANYONE, including the rural community, would be blaitant and unlawful DISCRIMINATION! We are all ALASKANS ? foremost AMERICAN people who believe and trust in our CONSTITUTION! Leave the law the way it is, we are all equal!

SIGNED:

Angela Fuststad  
Testifier

Fairbanks

Representing

3010 Riverview Drive / Fbks AK / 474-9689  
Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the \_\_\_\_\_

Committee on Subsistence Task Force : Dated 9/24/97

Committee Name

B : / Subject

SIGNED:

Rosemarie Martell-Greenblatt

Testifier

self -

Representing

PO Box 83298 FBKS. 99708

Address / Phone Number

Testimony by

Rosemarie Martell-Greenblatt  
P.O. Box 83298  
Fairbanks, AK 99708

I would like to comment on the proposal before Alaska.

First, the Task Force has painted a picture of federal take over as the worst of all scenarios. Should this be true, what that may mean to me, is I would not be able to hunt or fish in Alaska. I am not happy.

By forcing a constitutional amendment you have chosen a path where only a small portion of Alaskans will be able to feed their families and use the renewable consumable resources of this State. I live and work in Fairbanks amidst a bountiful population of subsistence resources. A rural priority on subsistence means that I would not be able to hunt and fish in Alaska. I again, am not happy.

I do not agree with a rural subsistence priority. It is a violation of my rights. Given the fact that the Governor's Task Force has never wanted to address the rights of urban Alaskans, the focus now must be on the rights of the minority.

As many others who speak here today I can speak all day and tell you what not to do. The task ahead is difficult. I do have ~~two~~ three suggestions:

First, keep in mind that in the eyes of many there already is a rural priority for subsistence in this state. Vast amounts of private property in and around rural villages are rightfully only open to shareholders. Even larger tracts of land are placed in exclusionary zones. The Department of Fish and Game has effectively closed off many parts of rural Alaska by the exclusion of many forms of transportation. The creative methodology that makes up the Tier II program is an example.

Secondly, when you do rewrite our Constitution and Statutes please do not close the door on urban Alaska. My children need to have a future of opportunities. Trying to keep the definitions unbiased and flexible will be difficult. Granted you may be stuck with a bad job but please don't make it worse by making this a racial issue.

Lastly, the proposed changes to ANILCA may appear to totally limit Mr. Babbitt control over subsistence in Alaska. While the intention may be honest, the language presented by Mr. Knowles is only a proposal. The good people of the State of

Alaska have first hand experience of quality of Mr. Babbitt's word. Ask any Alaskan with a federal mining claim or patent application.

The Governor's Task Force is selling this State a bill of goods where the fine print has not yet been written. I am skeptical and untrusting of the outcome but we must start somewhere.

Thank you for the opportunity to comment on such an important heartfelt issue.



# ALASKA STATE LEGISLATURE

RECEIVED  
OCT 02 1997

Please enter into the record my testimony to the Senate Resources  
Committee Name  
Committee on Subsistence Dated 9-25-97  
Bill / Subject

I oppose the Governors plan  
I strongly support the Alaska outdoor councils  
recommendations

I oppose any change to the Alaska constitution  
Hunting and fishing are my favorite pastime  
I have been hunting and fishing since I was little  
I hunt and fish every year and I have lived here  
for 15 year

SIGNED: Michael Mar  
Testifier

Representing  
3771 Erickson Fairbanks AK 99709  
Address / Phone Number

1/4

Testimony by:

John A. Miller  
1260 March Dr.  
Fairbanks 99709

State Senate Resources Committee Hearing, 9/24/97

Senator Stevens and Governor Knowles have been very effectively bludgeoning much of the opposition into submission. The momentum for the surrender they demand seems to be building. My position until recently has been total opposition to any form of subsistence preference for a selected group of us based on politically motivated and unquantifiable criteria. Perhaps I should accept the inevitability of some form of subsistence preference.

If there is to be a preference it should be narrowly defined to apply only to food for personal and family consumption (no selling, no barter). It should only apply in areas where there are few nutritional alternatives and only to individuals with a demonstrated history of use in that area. It should not apply to all members of a group - especially a racial group. Subsistence should be tightly and consistently regulated like any other consumptive use of wildlife, not the current anything-goes system prevalent today.

The use of "rural" as the sole qualifying criteria is grossly unworkable and unfair. It will give the privilege to many with no real need, economic or spiritual, and deny it to many others with a long history of dependence. To say that every resident of

2/A

Barrow, with the highest per-capita income in the State, gets the preference regardless of history, background or need and nobody in Fairbanks does, is just not acceptable.

And it can't be done using economic need either, in my view. Aside from the hopeless bureaucratic nightmare of attempting to define this need in economic terms and then police the system, is the fact that subsistence has little to do with economics anyway.

Some of the most passionate and effective explanations of the deeply felt need to participate in wildlife oriented consumptive uses have come from Native advocates. They often describe the philosophical and emotional rewards from participating in these activities, how they are intrinsic to their "culture" and how the quality of their lives would be severely diminished if they were denied these opportunities. I plead that as you struggle to devise solutions you understand that there are many Alaskans, who are neither Native nor rural, who have similar feelings. We have a long history of wildlife oriented consumptive uses, we feel it is an important part of our culture and we feel our culture is just as valuable and just as important as anyone else's. Please do not abandon us. If there must be this division, please leave something for us.

There has been exaggeration on both sides about the effect of the proposed rural-only system. Native interests characterize the situation as their rights and opportunities to participate in

subsistence activities are somehow eliminated if they don't get this preference. This is certainly not the case. They are afforded great deference under the current State system of allocation. In practice, the current regulatory system consists of little more than the Board of Game scrambling as quickly as they can to change regulations to ensure that actual practices in rural Alaska, as reported in the studies by the ADF&G Subsistence Division, are not illegal. There are numerous preferences in place, such as access restrictions, meat handling requirements, etc. that are specifically designed to make it difficult or impossible for non-rural hunters to utilize vast areas of the State. The Board is quick to establish new ones at the slightest whine. And these are in addition to the huge areas around and between villages that are privately owned and off-limits to other than their owners.

Urban interests characterize the situation as leaving nothing for them once the rural preference is fully implemented. This is also overstatement - at least for the short term.

However, since even under the existing State administration the subsistence preference has been interpreted to mean that all rural "needs" must be satisfied before any non-rural participation will be allowed, I think we non-rural residents have much more to fear. It would be inevitable that in all but the most remote areas of the State, or in very heavily utilized fringes of major urban areas, a subsistence preference would

eliminate meaningful participation by anyone but those qualifying as rural. The vast majority of the opportunity to utilize this public resource would be reserved for a small, privileged minority".

I really would like to be able to offer helpful suggestions on how this situation might be resolved. I fear I have failed to offer anything other than what NOT to do. I'm sorry, but I just can't see any way a subsistence preference can be extended to some subgroup of Alaskans in a way that is fair and consistent. I still feel very strongly that doing so violates the most basic of the principles upon which our society is supposed to be based.

If you go through with this, one can only hope that right-thinking people in South Africa will reciprocate the assistance they received in their struggle against apartheid - and boycott all things Alaskan.

Thank you for considering my views.



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the SENATE RESOURCES  
 Committee Name  
 Committee on Subsistence Dated 9.25.97  
 Bill / Subject

I oppose the Governor's plan on subsistence and strongly support the Alaska Outdoor Councils recommendations on this issue.

Regarding any changes to the Alaska Constitution I am, like most Alaskans opposed to even the thought of any change.

I am 46 years old and have been a resident for 32 years. I am the father of 2 (both born in AK) and enjoying the thrill of fly fishing I enjoyed as a child should be enjoyed by them. My Mother now deceased was a Alaskan and I've always considered myself the same.

I take my children fishing up to 10 times per year and can only hope someday soon they will experience the types of fishing I had in the 1960's

SIGNED:

Michael J. Miller  
 Testifier

Representing

117 Glenview Way Fairbanks 99712  
 Address / Phone Number

PH. 907.457.5530



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subsistence Committee Name Dated 9-24-97  
Bill / Subject

This type of legislation will lead to yet another form of discrimination. Because I choose not to live a bush lifestyle I should not be discriminated against by not being able to hunt, trap, or fish to feed myself or my family. We are all Alaskans we should all have equal rights.

SIGNED:

[Signature]

Testifier

Fairbanks

Representing

Box 82909, 455-8633

Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the SENATE RESOURCES  
 Committee on SUBSISTENCE Dated 9-24-97  
Committee Name  
Bill / Subject

BUSH life style A CHOICE, AND JUST BECAUSE I HAVE CHOSEN  
 to live in a city, I SHOULD NOT BE PREVENTED ~~KEY~~ FROM HAVING  
 THE SAME HUNTING AND FISHING RIGHTS AS THE NEXT ALASKAN.

I AM OPPOSED TO ANY CHANGE OR AMMENDMENT TO THE  
 STATE CONSTITUTION.

SIGNED:

*Ted Morphis*

\_\_\_\_\_

A.D.C. / TED MORPHIS

Representing

3811 ERICKSON #1 FBKS. AK. 99709 / 907-479-9771

Address / Phone Number

\_\_\_\_\_



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subsistence Committee Name  
 Dated 9-24-97  
 Bill / Subject

Your time on this issue is not waisted.

① I am disappointed in the lack of notification to the public, the decision on where the meeting was held and the timeliness of the scheduled meeting - "During the hunting season when most interested + affected parties are out participating in Subsistence"

Do Not Change or Amend the State Constitution. I encourage you to make changes in the Federal Law, to accomodate the State Constitution, Do not take away my rights to my way of life as a 3rd generation Alaskan

SIGNED: Tracy Morplus  
 Testifier  
Tracy Morplus - Fairbanks Resident  
 Representing  
3211 Erickson Ave #1 Fairbanks AK 99709  
 Address / Phone Number  
1479-1771 457 5282WK



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on \_\_\_\_\_ Committee Name  
 Committee on Subsistence Dated 9/25/97  
 Bill / Subject

Dear Representatives Hudson and Ogan:

I support the following principles regarding subsistence:

- Full state management *without* federal oversight
- No racially or culturally based preference
- Individual needs-based subsistence eligibility
- Effective regulation and no commercial sales
- No erosion of state constitutional protections
- Strongly Support the Outdoor Council's recommendations

Thank you for your help in protecting all Alaskan's privileges to hunt and fish.

Sincerely,

Signature  
 Printed Name  
 Address

James Neary  
James Neary  
5151 Denathlan Ave  
FBKS AK 99709

SIGNED: \_\_\_\_\_  
 Testifier  
 \_\_\_\_\_  
 Representing  
 \_\_\_\_\_  
 Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Substance  
 Committee on Substance Committee Name  
 Dated 9-24-97  
Bill / Subject

As Alaskans we are all equal  
 and must be treated as such.  
 Do not pit us against one another  
 over this issue.

Thank you

SIGNED: Carl E. Nicholas  
 Testifier

Jill  
 Representing

1239 Health Care, FBAS, AK 99712  
 Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subsistence Committee Name  
Bill / Subject Dated 9/24/87

I to am an Alaskan Resident,  
 I oppose what certain residents,  
 are trying to change subsistence laws  
No way — its for every body —

SIGNED:

Ed Nichols  
 Testifier

[Signature]  
 Representing

Box 75081 Fairbanks 99707 4517275  
 Address / Phone Number




# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on SUBSISTANCE Committee Name  
Bill / Subject Dated 7-24-97

I feel that what is trying to  
 be done to us is nothing but  
~~the~~ false and it will ~~cause~~ nothing  
 but ill feeling between this state  
 when we should all be treated equal.  
 NO! to changing the STATE CONSTITUTION!

SIGNED:

  
 Testifier MICHAEL J. NICHOLSON

Representing

4752 GLASGOW DR #2 451-6007  
 Address / Phone Number 835 AK



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subsistence Committee Name  
Bill / Subject Dated 9/25/97

- 1). I am opposed to the Governor's ~~plan~~ plan on the subsistence issue
- 2). I strongly support the Alaska Outdoor Council's recommendations
- 3). I'm opposed to any change in the Alaska Constitution
- 4). Hunting & fishing are important to me and I'm as entitled to share in the same resources as the next person, rural, native or whatever - This is the U.S.A. - "ALL MEN ARE CREATED EQUAL"
- 5). I've lived in Alaska 13 years and the U.S.A. all my life

SIGNED: Charles P. Perrin Jr.  
 Testifier

Myself & and many other Alaskans  
 Representing

1066 Propwash Dr., FBKS., AK. 99709  
 Address / Phone Number  
907-455-6275



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subsistance Committee Name  
Bill / Subject Dated 9-25-97

I strongly oppose the govenors plan.

I strongly support the Alaska Outdoor Councils recommendations.

I oppose any change to the Alaska Constution

I have been an alaskan for 31 years  
 I consider my self a native of Alaska  
 myself and my two young sons hunt  
 or fish all the time. I feel I have  
 as much right to hunt + fish as any  
 one regardless of nationality or location  
 of residence

SIGNED:

Demar Perry  
 Testifier

The Perry Family  
 Representing

3592 Lakeview Drive  
 Address / Phone Number

Fairbanks Alaska 99701



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Dep. Atty Resource  
Committee on Subsistence Committee Name  
Dated 9-23-97  
Bill / Subject

I do not believe that one group of Alaskans should have hunting & fishing rights which take precedence over another group of Alaskans throughout the whole state. Subsistence areas should be limited as they are presently.

SIGNED: Gary Pitsenberger  
Testifier

Myself  
Representing  
PO Box 81927 - 855 Chenathills  
Address / Phone Number  
Fbks Alaska 99708  
907-479-6072



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources Committee  
 Committee on subistence Committee Name Dated 9/25/97  
Bill / Subject

AS a hunter, fisherman and trapper, I strongly oppose the Governor's plan on subsistence. As a resident of Alaska for 21 years, I have raised two children in Fairbanks on game meat, fish and subsidized my income with fur that I have trapped. To give fish and game priority over one group to another alienates my rights as an American citizen guaranteed by the Constitution that all men are created equal. Many American citizens have given their lives in foreign wars to insure these rights remain. I support the Alaska Outdoor Council's recommendations and will continue to do so. My wife was born and raised in Fairbanks and grew up on game meat and fish that was harvested by an "urban hunter," gatherer. People who rely on eating game meat cannot tell if it was harvested by an urban or rural hunter. Our rights as Alaskan residents should not be infringed upon by the state and Federal government's ideas that all men are not created equal.

SIGNED: Steve Potter  
 Testifier

Potter Family  
 Representing

202 Kordy Dr. FBKS, AK 99701  
 Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
Committee Name  
Committee on Subsistence Dated 9-25-97  
Bill / Subject

- 1.) I oppose the governors plan.
- 2.) I support the Alaska Outdoor Councils recommendations.
- 3.) I oppose any change to the Alaska Constitution
- 4.) My family and I have been hunting and fishing in Alaska for 20+ years.
- 5.) I feel all Alaskans should be treated equally when it comes to Alaskas Fish & Game.

SIGNED:

Kevin J. Small

Testifier

Representing

315 Biaz Dr Fairbanks AK 907-457-6390  
Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House  
 Committee on Subsistence Committee Name  
Bill / Subject Dated 9-25-97

Dear Representatives Hudson and Ogan:

I support the following principles regarding subsistence:

- Full state management *without* federal oversight
- No racially or culturally based preference
- Individual needs-based subsistence eligibility
- Effective regulation and no commercial sales
- No erosion of state constitutional protections

Thank you for your help in protecting all Alaskan's privileges to hunt and fish.

Sincerely,

Signature  
 Printed Name  
 Address

Kevin J. Purcell  
Kevin J. Purcell  
315 Bies Dr  
Fairbanks AK 99712

SIGNED:

\_\_\_\_\_  
 Testifier

\_\_\_\_\_  
 Representing

\_\_\_\_\_  
 Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subsistence Committee Name Dated 9-24-97  
Bill / Subject

I don't believe that the constitution  
 amendment should be changed for legalizing rural  
 subsistence over all other alaskans. no matter  
 where we may live we all have the right  
 to live off the land — our land!

SIGNED:

Beth Grayson - Curtis

Testifier

Representing

P O Box 83307 E6KS . AK 99708

Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the SENATE RESOURCES  
 Committee on SUBSISTENCE Committee Name  
 Dated 7/25/97  
 Bill / Subject

I OPPOSE THE GOVERNOR'S PLAN  
 I STRONGLY SUPPORT THE ALASKA OUTDOOR COUNCILS  
 RECOMMENDATIONS  
 I OPPOSE ANY CHANGE TO THE ALASKA CONSTITUTION  
 I HAVE LIVED IN ALASKA FOR 14 YRS COMING FROM  
 THE MIDWEST. MY FAMILY GREW UP HUNTING + FISHING  
 ITS PART OF OUR HERITAGE. I FEEL I SHOULD HAVE  
 THE SAME RIGHTS TO HUNT AND FISH AS ANY ONE ELSE  
 IN THE STATE. MY GRAND CHILDREN WERE BORN HERE  
 I CONSIDER THEM TO BE NATIVE ALASKANS - ONE OF THEM  
 IS 1/4 NATIVE.

I HUNT DURING CARIBOU AND MOOSE SEASONS. I  
 BEAR HUNT, BIRD HUNT, DUCK HUNT. I START PLANNING  
 HUNTS IN AUG + SPRING BEAR HUNTS. I FISH FOR HALIBUT  
 IN HOMER - SILVERS + PINKS IN VALDEZ - REDON THE COPPER  
 MANY LAKES ON THE RICHARDSON - FISH OUT OF MONKEY HOLE  
 SPRINGS - FOR PIKE - GRAYLING + SALMON. THIS WAS MY  
 MAIN REASON FOR MOVING HERE - FOR HUNTING + FISHING  
~~with~~ without over regulations

SIGNED:

Testifier

SELF

Representing

3899 CRESENT DR. North Pole AK. 488-0510  
 Address / Phone Number

Sam ✓



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resource Committee  
Committee Name  
 Committee on Task Force on Subsistence Dated Sept 24, 1997  
Bill / Subject

I am Harding Sam representing Alutias Village Council.  
 My concern is subsistence is a Rural Issue that the  
 Rural people live & why are all the hearings held in  
 urban places.  
 Subsistence issue  
 Moratorium - It has been on the table for 16 years.  
 Why has this issue taking so long to resolve?  
 This issue is not one that I hope to pass on to  
 my children.  
 If this issue can't be resolved - why is  
 it not put on a ballot, so the people will  
 decide on it.

SIGNED: Harding Sam  
Testifier  
Alutias Village Council  
Representing  
PO Box 109 Allakaket, Alaska 99720  
Address / Phone Number

Saylor ✓

September 24, 1997

Senate Resources Committee  
Alaska State Senate

re: **Subsistence Hearing, September 24, 1997,  
Butrovich Building, University of Alaska at Fairbanks**

Dear Members of the Senate Resources Committee,

My name is Pat Saylor; I am from the village of Healy Lake. In 1995 I engaged in a potlatch hunt to take moose for a potlatch in honor of my uncles and aunts. I was charged by the state with hunting out of season. I went to court to fight this charge. Eventually the Governor extended a pardon to me. However, five of my relatives were also charged for engaging in traditional subsistence hunting. My relatives agreed to a plea bargain with the prosecutor to receive a lighter sentence. My five relatives are now convicted "felons", permanently impaired in their civic life and greatly hampered in the job market: they can not even work for Doyon with such a conviction.

I and my relatives were engaged in traditional hunting. We were not acting "lawlessly". There are very strict rules governing potlatch hunting and other traditional hunting, and the care of the wildlife and the meat. Potlatch hunting gives identity and builds character for the young men and women involved, it is a rite of passage into adulthood in our culture. The hunting is done for others, tying the community together through ceremony; there is no waste. Our hunters are growing older: fewer and fewer young people are being given the opportunity to be trained in potlatch hunting and in the care and preparation of the potlatch moose.

To Native Alaskans subsistence is not just a supplement to a job, or a replacement for welfare benefits. Subsistence is the foundation of our culture and at the basis of our identity: both our community and individual identities. Any subsistence scheme must recognize that subsistence is a cultural community right.

Native subsistence has rules, traditional rules known and enforced by traditional communities. These rules cannot realistically be understood and enforced by anyone except the Native communities. Any subsistence scheme must recognize the essential Native role in the development and enforcement of hunting and fishing rules in Alaska. There is an absolute need for a co-equal role for Native communities in the federal, state, and tribal co-management of Alaska's wildlife and fish resources.

Thank you for considering these comments.

Patrick Saylor  
Healy Lake, Alaska  
*rep. Patrick E. Saylor*

THOMAS N. SCARBOROUGH  
1676 TAROKA DRIVE  
FAIRBANKS, ALASKA 99709  
(907) 479-3412  
FAX (907) 479-6602

September 23, 1997

Testimony before the Senate Resources Committee

Title: It's not about Subsistence

My first introduction to the Subsistence issue was in 1976 when reading the early drafts of what was to become Public Law 96-487 known as the "Alaska National Interest Lands Conservation Act" (ANILCA). I have vivid memories of those early drafts and the accompanying maps. Almost all of the State north of the Alaska Range was in some type of conservation area. This included Fairbanks. All known mineralized lands were to be off limits. Subsistence was a Native only preference. The goals established at that time by the Elitist Environmentalist's are still in place but put on a different time schedule. To accomplish what they want requires that their opposition be fragmented to a point where it has no political clout.

As those of you who were in the thick of the battle over ANILCA up to the fall of 1980 will remember, natural resource issues, including hunting and fishing, were at the foreground of the issues of interest to we Alaskans. Alaska had put in place it's own Subsistence statutes in 1978 at the request of Senator Stevens, but we were not to be trusted as Senator's Stevens had Title VIII inserted into the final draft of ANILCA. This assured that Alaska could not repeal the Subsistence Statutes. Alaska was then saddled with a impossible situation which has continued for 17 years. This debacle had now cost we Alaskans millions of dollars and will likely cost much more.

In 1982 an Initiative was placed on the Ballet to repeal State Statutes on Subsistence. I was a prime sponsor. This Initiative failed as we Alaskan's had not yet felt the true effects that were intended. We have yet to truly understand or feel the real effects of Subsistence as detailed in Title VIII, however we are getting closer. I believe once the true effects are better understood, we Alaskan's will have nothing to do with the Title VIII Subsistence. Those most supportive of Subsistence back in 1980 are very aware of this and are now some of the strongest supporters of delaying and are supporting returning to a phony concept of State Management. More about this latter.

It is interesting to note just who is supporting the concept as advocated by Gov. Knowles. The only non-native group supporting the Gov. Knowles concept is his Task Force (which contains no one with a history of Subsistence opposition). Of course the Governor's staff is supporting his plan, but they must do this to maintain their employment. Then there is Senator Stevens, Senator Murkowski, and Rep. Young who have long forgotten that they were sent to Washington to represent Alaska and now represent the Federal Government interests instead. Senator Stevens has now taken the arrogant position of "King Stevens" and is demanding that a solution be brought to him that violates one of the most basic principles of the United States and Alaska's Constitutions, that being Equality.

Thomas N. Scarborough Testimony: It's not about Subsistence cont.

The Constitution of the State of Alaska states:

## ARTICLE I. DECLARATION OF RIGHTS

### SECTION 1. INHERENT RIGHTS

This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

### SECTION 15. PROHIBITED STATE ACTION

No law impairing the obligation of contracts, and no law making any irrevocable grant of special privileges or immunities shall be passed.

From the above stated provisions of the Constitution of the State of Alaska it is clear that the granting of a special priority of Subsistence Rights to any group by the Legislature is forbidden. It then appears that Gov. Knowles ploy of amending the Constitution by adding a new Section 19 granting this right to the Legislature is doomed to failure as it is inconsistent with Section's 1 and 15.

Equality is one of the basic God Given Rights that this Nation is founded upon. It is ironic that we have a Governor and a Congressional Delegation that are willing to place Alaska as the first State that begins the destruction of this basic Right by amending it's Constitution. The Revolutionary War, Civil War, World War I and World War II were fought because of the violation of this basic Right. In addition the Federal Law called The 1964 Civil Rights Act forbids the violation of an individuals rights as advocated by Gov. Knowles and Senator "King" Stevens.

The Constitution of the State of Alaska is very clear that the natural resources are reserved for common use by the Residents of Alaska. This mandates a Public Trust responsibility upon the Legislature. This responsibility can not be taken lightly as all of the natural resources of the State of Alaska are jointly owned by each Resident. The value of these renewable and non-renewable resources is in the Billions of Dollars and are worth much more that the Permanent Fund as it is not renewable.

## ARTICLE VIII. NATURAL RESOURCES

### SECTION 3. COMMON USE

Wherever occurring in the natural state, fish, wildlife, and waters are reserved to the people for common use.

### SECTION 15. NO EXCLUSIVE RIGHT OF FISHERY

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State.

Thomas N. Scarborough Testimony: It's not about Subsistence cont.

#### SECTION 17. UNIFORM APPLICATION

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

As is readily apparent, all laws concerning use or disposal of natural resources shall apply equally to all persons similarly situated. As all Alaska Residents are similarly situated concerning ownership, the Legislature is again prohibited from granting special Subsistence rights.

The granting of Priority Rights to Alaska's renewable natural resources (it must be noted that ANILCA is not limited to fish and wildlife) must be considered the largest theft ever contemplated in the State of Alaska. To transfer the use and control of Alaska's renewable natural resources to an estimated 15% minority is simply not going to be acceptable to we Alaskans.

Gov. Knowles is advocating a return to State management. However this will be a State management compatible Title VIII of ANILCA. The management concepts in Title VIII are very different than that mandated in the Alaska Constitution wherein it states:

#### ARTICLE VIII, SECTION 4

Fish, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

Title VIII of ANILCA, Section 802 states:

It is hereby declared to be the policy of Congress that -

- (1) Consistent with sound management principles, and the conservation of healthy populations of fish and wildlife ---consistent with management of fish and wildlife in accordance with recognized scientific principles ---

In order to be in compliance with ANILCA, the State of Alaska will have to resolve this conflict in management principles. The State of Alaska will be in a no win situation. The State will be in non-compliance of either the Alaska Constitution or Federal Law and be back to square one no matter which way it goes. The litigation on this issue may will allow 10 or more years of Federal management and achieve the exact desires of those supporting Priority Subsistence management by the Federal Government.

There is another problem with Priority Subsistence State management and that is funding. The funds that are used to pay for the management services of the Division of Wildlife and Sport Fisheries comes from resident and non-resident fees and from Federal taxation programs. It is no secret that very few hunting licenses are purchased in the rural areas. No subsistence fishing license is required. Therefore the license fees come from the urban areas and from non-residents (80% of dollars are non-resident). By preventing and or restricting these groups of hunters and fisherman from participating in the harvest of fish and wildlife will have a dramatic effect on funds available to match Federal funds. The problem even gets greater as it appears the Federal monies from Pitman-Robertson and Dingle-Johnson programs can not be legally used for

Thomas N. Scarborough Testimony: It's not about Subsistence cont.

Subsistence management. This means that the funds will have to come from General Fund monies.

It should become clear by now that the State of Alaska is in a no win situation if it goes the route charted by Gov. Knowles.

It should now be very apparent that there is something very wrong with the relationship between the State and Federal Governments concerning resource management. Our nation was organized wherein the Federal Government was to be subservient to the States. This is clearly spelled out in the Tenth Amendment. However, we now have the situation wherein the Federal Government has taken on the aspects of a very over weight undisciplined child and the parent (States) have failed in their parenting. At this late stage in the child development, correction will be very painful. The choice is quite clear as what must be done, but the will power to do it is in grave question.

The Legislature must clearly declare that the State of Alaska will not tolerate this Federal interference with the natural resource management authority granted with Statehood. Alaska was admitted on an equal status in accordance with Article IV, Section 3 of the U. S. Constitution. We therefore should be treated as equals to the other 49 states. Alaska simply must stand up for it's rights. Since we have a Governor that either does not understand this or is unwilling to comply with his Oath of Office, then it falls to the Legislature to take on this responsibility. Other Western States have already pioneered this battle and are winning. If Alaska wishes to continue to be called a State, then there is no choice, other wise we will be nothing more than another agency (Territory) under Federal management. One needs only to look at the disaster of the Washington D. C. management and know what will happen here.

The only remaining question is does the Legislature as a collective body have the will power to do what is necessary? This is a turning point in our future. Your decision will determine if we are to be a responsible Parent (State) or submit to further abuse and ultimate destruction by actions of this undisciplined Child (Federal Government).

It will be your decision whether Alaskans are forced to choose to accept an Apartheid provision of discrimination in Alaska's use and management of our renewable natural resources. I can assure you that a Priority Subsistence amendment will quickly become known as the Apartheid amendment. This time, those of us who believe the Alaska Constitution means what it says will not be so timid and will call a spade a spade.

I have faith that you will honor your Oath of Office to uphold the Constitution of Alaska.

  
Thomas N. Scarborough



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resource  
 Committee on Subsistence Committee Name  
 Dated 9-25-97  
Bill / Subject

I strongly support the Alaska  
 outdoor councils re commendation.

I Oppose any changes to the  
 Alaska Constitution!!!

SIGNED: Gary Seaman  
 Testifier

Representing  
421 Haines ave FBKS AK 99701  
 Address / Phone Number 907 452-5835



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subsistence Committee Name Dated 9-25-97  
Bill / Subject

I OPPOSE THE GOVERNORS PLAN ON  
 SUBSISTENCE

I STRONGLY SUPPORT THE ALASKA OUTDOOR  
 COUNCILS RECOMMENDATION

I OPPOSE MAKING ANY CHANGES TO THE  
 ALASKA CONSTITUTION

I HAVE LIVED IN ALASKA FOR 23 YEARS  
 and Hunt and Fish all year long. I  
 use this TO HELP SUPPORT MY FAMILIES  
 we eat the fish we catch and animals  
 we hunt

SIGNED:

Charles E. Stahl  
 Testifier

Representing

P.O. Box 56627 North Pole  
 Address / Phone Number

Senate Resources Committee

Ladies and Gentlemen, thank you for the opportunity to testify. My name is Mike Tinker. I live with my wife and son in Ester, Alaska, a non-rural community. In my limited time today, I would like to testify on a couple of issues of concern about the proposed changes to Alaska's Subsistence Laws.

Process:

I am very concerned about the proposed overhaul of the fish and game Board, Advisory Committee, and Regional Council structure for evaluating and adopting regulations. The existing process, utilizing 80 plus local advisory committees to provide citizen input, is cumbersome but it works. Adding another layer of review, with subsistence issues having virtual veto power over everything else, will both complicate and lengthen the process. It is difficult to be responsive to field conditions now, and would be worse under the proposal. The changes to the process are for show and won't add quality to our decision making. All of you here today realize that our written regulations are too long and complex. We need regulations that are easy to understand and short.

Language:

We have developed new and confusing terms in the language used to describe the issues of subsistence. Since subsistence activities are only loosely tied to sustenance, nutrition, tradition, livelihood, customs, etc.; the terms are used interchangeably. Some are defined in Statute, some are not. I fear that the proposed language insures work for the next three generations of lawyers. We could discuss the following terms all night and never understand each other: "customary and direct dependence", "mainstay of livelihood", "substantial deference". In some cases definitions go part way (i.e., pause) Leaving us hanging, waiting for some understanding, like the first part of this sentence. For example,

customary and traditional are related to "taking or use over a long time". Is ten years a long time, thirty years, three hundred years? How far can we come from the Alaska Constitution's Declaration of Rights, Article 1, Section 1 which says in part, ". . . That all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State." Doesn't that mean that the rural resident Alaskan is also obligated to protect the rights of the ~~rural~~<sup>urban</sup> Alaskans? Is the Administration proposing to change our first stated Inherent Right?

Looking ahead:

The subsistence portions of ANILCA and our Statutes are fatally flawed and will be an enormous problem for the next generation or two of Alaskans. If we're trying to fix the problem, let's be far-sighted not myopic. For example, we have some real and some perceived shortages of subsistence resources, right now, in rural Alaska. What happens when the population of rural Alaska doubles or quadruples? Will the proposed changes provide a basis for using resources then? One change says in part, ". . . the amount of fish and game permitted to be taken for subsistence uses in an area or community shall not be increased . . . (in this case as a result of proxy hunting)". The intent is clear, already limited resources should not be further exploited by the subsistence law.

However, between 1991 and 1997 the full time resident population of the Northwest Arctic Borough grew 8%, the North Slope Borough grew 16%. In 25 years, or basically one generation those numbers would show an increase of 40% and 80% respectively. Full time, rural residents. Qualified, as proposed, to participate in subsistence activities. How does this proposal address the rapidly inflating population of rural Alaska? Why would the Alaska Legislature and the Alaska Public vote to change the constitution without insuring a formula that would provide for the future?

Our Use of Subsistence Resources:

My family has lived in Alaska since 1962. I consider that one generation, my children were born and raised here. Since infancy, they have participated in subsistence activities by joining their mother and me in hunting, fishing and gathering activities. We have eaten fish and game as the "mainstay" or our diet for that entire time. Certainly we have access to alternate food sources but we prefer and have a family tradition of using Alaska's resources.

My son, Owen, was born in 1971 here in Fairbanks. By age 5 he had already canoed on what would become Alaska's wild rivers, fished for grayling and lake trout for our table, picked berries and helped gather firewood as best a little helper can. At age 6, Owen was diagnosed as having Duchene's Muscular Dystrophy. That fatal disease, which affects the muscles, was predicted to end his life by his late teen years.

Owen is now 26. Although in a wheelchair since age 9, he is student at UAF studying computers. His doctors tell us that he is holding his own even though he is 10 years beyond his expected lifespan. He is one of the oldest living Duchene's victims in the United States. Owen believes as deeply as any person can that he is still alive because of his lifestyle and especially his diet. He has always preferred and eaten caribou. His doctors agree that the lean meat has been a definite benefit in his living as long as he has.

We are Non-Rural Alaskans. How important do you think it is to my family that we be able to utilize the resources that this proposal seeks to reserve for rural residents?

On behalf of my family, I urge you to turn down this proposal.

*Mike Junker*  
Box 25289  
Estero, AK 99725  
907-479-2561



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee Name  
 Committee on Subsistence Dated 9-25-97  
 Bill / Subject

I oppose the Governor's Plan

I strongly support the Alaska outdoors councils recommendations

I oppose any change to the Alaska constitution

SIGNED:

Lita A. Torgerson  
 Testifier

Representing

Po box 84346 FBKB AK 99708  
 Address / Phone Number 457-2025



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
Committee Name  
 Committee on Subsistence Dated 4/24/97  
Bill / Subject

I oppose changing our state Constitution to comply with a very discriminatory Federal law. Drawing discriminatory lines in state law between rural and urban people is the last thing this state needs.

Fish and Game Utilization can be dealt with under existing regulation. Witness access restrictions to hunting areas via aircraft and the "Tier" hunting permit system. Constitutional changes are not needed.

I fear more onerous restrictions on our freedoms to utilize the natural resources of our state once our Constitution recognizes one groups rights over another.

SIGNED: Timothy Woller  
 Testifier

Se/A  
 Representing

460 McKinley View Drive Ft. Belknap AK 99712  
 Address / Phone Number

907-457-5896 or 479-6747



# ALASKA STATE LEGISLATURE

## SENATE RESOURCES COMMITTEE

Official Business

State Capitol  
Juneau, AK 99801

Chairman: Senator Rick Halford  
Vice Chair: Senator Lyda Green  
Senator Loren Leman  
Senator Bert Sharp  
Senator Robin Taylor  
Senator John Torgerson  
Senator Georgianna Lincoln

**AGENDA**  
2:00 TO 8:00 p.m.  
Thursday, September 25, 1997

**Interim Hearing on Subsistence**

**Wasilla City Council Chambers**  
290 E. Herning, Wasilla

**I. Presentation of the Governor's Subsistence Task Force Proposal**

Expected Witness:

**Robert Bosworth, Deputy Commissioner, Dept. of Fish & Game**

**II. Public Testimony on the Governor's Subsistence Task Force Proposal**

**NEXT MEETING**

Friday, September 26

**Kenai Borough Assembly Chambers**  
144 N. Binkley, Soldotna

**ADJOURN**



Official Business

**COMMITTEE:**

SENATE RESOURCES

**DATE:**

**Subject of meeting:** #1

INTERIM HEARING ON SUBSISTENCE

**SIGN-IN**

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Tim Schuerch ("SHIRK")	P.O. Box 256 Kotzebue, AK 99752	(907) 442-7621	Manilaq Association (10 native villages in NANA region)	YES
BRUCE KNOWLES	P.O. BOX 873206 WASHILLA AK 99687	907-745-4945	SELF	YES
JIM HERMAN	P.O. Box 451 PALMER AK	907-745-	3558 SELF	YES
Rob TKACZ	2 MARINE WAY #217 JUNEAU 99801	463-52153	AK FISHERMAN'S JOURNAL	NO
Bill Miller	P.O. B 870151 WASHILLA AK 99687	907 376-5636	SELF	MAYBE
Gynthia Lopez	2649 FOREST PKD 99517	278-8861	Self	Maybe
Peter M. Probasco	P.O. Box 861, Palmer AK 99665	745-3182	AOC	YES
Harry Wassink	1340 W 3RD A Anchorage AK 99503	274 8485	Self	Yes
Warren E. Olson	5961 Orth Circle Anchorage AK 99516	346 4440	Self	Yes
Lee Tackett	600 S. Alaska Palmer	745 3370	ME	YES



Official Business

COMMITTEE:

SENATE RESOURCES

DATE:

SIGN-IN

Subject of meeting: #2

INTERIM HEARING ON SUBSISTENCE

PLEASE PRINT!

NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?

Table with 5 columns: NAME, ADDRESS (MAILING) & (ZIP), PHONE, REPRESENTING, DO YOU WANT TO TESTIFY?. Rows include: Dean Babcock, Mary Babcock, JC "Bud" Smith, Kathleen Harms, Steve Miller, Duane Anderson, Holly Gerlach, Robert Hall, Gene Straatmeyer, Kerry Hondl.





September 25, 1997

Mark W. Gordon  
HC01 6131 AB  
Palmer, AK 99645

Gordon  
RECEIVED  
SEP 26 1997

Ans'd.....

Senate Resources Committee  
P.O. Box 670190  
Chugiak, AK 99567

Ladies and Gentlemen:

When I first heard of this subsistence problem at least a dozen years ago, like most Alaskans, I felt that there should be a dominant patent to harvest fish and wildlife ensured to the appropriate wilderness entities. I no longer feel this way.

All these years of debate have exposed both the good will and the selfishness of the participants of all sides of this issue.

For example, at a recent subsistence celebration event promoted by native groups a doctrine was released to the public. It espoused the belief that subsistence was primarily native based, not rural based. Urban natives should enjoy the same subsistence priority that rural natives should. Then, amazingly, the last point stated that subsistence is a basic human right.

I failed to perceive any inkling that the author may have considered the possibility that I and other non-natives might be human too.

I am of creole cajun descent. Both sides of my family went to California during the Depression/WWII era. My father's side came from a subsistence lifestyle in the bayou.

I was born in Los Angeles. When I was young we moved to a growing suburb in Orange County, escaping city life for a newer, safer environment. But we were just the first. Waves of social and cultural refugees followed us to Orange County. I hated it. When I graduated in 1974 at the age of seventeen I successfully urged my parents to sign a consent form so I could enlist in the Army with a guarantee of station in Alaska. Within two years I had met and married a local girl of the Matanuska Valley. I have rarely eaten beef or purchased poultry or fish since then. We eat our own homegrown

greens and vegetables along with harvested moose, caribou, venison, salmon, halibut, clams, trout, berries, and homegrown apples.

But look at the Valley now. Again, I was just among the earlier social or cultural refugees. I have been followed. I am not happy with this "progress".

So this population growth I did not want justifies giving someone else "more rights" than me on public lands? That land is no more theirs than mine or the taxpayers in Gary, Indiana.

And the basic truth demonstrated by my life experience?: Like my parents before me and the refugees who followed me, we are but grains of sand on the beach. They will keep coming. You cannot stop them.

If someone negates my subsistence lifestyle because I live in Palmer, and guarantees someone else's because they live in the Bush, I will move to the Bush.

I bet I will just be among the first. I will be followed.

It's interesting how forbearing our federal delegation was after federal authorities stole game management authority over federal lands a few years ago. They insisted that Alaskans needed to reach consensus over a solution. Their patience seemed to run out quick when the feds were set to steal authority over fisheries. There are more big-dollar entities involved with fisheries.

As a personal use/subsistence fisherman, I have been completely disgusted with state management of fisheries. Federal management won't be any better, but it can't get worse (can it?).

Frankly, I don't fear federal management. Their subsistence priority law will not stand constitutional challenge any better than state subsistence law withstood state constitutional challenge. Proponents of constitutional amendment betray their fear of U.S. Supreme Court challenge.

And, further, since so few remain content with federal management of anything, what goes around will be very certain to come back around, anyway. As ridiculous as AOC official Rod Arno's suggestion of succession sounds to many, we should all be concerned that it sounds like a just and inevitable solution to the subsistence issue as well as many other problems.

If the feds want more rope, give it to them. We can marvel at the creative noose the entangle themselves with.

The disaster regarding this devil-may-care approach is the "Balkanization" of our people. Resentment and hatred will grow. This is what central planning has achieved for all the peoples of the world.

Leave the state constitution alone. Congress itself approved it, along with its common use clause, in 1959 with the Alaska Statehood Act.

Although I believe the whole intent and black-letter of ANILCA is illegitimate, the subsistence clause is simply and clearly a violation of the spirit of equal access guaranteed by the Fourteenth Amendment of the U.S. Constitution. It is also an illegal affront to the rights of states guaranteed by the Tenth Amendment of the U.S. Constitution.

It should not and will not stand.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark E. ...". The signature is written in dark ink and is positioned below the word "Sincerely,".

Soldotna



# Teleconference

DATE: Sept. 26, 1997

SPONSOR: State Resources

TIME: START 12:50p END \_\_\_\_\_

Subsistence

TCN# 70909

PLEASE PRINT

NAME (PLEASE PRINT)	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP CODE	(H) PHONE	(W) PHONE	TESTIFYING	WHAT SUBJECT OR BILL?
BOB PENNEY	CISCO	937 KEYSTONE		262-5782		X N	
BOB PENNEY	SELF 7 G/KIDS	" "		" "		Y N	
JIM REARDEN	Self	413 E. Lee Drive, Homer	99603	235-8543	Same	(Y) N	Subsistence OIK
Dy Waide	Self	937 Keystone		262-5782	Same	Y (N)	
HERMAN FANDEL	FAMILY	702 LAWTON DRIVE, KENAI	99611	283-4501		(Y) N	OIK
Jess Shantz	Kenaitze Indian Tribe			262-465	283-3633	<del>Y</del> (N)	
FRANK RUIE	ADFELG	-			465-6141	(Y) N	
Blair G. Zullo	KENAITZE	BOX 1057 KENAI	99611	716-5250		Y N	SUBSISTENCE
Ronald Patterson	KENAITZE	1803 CROW ST KENAI	99611	283-2636	283-3633	(Y) N	SUBSISTENCE
Becky Hurlberg	Self	35501-B Kenai Spur Hwy. <sup>CDH.</sup>	99609	283-6275	283-3355	(Y) N	Subsistence OIK (Grant)
						Y N	

(1)



# Teleconference

SPONSOR: SRES

DATE: 9-26-97

TIME: START \_\_\_\_\_ END \_\_\_\_\_

TCN# 70909

NAME (PLEASE PRINT)	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP CODE	(H) PHONE	(W) PHONE	TESTIFYING		WHAT SUBJECT OR BILL?
BYRON L. BONDURANT	SELF	HCI Box 1258 Soldotna	99669	262-1691		<input checked="" type="checkbox"/>	<input type="checkbox"/>	
BETTY BONDURANT		"	"	"		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Sam Kaser	self	Box 151 Sterling	79672			<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Marcy Ann Mills	self	Box 143, Sterling, AK.	99672	262-5403		<input checked="" type="checkbox"/>	<input type="checkbox"/>	
John Dahman	Self	Box 39428 Ninilchik, AK.	99639	567-9327		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Elise McCloud	Self	618 Fir Kenai AK 99611		283-3633		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Lita Haggan	<sup>at the</sup> Bridges Trail	BH Box 7900	99611	283-1432		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Susan Ross	SELF	P.O. Box 198 Kaslof	99610	2-5479		<input checked="" type="checkbox"/>	<input type="checkbox"/>	
						<input type="checkbox"/>	<input type="checkbox"/>	
						<input type="checkbox"/>	<input type="checkbox"/>	
						<input type="checkbox"/>	<input type="checkbox"/>	

(2)

Vertical text on the right margin, possibly a page number or reference.



Official Business

COMMITTEE:

SENATE RESOURCES

DATE: 9-26-97

SIGN-IN

Subject of meeting:

INTERIM HEARING ON SUBSISTENCE

#3

PLEASE PRINT!

NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?

Dennis N. Randa	Box 3055 99669	262 9494	Self & family	YES
Dw Johnson	Box 876 SOLDOTNA 99610	262 7823	SELF	YES
L. L. Lewis	P.O. Box 403 KASLOV AK	262-1370	SELF	YES
MEL KROGSENG	PO Box 3913 Soldotna AK	262-2671	ALASKA Sportfish Recovery Assoc	Yes
SEYMOUR MARVIN MILLS	P.O. Box 51 Sterling, Alaska	262-9289	SELF	YES
Ascom Hett	POB 3139 Kenai AK	283-5808	Cong delegation	NO
Rob Massingill	P.O. Box 2107, Kenai, AK	283-0781	Family	NO
Bruce Draper	312 W Riverview Soldotna	2-5970	self	NO
CASEY SULLIVAN	1417 INLET FL. Anch.	211 3725		NO
Ch Robert Cun Merchant	4c 2 Bx 9506 Soldotna	282-9447	family	NO



Official Business

COMMITTEE:

SENATE RESOURCES

DATE: 9-26-97

SIGN-IN

Subject of meeting: #4

INTERIM HEARING ON SUBSISTENCE

PLEASE PRINT!

NAME

ADDRESS

(MAILING) & (ZIP)

PHONE

REPRESENTING

DO YOU WANT TO TESTIFY?

Tim E O'Brien	Hci Box 1376 Kenai, 99601	776-2781	SELF <sup>not</sup> <del>ver</del>	YES
Roberta O'Brien	LI LI	LI LI	" "	NO
RADY GILLETTE	Box 631 KENAI, AK.	260-3080	SELF	NO
CLAY ROARK	Box 2294 SOLDOTNA AK	285-5068	SELF	NO
Daniel O'Brien	Box 7257 Nikiski, AK 99635	776-3480	SELF	NO
Ron Dolchull	Box F3 Kenai AK 99611	3-5955	Self	YES
Bob Kintzela	P.O. Box 3313 Kenai	283.7187	SELF	NO
Sam Brow	Box 1161 Sol Ak 99649	2627984	Self	no
HANK EVERY	Route 1 Box 970	776-8603	Self	YES
W.T. MANEK	322 N. FIREWOOD	262-8893 776	SELF	YES



Official Business

COMMITTEE:

SENATE RESOURCES

DATE: 9-26-97

SIGN-IN

Subject of meeting: #5

INTERIM HEARING ON SUBSISTENCE

PLEASE PRINT!

NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?

Table with 5 columns: NAME, ADDRESS (MAILING) & (ZIP), PHONE, REPRESENTING, DO YOU WANT TO TESTIFY?. Rows include: Peggy Mullen, Elaine Spraker, Bob Krogseng, Jim Turner, Robin Turner, Larry Davis, Pepper Johansen, Sean Wilson, Stephanie Wilson, Paul A. Shadura, James J. Wilson, Nicole J. Tozzi.



Official Business

COMMITTEE:

SENATE RESOURCES

DATE: 9-26-97

Subject of meeting: #6

INTERIM HEARING ON SUBSISTENCE

SIGN-IN

PLEASE PRINT!

NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?

Table with 5 columns: Name, Address (Mailing) & (Zip), Phone, Representing, and Do You Want to Testify? Rows include Bill Phillips, Dan Haskins, Pat Hawkins, Dave O. Luca, Leonard Efta, James Evenson, Joan Szepanski, Donald Szepanski, and Grace Kendall.



Official Business

COMMITTEE:

SENATE RESOURCES

DATE:

**SIGN-IN**

Subject of meeting: #7

INTERIM HEARING ON SUBSISTENCE

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
JOSEPH E. GOUD	Box 7086 Nikiski AK. 99635	776-8995	Self	<del>YES</del>
DICK HAHN	PO BOX 2754 Soldotna AK 99669	262 8575	Self	No
GEORGE A. WALTERS	Box 2221 Juneau AK. 99801	790-5521	SELF	No
BEN ELLIS	P.O. Box 1228 SOLDOTNA 99669	262-8584	Kentzi River Sportfishing Assoc.	<del>YES</del>
WILL JOSEY	PO BOX 881 STERLING, AK 99672	262-7305	SELF	NO
ROBERT SCOTT BYRNE	HCI BX 1365 Soldotna 99669	262-4798	SELF	NO
LES PALMER	Box 631 STERLING, AK 99672	262-7788	SELF	YES
JANET PALMER	Box 631 STERLING, AK 99672	262-7788	SELF	NO
JOHN EFTA	Box 353 99611	3-5899	SELF	NO
MARK WEIGNER	PO BOX 709 STERLING 99672	262-7840	SELF	NO



Official Business

COMMITTEE:

SENATE RESOURCES

DATE: 9-26-97

SIGN-IN

Subject of meeting: #8

INTERIM HEARING ON SUBSISTENCE

PLEASE PRINT!

NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?

Table with 5 columns: Name, Address (Mailing) & (ZIP), Phone, Representing, and Do You Want to Testify? containing handwritten entries for various individuals like Debra Horne, Theo Matthews, Les Van Devere, Alan Holt, James E Fisher, Bob Kragting, Kevin Dell, Mark Chase, Dietrich Hermansen, and Bill Wilney.



Official Business

**COMMITTEE:**

SENATE RESOURCES

**DATE:** 9-26-97

**SIGN-IN**

**Subject of meeting:**

#9

INTERIM HEARING ON SUBSISTENCE

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Don Melendy	PO Box 3723 48400 Prinnial Ave	2-3723		No
James E. Johnson Amye K. Johnson	Box 3774 Soldotna	262-5357		yes
Chandy Silwante Randy Silwante	Box 443 99669 Soldotna AK	262-6033	SCI	yes
Jim Ray, Jr.	Box 1717, Soldotna, AK 99669	262-1727		yes
David R Martin	<sup>99568</sup> HC-2 Box 860 Clam Gulch AK	567-3306	Self	yes
Billie Shackleton	<sup>99669</sup> 485 Lingenberry Lane Soldotna	262-6665	self	No
LAREN MCGAHAN	ROUTE I, Box 767 KENAI <sup>99611</sup>	776-8240	self	yes
Bob Bird	HC-1 Box 353-1 KENAI	776-5898	self	yes!
KARL KIRCHER	Box 95 KASLOF 99610	2519	KPFA	yes
Sam McDowell	336 E. 23rd Ave Anchorage AK 99503	272-6605	Self	yes



Official Business

COMMITTEE:

SENATE RESOURCES

DATE: 9-26-97

SIGN-IN

Subject of meeting:

INTERIM HEARING ON SUBSISTENCE

#10

PLEASE PRINT!

NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?

Table with 5 columns: NAME, ADDRESS (MAILING) & (ZIP), PHONE, REPRESENTING, DO YOU WANT TO TESTIFY?. Rows include: SHANN E. BELL, Jeff Breakfield, Richard M. Sobel, JIM RAY (crossed out), W. Longerson.

GITE

*Becky Hultberg  
Testimony to the Alaska Senate & House Resources Committees  
Friday, September 26, 1997  
Soldotna, Alaska*

RE: Proposal of the Governor's Task Force on Subsistence

First of all, I would like to thank you for the opportunity to speak to you about the proposal of the Governor's Task Force on Subsistence. The subsistence issue is important to all Alaskans because it affects families' livelihoods, ways of life, and values. As a young Alaskan, I have a big stake in this decision.

I would like to speak briefly today about the constitutional issues raised by this proposal, because the public policy implications of your decision will affect not only this generation, but successive generations as well.

All of us realize Alaska's precarious position with the federal government. Any state in which over half of the land is federally managed must to some degree accede to the wishes of the United States Government. However, I submit to you today, that in following the course recommended by the subsistence task force, we are stumbling down a very slippery slope to an uncertain future.

Giving in to the federal government may seem like the most expedient method to resolve our current dilemma. But by doing so, we lose an important battle, the battle of principle. If we agree to amend the constitution, we lose the moral authority to assert our state's rights in future situations, setting a dangerous precedent for future acquiescence to the federal government. This indeed poses the true threat to future generations. May I remind you that Article 10 of the Bill of Rights in the U. S. Constitution states that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The last time I checked, fish and game management was not a right delegated expressly to the federal government. It was never the intent of this document that federal legislation would take precedence over a state constitution.

As Legislators, your responsibility is to govern Alaska wisely and well, protecting the Alaska constitution. Amending the constitution to comply with a federal statute cheapens it, rendering it a functionally meaningless document. If we set a precedent of amending our constitution to comply with federal law, we have ceded to the federal government a dangerous right. Why then, do we have a state government, if the will of that state body and its constitution can be rendered irrelevant by a mere act of Congress?

In many ways, we are a vassal state. We have seen our self-determination compromised by our inability to harvest our own timber, drill our own oil, and create jobs for our own people. We cannot, however, continue this pattern of bowing to the wishes of the feds whenever they knock on our doors. As a lifelong Alaskan, I appreciate the values inherent in this state, such as our independence and self-sufficiency. By agreeing to change the state constitution, we compromise

these values. Amending the constitution presents a seemingly easy way out. But Alaskans have never taken the easy way out. Allowing the feds to take over fish and game management may hurt some people in the short term, but in the long run, our refusal to compromise and our defense of our constitution may give us back some of the self-determination we built our state on. We cannot leave our children with a legacy of acquiescence to the feds. If this issue must wind its way through the legal system for 20 years, we must live with it.

Finally, our constitution may be a living and malleable document. Indeed, it has been amended numerous times. However, the force of threat is not, and will never be, a legitimate reason to amend the constitution. I applaud you for your efforts to date, and I encourage you to challenge the federal takeover, not because it is the easy thing to do, but because it is the right policy decision to make for all Alaskans.

*Becky Hultberg*  
*35561-B Kenai Spur Highway*  
*Soldotna, AK 99669*

*907.283.6275 (home)*  
*907.283.3335 (work)*  
*e-mail: hultberg@alaska.net*

To: Members of the Subsistence Committee  
From: Robert M. Bird  
HC-1 Box 353-1  
Kenai, AK 99611  
907-776-5898

My name is Bob Bird and I am a 20-year Alaska resident. In 1990 I ran for the U.S. Senate against Ted Stevens, garnered 30% of the vote in the Republican Primary, largely debating the subsistence issue against Senator Stevens.

This issue is not really about rural vs. urban, nor native vs. non-native. This issue is about the federal government pushing us around. If we really wanted to change our concepts of equality before the law, we would have done so on our own initiative, without being under the duress of a federal threat to our state sovereignty. As it was, the *McDowell* case struck down a law already coerced from us by the federal government.

The argument that tells us we must amend our state constitution in order to avoid federal control is oxymoronic. We already have federal control. The sad fact is, our supposed champion in Washington, the man who should use his clout to protect us from federal tyranny, is the very author who gave us the subsistence clause in ANILCA. He probably thought it was "enlightened" at the time, but the passage of the years has proven otherwise. Rather than admit he made a mistake, Senator Stevens refuses to consider amending ANILCA to give the state back its sovereignty in fish and game. And, he continues to woo his constituency as an "indispensable friend" of our state by funneling back unconstitutional and budget-wrecking pork-barrel projects, as a way to deflect attention from the great harm he has caused Alaska.

By accepting our state constitution, as written, in 1959, the federal government made a contract with Alaska. ANILCA has demonstrated that the federal government no longer wishes to abide by the terms of that contract. We should sue the federal government for our sovereign rights as a state. A hundred and fifty years ago, such high-handedness by the federal power would have been a reasonable cause for secession. Alaska should look to other states as allies in this tyrannical grab of federal power: states such as Utah, Nevada, Arizona, Montana and Wyoming have all continued to suffer from unconstitutional power grabs. We must fight, rather than genuflect, to this usurpation of our statehood contract.

## TESTIMONY ADDRESSING THE ATTEMPT TO AMEND THE CONSTITUTION OF THE STATE OF ALASKA

To Whom It May Concern:

Question:

Is the proposed amendment, of the Alaska Constitution, to provide a priority subsistence right to a restrictive class of USERS of our common property fish, wildlife and waters public trust resources; a constitutionally proper subject to be decided by a vote of the public?

The Colorado Supreme Court recently voiced it very simple and eloquently: "Ones right to life, liberty and property.... and other fundamental rights may not be submitted to a vote; they depend on the outcome of no elections."

The US Supreme Court rejected the Colorado Governor's bid to have that court override the Colorado Supreme Court decision which overturns a public vote to amend the state's constitution. (does that sound familiar?)

This decision reflects a litany of Supreme Court decisions that have continuously rejected those positions that claim that the constitution's "equal protection of the laws" can be declared voided by a vote of the public.

The US Constitution provided that no state shall "deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." This equal protection of the law is a most important right of any true democracy. And it cannot be subverted by the passage of any law (i.e. statute or amendment) which in fact and effect removes this fundamental right.

The "property" referenced in the fourteenth amendment of the US Constitution addresses the common property, such as fish, wildlife and waters, which are held in public trust for all people. The proposed amendment of the State Constitution, that subjugates the fundamental right of common use, then grants it as priority use to a restrictive class of USERS of those public trust properties, also denies "equal protection of the law." And thereby violate the US Constitution.

So, as to present my belief in what I objectively assume as may be individual public reasons for those who wish to truly support and honestly contribute to the priority of rights for the selective class of USERS of our common property fish,

wildlife and waters; I will first enumerated such a list and then issue a challenge to their personal commitments:

- TO: Governor Tony Knowles and his politically indebted constituency, including the politically appointed task force that would plagiarize his own unconstitutional amendment to the Alaska Constitution.
- TO: Lieutenant Governor Fran Ulmer who as the political handmaiden of the Governor, she has shown a continuing rush for a political settlement of the subsistence issue rather than any desire to stand up for equal rights protection.
- TO: Former Governor Jay Hammond who publicly attacks those "opposed to amending our constitution or discriminating further between Alaskans" and then he co-ercively calls for the courage of others to follow his continual demand for the illegal vote on this unconstitutional denial of the equal protection rights of all the people. And to those who participate in his commercial fishing interests.
- TO: House Speaker Gail Phillips who with her higher future political aspirations, has flip flopped from a position of "What are we wasting time for then?" to her present medicine show huckstering of the so called hardfast "linkage" of the proposed constitution's amendment. I questioned the honesty of this so called linkage when viewed, compared to the total federal disregard of the statehood compact linkage. Later she made a personal effort to confront me and make her accusation that I was the problem. (Confidentially, I better like the Alaska Supreme Court McDowell decision that we were right.)
- TO: Byron Mallot who declared that the subsistence priority was no longer an equal protection issue. Then he adds that the Alaskan Natives have a special governmental relationship and that the Alaska public must recognize and accept this as a true fact. (A civil rights issue based on ethnic identity and religious claim of subsistence rights?)
- TO: Former Attorney General Charlie Cole who personally admitted to me, that the due process right of life, liberty and property of the XIV amendment to the US Constitution is not subject to the vote of the public. Of course he agreed to bring it up, but if he did, it was evidently not in public.

- TO: Senate President Mike Miller, who has also made a political flip flop, as he stated after discussion with Secretary of Interior Bruce Babbitt.
- TO: Said Interior Secretary, the federal fox guarding the state hen house, but he too no doubt does have strong interests in hunting and fishing uses of these public trust resources.
- TO: Bruce Botelho Attorney General who is the Governor's politically appointed legal shill, who's entire office is committed to a political client-attorney relationship. And he has publicly stated that he has accepted that the only solution is not substantively but politically.
- TO: Alaska's Congressional delegation who publicly makes excuses for their inept ability to protect the provisions of the statehood compact, the equal footing state resource management authority under the Submerged Lands Acts and Alaskans right to life, liberty and property, due process protection under the US Constitution. To specifically address Senator Stevens who created this quagmire, by supporting Title VIII ANILCA and to his support of his son's commercial fishing interest and to all of his congressional buddies who he accompanies each year to fish in the Kenai River
- TO: To Bob Penny, Ben Ellis, Phil Cutler, and any other amendment supporting members of their sport fishing organizations.
- TO: Theo Mathews, Karl Kishner and any other amendment supporting members of the statewide commercial fishing organizations.
- TO: Federal Court Judge Holland who also enjoys fishing on the Kenai and to all individual federal authority who support the priority for a restrictive class of USERS of our fish, wildlife and water common use public trust resource properties.
- TO: All of those who support the subsistence priority of a restricted class of USERS only if confined to specific areas of the Kenai Peninsula.

And now to the above listed parties and including all others who wish to truly support and honestly contribute to the priority demands of the restrictive class of USERS as proposed in the proposed amendment; I now challenge them to individually and collectively voluntarily "just say no" and cease their future

involvement in the harvest of these fish and wildlife, but to also cease their demand for a illegal vote to deny others equal protection of the laws.

Such responsible individual choices are the hallmark of a true democracy.

If we had a Governor and his administration who really opposes the federal oversight authority and was not tied to a political solution, we should disregard these federal administrative edicts and instead listen to the states highest legal authority (The Alaska Supreme Court).

The Alaska Supreme Court has taken the following positions:

1. "For a number of reasons... the federal government has no authority to regulate hunting and fishing in Alaska's water."
2. "We are not obligated to follow the 9th Circuit Courts rulings since this court is not bound by decisions of federal court, other than the United States Supreme Court."

In response, Botelho's staff argued that most of the issues raised in Totemoff's appeal were unworthy of Supreme Court review. But their response did urge the justices to resolve the conflicting edicts about regulatory authority.

It seems to me that if the State would follow our highest courts legal advice, it would then be the federal administrators responsibility to seek their support from their highest federal legal authority, the US Supreme Court. That should at least force an avenue of level ground to the final settlement of these most important rights of the state authority over public trust resources. (See enclosure I: Concurrent federal & state authority over public trust resources)

I ask the Knowles administration what it intends to do if they succeed in brokering their so called linkage-agreement and then but not if, when Federal District Court Judge Holland does as he has in the past, over rides even the 9th Circuit Court when he issued his Kenatizie priority educational fishery decision.

Another issue that will create a direct conflict with the state administration proposed amendment and a recent 1997 Supreme Court decision (Payton -v- State of Alaska) i.e. "Despite repeated legal challenges to and multiple revisions of the subsistence laws, 'Subsistence USES' have long been defined in the terms of 'customary and traditional USES' ".

"Accordingly, we consistently have interpreted 'customary and traditional' to refer to 'USES' rather than USERS".

Because the proposed amendment grants a priority right for a restrictive class of 'USERS' and not just a preference of USE open to all persons; it will raise a challenge and a Supreme Court reversal due to its equal protection violation.

When we ask the Anchorage Attorney General's office what kind of new advice would be given to the Boards of Fish and Game due to this Supreme Court (Payton) decision. Their response was that the Paytons would be given their rights granted by the court, but this would have no expanded effect on future Board Management decisions.

The same challenge and Supreme Court reversal will be triggered by the place of residency clause of the proposed amendment. The Alaska Supreme Court in McDowell pointed out that a number of jurisdictions have struck down intrastate residency conditions for USERS priority of these common property resources.

Then why do those who push for such vulnerable actions continue such irresponsible attempts. Because they can pay their political debts by showing their constituency they tried. They care less for those who are denied their constitutional right for the years of time, effort and money it takes to win back their right, through court action.

**Submitted By:**

*Dale Bondurant*

**Dale Bondurant  
HC - 1 Box 1197  
Soldotna, Alaska 99669**

**cc: Concerned Alaskans  
Concerned Americans**

To all whom it may concern:

Here we go again.

There are always those who demand special privileges and there by willingly subjugated the equal rights of all the people.

Even more at fault, there are those who are even more willing to use such matters for their own political purposes.

ANILCA Title VIII Subsistence priority for rural residents is such a matter. To understand the full implications of this provision, it is important to first establish some important facts.

Throughout recorded history, the fish, wildlife, and waters, as common property resources have been a compelling motivation for establishment of democratic equality under the law. This history of common USER ownership of these untitled properties has been recognized in what is referred as the Public Trust Doctrine.

The Public Trust Doctrine is an axiom of the recognition that the untitled fish, wildlife, and water properties be managed for the peoples common use. It was developed, evolved, and honed by its travel through centuries of time and various societies, that is why its purposes must be continued in light of changing history of regulations developing by agencies and court interpretations. But the thread of equality of common USE must not be broken by a priority of USERS.

The Alaska Constitution Article VIII Natural Resources explicitly reflects the Public Trust Doctrine mandate of equal protection of the law for USER of the fish, wildlife, and water as a common property resource. Section 3 "Common Use." "Where ever occurring in their natural state fish, wildlife, and waters are reserved to the people for common use" is a pure axiom of such a public trust.

Section 4 Sustained Yield. Fish, forest, wildlife, grass lands and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial USES"

Here in lies an oxymoron that creates confusion for those who do not wish to understand nor except that thread, of equal protection for all USERS, that ties together all Sections of Article VIII.

There can and will be Selective preferences among the beneficial USES of the common property fish, wildlife, and waters resources. Example: Subsistence, personal use and sport fisheries; all of which are recognized as personal common consumptive USES, which are specifically identified by methods, means, bag limits, species, availability, etc. But whenever or where ever, each such specific USES are selected for preference, then All USERS must be awarded their equal rights of consideration to participate in the harvest of these common use property public trust resources.

This equality as USERS is further provided by Section 15. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State" and Section 17 "Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons."

Alaska Constitution Article VIII is recognized by constitutional scholars as the best Natural Resources provision in the Nation. Members of the Constitutional

Convention spent more time on Article VIII than they did on the rest of the Constitution. The main thrust of Article VIII is that Alaska's public resources are to be used by and for the common benefit of All of the people.

"Although 3, 15 & 17 vary in expression, they share at least one meaning; exclusive or special privileges to take fish and wildlife are prohibited in the use of natural resources subject to the disposition of the state." Still further the constitutional Convention stated: "This section (15) is intended to serve as a substitute for the provision, prohibiting the several right of fisheries in the White Act." "Instead of using the terminology of the Act, the purpose sought by it are given expression in a prohibition of exclusive right or special privileges of any person to the fisheries of the State."

In both the United States and Alaska Constitutions we find provisions of the public trust responsibility and further fortify the equal rights of USERS of the common property fish, wildlife, and water resource.

The Constitution of Alaska Article I Declaration of Rights: Section 1 Inherent Rights: This Constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities and protection under the law; and that all persons have corresponding obligation to the people and to the State."

In opposition to the Subsistence priority for rural residents, Alaska Supreme Court Justice Moore stated: "This is an equal protection case, and an easy one at that."

Therefore in a rare show of openness, responsibility and 'corresponding obligation to the people and the State'; I challenge, the secretly seven to submit in their proposed constitutional amendment the following addendum to "Article I Inherent Rights" "...that all persons are equal and entitled to equal rights, opportunities, and protection under the law [addendum: except as the Legislature may wish to deny these rights and selectively impose priority classes of USERS of Alaska's fish, wildlife, and waters public trust resources.]

I also challenge our esteemed congressional delegation, who pleads an ability to only selectively amend ANILCA, to submit such a companion phrase for the US Constitution Article XIV "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or (property)...[(addendum) except as when Congress may wish to deny such protection and selectively impose priority classes of USERS of Alaska's fish, wildlife, and waters public trust properties.]

(Footnote) This denial of equal protection under the law explicitly includes All residents of specifically named cities of Anchorage, Fairbanks, Ketchikan, and Juneau and thereby the sovereign State of Alaska is shorn of its equal footing status with the other states of the Union.

Court reversals of congressional and federal attempts to deny equal footing status is well documented: Wyoming v. Race Horse cite 163 US 514 (Enclosure I) presents a number of such attempts to deny, by federal acts, the equal footing clause to sovereign states; and pertinent information is quoted in brief as follows: "The power of a state to control and regulate the taking of game can not be questioned."

"This argument indicates at once the conflict between the right to hunt in the unoccupied land, with in hunting districts and the assertion of power to exercise of the privilege in question in the state of Wyoming is in defiance of its laws"

The act which admitted Wyoming into the Union, as we have said expressly declared that state should have all the powers of the other states of the Union."

"It was held that the shores of navigable waters and the soil under them were not granted by the Constitution of the United States, and hence the jurisdiction exercised there over by the Federal government, before the formation of the new state, was held temporarily and in trust for the new state to be there after created, and that such state when created, by virtue of its being, possessed the same rights and, jurisdiction as had the original states." "The courts declared that to refuse to concede to Alabama sovereignty and jurisdiction over all territory within its limits would be to deny that Alabama has been admitted into the Union on an equal footing with the original states."

"In considering this act of Congress...it is unnecessary to institute any examination or criticism as to its legitimate meaning or operation or binding authority, further than to affirm that it could have no effect to restrict the new state as an independent sovereign government nor inhibit or diminish its perfect equality with the other members of the confederacy with which it was to be associated."

"Whatever the limitation upon her powers as a government whilst a territory condition, whether from....legislation of Congress, it ceased to have any operative force except as voluntarily adopted by her, after she became a state of the Union." "On her admission she at once became entitled to and possessed of all the rights of dominion and sovereignty which belong to the original states." "She was admitted, and could be admitted, only on the same footing with them...Equality of the constitutional right and power is the condition of all the states of the Union old and new."

"And it was held that a clause in the act of admitting California into the Union which provided that the navigable waters within the state shall be free to citizens of the United States, in no way impaired the power which the state could exercise over the subject if the clause in question had no existence." "The act admitting California declared that she is admitted into the Union on an equal footing with the original states in all respects whatever." "She was not, therefore shorn by the clause as to navigable water, within her limits, of any of the powers which the original states possessed over such waters within their limits."

How do these above quoted decisions relate to the mandate of federal management imposed by Congress in their enactment of Title VIV of ANILCA? The Federal Government has argued on several issues their supremacy right to impose this rural residency discrimination on USERS on public land within the limits of sovereign State of Alaska. This by fact and intent impinges upon the States sovereign servitude responsibility to manage Alaska's fish, wildlife, and water public trust resource and there with denies her people and State the equal footing of the other states.

The federal government rightly claim that those dedicated lands such as National Parks, reserves, forests, etc.. are set aside for special purposes that requires compatible management of the fish, wildlife, and waters. This argument is a slender reed when viewed in the context of the Alaska Constitution recognition of such preferences of beneficial USES. But the mandate of ANILCA is in fact a federal oversight authority

demanding the imposition of a certain class of (intrastate rural residents) priority USERS of these common property fish, wildlife, and waters public trust resource. This imposition of such a factional and intentional denial of the protection of the privileges and immunities and the equal protection of life, liberty and property has no precedent in the police powers of the State sovereignty. All such attempts have been struck down by courts as violation of Articles IV, V, X, and XIV of the US Constitution.

The federal authorities used a two prong attack, on Alaska's right to manage the fish, wildlife, and waters within its limits, by contending that it can claim federal authority by reserved water rights and over navigable waters of the federal public lands reserved within the limits of Alaska.

1. The reserved water rights of these National Parks, reserves, forest, etc.. are of a commendable and viable concern to protect their purpose, but to use this as a claim of federal supremacy over the states servitude responsibility to manage these fish, wildlife, and waters becomes a sham when viewed in the proper prospective and recognized purpose:

"Water Resource Management" "A Case Book in Law and Public Policy" (quote), "The United States follows state water law in appropriating water rights, but when it is unable to comply with the provisions of the law and still carry out federal purposes, state law may be preempted. The policy debate is over how vigorously the Executive will act in asserting preemption."

["Consider several possible federal needs for water. In which cases do reserved rights exist? In which must the government proceed to acquire water rights entirely according to state law? In which may aspects of state law be avoided in order to acquire water rights?"]

1. The Department of Defense needs water to serve barracks built on a military reservation.
2. The Forest Service seeks in stream flow rights for fish and wildlife purpose in a national forest, but state law does not recognize in stream flows as a beneficial use.
3. The Park Service seeks to convert state-permitted agricultural rights it purchased from a farmer to in stream flow rights for a national park, but the state law allows in stream flow rights to be held only by a state agency.
4. The Bureau of Land Management (B.L.M.) seeks water rights to maintain a fishery in a stream on unreserved lands in a state that does not recognize in stream flows as a beneficial use.] (Enclosure II Water Resource Management)

The Alaska Constitution Title VIII Section 13 "...an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise as prescribed by law, and to the general reservation of fish and wildlife."

So there is no conceptual conflict with the responsible federal need for reserved water rights on these public lands, and the need of in stream flows for the general reservation of fish and wildlife as is mandated. This is the same constitution that was required by the Alaska Statehood Compact to prove the state - "has made an adequate

provisions for the administration, management, and conservation of said resources in the broad national interest." To make reserved water rights the scapegoat of federal claim of management, not of preference USES, but of priority USERS of Alaska's fish and wildlife, and waters public trust resources; is just another naked attack on Alaska's right of equal footing and its people's life, liberty and property rights of equality under the law.

This same federal attack is also aimed at those navigable waters that are on or flow through such federal lands that lie within Alaska limits. It shows a repeated lack of federal respect for the equal footing right of the State and, therefore, the state's citizens.

The Alaska Statehood Compact explicitly provides: "The Submerged Lands Act of 1953...shall be applicable to the State of Alaska and the said State shall have the same rights as do existing states thereunder." ["Submerged Lands Act" Title II "Section 3 Right of the States":

"(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of lands beneath the navigable waters within the boundaries of the respective States, and the natural resources within such land and waters. And (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with the applicable state law be, and they are hereby subject to the provisions hereof, recognized confirmed, established and rested in and assigned to the respective States."

(b)(1) The United States hereby releases and relinquishes unto said States...all rights, title and interest of the United States, if any it has in and to said land, improvement and natural resources. (2) The United States hereby releases and relinquishes all claims of the United States."

"Title I Definitions"

(e) The terms 'natural resources' includes without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animals and plant life.] (Enclosure III, The Submerged Lands Act.)

It can be briefly explained that the federal government has a servitude responsibility to manage navigable waters for transportation and commerce. The State governments have a servitude responsibility to manage the natural resources within the submerged lands and all fish, marine animals and plant life within these navigable waters.

Now through Title VIII of ANILCA, Congress has shorn Alaska of its equal footing rights and the State's citizens are denied their constitutional right of equality under the laws.

Some argue that the Alaska Statehood Compact's provisions promising the State management authority of its fish and wildlife was an act of Congress and it can also be taken thereof.

I will, in reply, argue that Title VIII of ANILCA, did not, in fact and effects, mandate the management of beneficial USES but instead it mandates the priority of a restricted class of USERS to participate in the harvest of these common property fish, wildlife and waters public trust resource.

If the people are so lackadaisical as to accept such politically motivated, imperialistic action, there still remains the fact that the Statehood Compact also provided that: "The Submerged Lands Act - shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder." If the same imperialistic implications exist - that what Congress gives, they can also take away -; then under the Constitutions provision of State sovereignty equal footing rights, it must follow that all other States would also lose their resource management authority as provided by said Submerged Lands Act.

The supremacy of the federal government also cannot subjugate the police powers of a sovereign State as delegated by US Constitution Article X; by an act of Congress such as Title VIII ANILCA.

I find that: Governor Knowles in delivering on past political promises to his supporters, Speaker Gail Phillips by laying foundations of future political aspirations, and former Governor Jay Hammond's arrogant statement to shame Alaskans into giving up their principles of fairness for his idea of acceptable discrimination are personal positions; that further clouds the task force's amendment product, hatched in secret of purpose and shows an irresponsible disregard for the Alaska Constitution's provision "that all persons have corresponding obligations to the people and to the State."

I would still hope that instead of the acceptance of 'politically correct' (?) positions, the incentive would instead be to protect the equal rights under the law for all people. Instead of accepting excuses that our Congressional delegation are inept at changing the prejudices and inequities of Title VIII ANILCA, we should look to the findings of the Alaska Supreme Court as the most important guide to the State's legal position.

Some of the findings are as follows:

- (1) "State control merely for the sake of control is a questionable goal when the terms infringe upon the open access values of Article VIII." (Enclosure IV, McDowell v. State of Alaska 1989)
- (2) "We note that several other jurisdictions have struck down intrastate residential preferences in fish and game statutes." "These authorities support our view that the equal access clauses of Article VIII, which are special types of equal protection guarantee, bar the residential discrimination imposed in this case." (McDowell v. State of Alaska, 1989)
- (3) "The common right, which one individual of the whole community is entitled to enjoy as much as another, cannot be made by law, the exclusive privilege of the people of a certain class or section upon terms that do not apply to the whole people alike." "This right which one individual has in common with every other individual in the community to take and use fish and game, *ferae naturae*, is one that has existed from the remotest times, and although at one time in England after the Norman Conquest the right to take fish and game was claimed a royal prerogative to the exclusion of the people, it was restored to them by the Barons at Runnymede in 1215 and was declared in the great (Magna) Charter which they wrested from King John." "(McDowell quoted from Lewis v. State 110 Arizona 201)"

"These rights were confirmed and established ever after in England by acts of Parliament, and they have come down to us from the laws of England and may be regarded as a common heritage of the English speaking people."

"(McDowell, also see Parker v. People - 111 Ill 581; Greer v. Conn 161 US 519; Martin v. Waddell 41 US)"

- (4) "Where the necessity for the preservation of wild game and fish exists in certain territories of the State, that territory may be segregated for the purpose of regulating the right to taking game and fish therein; but the privilege of taking and using same must be extended to the people of the State outside of the territory upon the same terms that are given to those who are residents of the territory embraced in the legislation." "(McDowell also see Hayes v. Territory 2 Wash T 286; State v. Higgins 51SC51; and Harper v. Galloway 58 Fla 253)"
- (5) Alaska Supreme Court Judge Moore "This is an equal protection case, and an easy one at that." "Article I Section 1 of the Alaska Constitution provides that 'all persons...are entitled to equal rights, opportunities and protection under the law...' "The Alaska Constitution has a similar clause specifically concerning natural resources." Article VIII section 17 the Uniform Application Clause, ' provides that laws and regulations governing the use and disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation'." (McDowell)
- (6) "In Owsichek v. State (Alaska 1988) we observed that Article VII provisions were designed to ensure to the public the broadest possible access to wildlife." We noted that "the common use clause imposes upon the State a trust duty to manage the fish, wildlife and water resources of the State for the benefit of All the People." "(emphasis added)" "A minimum requirement of this duty is a prohibition against any...special privileges" (McDowell).
- (7) "In State v. Ostrosky (Alaska 1983), we observed that the common use and no exclusive right of fishery clauses reflect 'anti-exclusionist values'." (McDowell)
- (8) [The following comments are excerpts from Anchorage Daily News article related to sovereign edicts over regulatory to manage Alaska's common property fish, wildlife and waters public trust resources: (Enclosure V) The US Supreme Court...refused to address a conflict between a federal appeals court and Alaska's Supreme Court over whether the state or federal government has the highest regulatory authority over hunting and fishing along Alaska's waterways. The justices, without making any comments, let stand an Alaska Supreme Court ruling that said the State - not the Federal Government - has regulatory authority over subsistence hunting and fishing. The case...dates back to an incident...on Naked Island in Prince William Sound. Michael Totemoff ...was convicted of illegally hunting deer with a spotlight off the island. He challenged his conviction, and based his legal case in part on what he said was the state's lack of authority to regulate his conduct in navigable waters. The Alaska Supreme Court upheld Totemoff's

conviction, ruling that state game laws applied to his conduct. "We are not obligated to follow (the Ninth Circuit Court's ruling) since this court is not bound by decisions of federal courts other than the United State's Supreme Court" the Alaska Court said. "For a number of reasons...the federal government has no authority to regulate hunting and fishing in Alaska's navigable waters", it added.] (Enclosure V, Anchorage Daily News article)

- (9) "Despite repeated legal challenges to and multiple revisions of subsistence laws, 'subsistence USES' have long been defined in terms of 'customary and traditional USES'. "Accordingly we consistently have interpreted 'customary and traditional' to refer to 'USES' rather than 'USERS'." State v. Morry 1992; McDowell v. State; Madison (reference Payton v State of Alaska 1997) (Enclosure VI Payton v. State of Alaska)

Customs and traditions are important heritages of different peoples, but when they invoke prejudice they are merely demands of special privileges for some and destroy equality among All the people.

All past history shows that Title VIII ANILCA federal management oversight authority continues no matter what the State may do to comply. It was this blackmail purpose that resulted when Senator Stevens told the Alaska legislators that if they did not pass a subsistence priority statute, then Congress would. He then went before Congress and declared that this was what Alaska wanted. It was his devious purpose of supporting Title VIII ANILCA which resulted in the federal mandated oversight that unilaterally denies Alaskans its equal footing right to manage the State common property fish, wildlife and waters public trust resources.

As further proof of the foolish expectations for, a return of true State fish, wildlife, and water resource management authority, from the proposed discriminatory amendment to our "Common Use" and No exclusive right or special privilege clause of Alaska's Constitution; I provide the following results from a meeting between Bruce Botelho (Governor Knowles appointed Attorney General) and over 20 Alaska Legislators.

(Enclosure VIII)

**Speaker Phillips:**

Bruce, time and time again, we have been told that if Alaska comes into compliance with the federal law, that we will be guaranteed the right to manage our fish and game resources again, or at least manage them with the least amount of federal interference. However, you will recall that when the...the same promises were made to us when we reassumed management of the walrus under the Marine Mammal Protection Act. And once we had that, then the management was forced...we were forced return walrus management to the federal government due to continued harassment by the federal government. Do we have any kind of guarantees whatsoever, that if we were to take action, whether it be to come into compliance as has been stated, or to reach some kind of compromise, or to come up with some kind of solution, do we have any guarantee

whatsoever that the federal government will pull out and take us out from under this threat of their interfering with our management?

**Bruce Botelho:**

Madam Chairman, it's a difficult question to answer. I don't think there is an absolute guarantee and I think that Senator Taylor is correct when he has identified one aspect, I think, very important, sometimes overlooked, which is that when we talk about a constitutional amendment and subsidiary laws bringing the state's laws consistent with ANILCA, it does mean, obviously, that – maybe not so obviously – that fish and game managers would be state managers, setting guidelines. But it does not eliminate federal government oversight. ANILCA, by its terms, provides for any aggrieved citizen or person – not limited to citizen – to seek recourse ultimately in U.S. District Court, and to the extent that there is no resolution, the federal district court retains the right to fashion relief. And that would occur, does occur now, and would occur also with a constitutional amendment. The effect of a constitutional amendment found to be consistent with ANILCA, simply means, and it's an important simple, that it would be state fish and game managers managing the fish and wildlife resources within the boundaries of Alaska. But it does not mean there's no federal oversight.

**Speaker Phillips:**

So, just to clarify...could I just verify and clarify your response. We could take any kind of action we wanted in the state of Alaska. We could do anything we want to try to come into compliance...to meet the federal compliance and that still does not guarantee us, that we would have the rights to manage our fish and game resources, regardless of what we do.

**Bruce Botelho:**

If I've not been clear, Madam Chairman, we do have the right to manage. We are subject, however, to federal court oversight by ANILCA. Whatever changes we make that bring us into compliance, the actions of our state government would be subject to a person challenging our... the propriety of our management under the guidelines of ANILCA. That is, whether we have in fact satisfied the rural subsistence priority found in Title 8.

**Speaker Phillips:**

What are we wasting time for, then?

**Representative Bunde:**

Well, I tend to oversimplify things, but to me that says that the state can manage, as long as they do it the way the federal government tells them to. In other words, the state managers do the talking, but the feds pull the strings.

**Senator Taylor:**

A puppet.

**Senator Halford:**

So a constitutional amendment, absent changes in ANILCA, is not a solution?

**Bruce Botelho:**

I have not said that though I would believe my—well, let me restate that is a correct assumption of my view. I think there are changes to ANILCA – the solution lies in a combination of a constitutional amendment and certain changes to ANILCA.

**Senator Halford:**

Could the solution lie with changes to ANILCA without the constitutional amendment?

**Bruce Botelho:**

I believe that there is no solution that can be found that rests solely on changes to ANILCA.

**Senator Halford:**

Politically or substantively?

**Bruce Botelho:**

Politically.

|

**Senator Halford:**

Isn't it kind of an insidious thing though? I mean it starts out with subsistence management and that's all that's provided for in the federal law, but as you manage for subsistence, then you manage the other conflict. So, it's not something I think that happens all at once even if you – you know I think it happens insidiously and it grows as it goes, because the federal law doesn't provide for management of fish and game, it provides for management of subsistence, but in order to manage the subsistence harvest, you have to cut off and deal with other harvests in conflict. So eventually, you get further and further into the management of every other use, and maybe even some non use areas - maybe some development areas as well.

**Bruce Botelho:**

Both that in terms of the expansion through the species, but also expansion geographically, whatever the outcome in Katie John in terms of navigable waters, we have separate related question in terms of management of species which passed between public and non public lands and the ability to regulate off public lands to make sure that the species are available to satisfy subsistence on public lands.

**Senator Halford:**

That's my comment. My question goes back to Katie John and the probable outcome. It seems that the – you know we have lot of other states that are on our side on navigational servitude. We have lots of arguments and lots of history to win that portion of the case, but what about federal reserve water rights. Isn't that the place where we can lose in part and be variable based on a whole bunch of further determinations down the road?

**Joanne Grace:**

Yes, I think – I think it's going to be harder for the court to base its decision on that because what the court would essentially be saying is if the United States has any interest, no matter how small in the water, that that converts the entire waterway into public lands. It's an absurd result because essentially we'll convert all lands and waters in Alaska into public lands. For example, we are just before the Ninth Circuit that it would – we argued this in the context of an absurd result. All lands in Alaska patented

after the year 1890 are conveyed subject to (indisc.) and easements (indisc.). That is an interest that the United States holds in all lands they've patented after 1890 (indisc.). So we argued that (indisc.) tend to any tiny interest of the United States to convert back areas of land and water into public lands. So I think that it's going to be pretty difficult for the court to base its decision on federal reserve water rights, but if the court does, then we're looking at a waterway by waterway determination or maybe a reservation system by reservation system of determination of whether the United States has the waterway.

**Senator Halford:**

But don't you think that's - I mean do you think they'll go back to navigational servitude or you think there is any chance that they will? I mean that one seems to go even further back into the...

**Joanne Grace:**

There's never been a decision that said a navigational servitude is a property interest and I think the Supreme Court has been - in power of the federal government (indisc.). So it would be - it would surprise me if the Ninth Circuit would rule that way just because the concept is so odd. But (indisc.), I guess don't feel really comfortable predicting what they'll do.

**Bruce Botelho:**

That might be something to elaborate on very briefly and that is to say that in virtually every case presented to the Ninth Circuit, the Ninth Circuit has favored the subsistence use over adverse interest, frequently the state of Alaska.

This meeting is reminiscent of the same lame brain solutions and Administration's propagandized attempts to sell the same illusionary state management control, discussed before the special Legislative session in 1990.

During both periods, there appears, the Governor's willingness to continue to support the impingement against the rights of All the peoples; and their right of equal consideration in the harvest of Alaska's common property fish, wildlife and wildlife public trust resources. To illustrate this relentless subjugation of equal footing as granted all of the other states; and to tie together this continuous attitude, I enter the dissertation that I wrote in response to the 1990 special Legislative session (Enclosure VIII). "State Control Management of Alaska's Fish and Wildlife, Illusionary or Fact?"

It is of related importance to note that in the above referenced dissertation; (i.e. Enclosure VIII), I referenced the effect of, the Gulkana River 1987 US District Court decisions, on the States ownership of our navigable waters and therewith the management of Alaska's fisheries as provided by the Submerged Lands Act.

This decision (Gulkana River Enclosure IX) established the broadest interpretation - susceptibility to transportation - as to the determination of navigable waters, by a federal court. Therefore, Alaska gained title to millions of acres of submerged lands and the State management authority of the fish in an estimated 100,000 to 180,000 miles of navigable water as provided by the Submerged Lands Act and the equal footing provision Article IV US Constitution.

Some of the pertinent quotes from the Gulkana River case are:

"1. Navigable Waters 36 (1) Title to beds of navigable inland water bodies in Alaska passed from the United States to Alaska when Alaska entered the Union; therefore, beds of navigable waterbodies in Alaska were not available for selection or changeable to either Alaska Native Claims Settlement Acts or the Alaska Statehood Act entitlements."

"This case raises difficult questions concerning application of the well settled principles that a state is vested with title to the beds underlying navigable waterbodies at the time the state enters the Union."

"However under the 'equal footing doctrine', see Pollard's v Hagan ... and its codification in the Submerged Lands Act of 1953, title to the beds of navigable inland waterbodies passes from the United States when the state enters the Union."

"Because title to the beds of navigable waterbodies passed automatically to Alaska at the time of statehood, they are neither available for selection nor chargeable to either the ANCSA or the Statehood entitlements." (See generally 43 USC 1602 (e) 1610 - 1611, 1631 and 48 USC prec. 21 Sec. 6 (a) and (b).)

"American courts adopted the English common law principle that navigable waterbodies are held by the sovereign in trust for the public." "In Martin v Waddell... the Supreme Court found that the title navigable waterbodies in the former colonies, formerly held by the King of England in trust for the public pursuant to the common law doctrine of navigable waterbodies, was by virtue of the Revolution rested in the States."

"Other consideration unique to the American system of government came into play when applying the doctrine of title navigability to waterbodies lying outside the original 13 colonies." "Under the equal footing doctrine, new states have the same rights, sovereignty and jurisdiction as the original states possess within their respective borders."

"Under the Americanized version of common law doctrine of navigability, by virtue of the rights gained in the Revolution and confirmed by the Constitution, it is the state, as opposed to the federal government, which hold title in public trust of 'public waterbodies' and it is through application of the definition of navigability that the determinations made of which waterbodies are public and which are not."

"The purpose then of the equal footing doctrine as applied to questions of title navigability is to ensure that all states are rested with the same right of safeguarding 'public', that is 'navigable waterbodies'." (emphasis added)

As can be readily seen this Gulkana River federal court decision is very repetitive in it's references to the equal footing right of the State of Alaska; which would include the public trust title to and management authority of the submerged lands and the fisheries of all of the navigable waters within Alaska.

It has been my long time observation that State officials have continually displayed an apathy of appreciation of the value of this Gulkana River decision. They ignore the public citizens' struggle who wrestled the title to millions of acres of submerged lands and therewith the management of all of the fisheries in the States navigable waters. At that time federal opposition, also included Alaska's congressional delegation, and now for political positioning, they again demand that a passive public

accept an unconstitutional proposed amendment to vote away their Constitutional protection of "life, liberty, and property" and the equal protection "under the law".

In this instance such an amendment would impinge not only on the Statehood Compact, Alaska Constitution Article I Section 7 Inherent Rights, and Article VIII Natural Resources; but also the US Constitution Article IV privilege and immunities, Article X States police powers and Article XIV life, liberty and property equal protection clauses.

I find that the Administrations irresponsible action in dropping, with prejudice, their opposition to parts of the Katie John case (the sanction of federal management) should raise the question of its (the Governor) purpose and position on the question of navigability State servitude title; if they are willing to vacate this right of equal footing of State management authority, by subjugating it under the proposed Constitutional amendment.

With such a voluntary subjugation the question of state title of navigable servitude, management authority can then be viewed as an issue that is moot.

In a true democracy the decision to subjugate a persons inherent rights of equality under the law must be of an individuals own volition. Then right to life, liberty and property cannot be made the preview of the vote of a majority. There are many who would deny the right of all people just to obtain privileges for their own purposes. This demand for personal privileges results in the automatic imbalance on the scale of justice.

Therefore I find that such a rear ended assault on these constitutionally protected rights of All citizens, are not a proper subject for a vote by majority of Alaskans. It is only the preview of the people of the Nation as a whole; and then only when presented as an honestly open, unclouded presentation of all of these most important rights of equal protection under the law and through the appropriate lawful process.

In support of this position, I present the following references:  
(Enclosure X State v Julow; Supreme Court of Missouri)

"A citizen cannot be deprived of a right secured by the Constitution by a statute passed as a police regulation."

"...the 5<sup>th</sup> amendment of the constitution of the United States, providing, among other things, "nor deprived of life, liberty or property without due process of law." "In section 30, supra, as well as in the section in the federal constitution just recited, it will be noted that the rights of life, liberty, and property are grouped together in the same sentence; they constitute a trinity of rights, and each, as opposed to unlawful deprivation thereof, is of equal constitutional importance." "With each of those rights, under operation of a familiar principle, every auxiliary right, every attribute necessary to make the principal right effectual and valuable in its most extensile sense, pass as incidents of the original grant." "The rights thus guaranteed are something more than the mere privileges of locomotion; the guaranty is the negation of arbitrary power in every form which results in a deprivation of a right."

"These terms: "life", "liberty," and "property," are representative terms, and cover every right to which a member of the body politic is entitled under the law." "Within their comprehensive scope are embraced the right of self-defense, freedom of speech, religious and political freedom, exemption from arbitrary arrests, the right to buy and sell as others may, - all our liberties, personal, civil, and political - in short, all that

makes life worth living; and of none of these liberties can any one be deprived except by due process of law." "Now, as before stated, each of the rights heretofore mentioned carries with it, as its natural and necessary coincident, all that effectuates and renders complete the full, unrestrained enjoyment of that right."

"The 'law of the land' and 'due process of law' are the legal equivalents of each other." Touching this topic, a distinguished jurist observes: "Perhaps no definition is more often quoted than that given by Mr. Webster in the Dartmouth College Case: 'By the law of the land is most clearly intended the general law, a law which hears before it condemns, which proceeds upon inquiry and renders judgement only after trial.' 'The meaning is that every citizen shall hold his life, liberty, property, and immunities, under the protection of the general rules which govern society.' 'Everything which may pass under the form of an enactment is not, therefore, to be considered the law of the land.'" "Cooley, Const. Lim. (6<sup>th</sup> Ed.) 431. Comstock, J., when discussing a constitutional prohibition, such as ours, said: 'No doubt, it seems to me, can be admitted to the meaning of these provisions.' 'To say, as has been suggested, that 'the law of the land' or 'due process of law' may mean the very act of legislation which deprives the citizen of his rights, privileges, or property, leads to a simple absurdity'. 'The constitution would then mean that no person shall be deprived of his property or rights unless the legislature shall pass a law to effectuate the wrong; and this would be throwing restraint entirely away. \* \* \* Where rights of property are admitted to exist the legislature cannot say they shall exist no longer; nor will it make any difference although a process and a tribunal are appointed to execute sentence'." "If this is the 'law of the land', and 'due process of law' within the meaning of the constitution, then the legislature is omnipotent.' 'It may, under the same interpretation, pass a law to take away liberty of life without a pre-existing cause, appointing judicial and executive agencies to execute its will.' 'Property is placed by the constitution in the same category with 'liberty and life'." *Wynehamer v People*, 13 N.Y. 375. Here, the law under review declares that to be a crime which consists alone in the exercise of a constitutional right, to wit, that of terminating a contract, - one of the essential attributes of property, indeed property itself, under preceding definitions. Brought to the bar of a court on such a charge, the accused would have been prejudiced in so far as the criminality of the act charged is concerned." "No question could there be made or admitted as to the quality of the act." "That would have been settled by the previous legislative declaration, and it would only remain to find the fact as charged in order to declare the guilt as charged." "But the fact as charged, as already seen, is not a crime, and will not be a crime so long as constitutional prohibitions are respected and enforced." "If an owner, etc., obeys the law on which this prosecution rests, he is thereby deprived of a right and a liberty to contract or terminate a contract, as all others may; if *he* disobeys it, then he is punished for the performance of an act wholly innocent, unless, indeed, the doing of such an act, guaranteed by the organic law, - the exercise of a right of which the legislature is forbidden to deprive him, - can by that body be conclusively pronounced criminal." "We deny the power of the legislature to do this, to brand as an offense that which the constitution designated and declares to be a right, and therefore as innocent act; and consequently we hold that the statute which professes to exert such a power is nothing more or less than a "legislative judgement," and an attempt to deprive all who are included within its terms of a constitutional right without

due process of law." "A statute would not be constitutional which should select particular individuals from a class or locality and subject them to peculiar rules, or impose upon them special obligations or burdens, from which others in the same class or locality are exempt. \* \* \* Everyone has a right to demand that he be governed by general rules, and a special statute which, without his consent, singles his case out as one to be regulated by a different law from that which is applied in similar cases would not be legitimate legislation, but would be such an arbitrary mandate as is not within the province of free government." "Cooley, Const. Lim. 391." "The legislature may legislate in regard to a class of persons, but they cannot take what may be termed a natural class of person, split that class in two, and then arbitrarily designate the dissevered fractions of the original unit as two classes and enact different rules for the government of each." "This would be a mere arbitrary classification, without any basis of reason on which to rest, and would resemble a classification of men by the color of their hair or other individual peculiarities, something not competent for the legislature to do."

"The litigated statute is also in conflict with section 1, art. 14, of the federal constitution, aforesaid, forbidding that "any state deprive any person of life, liberty, or property without due process of law," as to which the same considerations as heretofore announced apply."

"Nor can the statute escape censure by assuming the label of a "police regulation." It has none of the elements or attributes which pertain to such a regulation, for it does not, in terms or by implication, promote or tend to promote the public health, welfare, comfort, or safety; and if it did, the state would not be allowed, under the guise and pretence of a police regulation, to encroach or trample upon any of the just rights of the citizen, which the constitution intended to secure against diminution or abridgment."

"In conclusion it may be said that there is a broad distinction between the invasion of a right conferred by the constitution, to wit, a right of property, carrying with it, as we have seen, all the liberties, attributes, and coincident rights, and those rights which are the mere creatures of legislative gratuity, where the legislature granting a privilege or bestowing a bounty may, of course, as no constitutional right is involved, prescribe the conditions upon which the privilege may be exercised or the bounty be obtained."

I charge that those politicians who would amend, Alaska's Constitution, to eliminate open, equal access to ALL USERS of the States fish, wildlife, and waters common property resource; are in fact impinging on the Nations Constitutional provisions of equal protection under the law. As long as they can momentarily deliver on a political promise, they care not of their denial of this equal protection to a segment of citizens who must spend time, effort, and money to gain back their inherent right to life, liberty, and property. The politician can then claim they tried to deliver on those self interest commitments, without any thought or obligation of responsibility to those public rights of all persons.

It is because of such irresponsible political attitudes that the courts have consistently found that the Constitutional rights cannot be impinged upon by submitting to a vote, one's right to life, liberty, and property.

In a more recent case, the Colorado Supreme Court ruled, "One's right to life, liberty and property...and other fundamental rights may not be submitted to a vote; they depend on the outcome of no election." (Enclosure XI, attachment (a))

In addressing this case (Enclosure XI, Roy Romer, Governor of Colorado v. Richard Evans 1996) the US Supreme Court found the following:

"One century ago the first Justice Harlan admonished this Court that the Constitution 'neither knows or tolerates classes among citizens.'" "Unheeded then, these words now are understood to state a commitment to the law's neutrality where the rights of persons are at stake." "The Equal Protection Clause enforces this principle and today requires us to hold invalid a provision of Colorado's Constitution."

"Colorado's state and municipal laws typify this emerging tradition of statutory protection and follow a constitutional pattern."

"These statutes and ordinances also depart from the common law by enumerating the group or persons within their ambit of protection." "Enumeration is the essential device used to make the duty not to discriminate concrete and to provide guidance for those who must comply." "...it's sheer breath is so discontinuous with reasons offered for it that the amendment seems inexplicable by anything but animus toward a class that it affects; it lacks rational relationship to legitimate state interest." "...even in the ordinary equal protection case calling for the most deferential of standards, we insist on knowing the relation between the classification adopted and the object to be attained." "By requiring that the classification bear a rational relationship to the independent and legitimate legislative end, we ensure that classifications are not drawn for the purpose of disadvantaging the group burdened by the law."

"Amendment...confounds this normal process of judicial review. "It is at once too narrow and too broad." "It identifies persons by a single trait and then denies them protection across the board."

(The same thoughts were addressed in *McDowell v. State*; and are also imposed by Title VIII ANILCA.)

Further quotes from Enclosure XI:

"...discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision." "It is not within our constitutional traditions to enact laws of this sort. Central both to the idea of the rule of the law and to our own Constitution's guarantees of equal protection is the principle of government and each of its parts remain open on impartial terms to all who seek its assistance." "Equal protection of the law is not achieved through indiscriminate imposition of inequalities."

"The guaranty of 'equal protection' of the laws is a pledge of the protection of equal laws." (Enclosure XI) "The liberty of which the fourteenth amendment forbids a state from depriving anyone without due process of law is something more than freedom from enslavement of the body or from physical restraint." "In my judgement the words, 'life, liberty or property' in the fourteenth amendment should be interpreted as embracing every right that may be brought within judicial cognizance and therefore no right of that kind can be taken in violation of 'due process of law'." (*Taylor v Beckman* 20 S.C.T. 890, 1016, 178 U.S. 548, 44 LCD 1187) (Enclosure XI attachment)

There is an even more insidious demand developing from the constitutional flawed edicts of Title VIII ANILCA: Some of the growing demand for a subsistence based priority are claimed to be a right of Native heritage and as a matter of religious preference. There is no fault with the fundamental claims; but when they become the basis for demands of any priority right, they in fact, result in discrimination based on ethnic identity (race) and religious preference. Such results have no place in a democratic society and are especially obnoxious when it denies Common Use of Alaska's fish, wildlife, and waters public trust resource properties.

This preordain both a civil rights violation, as well as an equal protection cases.

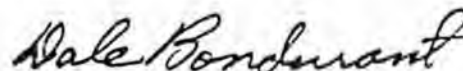
I believe that I have presented a fair rationale to support the States sovereign public trust authority and responsibility to manage Alaska common property fish, wildlife, and water resources. This authority is supported by the Alaska Statehood Act, Submerged Lands Act, Alaska Constitution, US Constitution and a documented history of such authority throughout our Nation's history.

I would now add, that with the matter of the fisheries there is an additional argument against federal management interventions in Alaska's anadromous fisheries.

There is no justification to trigger Title VIII ANILCA illegally mandated subsistence priority class of USERS. Since the total yearly personal consumptive USES are less that 1 ½ percent (i.e., subsistence .007; personal use .0009, and sport fishery .006) of the state total harvest of Alaska salmon; there can be no perceived shortage. (Enclosure XII)

It appears that the demands for the priority of USERS is more of selfish infatuation than any reality.

Respectfully submitted,



Dale Bondurant  
HCI Box 1197  
Soldotna, AK. 99669  
Phone (907) 262-0818

## List of Enclosed References

Enclosure I	Ward v Racehorse
Enclosure II	Water Resource Management
Enclosure III	Submerged Lands Act
Enclosure IV	McDowell v State of Alaska (1989)
Enclosure V	Totemoff related Anchorage News Article
Enclosure VI	Payton v State of Alaska (1997)
Enclosure VII	Meeting Bruce Botelho and Alaska Legislators (1995)
Enclosure VIII	State Control Management, Illusionary or Fact? (1990)
Enclosure IX	Gulkana River (1987)
Enclosure X	State of Missouri v Julow (1985)
Enclosure XI	Governor of Colorado v Evans (1996) (attachments (a) and (b))
Enclosure XII	Fish Harvest Percentages

Bois down to Control & Lust for Power.

Everything I've seen & heard here points toward - 9193.  
unmanageable Bureaucracy. Let's don't

Further complicate life. If it aint 9-26-97

break, don't fix it. The Fed can't Box 451

give us something we already own

Sterling 99672

Substance Committee:

NO!


Re: Constitution Amendment

The Feds want our Permanent Fund and to  
absolutely control our daily lives.

Unfortunately, our Governor and too many  
of our local governing bodys think that's OK,  
I don't.

If we allow our Constitution to be messed with  
you'd better believe the Feds (and our Governor)  
will inject enough fine print in any amendment  
to totally destroy our constitution and allow the  
Central Bureaucracy to steal all our resources.

We must, by whatever means necessary, run  
the Feds out of Alaska.

  
Sam Kaser

## SUBSISTENCE, ANILCA AND ALASKA'S CONSTITUTION

Mel Krogsenig

The Alaska Sportfish Recovery Association is opposed to placing a Subsistence Constitutional amendment on the ballot to solve ANILCA's problem with Alaska's Constitution.

Alaska already has enough user group conflicts as a result of unfair resource allocation. A subsistence preference for any exclusive group of people will only further divide the people of Alaska.

We believe there is great wisdom in the current "common use" logic found in Article VIII of our Constitution which states "Section 3. COMMON USE. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."

To destroy this great wisdom of treating everyone equally with a discriminatory amendment would be an insult to all Alaskan's, past, present and future.

We suggest that the subsistence problem may stem from <sup>incomplete</sup> improper implementation of the Limited Entry Amendment which granted limited special access privileges for some of our people. Please allow me to explain. Exclusive access rights have been pursued by hunting guides and commercial fishermen to the point of restricting resource use by the public thus creating the subsistence problem.

For example, in the Alaska Supreme Court Case *Johns v. Commercial Fisheries Entry Commission*, 758 P.2d 1256 (Alaska 1988), Chief Justice Matthews stated:

"In *State v. Ostrosky*, 667 P.2d at 1184 (Alaska 1983), we noted that there is a tension between the limited entry clause of the state constitution and the clauses of the constitution which guarantee open fisheries. We suggested that to be constitutional, a limited entry system should impinge as little as possible on the open fishery clauses consistent with the constitutional purposes of limited entry, namely, prevention of economic distress to fishermen and resource conservation. *Ostrosky*, 667 P.2d at 1191. The optimum number provision of the Limited Entry Act is the mechanism by which limited entry is meant to be restricted to its constitutional purposes. Without this mechanism, limited entry has the potential to be a system which has the effect of creating an exclusive fishery to ensure the wealth of permit holders and permit values, while exceeding the constitutional purposes of limited entry. Because this risk of unconstitutionality exists, the CFEC should not delay in embarking on the optimum number process, except where there is a substantial reason for doing so."

Despite the courts directive to the Commercial Fisheries Entry Commission, little if anything has been done to date to prevent impingement on the open public fishery. The result of this lack of action is the overharvest of a resource which is affecting the subsistence lifestyle of all Alaska residents.

ANILCA must be amended so as not to conflict with Alaska's Constitution. ANILCA should have been written to survive with our Constitution, not the other way around. Alaska's Constitution was written as a general statement of the conscience of Alaska's people. You don't change the conscience of a people because someone passes a conflicting piece of legislation.

There is nothing wrong with giving all of Alaska's people a subsistence priority over other uses but that privilege must survive within our current Constitution.

I ask that the following changes be made to resolve this conflict:

1. Pass a resolution urging Congress to immediately amend ANILCA to be consistent with our Constitution.
2. Ask the other state Legislatures to join Alaska in this endeavor. This a state's rights issue and the other states should be sympathetic to our plea.
3. Amend the Limited Entry statutes as follows:

**AS 16.43.290. Optimum Number of Entry Permits.**

- (1) the number of entry permits sufficient to maintain an economically healthy fishery that will result in a reasonable average rate of economic return to the fishermen participating in that fishery, considering time fished and necessary investments in vessels and gear;
- (2) the number of entry permits necessary to harvest the allowable commercial take of the fishery resource during all years in an orderly, efficient manner, and consistent with sound fishery management techniques;
- (3) the number of entry permits sufficient to avoid serious economic hardship to those currently engaged in the fishery, considering other economic opportunities reasonably available; **and**
- (4) the number of entry permits sufficient to prevent serious impingement on the open public fishery.**

**AS 16.43.300. Revisions of Optimum Number of Entry Permits.**

(a) The Limited Entry Commission [may] **shall** increase or decrease the optimum number of entry permits for a fishery when one or more of the following conditions makes a change desirable considering the purposes of this chapter:

- (1) an established long-term change in the biological condition of the fishery has occurred that substantially alters the optimum number of entry permits permissible applying the standards set out in AS 16.43.290;
- (2) an established long-term change in market conditions has occurred, directly affecting the fishery, that substantially alters the optimum number of entry permits permissible under the standards set out in AS 16.43.290.

**(3) an established long-term change in public participation in the open public fishery has occurred that substantially alters the optimum number of entry permits permissible under the standards set out in AS 16.43.290.**

(b) If the commission decreases the optimum number of entry permits for a fishery, the number of entry permits may be reduced only under the voluntary buy-back provision in AS 16.43.310. Establishment of Buy-back funds.

**SUMMARY:**

1. Amend ANILCA so as not to conflict with Alaska's constitution.
2. Amend AS.16.43.290 to include new subsection (4) relating to limiting the number of entry permits sufficient to **prevent serious impingement on the open public fishery.**
3. Amend AS 16.43.300 by mandating that the Limited Entry Commission alter the number of limited entry permits when certain changes in the fishery have occurred and adding language to the effect that the criteria include **changes in public participation.**

STATE OF ALASKA SUBSISTENCE HEARINGS

SEPTEMBER 26, 1997

SOLDOTNA, ALASKA

TESTIMONY / PROPOSAL By: MARY ANN MILLS

Thank you for taking testimony and welcome to Soldotna. My name is Mary Ann Mills. I am Dena'ina and Aleut from the Kenai Peninsula. I believe the subsistence issue can and should be solved by basing our resolve in honesty; in truth. The Indigenous People of Alaska have been very good hosts and hostess to most guests who have come into our land. It is our nature to care and share with others and it is our nature to respect everyone and everything in our existence. We believe the Creator made us the care-takers of our land. Before the United States and before the State of Alaska our land was pristine, our waters were clean, our fish and wildlife was plentiful. We shared with everybody, but we were not prepared for the greed, disrespect and lies that followed. And we were quiet and said nothing so as not to offend anyone, and we tried to lead by example, but nobody paid attention.

Today the Indigenous People of Alaska are in a crisis of genocidal proportions and it is time to speak out. If our Basic, Sacred, Fundamental Human Rights are not protected there is no one in this room or in this land whose Rights will be secure, for Human Rights are not exclusive to one race.

The biggest deception of the U.S. government was when they announced to the American People and the World they purchased Alaska from Russia. It is a well documented fact that Russia never claimed ownership of Alaska. Verification of this is found in the Koslitzof Memorandum and further documented in the "smoking gun" document found in the 58<sup>th</sup> Congress 2<sup>nd</sup> Session; Document No. 162, Alaska Boundary Tribunal, Proceedings of the Alaskan Boundary Tribunal, convened at London. What the U.S. purchased from Russia was the right to trade with the Indian, Eskimo, and Aleut Peoples.

After the Jewish holocaust of WWII the United States and other countries formed the United Nations in an effort to provide World peace and prevent other holocausts or genocide from occurring. Their guidelines are found in the UN Charter, which includes the Convention of the Punishment and Prevention of the Crime of Genocide. The United States then took upon themselves a "sacred trust" over Alaska and

its Indigenous Peoples as defined in the United Nations Charter, Article 73, which states that our People were to be brought to the full measure of our own self-governance. Instead the U.S. sent military troops which opened this Great Land to many dubious individuals as well as many good Human Beings. In an unprecedented move the U.S. paid Service men to vote for Statehood, and allowed those who moved to Alaska to vote for Statehood. Those who were not allowed to vote were those who could not speak English, most of whom were Alaska Natives. As a pre-existing condition for statehood Alaska had to accept into its constitution a disclaimer clause which is found in Article XII, Section XII of the state constitution. Article 12, Section 12 basically states the State and its People FOREVER disclaim all rights and titles to property including hunting and fishing rights of the Indian, Aleut, and Eskimo Peoples.

In 1971 Congress passed and President Nixon signed in to law the Alaska Native Claims Settlement Act (ANCSA). This Act was accomplished by a group of approximately 500 Natives, many of whom represented their own interest. This was done without the consent or full knowledge of the (approximately) 65,000 other Natives. ANCSA was never ratified by the Indigenous Peoples. ANCSA is an act of termination, an act of apartheid, an act of genocide. Today we recognize who our Native leaders are and who our Native traitors are. The Alaska Federation of Natives, Inc., is misrepresenting themselves, they are not a Federation, and they do not represent the Indigenous People, they represent the corporations. We would not expect K-Mart to represent the American People just as you should not expect AFN, Inc. to represent us. We expect tribal governmental representation. It is an insult to have Byron Mallott on the Governor's subsistence panel of 7, as it was he along with AFN who illegally implemented "Rural preference" for our subsistence rights in ANILCA. This was accomplished without the knowledge or consent of our Peoples, and is considered an act of treason and genocide on their part, by many of us.

I believe subsistence is a human right given to all of us by our creator. I agree with Senator Rick Halford when he said "subsistence is an inalienable right". The seriousness of subsistence was well depicted by Henry Shue, Ph.D. Princeton 1970, when he stated:

"No one can fully, if at all, enjoy any right that is supposedly protected by society if he or she lacks the essentials for a reasonably healthy and active life. Deficiencies in the means of subsistence can be just as

fatal, incapacitating, or painful as violations of physical security. The resulting damage or death can at least as decisively prevent the enjoyment of any right as can the effects of security violations. Any form of malnutrition, or fever due to exposure, that causes severe and irreversible brain damage, for example, can effectively prevent the exercise of any right requiring clear thought and may, like brain injuries caused by assault, profoundly disturb personality. And, obviously, any fatal deficiencies end all possibility of the enjoyment of rights as firmly as an arbitrary execution.

Indeed, prevention of deficiencies in the essentials for survival is, if anything, more basic than prevention of violations of their physical security. People can, if they are free, fight back against their attackers or flee, but people who lack essentials, such as food, because of forces beyond their control, often can do nothing and are on their own, utterly helpless."

The only way conflicts and concerns can be accomplished without engaging in futile arguments over Indigenous sovereignty or the state's authority is by basing our resolve upon truth. The Indigenous Peoples should be given the dignity of our own self-governance, instead of being forced to participate in foreign non-human corporate entities and foreign governments that is bringing us to the brink of our demise. Our healing can only be successful if it is based on truth. Being holders of the alodial title to Alaska has made us targets for genocide, and we don't like it. We are loving, caring, and peaceful People, and recognize the only way to protect our sovereignty and our Human Rights is by protecting these sacred rights of those Humans who have peacefully integrated into our Human societies.

This is an exciting era for all of us: a new millennium, a time of hope and ancient prophesy. We are told the healing of our Earth Mother and of Humans will begin in the North when we recognize that we are all brothers and sisters and when we strive and accomplish a peaceful and loving coexistence between each other and all Earth's children, including the plants and animals.

In closing, I propose that the State of Alaska and its People, the United States and its People, honor and up-hold their own Constitutions, laws, treaties, conventions and proclamations. In doing so our rights will be protected. We do not need any new amendments to the constitution or new legislation. Our Rights are inherent. I stand firm and would like to go on record that BASIC, SACRED,

FUNDAMENTAL HUMAN RIGHTS ARE NOT NEGOTIABLE.

*Ise Nan  
Thank You*

DATE: September 25, 1997

TO: Senator Rick Halford, Chair  
Members of the Senate Resources Committee

FROM: Bill Stockwell  
P.O. Box 721  
Cooper Landing, AK 99572 Phone & Fax 595-1540

SUBJECT: Rural Priority for Subsistence

I am a 25 year Alaskan now retired in Cooper Landing and I serve on the Cooper Landing Fish & Game Advisory Committee. I have reviewed the July 1997 proposal by the Miller/Phillips/Knowles Task Force and the proposed changes to ANILCA, Title VIII, offered by Senator Murkowski and Representative Young. I will be unable to attend the public hearing on subsistence issues on Friday, September 26, but would like to have my written testimony made part of the record.

For the legislature to allow the rural priority for subsistence issue to drag on without compromise until the Federal takeover of management of both fisheries and game, would be totally irresponsible. Rural priority for subsistence has divided Alaskans for the 17 years since the passage of Title VIII of ANILCA and, because of political bickering and inaction, the situation is far worse today than in December 1980.

Now is the time for action. The Federal takeover of fisheries would have a devastating impact on the State economy, especially here on the Kenai Peninsula where tourism and commercial fishing are both mainstays of local economies. The only viable industry in Cooper Landing is tourism and the lion's share of the tourist dollars spent here are spent on sport fishing.

Now is the time for the Alaska Legislature to take a leadership position on subsistence and find a solution to this problem that has divided Alaskans for 17 years. Inaction has only made the problem worse. Amending our Alaska Constitution should never be taken lightly, BUT allowing the Federal Government to manage the fish and wildlife resources of Alaska should be considered intolerable. Once Federal control of fisheries occurs, the State of Alaska will never regain total control of our fish and wildlife resources again.

Study carefully the recommendations, both old and new, of the Miller/Phillips/Knowles Team. Enlist the advice and support of our Congressional Delegation. Hold a special legislative session if necessary to find a solution. But most important, listen to the voices of the people, ignore the special interests on both sides of the issue, and allow the CITIZENS OF ALASKA TO VOTE on this most contentious issue that has divided the people of our State far too long.

Thank you for your time





COOK INLET SPORTFISHING CAUCUS  
3620 PENLAND PARKWAY  
ANCHORAGE, ALASKA 99508  
(907) 276-2222 FAX (907) 278-0896

---

September 26, 1997

Senate Resources Committee

The impact of the federal management on subsistence fisheries will be traumatic to sport and commercial fishing. It will create a two tier management system. We asked Dan Coffey, Vice Chair of Board of Fisheries for his comments and this was his response:

Q. What would be the effect if the feds take over management of subsistence?

A. "It is impossible for any fishery to be managed by two different agencies. It would certainly be a nightmare, with a potential for disaster."

Q. What would be the effect if legislation and regulations were adopted as proposed by the Task Force?

A. "There would be no significant changes in the way our fisheries are managed for any user group nor in the way that people fish today."

---

We have reviewed the revised Task Force proposal as to how it would effect sportfishing in Alaska . Our analysis is as follows:

"If we replaced todays laws relating to sport fishing with the revised Task Force proposal, the result would be neutral to neutral-positive for sport fishing state wide; it would be equal to or better than todays laws for the 200,000 Alaskans who have sportfishing licenses."

We urge the Legislature to proceed with a Constitutional Amendment as quickly as possible before the Feds get their program in place.

Don't let the Feds in.

*Robert Penney*

**KENAITZE INDIAN TRIBE, IRA  
P.O. BOX 988 KENAI, ALASKA 99611**

**RESOLUTION NO. 97-24**

**A TRIBAL RESOLUTION IN STRONG SUPPORT OF A SUBSISTENCE PRIORITY  
FOR ALL ALASKA NATIVES**

**WHEREAS**, the Kenaitze Indian Tribe, IRA, a federally recognized Tribe, reorganized in August, 1971 pursuant to the Indian Reorganization Act (I.R.A.) of 1934, as amended for Alaska in 1936 and is responsible (in accordance with the Preamble to the Tribal Constitution) for the social and economic welfare of its 939 Tribal Members and for the welfare of the total 2,767 Alaska Native residents of Central and Upper Southern Kenai Peninsula of south-central Alaska; and

**WHEREAS**, the Kenaitze Indian Tribe, IRA has established long range goals which relate to the collective and individual, social, economic, and governmental concerns of its people; and

**WHEREAS**, the Kenaitze Indian Tribe, IRA, the natural stewards of this land and its resources since time immemorial have respected and depended upon the natural resources along the Cook Inlet Basin and its tributaries as our inherited, cultural way of life; and

**WHEREAS**, if the culture of Alaska Natives in the Cook Inlet area is to continue to exist, the special relationship Alaska Natives have with Alaska's wild, renewable resources and subsistence hunting, fishing, marine mammals, and gathering must be expressly recognized and protected in federal law; and

**WHEREAS**, a "Native Preference" represents the most complete, long range protections for Alaska Natives and is the desired option. However, in light of the current political environment it is understood that pursuing a Native Preference would be a difficult task; and

**WHEREAS**, as a condition of acceptance of any resolution of the subsistence issue, the proposed solution must, at a minimum, incorporate the following guiding principles:

1. Federal law must protect the Alaska Native way of life for both rural villages and those Alaska Native people who still occupy their traditional homelands even though those homelands may no longer be considered "rural",
2. Customary and traditional Alaska Native Tribal subsistence uses, including but not limited to cultural, religious and medicinal uses, seasons, bag limits, methods and means and harvest patterns must be fully protected. A priority must be provided to residents of Alaska communities that are rural

Kenaitze Indian Tribe, IRA  
Res. 97-24

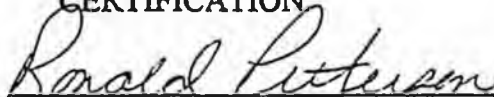
(as defined by the Kenaitze case) and have established over time customary, historical and traditional uses,

3. A regional co-management system that requires tribal and subsistence users representation as determined by the Alaska Native community. And tribal authority that is directly reflected in the decision-making process and funding for a level of enforcement that places a priority on subsistence uses and the related resources;
4. Continued federal oversight by the Secretary and the federal courts to assure full implementation of federally protected tribal subsistence rights and practices by Alaska native people;
5. Maximum protection for urban Alaska Natives to carry out and share in tribal subsistence practices;
6. Language that is precise, leaving a minimum of discretion to law makers;
7. Guaranteed subsistence protections that are equal to, or greater than, protections currently provided in ANILCA.

**NOW THEREFORE BE IT RESOLVED** by the Kenaitze Indian Tribe, IRA Executive Committee/Tribal Council that the Alaska Native subsistence way of life can only be protected through a tribal/subsistence priority, and demands that tribal subsistence rights and practices among Alaska Natives be protected by Federal Law.

CERTIFICATION

VOTING FOR: 4  
VOTING AGAINST: 0  
ABSTAINING: 0  
ABSENT: 2



RONALD PETTERSON, TRIBAL CHAIRPERSON  
KENAITZE INDIAN TRIBE, IRA



BONNIE JULIUSSEN, TRIBAL SECRETARY  
KENAITZE INDIAN TRIBE, IRA

September 24, 1997

DATE



**The Kenai River Sportfishing Association's position paper  
to the State Senate Resource Committee  
Concerning Governor's Task Force on Subsistence  
September 26, 1997**

The Board of Directors of the Kenai River Sportfishing Association supports in concept those presented by the governor's task force position on subsistence. The Board based its decision on:

- the position should provide for a subsistence priority in time of shortages for those who live in areas of the state where a subsistence is the principle characteristic of the economy.
- it is a linked package addressing both the state constitution and the federal law ANILCA
- Our association has sent each legislator a letter urging your bipartisan action to stave off Federal takeover of the state's fish and game management October 1, 1997.

It is imperative that the State of Alaska retain management of our state's fish and game. By calling for a special subsistence session followed by placing the issue before the voters in 1998, we believe the state can retain management of this complex natural resource.

Legal recognition of subsistence use dates back to 1925 when the Alaska Game 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 for food." (ADF&G Subsistence Division, 1995).

The Alaska Constitution is unique among state constitutions in that it dedicates an entire segment, Article VII, to natural resources. While several sections are relevant to the management and conservation of salmon, Section 4 is especially pertinent to this issue. It states that: "Fish, forest, wildlife, grasslands and all other replenishable resources belong to the State and shall be utilized, developed and maintained on the sustained yield principle, subject to preferences among beneficial uses."

We are asking you to allow the people of Alaska to determine if subsistence use as defined by your actions based on what the Governor's Task Force has put forward is an acceptable preference among beneficial uses.

Once again, we strongly urge you to address this issue as soon as possible in order to allow the voters of the State to voice their preference on the subsistence impasse.

*Executive Director*

**Ben Ellis**

P.O. Box 1228

Soldotna, AK 99669

Phone: (907) 262-8588

1-800-478-0724

Fax: (907) 262-8582

26 September 1997

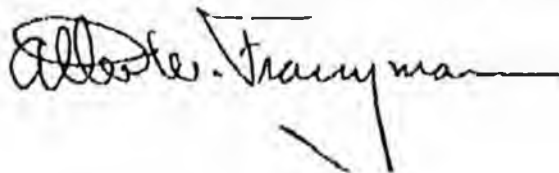
FAX To: Legislative Affairs Office-Kenai for members of both the Senate and House Resources Committees.

From: Dr. Al Franzmann, Soldotna, Wildlife Veterinarian, Former member of the Alaska Board of Game, Board Director at Large of the Alaska Outdoor Council.

I was hoping to give testimony at the Soldotna Senate subsistence hearings on the 26<sup>th</sup>, but must be in Anchorage. I therefore have prepared this statement for both committees on my views of the subject.

My opposition to the Knowles group "compromise" on subsistence is based on several components of their proposal. The primary one is my opposition to harvest preference based on group criteria such as ZIP code, culture or race. To amend our constitution to comply with a federal law that provides for a rural priority is not in the best interests of Alaskans. The last minute rush to force this upon us because of an arbitrary October 1 deadline is an example of the federal government holding us hostage. We have the most powerfully placed Alaska delegation to the U.S. Congress, yet no concerted effort has been made simply amend a few conflicting portions of the flawed ANILCA law.

The recommended Regional Subsistence Boards in the Knowles proposal will destroy the Alaska Boards of Fish and Game. It adds another layer of bureaucracy that is not needed. If it functions like the Federal Subsistence Boards, which it likely will due to the proposed makeup of it, we will experience what the Kenai Peninsula and the Ketchikan area have recently gone through. Why not strengthen our present constitutionally derived system and strengthen the Advisory Committee system and not further dilute it and the Boards. We had the best working system in the world and it can be again if we give it a chance. True subsistence needs, wherever they may occur, can be provided for by regulations through the Advisory Committee and Boards process. It was managed in this manner for many years until special interests groups used the courts and politicians to circumvent the process. Lets fix what we already have and put real pressure on our Congressional delegation to simply fix ANILCA.

Al Franzmann



Official Business

**COMMITTEE:**

SENATE RESOURCES

**DATE:**

**Subject of meeting:** #1

INTERIM HEARING ON SUBSISTENCE

**SIGN-IN**

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Ed Earnhart	1043 W. 74th Ave. Anch. AK 99516	349-1160	Public interest as a disinterested party & Const. Specialist	yes
Wayne A. Ross	Box 101522 Anchorage AK 99510	276-5307 346-2697	Republican Party National Committee man	yes
Charles E. McKee	Box 243053 Anch. AK 99524	none		yes
<del>Harold C. Sturdy</del>	<del>DECEASED</del> <del>2025 1/2 Ave. Apt. 2 Anch. AK 99501</del>	<del>276-5614</del>	<del>Indigenous Holders of the Alaska Title</del>	<del>yes</del>
Dale S. Bombardieri	AC-1 Box 1177 S. Unit no 97667	242-0818	Self	yes
Patty Crisberg	810 N St. #1202 Anchorage AK 99501	258-7524	Commonwealth North	yes
Charles Edwards	211 Mc. Carver St. Anchorage	272-9315	Self	yes
Joe K. Stachler	1083 S. 4th Ave. Anchorage AK 99501	251-3314	Self	yes
Joseph H. McCute	P.O. Box 65 Anchorage AK 99501	552-0351	North Slope Borough	yes
HERBY	ANCOA	yes	Self	yes



Official Business

### COMMITTEE:

SENATE RESOURCES

DATE:

# SIGN-IN

## Subject of meeting: # 2

INTERIM HEARING ON SUBSISTENCE

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
PAUL "AMAROK" HARRISON	925 Eagle Hill Road 99501	277-2043	Self	Yes
Willard Fennell	17549 Summitway Drive Eagle River Alaska 99577	626 2470	Self	
Carroll Giverson	2000 Muldoon Rd Anchorage	333-2852	Self	Yes
Bob Jettner	7532 Bayshore Highway Eagle River	210 700	Alaska East Line	Yes
Randy Kubitz	18124 meadow creek Eagle River AK	696 2818	Self + Alaskan Res.	Yes!
LANDIS TEW	19415 U. SKYLINE DR E. RIVER AK. 577	696 2226	SELF	YES
Warren Olson	5961 North Circle Anch 99516	346 4440	Self	Yes
Daniel Pease	4670 Southpark Bluff 99516	345-6222	self	yes
John Morrison	1051 MARINA DRIVE ANCHORAGE AK 99515	340 2197		Yes
GARY MASON	7616 Old Harbor Rd Anch AK 99509	339-2220	SELF	Yes



Official Business

**COMMITTEE:**

SENATE RESOURCES

**DATE:**

**Subject of meeting:** # 3

INTERIM HEARING ON SUBSISTENCE

**SIGN-IN**

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Michael Galgiantis	1652 Sunrise Drive Anch, AK 99508		self	No
Terry Bueck	P.O. Box 6008, Anchorage, AK 99510			Yes
Charles Skultka	P.O. Box 665 Sitka, AK. 99835	907-966-2577	Self - Family - Haida People	No
Doug Pope	3940 Ckey Products, Anch	294-9338	SELF/SONS	YES
Josef Peimotta	74 Hst #510 ANCH 99501	562 6306	SELF	YES
Don Sherwood	1610 Brink Dr Anch, AK	333-6268	AK BOATING ASSOC	YES
Vic Fischer	Po Box 201348 Anch, AK 99520	2767626	Self	yes
Art Mathias	340 Arctic Anchorage	563-3188	Self	Yes
Cluck Cavaliam	Box 11 Hope	982-5391	Self	Yes
WILDA HUDSON	<del>LWAK</del> 1542 E 27th Ave, Anchorage, AK 99505	272-0366	LWAK	Yes



Official Business

## COMMITTEE:

SENATE RESOURCES

DATE:

# SIGN-IN

## Subject of meeting:

# 4

INTERIM HEARING ON SUBSISTENCE

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Ken Wears	44 Wickenham Dr Anch AK 99507	563-7616	Forgotten 90%	Yes
Larry Holmes	P.O. Box 454, Girdwood 99587	783-2188	—	No
Randy Berman	3038 Dunsmuir Dr. 99504	333-8347	ABA	Yes
Delice Calcote	205 E Diamond # 326 99515	745-0505	CIMMC	yes
Ron Barnes	8301 Rungvik #1 Anchorage Alaska 99504	337-5481	TTC S.A.I.W.T.	
CLAYTON GOTTSCHALK	<del>P.O. Box 122</del> NAKVIC AK 99652	(907) 241 8608	PAUG-UIK	YES
Kay Metcalfe	P.O. Box 232009 Anch 99523			
Fritz Petlyobal	Box 110912 HA '11	563 3452	self	Yes

TESTIMONY ADDRESSING THE ATTEMPT TO AMEND THE  
CONSTITUTION OF THE STATE OF ALASKA

To Whom It May Concern:

Question:

Is the proposed amendment, of the Alaska Constitution, to provide a priority subsistence right to a restrictive class of USERS of our common property fish, wildlife and waters public trust resources; a constitutionally proper subject to be decided by a vote of the public?

The Colorado Supreme Court recently voiced it very simple and eloquently: "Ones right to life, liberty and property... and other fundamental rights may not be submitted to a vote; they depend on the outcome of no elections."

The US Supreme Court rejected the Colorado Governor's bid to have that court override the Colorado Supreme Court decision which overturns a public vote to amend the state's constitution. (does that sound familiar?)

This decision reflects a litany of Supreme Court decisions that have continuously rejected those positions that claim that the constitution's "equal protection of the laws" can be declared voided by a vote of the public.

The US Constitution provided that no state shall "deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." This equal protection of the law is a most important right of any true democracy. And it cannot be subverted by the passage of any law (i.e. statute or amendment) which in fact and effect removes this fundamental right.

The "property" referenced in the fourteenth amendment of the US Constitution addresses the common property, such as fish, wildlife and waters, which are held in public trust for all people. The proposed amendment of the State Constitution, that subjugates the fundamental right of common use, then grants it as priority use to a restrictive class of USERS of those public trust properties, also denies "equal protection of the law." And thereby violate the US Constitution.

So, as to present my belief in what I objectively assume as may be individual public reasons for those who wish to truly support and honestly contribute to the priority of rights for the selective class of USERS of our common property fish,

wildlife and waters; I will first enumerated such a list and then issue a challenge to their personal commitments:

- TO: Governor Tony Knowles and his politically indebted constituency, including the politically appointed task force that would plagiarize his own unconstitutional amendment to the Alaska Constitution.
- TO: Lieutenant Governor Fran Ulmer who as the political handmaiden of the Governor, she has shown a continuing rush for a political settlement of the subsistence issue rather than any desire to stand up for equal rights protection.
- TO: Former Governor Jay Hammond who publicly attacks those "opposed to amending our constitution or discriminating further between Alaskans" and then he co-ercively calls for the courage of others to follow his continual demand for the illegal vote on this unconstitutional denial of the equal protection rights of all the people. And to those who participate in his commercial fishing interests.
- TO: House Speaker Gail Phillips who with her higher future political aspirations, has flip flopped from a position of "What are we wasting time for then?" to her present medicine show huckstering of the so called hardfast "linkage" of the proposed constitution's amendment. I questioned the honesty of this so called linkage when viewed, compared to the total federal disregard of the statehood compact linkage. Later she made a personal effort to confront me and make her accusation that I was the problem. (Confidentially, I better like the Alaska Supreme Court McDowell decision that we were right.)
- TO: Byron Mallot who declared that the subsistence priority was no longer an equal protection issue. Then he adds that the Alaskan Natives have a special governmental relationship and that the Alaska public must recognize and accept this as a true fact. (A civil rights issue based on ethnic identity and religious claim of subsistence rights?)
- TO: Former Attorney General Charlie Cole who personally admitted to me, that the due process right of life, liberty and property of the XIV amendment to the US Constitution is not subject to the vote of the public. Of course he agreed to bring it up, but if he did, it was evidently not in public.

- TO: Senate President Mike Miller, who has also made a political flip flop, as he stated after discussion with Secretary of Interior Bruce Babbitt.
- TO: Said Interior Secretary, the federal fox guarding the state hen house, but he too no doubt does have strong interests in hunting and fishing uses of these public trust resources.
- TO: Bruce Botelho Attorney General who is the Governor's politically appointed legal shill, who's entire office is committed to a political client-attorney relationship. And he has publicly stated that he has accepted that the only solution is not substantively but politically.
- TO: Alaska's Congressional delegation who publicly makes excuses for their inept ability to protect the provisions of the statehood compact, the equal footing state resource management authority under the Submerged Lands Acts and Alaskans right to life, liberty and property, due process protection under the US Constitution. To specifically address Senator Stevens who created this quagmire, by supporting Title VIII ANILCA and to his support of his son's commercial fishing interest and to all of his congressional buddies who he accompanies each year to fish in the Kenai River
- TO: To Bob Penny, Ben Ellis, Phil Cutler, and any other amendment supporting members of their sport fishing organizations.
- TO: Theo Mathews, Karl Kishner and any other amendment supporting members of the statewide commercial fishing organizations.
- TO: Federal Court Judge Holland who also enjoys fishing on the Kenai and to all individual federal authority who support the priority for a restrictive class of USERS of our fish, wildlife and water common use public trust resource properties.
- TO: All of those who support the subsistence priority of a restricted class of USERS only if confined to specific areas of the Kenai Peninsula.

And now to the above listed parties and including all others who wish to truly support and honestly contribute to the priority demands of the restrictive class of USERS as proposed in the proposed amendment; I now challenge them to individually and collectively voluntarily "just say no" and cease their future

involvement in the harvest of these fish and wildlife, but to also cease their demand for a illegal vote to deny others equal protection of the laws.

Such responsible individual choices are the hallmark of a true democracy.

If we had a Governor and his administration who really opposes the federal oversight authority and was not tied to a political solution, we should disregard these federal administrative edicts and instead listen to the states highest legal authority (The Alaska Supreme Court).

The Alaska Supreme Court has taken the following positions:

1. "For a number of reasons... the federal government has no authority to regulate hunting and fishing in Alaska's water."
2. "We are not obligated to follow the 9th Circuit Courts rulings since this court is not bound by decisions of federal court, other than the United States Supreme Court."

In response, Botelho's staff argued that most of the issues raised in Totemoff's appeal were unworthy of Supreme Court review. But their response did urge the justices to resolve the conflicting edicts about regulatory authority.

It seems to me that if the State would follow our highest courts legal advice, it would then be the federal administrators responsibility to seek their support from their highest federal legal authority, the US Supreme Court. That should at least force an avenue of level ground to the final settlement of these most important rights of the state authority over public trust resources. (See enclosure 1 Concurrent federal & state authority over public trust resources)

I ask the Knowles administration what it intends to do if they succeed in brokering their so called linkage agreement and then but not if, when Federal District Court Judge Holland does as he has in the past, over rides even the 9th Circuit Court when he issued his Kenatizie priority educational fishery decision.

Another issue that will create a direct conflict with the state administration proposed amendment and a recent 1997 Supreme Court decision (Payton -v- State of Alaska) i.e. "Despite repeated legal challenges to and multiple revisions of the subsistence laws, 'Subsistence USES' have long been defined in the terms of 'customary and traditional USES' ".

"Accordingly, we consistently have interpreted 'customary and traditional' to refer to 'USES' rather than USERS".

Because the proposed amendment grants a priority right for a restrictive class of 'USERS' and not just a preference of USE open to all persons; it will raise a challenge and a Supreme Court reversal due to its equal protection violation.

When we ask the Anchorage Attorney General's office what kind of new advice would be given to the Boards of Fish and Game due to this Supreme Court (Payton) decision. Their response was that the Paytons would be given their rights granted by the court, but this would have no expanded effect on future Board Management decisions.

The same challenge and Supreme Court reversal will be triggered by the place of residency clause of the proposed amendment. The Alaska Supreme Court in McDowell pointed out that a number of jurisdictions have struck down intrastate residency conditions for USERS priority of these common property resources.

Then why do those who push for such vulnerable actions continue such irresponsible attempts. Because they can pay their political debts by showing their constituency they tried. They care less for those who are denied their constitutional right for the years of time, effort and money it takes to win back their right, through court action.

Submitted By:

*Dale Bondurant*

Dale Bondurant  
HC - 1 Box 1197  
Soldotna, Alaska 99669

cc: Concerned Alaskans  
Concerned Americans

To all whom it may concern:

Here we go again.

There are always those who demand special privileges and there by willingly subjugated the equal rights of all the people.

Even more at fault, there are those who are even more willing to use such matters for their own political purposes.

ANILCA Title VIII Subsistence priority for rural residents is such a matter. To understand the full implications of this provision, it is important to first establish some important facts.

Throughout recorded history, the fish, wildlife, and waters, as common property resources have been a compelling motivation for establishment of democratic equality under the law. This history of common USER ownership of these untitled properties has been recognized in what is referred as the Public Trust Doctrine.

The Public Trust Doctrine is an axiom of the recognition that the untitled fish, wildlife, and water properties be managed for the peoples common use. It was developed, evolved, and honed by its travel through centuries of time and various societies, that is why its purposes must be continued in light of changing history of regulations developing by agencies and court interpretations. But the thread of equality of common USE must not be broken by a priority of USERS.

The Alaska Constitution Article VIII Natural Resources explicitly reflects the Public Trust Doctrine mandate of equal protection of the law for USER of the fish, wildlife, and water as a common property resource. Section 3 "Common Use." "Where ever occurring in their natural state fish, wildlife, and waters are reserved to the people for common use" is a pure axiom of such a public trust.

Section 4 Sustained Yield. Fish, forest, wildlife, grass lands and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial USES"

Here in lies an oxymoron that creates confusion for those who do not wish to understand nor except that thread, of equal protection for all USERS, that ties together all Sections of Article VIII.

There can and will be Selective preferences among the beneficial USES of the common property fish, wildlife, and waters resources. Example: Subsistence, personal use and sport fisheries; all of which are recognized as personal common consumptive USES, which are specifically identified by methods, means, bag limits, species, availability, etc. But whenever or where ever, each such specific USES are selected for preference, then All USERS must be awarded their equal rights of consideration to participate in the harvest of these common use property public trust resources.

This equality as USERS is further provided by Section 15. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State" and Section 17 "Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons."

Alaska Constitution Article VIII is recognized by constitutional scholars as the best Natural Resources provision in the Nation. Members of the Constitutional

Convention spent more time on Article VIII than they did on the rest of the Constitution. The main thrust of Article VIII is that Alaska's public resources are to be used by and for the common benefit of All of the people.

"Although 3, 15 & 17 vary in expression, they share at least one meaning; exclusive or special privileges to take fish and wildlife are prohibited in the use of natural resources subject to the disposition of the state." Still further the constitutional Convention stated: "This section (15) is intended to serve as a substitute for the provision, prohibiting the several right of fisheries in the White Act." "Instead of using the terminology of the Act, the purpose sought by it are given expression in a prohibition of exclusive right or special privileges of any person to the fisheries of the State."

In both the United States and Alaska Constitutions we find provisions of the public trust responsibility and further fortify the equal rights of USERS of the common property fish, wildlife, and water resource.

The Constitution of Alaska Article I Declaration of Rights: Section 1 Inherent Rights: This Constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities and protection under the law; and that all persons have corresponding obligation to the people and to the State."

In opposition to the Subsistence priority for rural residents, Alaska Supreme Court Justice Moore stated: "This is an equal protection case, and an easy one at that."

Therefore in a rare show of openness, responsibility and 'corresponding obligation to the people and the State'; I challenge, the secretly seven to submit in their proposed constitutional amendment the following addendum to "Article I Inherent Rights" "...that all persons are equal and entitled to equal rights, opportunities, and protection under the law [addendum: except as the Legislature may wish to deny these rights and selectively impose priority classes of USERS of Alaska's fish, wildlife, and waters public trust resources.]

I also challenge our esteemed congressional delegation, who pleads an ability to only selectively amend ANILCA, to submit such a companion phrase for the US Constitution Article XIV "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or (property)...[(addendum) except as when Congress may wish to deny such protection and selectively impose priority classes of USERS of Alaska's fish, wildlife, and waters public trust properties.]

(Footnote) This denial of equal protection under the law explicitly includes All residents of specifically named cities of Anchorage, Fairbanks, Ketchikan, and Juneau and thereby the sovereign State of Alaska is shorn of its equal footing status with the other states of the Union.

Court reversals of congressional and federal attempts to deny equal footing status is well documented: Wyoming v. Race Horse cite 163 US 514 (Enclosure I) presents a number of such attempts to deny, by federal acts, the equal footing clause to sovereign states; and pertinent information is quoted in brief as follows: "The power of a state to control and regulate the taking of game can not be questioned."

"This argument indicates at once the conflict between the right to hunt in the unoccupied land, with in hunting districts and the assertion of power to exercise of the privilege in question in the state of Wyoming is in defiance of its laws"

The act which admitted Wyoming into the Union, as we have said expressly declared that state should have all the powers of the other states of the Union."

"It was held that the shores of navigable waters and the soil under them were not granted by the Constitution of the United States, and hence the jurisdiction exercised there over by the Federal government, before the formation of the new state, was held temporarily and in trust for the new state to be there after created, and that such state when created, by virtue of its being, possessed the same rights and, jurisdiction as had the original states." "The courts declared that to refuse to concede to Alabama sovereignty and jurisdiction over all territory within its limits would be to deny that Alabama has been admitted into the Union on an equal footing with the original states."

" In considering this act of Congress...it is unnecessary to institute any examination or criticism as to its legitimate meaning or operation or binding authority, further than to affirm that it could have no effect to restrict the new state as an independent sovereign government nor inhibit or diminish its perfect equality with the other members of the confederacy with which it was to be associated."

"Whatever the limitation upon her powers as a government whilst a territory condition, whether from....legislation of Congress, it ceased to have any operative force except as voluntarily adopted by her, after she became a state of the Union." "On her admission she at once became entitled to and possessed of all the rights of dominion and sovereignty which belong to the original states." "She was admitted, and could be admitted, only on the same footing with them...Equality of the constitutional right and power is the condition of all the states of the Union old and new."

"And it was held that a clause in the act of admitting California into the Union which provided that the navigable waters within the state shall be free to citizens of the United States, in no way impaired the power which the state could exercise over the subject if the clause in question had no existence." "The act admitting California declared that she is admitted into the Union on an equal footing with the original states in all respects whatever." "She was not, therefore shorn by the clause as to navigable water, within her limits, of any of the powers which the original states possessed over such waters within their limits."

How do these above quoted decisions relate to the mandate of federal management imposed by Congress in their enactment of Title VIV of ANILCA? The Federal Government has argued on several issues their supremacy right to impose this rural residency discrimination on USERS on public land within the limits of sovereign State of Alaska. This by fact and intent impinges upon the States sovereign servitude responsibility to manage Alaska's fish, wildlife, and water public trust resource and there with denies her people and State the equal footing of the other states.

The federal government rightly claim that those dedicated lands such as National Parks, reserves, forests, etc.. are set aside for special purposes that requires compatible management of the fish, wildlife, and waters. This argument is a slender reed when viewed in the context of the Alaska Constitution recognition of such preferences of beneficial USES. But the mandate of ANILCA is in fact a federal oversight authority

demanding the imposition of a certain class of (intrastate rural residents) priority USERS of these common property fish, wildlife, and waters public trust resource. This imposition of such a factional and intentional denial of the protection of the privileges and immunities and the equal protection of life, liberty and property has no precedent in the police powers of the State sovereignty. All such attempts have been struck down by courts as violation of Articles IV, V, X, and XIV of the US Constitution.

The federal authorities used a two prong attack, on Alaska's right to manage the fish, wildlife, and waters within its limits, by contending that it can claim federal authority by reserved water rights and over navigable waters of the federal public lands reserved within the limits of Alaska.

1. The reserved water rights of these National Parks, reserves, forest, etc.. are of a commendable and viable concern to protect their purpose, but to use this as a claim of federal supremacy over the states servitude responsibility to manage these fish, wildlife, and waters becomes a sham when viewed in the proper perspective and recognized purpose:

"Water Resource Management" "A Case Book in Law and Public Policy" (quote), "The United States follows state water law in appropriating water rights, but when it is unable to comply with the provisions of the law and still carry out federal purposes, state law may be preempted. The policy debate is over how vigorously the Executive will act in asserting preemption."

["Consider several possible federal needs for water. In which cases do reserved rights exist? In which must the government proceed to acquire water rights entirely according to state law? In which may aspects of state law be avoided in order to acquire water rights?]

1. The Department of Defense needs water to serve barracks built on a military reservation.
2. The Forest Service seeks in stream flow rights for fish and wildlife purpose in a national forest, but state law does not recognize in stream flows as a beneficial use.
3. The Park Service seeks to convert state-permitted agricultural rights it purchased from a farmer to in stream flow rights for a national park, but the state law allows in stream flow rights to be held only by a state agency.
4. The Bureau of Land Management (B.L.M.) seeks water rights to maintain a fishery in a stream on unreserved lands in a state that does not recognize in stream flows as a beneficial use.] (Enclosure II Water Resource Management)

The Alaska Constitution Title VIII Section 13 "...an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise as prescribed by law, and to the general reservation of fish and wildlife."

So there is no conceptual conflict with the responsible federal need for reserved water rights on these public lands, and the need of in stream flows for the general reservation of fish and wildlife as is mandated. This is the same constitution that was required by the Alaska Statehood Compact to prove the state - "has made an adequate

provisions for the administration, management, and conservation of said resources in the broad national interest." To make reserved water rights the scapegoat of federal claim of management, not of preference USES, but of priority USERS of Alaska's fish and wildlife, and waters public trust resources; is just another naked attack on Alaska's right of equal footing and its people's life, liberty and property rights of equality under the law.

This same federal attack is also aimed at those navigable waters that are on or flow through such federal lands that lie within Alaska limits. It shows a repeated lack of federal respect for the equal footing right of the State and, therefore, the state's citizens.

The Alaska Statehood Compact explicitly provides: "The Submerged Lands Act of 1953...shall be applicable to the State of Alaska and the said State shall have the same rights as do existing states thereunder." ["Submerged Lands Act" Title II "Section 3 Right of the States":

"(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of lands beneath the navigable waters within the boundaries of the respective States, and the natural resources within such land and waters. And (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with the applicable state law be, and they are hereby subject to the provisions hereof, recognized confirmed, established and rested in and assigned to the respective States."

(b)(1) The United States hereby releases and relinquishes unto said States...all rights, title and interest of the United States, if any it has in and to said land, improvement and natural resources. (2) The United States hereby releases and relinquishes all claims of the United States."

"Title I Definitions"

(e) The terms 'natural resources' includes without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animals and plant life.] (Enclosure III, The Submerged Lands Act.)

It can be briefly explained that the federal government has a servitude responsibility to manage navigable waters for transportation and commerce. The State governments have a servitude responsibility to manage the natural resources within the submerged lands and all fish, marine animals and plant life within these navigable waters.

Now through Title VIII of ANILCA, Congress has shorn Alaska of its equal footing rights and the State's citizens are denied their constitutional right of equality under the laws.

Some argue that the Alaska Statehood Compact's provisions promising the State management authority of its fish and wildlife was an act of Congress and it can also be taken thereof.

I will, in reply, argue that Title VIII of ANILCA, did not, in fact and effects, mandate the management of beneficial USES but instead it mandates the priority of a restricted class of USERS to participate in the harvest of these common property fish, wildlife and waters public trust resource.

If the people are so lackadaisical as to accept such politically motivated, imperialistic action, there still remains the fact that the Statehood Compact also provided that: "The Submerged Lands Act - shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder." If the same imperialistic implications exist - that what Congress gives, they can also take away -; then under the Constitution's provision of State sovereignty equal footing rights, it must follow that all other States would also lose their resource management authority as provided by said Submerged Lands Act.

The supremacy of the federal government also cannot subjugate the police powers of a sovereign State as delegated by US Constitution Article X; by an act of Congress such as Title VIII ANILCA.

I find that: Governor Knowles in delivering on past political promises to his supporters, Speaker Gail Phillips by laying foundations of future political aspirations, and former Governor Jay Hammond's arrogant statement to shame Alaskans into giving up their principles of fairness for his idea of acceptable discrimination are personal positions; that further clouds the task force's amendment product, hatched in secret of purpose and shows an irresponsible disregard for the Alaska Constitution's provision "that all persons have corresponding obligations to the people and to the State."

I would still hope that instead of the acceptance of 'politically correct' (?) positions, the incentive would instead be to protect the equal rights under the law for all people. Instead of accepting excuses that our Congressional delegation are inept at changing the prejudices and inequities of Title VIII ANILCA, we should look to the findings of the Alaska Supreme Court as the most important guide to the State's legal position.

Some of the findings are as follows:

- (1) "State control merely for the sake of control is a questionable goal when the terms infringe upon the open access values of Article VIII." (Enclosure IV, McDowell v. State of Alaska 1989)
- (2) "We note that several other jurisdictions have struck down intrastate residential preferences in fish and game statutes." "These authorities support our view that the equal access clauses of Article VIII, which are special types of equal protection guarantee, bar the residential discrimination imposed in this case." (McDowell v. State of Alaska, 1989)
- (3) "The common right, which one individual of the whole community is entitled to enjoy as much as another, cannot be made by law, the exclusive privilege of the people of a certain class or section upon terms that do not apply to the whole people alike." "This right which one individual has in common with every other individual in the community to take and use fish and game, *ferae naturae*, is one that has existed from the remotest times, and although at one time in England after the Norman Conquest the right to take fish and game was claimed a royal prerogative to the exclusion of the people, it was restored to them by the Barons at Runnymede in 1215 and was declared in the great (Magna) Charter which they wrested from King John." "(McDowell quoted from Lewis v. State 110 Arizona 204)"

"These rights were confirmed and established ever after in England by acts of Parliament, and they have come down to us from the laws of England and may be regarded as a common heritage of the English speaking people."

"(McDowell, also see Parker v. People - 111 111 581; Greer v. Conn 161 US 519; Martin v. Waddell 41 US)"

- (4) "Where the necessity for the preservation of wild game and fish exists in certain territories of the State, that territory may be segregated for the purpose of regulating the right to taking game and fish therein; but the privilege of taking and using same must be extended to the people of the State outside of the territory upon the same terms that are given to those who are residents of the territory embraced in the legislation." "(McDowell also see Hayes v. Territory 2 Wash T 286; State v. Higgins 51SC51; and Harper v. Galloway 58 Fla 253)"
- (5) Alaska Supreme Court Judge Moore "This is an equal protection case, and an easy one at that." "Article I Section 1 of the Alaska Constitution provides that 'all persons...are entitled to equal rights, opportunities and protection under the law...'" "The Alaska Constitution has a similar clause specifically concerning natural resources." Article VIII section 17 the Uniform Application Clause, ' provides that laws and regulations governing the use and disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation'." (McDowell)
- (6) "In Owsichek v. State (Alaska 1988) we observed that Article VIII provisions were designed to ensure to the public the broadest possible access to wildlife." We noted that "the common use clause imposes upon the State a trust duty to manage the fish, wildlife and water resources of the State for the benefit of All the People." "(emphasis added)" "A minimum requirement of this duty is a prohibition against any...special privileges" (McDowell).
- (7) "In State v. Ostrosky (Alaska 1983), we observed that the common use and no exclusive right of fishery clauses reflect 'anti-exclusionist values'." (McDowell)
- (8) [The following comments are excerpts from Anchorage Daily News article related to sovereign edicts over regulatory to manage Alaska's common property fish, wildlife and waters public trust resources: (Enclosure V) The US Supreme Court...refused to address a conflict between a federal appeals court and Alaska's Supreme Court over whether the state or federal government has the highest regulatory authority over hunting and fishing along Alaska's waterways. The justices, without making any comments, let stand an Alaska Supreme Court ruling that said the State - not the Federal Government - has regulatory authority over subsistence hunting and fishing. The case...dates back to an incident...on Naked Island in Prince William Sound. Michael Totemoff ...was convicted of illegally hunting deer with a spotlight off the island. He challenged his conviction, and based his legal case in part on what he said was the state's lack of authority to regulate his conduct in navigable waters. The Alaska Supreme Court upheld Totemoff's

conviction, ruling that state game laws applied to his conduct. "We are not obligated to follow (the Ninth Circuit Court's ruling) since this court is not bound by decisions of federal courts other than the United State's Supreme Court" the Alaska Court said. "For a number of reasons...the federal government has no authority to regulate hunting and fishing in Alaska's navigable waters", it added.] (Enclosure V, Anchorage Daily News article)

- (9) "Despite repeated legal challenges to and multiple revisions of subsistence laws, 'subsistence USES' have long been defined in terms of 'customary and traditional USES'. "Accordingly we consistently have interpreted 'customary and traditional' to refer to 'USES' rather than 'USERS'." State v. Morry 1992; McDowell v. State; Madison (reference Payton v State of Alaska 1997) (Enclosure VI Payton v. State of Alaska)

Customs and traditions are important heritages of different peoples, but when they invoke prejudice they are merely demands of special privileges for some and destroy equality among All the people.

All past history shows that Title VIII ANILCA federal management oversight authority continues no matter what the State may do to comply. It was this blackmail purpose that resulted when Senator Stevens told the Alaska legislators that if they did not pass a subsistence priority statute, then Congress would. He then went before Congress and declared that this was what Alaska wanted. It was his devious purpose of supporting Title VIII ANILCA which resulted in the federal mandated oversight that unilaterally denies Alaskans its equal footing right to manage the State common property fish, wildlife and waters public trust resources.

As further proof of the foolish expectations for, a return of true State fish, wildlife, and water resource management authority, from the proposed discriminatory amendment to our "Common Use" and No exclusive right or special privilege clause of Alaska's Constitution; I provide the following results from a meeting between Bruce Botelho (Governor Knowles appointed Attorney General) and over 20 Alaska Legislators.

(Enclosure VIII)

**Speaker Phillips:**

Bruce, time and time again, we have been told that if Alaska comes into compliance with the federal law, that we will be guaranteed the right to manage our fish and game resources again, or at least manage them with the least amount of federal interference. However, you will recall that when the...the same promises were made to us when we reassumed management of the walrus under the Marine Mammal Protection Act. And once we had that, then the management was forced...we were forced return walrus management to the federal government due to continued harassment by the federal government. Do we have any kind of guarantees whatsoever, that if we were to take action, whether it be to come into compliance as has been stated, or to reach some kind of compromise, or to come up with some kind of solution, do we have any guarantee

whatsoever that the federal government will pull out and take us out from under this threat of their interfering with our management?

**Bruce Botelho:**

Madam Chairman, it's a difficult question to answer. I don't think there is an absolute guarantee and I think that Senator Taylor is correct when he has identified one aspect, I think, very important, sometimes overlooked, which is that when we talk about a constitutional amendment and subsidiary laws bringing the state's laws consistent with ANILCA, it does mean, obviously, that – maybe not so obviously – that fish and game managers would be state managers, setting guidelines. But it does not eliminate federal government oversight. ANILCA, by its terms, provides for any aggrieved citizen or person – not limited to citizen – to seek recourse ultimately in U.S. District Court, and to the extent that there is no resolution, the federal district court retains the right to fashion relief. And that would occur, does occur now, and would occur also with a constitutional amendment. The effect of a constitutional amendment found to be consistent with ANILCA, simply means, and it's an important simple, that it would be state fish and game managers managing the fish and wildlife resources within the boundaries of Alaska. But it does not mean there's no federal oversight.

**Speaker Phillips:**

So, just to clarify...could I just verify and clarify your response. We could take any kind of action we wanted in the state of Alaska. We could do anything we want to try to come into compliance...to meet the federal compliance and that still does not guarantee us, that we would have the rights to manage our fish and game resources, regardless of what we do.

**Bruce Bothelo:**

If I've not been clear, Madam Chairman, we do have the right to manage. We are subject, however, to federal court oversight by ANILCA. Whatever changes we make that bring us into compliance, the actions of our state government would be subject to a person challenging our... the propriety of our management under the guidelines of ANILCA. That is, whether we have in fact satisfied the rural subsistence priority found in Title 8.

**Speaker Phillips:**

What are we wasting time for, then?

**Representative Bunde:**

Well, I tend to oversimplify things, but to me that says that the state can manage, as long as they do it the way the federal government tells them to. In other words, the state managers do the talking, but the feds pull the strings.

**Senator Taylor:**

A puppet.

**Senator Halford:**

So a constitutional amendment, absent changes in ANILCA, is not a solution?

**Bruce Botelho:**

I have not said that though I would believe my—well, let me restate that is a correct assumption of my view. I think there are changes to ANILCA – the solution lies in a combination of a constitutional amendment and certain changes to ANILCA.

**Senator Halford:**

Could the solution lie with changes to ANILCA without the constitutional amendment?

**Bruce Botelho:**

I believe that there is no solution that can be found that rests solely on changes to ANILCA.

**Senator Halford:**

Politically or substantively?

**Bruce Botelho:**

Politically.

**Senator Halford:**

Isn't it kind of an insidious thing though? I mean it starts out with subsistence management and that's all that's provided for in the federal law, but as you manage for subsistence, then you manage the other conflict. So, it's not something I think that happens all at once even if you – you know I think it happens insidiously and it grows as it goes, because the federal law doesn't provide for management of fish and game, it provides for management of subsistence, but in order to manage the subsistence harvest, you have to cut off and deal with other harvests in conflict. So eventually, you get further and further into the management of every other use, and maybe even some non use areas - maybe some development areas as well.

**Bruce Botelho:**

Both that in terms of the expansion through the species, but also expansion geographically, whatever the outcome in Katie John in terms of navigable waters, we have separate related question in terms of management of species which passed between public and non public lands and the ability to regulate off public lands to make sure that the species are available to satisfy subsistence on public lands.

**Senator Halford:**

That's my comment. My question goes back to Katie John and the probable outcome. It seems that the – you know we have lot of other states that are on our side on navigational servitude. We have lots of arguments and lots of history to win that portion of the case, but what about federal reserve water rights. Isn't that the place where we can lose in part and be variable based on a whole bunch of further determinations down the road?

**Joanne Grace:**

Yes, I think – I think it's going to be harder for the court to base its decision on that because what the court would essentially be saying is if the United States has any interest, no matter how small in the water, that that converts the entire waterway into public lands. It's an absurd result because essentially we'll convert all lands and waters in Alaska into public lands. For example, we are just before the Ninth Circuit that it would – we argued this in the context of an absurd result. All lands in Alaska patented

after the year 1890 are conveyed subject to (indisc.) and easements (indisc.). That is an interest that the United States holds in all lands they've patented after 1890 (indisc.). So we argued that (indisc.) tend to any tiny interest of the United States to convert back areas of land and water into public lands. So I think that it's going to be pretty difficult for the court to base its decision on federal reserve water rights, but if the court does, then we're looking at a waterway by waterway determination or maybe a reservation system by reservation system of determination of whether the United States has the waterway.

**Senator Halford:**

But don't you think that's - I mean do you think they'll go back to navigational servitude or you think there is any chance that they will? I mean that one seems to go even further back into the...

**Joanne Grace:**

There's never been a decision that said a navigational servitude is a property interest and I think the Supreme Court has been - in power of the federal government (indisc.). So it would be - it would surprise me if the Ninth Circuit would rule that way just because the concept is so odd. But (indisc.), I guess don't feel really comfortable predicting what they'll do.

**Bruce Botelho:**

That might be something to elaborate on very briefly and that is to say that in virtually every case presented to the Ninth Circuit, the Ninth Circuit has favored the subsistence use over adverse interest, frequently the state of Alaska.

This meeting is reminiscent of the same lame brain solutions and Administration's propagandized attempts to sell the same illusionary state management control, discussed before the special Legislative session in 1990.

During both periods, there appears, the Governor's willingness to continue to support the impingement against the rights of All the peoples; and their right of equal consideration in the harvest of Alaska's common property fish, wildlife and wildlife public trust resources. To illustrate this relentless subjugation of equal footing as granted all of the other states; and to tie together this continuous attitude, I enter the dissertation that I wrote in response to the 1990 special Legislative session (Enclosure VIII). "State Control Management of Alaska's Fish and Wildlife, Illusionary or Fact?"

It is of related importance to note that in the above referenced dissertation; (i.e. Enclosure VIII), I referenced the effect of, the Gulkana River 1987 US District Court decisions, on the States ownership of our navigable waters and therewith the management of Alaska's fisheries as provided by the Submerged Lands Act.

This decision (Gulkana River Enclosure IX) established the broadest interpretation - susceptibility to transportation - as to the determination of navigable waters, by a federal court. Therefore, Alaska gained title to millions of acres of submerged lands and the State management authority of the fish in an estimated 100,000 to 180,000 miles of navigable water as provided by the Submerged Lands Act and the equal footing provision Article IV US Constitution.

Some of the pertinent quotes from the Gulkana River case are:

"1. Navigable Waters 36 (1) Title to beds of navigable inland water bodies in Alaska passed from the United States to Alaska when Alaska entered the Union; therefore, beds of navigable waterbodies in Alaska were not available for selection or changeable to either Alaska Native Claims Settlement Acts or the Alaska Statehood Act entitlements."

"This case raises difficult questions concerning application of the well settled principles that a state is vested with title to the beds underlying navigable waterbodies at the time the state enters the Union."

"However under the 'equal footing doctrine', see Pollard's v Hagan ...and its codification in the Submerged Lands Act of 1953, title to the beds of navigable inland waterbodies passes from the United States when the state enters the Union."

"Because title to the beds of navigable waterbodies passed automatically to Alaska at the time of statehood, they are neither available for selection nor chargeable to either the ANCSA or the Statehood entitlements." (See generally 43 USC 1602 (e) 1610 - 1611, 1631 and 48 USC prec. 21 Sec. 6 (a) and (b).)

"American courts adopted the English common law principle that navigable waterbodies are held by the sovereign in trust for the public." "In Martin v Waddell...the Supreme Court found that the title navigable waterbodies in the former colonies, formerly held by the King of England in trust for the public pursuant to the common law doctrine of navigable waterbodies, was by virtue of the Revolution rested in the States."

"Other consideration unique to the American system of government came into play when applying the doctrine of title navigability to waterbodies lying outside the original 13 colonies." "Under the equal footing doctrine, new states have the same rights, sovereignty and jurisdiction as the original states possess within their respective borders."

"Under the Americanized version of common law doctrine of navigability, by virtue of the rights gained in the Revolution and confirmed by the Constitution, it is the state, as opposed to the federal government, which hold title in public trust of 'public waterbodies' and it is through application of the definition of navigability that the determinations made of which waterbodies are public and which are not."

"The purpose then of the equal footing doctrine as applied to questions of title navigability is to ensure that all states are rested with the same right of safeguarding 'public', that is 'navigable waterbodies'." (emphasis added)

As can be readily seen this Gulkana River federal court decision is very repetitive in it's references to the equal footing right of the State of Alaska; which would include the public trust title to and management authority of the submerged lands and the fisheries of all of the navigable waters within Alaska.

It has been my long time observation that State officials have continually displayed an apathy of appreciation of the value of this Gulkana River decision. They ignore the public citizens' struggle who wrestled the title to millions of acres of submerged lands and therewith the management of all of the fisheries in the States navigable waters. At that time federal opposition, also included Alaska's congressional delegation, and now for politica! positioning, they again demand that a passive public

accept an unconstitutional proposed amendment to vote away their Constitutional protection of "life, liberty, and property" and the equal protection "under the law".

In this instance such an amendment would impinge not only on the Statehood Compact, Alaska Constitution Article I Section 7 Inherent Rights, and Article VIII Natural Resources; but also the US Constitution Article IV privilege and immunities, Article X States police powers and Article XIV life, liberty and property equal protection clauses.

I find that the Administrations irresponsible action in dropping, with prejudice, their opposition to parts of the Katie John case (the sanction of federal management) should raise the question of its (the Governor) purpose and position on the question of navigability State servitude title; if they are willing to vacate this right of equal footing of State management authority, by subjugating it under the proposed Constitutional amendment.

With such a voluntary subjugation the question of state title of navigable servitude, management authority can then be viewed as an issue that is moot.

In a true democracy the decision to subjugate a persons inherent rights of equality under the law must be of an individuals own volition. Then right to life, liberty and property cannot be made the preview of the vote of a majority. There are many who would deny the right of all people just to obtain privileges for their own purposes. This demand for personal privileges results in the automatic imbalance on the scale of justice.

Therefore I find that such a rear ended assault on these constitutionally protected rights of All citizens, are not a proper subject for a vote by majority of Alaskans. It is only the preview of the people of the Nation as a whole; and then only when presented as an honestly open, unclouded presentation of all of these most important rights of equal protection under the law and through the appropriate lawful process.

In support of this position, I present the following references:  
(Enclosure X State v Julow; Supreme Court of Missouri)

"A citizen cannot be deprived of a right secured by the Constitution by a statute passed as a police regulation."

"...the 5<sup>th</sup> amendment of the constitution of the United States, providing, among other things, "nor deprived of life, liberty or property without due process of law." "In section 30, supra, as well as in the section in the federal constitution just recited, it will be noted that the rights of life, liberty, and property are grouped together in the same sentence; they constitute a trinity of rights, and each, as opposed to unlawful deprivation thereof, is of equal constitutional importance." "With each of those rights, under operation of a familiar principle, every auxiliary right, every attribute necessary to make the principal right effectual and valuable in its most extensile sense, pass as incidents of the original grant." "The rights thus guaranteed are something more than the mere privileges of locomotion; the guaranty is the negation of arbitrary power in every form which results in a deprivation of a right."

"These terms: "life", "liberty," and "property," are representative terms, and cover every right to which a member of the body politic is entitled under the law." "Within their comprehensive scope are embraced the right of self-defense, freedom of speech, religious and political freedom, exemption from arbitrary arrests, the right to buy and sell as others may, - all our liberties, personal, civil, and political - in short, all that

makes life worth living; and of none of these liberties can any one be deprived except by due process of law." "Now, as before stated, each of the rights heretofore mentioned carries with it, as its natural and necessary coincident, all that effectuates and renders complete the full, unrestrained enjoyment of that right."

"The 'law of the land' and 'due process of law' are the legal equivalents of each other." Touching this topic, a distinguished jurist observes: "Perhaps no definition is more often quoted than that given by Mr. Webster in the Dartmouth College Case: 'By the law of the land is most clearly intended the general law, a law which hears before it condemns, which proceeds upon inquiry and renders judgement only after trial.' 'The meaning is that every citizen shall hold his life, liberty, property, and immunities, under the protection of the general rules which govern society.' 'Everything which may pass under the form of an enactment is not, therefore, to be considered the law of the land.'" "Cooley, Const. Lim. (6<sup>th</sup> Ed.) 431. Comstock, J., when discussing a constitutional prohibition, such as ours, said: 'No doubt, it seems to me, can be admitted to the meaning of these provisions.' 'To say, as has been suggested, that 'the law of the land' or 'due process of law' may mean the very act of legislation which deprives the citizen of his rights, privileges, or property, leads to a simple absurdity'. 'The constitution would then mean that no person shall be deprived of his property or rights unless the legislature shall pass a law to effectuate the wrong; and this would be throwing restraint entirely away. \* \* \* Where rights of property are admitted to exist the legislature cannot say they shall exist no longer; nor will it make any difference although a process and a tribunal are appointed to execute sentence.'" "If this is the 'law of the land', and 'due process of law' within the meaning of the constitution, then the legislature is omnipotent." "It may, under the same interpretation, pass a law to take away liberty of life without a pre-existing cause, appointing judicial and executive agencies to execute its will." "Property is placed by the constitution in the same category with 'liberty and life'." *Wynehamer v People*, 13 N.Y. 375. Here, the law under review declares that to be a crime which consists alone in the exercise of a constitutional right, to wit, that of terminating a contract, - one of the essential attributes of property, indeed property itself, under preceding definitions. Brought to the bar of a court on such a charge, the accused would have been prejudiced in so far as the criminality of the act charged is concerned." "No question could there be made or admitted as to the quality of the act." "That would have been settled by the previous legislative declaration, and it would only remain to find the fact as charged in order to declare the guilt as charged." "But the fact as charged, as already seen, is not a crime, and will not be a crime so long as constitutional prohibitions are respected and enforced." "If an owner, etc., obeys the law on which this prosecution rests, he is thereby deprived of a right and a liberty to contract or terminate a contract, as all others may; if *he* disobeys it, then he is punished for the performance of an act wholly innocent, unless, indeed, the doing of such an act, guaranteed by the organic law, - the exercise of a right of which the legislature is forbidden to deprive him, - can by that body be conclusively pronounced criminal." "We deny the power of the legislature to do this, to brand as an offense that which the constitution designated and declares to be a right, and therefore as innocent act; and consequently we hold that the statute which professes to exert such a power is nothing more or less than a "legislative judgement," and an attempt to deprive all who are included within it's terms of a constitutional right without

due process of law." "A statute would not be constitutional which should select particular individuals from a class or locality and subject them to peculiar rules, or impose upon them special obligations or burdens, from which others in the same class or locality are exempt. \* \* \* Everyone has a right to demand that he be governed by general rules, and a special statute which, without his consent, singles his case out as one to be regulated by a different law from that which is applied in similar cases would not be legitimate legislation, but would be such an arbitrary mandate as is not within the province of free government." "Cooley, Const. Lim. 391." "The legislature may legislate in regard to a class of persons, but they cannot take what may be termed a natural class of person, split that class in two, and then arbitrarily designate the dissevered fractions of the original unit as two classes and enact different rules for the government of each." "This would be a mere arbitrary classification, without any basis of reason on which to rest, and would resemble a classification of men by the color of their hair or other individual peculiarities, something not competent for the legislature to do."

"The litigated statute is also in conflict with section 1, art. 14, of the federal constitution, aforesaid, forbidding that "any state deprive any person of life, liberty, or property without due process of law," as to which the same considerations as heretofore announced apply."

"Nor can the statute escape censure by assuming the label of a "police regulation." It has none of the elements or attributes which pertain to such a regulation, for it does not, in terms or by implication, promote or tend to promote the public health, welfare, comfort, or safety; and if it did, the state would not be allowed, under the guise and pretence of a police regulation, to encroach or trample upon any of the just rights of the citizen, which the constitution intended to secure against diminution or abridgment."

"In conclusion it may be said that there is a broad distinction between the invasion of a right conferred by the constitution, to wit, a right of property, carrying with it, as we have seen, all the liberties, attributes, and coincident rights, and those rights which are the mere creatures of legislative gratuity, where the legislature granting a privilege or bestowing a bounty may, of course, as no constitutional right is involved, prescribe the conditions upon which the privilege may be exercised or the bounty be obtained."

I charge that those politicians who would amend, Alaska's Constitution, to eliminate open, equal access to ALL USERS of the States fish, wildlife, and waters common property resource; are in fact impinging on the Nations Constitutional provisions of equal protection under the law. As long as they can momentarily deliver on a political promise, they care not of their denial of this equal protection to a segment of citizens who must spend time, effort, and money to gain back their inherent right to life, liberty, and property. The politician can then claim they tried to deliver on those self interest commitments, without any thought or obligation of responsibility to those public rights of all persons.

It is because of such irresponsible political attitudes that the courts have consistently found that the Constitutional rights cannot be impinged upon by submitting to a vote, one's right to life, liberty, and property.

In a more recent case, the Colorado Supreme Court ruled, "Ones right to life, liberty and property...and other fundamental rights may not be submitted to a vote; they— depend on the outcome of no election." (Enclosure XI, attachment (a))

In addressing this case (Enclosure XI, Roy Romer, Governor of Colorado v. Richard Evans 1996) the US Supreme Court found the following:

"One century ago the first Justice Harlan admonished this Court that the Constitution 'neither knows or tolerates classes among citizens.'" "Unheeded then, these words now are understood to state a commitment to the law's neutrality where the rights of persons are at stake." "The Equal Protection Clause enforces this principle and today requires us to hold invalid a provision of Colorado's Constitution."

"Colorado's state and municipal laws typify this emerging tradition of statutory protection and follow a constitutional pattern."

"These statutes and ordinances also depart from the common law by enumerating the group or persons within their ambit of protection." "Enumeration is the essential device used to make the duty not to discriminate concrete and to provide guidance for those who must comply." "...it's sheer breath is so discontinuous with reasons offered for it that the amendment seems inexplicable by anything but animus toward a class that it affects; it lacks rational relationship to legitimate state interest." "...even in the ordinary equal protection case calling for the most deferential of standards, we insist on knowing the relation between the classification adopted and the object to be attained." "By requiring that the classification bear a rational relationship to the independent and legitimate legislative end, we ensure that classification are not drawn for the purpose of disadvantaging the group burdened by the law."

"Amendment...confounds this normal process of judicial review. "It is at once too narrow and too broad." "It identifies persons by a single trait and then denies them protection across the board."

(The same thoughts were addressed in McDowell v. State; and are also imposed by Title VIII ANILCA.)

Further quotes from Enclosure XI:

"...discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision." "It is not within our constitutional traditions to enact laws of this sort. Central both to the idea of the rule of the law and to our own Constitution's guarantees of equal protection is the principle of government and each of its parts remain open on impartial terms to all who seek its assistance." "Equal protection of the law is not achieved through indiscriminate imposition of inequalities."

"The guaranty of 'equal protection' of the laws is a pledge of the protection of equal laws." (Enclosure XI) "The liberty of which the fourteenth amendment forbids a state from depriving anyone without due process of law is something more than freedom from enslavement of the body or from physical restraint." "In my judgement the words, 'life, liberty or property' in the fourteenth amendment should be interpreted as embracing every right that may be brought within judicial cognizance and therefore no right of that kind can be taken in violation of 'due process of law'." (Taylor v Beckman 20 S.C.T. 890, 1016, 178 U.S. 548, 44 LCD 1187) (Enclosure XI attachment)

There is an even more insidious demand developing from the constitutional flawed edicts of Title VIII ANILCA: Some of the growing demand for a subsistence based priority are claimed to be a right of Native heritage and as a matter of religious preference. There is no fault with the fundamental claims; but when they become the basis for demands of any priority right, they in fact, result in discrimination based on ethnic identity (race) and religious preference. Such results have no place in a democratic society and are especially obnoxious when it denies Common Use of Alaska's fish, wildlife, and waters public trust resource properties.

This preordain both a civil rights violation, as well as an equal protection cases

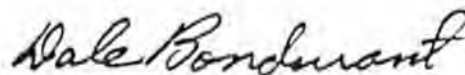
I believe that I have presented a fair rationale to support the States sovereign public trust authority and responsibility to manage Alaska common property fish, wildlife, and water resources. This authority is supported by the Alaska Statehood Act, Submerged Lands Act, Alaska Constitution, US Constitution and a documented history of such authority throughout our Nation's history.

I would now add, that with the matter of the fisheries there is an additional argument against federal management interventions in Alaska's anadromous fisheries.

There is no justification to trigger Title VIII ANILCA illegally mandated subsistence priority class of USERS. Since the total yearly personal consumptive USES are less that 1 ½ percent (i.e., subsistence .007; personal use .0009, and sport fishery .006) of the state total harvest of Alaska salmon; there can be no perceived shortage (Enclosure XII)

It appears that the demands for the priority of USERS is more of selfish infatuation than any reality.

Respectfully submitted,



Dale Bondurant  
HCI Box 1197  
Soldotna, AK 99669  
Phone (907) 262-0818

## List of Enclosed References

Enclosure I	Ward v Racehorse
Enclosure II	Water Resource Management
Enclosure III	Submerged Lands Act
Enclosure IV	McDowell v State of Alaska (1989)
Enclosure V	Totemoff related Anchorage News Article
Enclosure VI	Payton v State of Alaska (1997)
Enclosure VII	Meeting Bruce Botelho and Alaska Legislators (1995)
Enclosure VIII	State Control Management, Illusionary or Fact? (1990)
Enclosure IX	Gulkana River (1987)
Enclosure X	State of Missouri v Julow (1985)
Enclosure XI	Governor of Colorado v Evans (1996) (attachments (a) and (b))
Enclosure XII	Fish Harvest Percentages

Subsistence

I moved to Alaska when I was little and married a life long Alaskan. We are now raising third generation Alaskans. A subsistence preference for any class of people based on location, race, age or any other way to delineate a preference is wrong! The Zoebel/Permanent Fund lawsuit established that we can't create a separate class of citizen based on residency.

We must give credit to the powerful lobby effort of the Alaskan Natives. Exemptions from welfare reform; the inflated purchases of their land from the Exxon oil spill moneys; the new Alaskan Native Hospital which provides free medical service to native Americans; to the current proposal to spend \$1.1 Billion on modern sanitation systems to connect only 8,000 homes to sewer and water lines is outrageous. As a taxpayers of Anchorage I resent this gross misuse of public funds. This sewer system reflects \$137,500 per home with no assessments or community obligations to the bonds. \$137,500 is almost the average selling price of a home in Anchorage.

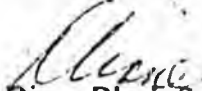
A subsistence preference has only been made an issue by Senator Ted Stevens. Why is this an issue after 20 years of ANCSA (Alaska Native Claims Settlement Act)? What is so bad about the federal government taking over the fish and wildlife management? Most of Alaska is federal land or Native land with priority subsistence rights to Natives. All the land conveyed by the Oil Spill Council has a native subsistence priority. Maybe having the Feds manage Fish and Wildlife will save the state money!

In addition to Federal land and Native Corporation land (44 million acres), every Alaskan Native that could establish a subsistence claim to land has been granted a 160 acre Native allotment. These allotments represent the best hunting and fishing sites in all Alaska. BLM reports that applications for 5,721 Native Allotments were still pending as of September 30, 1996. On all these lands, they have a subsistence priority. Enough is enough.

A subsistence life style is a luxury. Who would not like living in a beautiful remote location in a pristine environment, with no other responsibilities than your day to day existence. As long as Uncle Sam and the State of Alaska pay for all your housing, medical and education. Its a recreational lifestyle with no financial obligations!

We can't stop the twentieth century from coming. No one is owed a lifestyle. When the resources and economic opportunities no longer can support your lifestyle, man moves. This has been true throughout mans evolution. The Alaska Natives must take financial responsibility for their lifestyle or move to other areas where there are jobs. People that give up the big-city in favor of a rural life style fully expect the cold seat of an outhouse.

Respectively,

  
Diane Black-Smith  
2755 Iliamna  
Anchorage, Alaska 99517



---

Alaska Boating Association \* PO Box 210430 \* Anchorage Alaska 99521

---

E-Mail to ..... [loneagle@alaska.net](mailto:loneagle@alaska.net)

I am Speaking in regards to the issue that is very up-front and apparent at this time being. The Subsistence issue,, Constitutional Amendment consideration,, relationship to ANILCA. This issue has been under debate in our great state since the 70's and Title VIII of ANILCA has added another "black cloud" to an already complex, complicated issue.

What we feel is of most importance, to all Alaskans, is the Constitutional Amendment part of this issue. This group should attack this issue, up front and before any other part of the issue is considered. We are being pressured by Congress to change our Constitution to conform to what is considered by most of us to be an unconstitutional federal statute. If this group wants to truly do something to resolve all the issues, it must be taken a piece-at-a-time and resolve each piece respectively. We know you have tried and now you have come to us for our opinions and thoughts and now we suggest that you stand united against the Constitutional Amendment and send a message to our Congressional Delegation to end this "blackmail" the Federal government is holding over our great state. With that resolved, and knowing that our Constitution is protected, we can then go to work and begin to resolve the other issues involved. No matter how many proposals are put forth, we must have EQUAL access to our fish and game. We have paid for these studies done to keep our renewable resources stable so that we can fish and hunt together and benefit equally in the harvest of OUR fish and Game.

Look at the whole picture, and be honest with the people of this great state, subsistence is just a small but very important part of this and can be solved once the people of this state know that we cannot and will not be continually "blackmailed" by the federal government. When the Governor withdrew the suit against Federal government, he opened up "pandora's box" and now look at us. Now we are being divided within our state, and that has to stop. Make and Stand for all Alaskans and maintain equally for one and all. Thank you for the time and for listening to us.

Donald E. Sherwood  
President

LEGISLATIVE INFORMATION OFFICE FAX 2581261  
TO: ALL HOUSE AND SENATE MEMBERS 9-25-97

DO NOT BE INTIMIDATED BY THE  
FEDERAL GOVERNMENT. STAY THE  
COURSE. ALL ALASKANS ARE EQUAL  
NO SPECIAL SUBSTANCE FOR  
SOME, MAKING 2ND CLASS CITIZENS  
OF OTHERS.

RONALD J. SMITH SR.  
2900 KATALLA CIRCLE  
ANCH. AK 99502  
Ph. 2434173  
FAX 2482604

Senator,

Subsistence...my two bits worth. The state must retain management. I doubt that any rural preference will be much different than it is now. There is defacto discrimination at present merely because of access to fish and game by "rural" residents. If the AOC doesn't want preference based on zip codes why, may I ask, do we charge non-residents higher license fees. Why is the permanent fund distributed to only Alaskans? Zipcode discrimination? Why are there senior citizen discounts? A form of discrimination? Basically my subsistence permit is called a personal use permit. Ralph Seekins doesn't have it that bad. On the other side, you know that there will be many "frivolous" lawsuits filed by native groups. Why wouldn't Ft Yukon sue the Federal Government to increase their subsistence fishery? Why wouldn't the courts force reductions to the commercial fishery in the lower Yukon in an attempt to comply. I don't see any of the rural residents not getting adequate subsistence resources at present. Why not just acknowledge what is already occurring? Change the State constitution. I don't like racial or zip code preferences any more than the AOC but the alternatives are rather slim or none. Just tell the subsistence users that the State or the Feds can easily comply...we'll just cut the commercial harvests. What a mess!



Monty Millard  
1571 Alpine Vista Ct.  
Fairbanks, AK 99712

RECEIVED

SEP 2 1997

.....

**SUBSISTENCE**  
**THE STATE OF ALASKA VERSUS THE UNITED STATES OF AMERICA**

Prepared for  
Legislative Hearings on Subsistence  
27 September 1997  
By Wayne Anthony Ross

---

There is an old cliché that says "When all else fails, look at the instructions."

Instructions for governments, at least in this country, are contained in documents called constitutions. The government of the United States has one. The government of the State of Alaska has one.

There is nothing in the Constitution of the United States that gives the U.S. Government the authority to govern fish and game resources of the individual states<sup>1</sup>. Instead, Article X of the United States Constitution states, clearly, that:

**"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people."**

From the United States Constitution.

It would appear, therefore, that a simple reading of the "instructions" established for operating the U.S. Government would indicate that the U.S. Government should not be interfering with any state's fish and game resources. If there are no powers delegated to the United States Government by the Constitution to govern fish and game resources, Article X of the U.S. Constitution provides that such powers are reserved to the individual states or the people.

Alaska also has a Constitution. Alaska's Constitution was adopted by the Alaskan Constitutional Convention on 5 February 1956, it was ratified by the people of Alaska on 24 April 1956, and it was sent to the President of the United States for submission to the

---

<sup>1</sup>Some commentators and courts have cited Article IV, Section 3, of the U.S. Constitution for this authority. That Section reads: "The Congress shall have power to dispose of and make all needed rules and regulations respecting the territory and other property belonging to the United States...". Even if such interpretation of this section is correct, however, the actions of Congress during the statehood proceedings clearly demonstrate that Congress, through the Statehood Compact, contractually delegated any such authority to the State of Alaska. Congress cannot, therefore, unilaterally withdraw from that contract.

Congress. Congress ratified Alaska's Constitution and Alaska was formally proclaimed a State on 3 January 1959.

During the period between the adoption of our Constitution by Alaskans, and the proclamation of statehood, Congress passed the Statehood Compact, which was approved by the citizens of Alaska. That Statehood Compact said the State of Alaska was to manage the vacant, unappropriated, and unreserved lands belonging to the Federal Government in Alaska, for which we were to receive 90% of the potential revenue from those lands (the so-called "90-10 split")<sup>2</sup>.

"On 18 December 1971, the Congress of the United States, the President, and the State of Alaska, including a wide representation of Alaska Natives, came to an agreement called the Alaska Native Claims Settlement Act (ANCSA) (Public Law 92-203). That agreement read, in part:

**'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 or fishing rights that may exist, are hereby extinguished.'**

From the Alaska Native Claims Settlement Act

In exchange for such waiver of any claims for "aboriginal title" and "aboriginal hunting or fishing rights" the Alaska Native peoples received \$962,000,000<sup>3</sup> and 44,000,000<sup>4</sup> acres of land (15 % of the land base of the state)."<sup>5</sup>

"Section 2 of ANCSA made it very clear that this settlement settled all claims 'with certainty' and 'without establishing any permanent racially defined rights or privileges'."<sup>6</sup>

---

<sup>2</sup>"One of the most central, most emotional and most critical issues that brought this vast Federal Territory to choose Statehood was Alaskan insistence that Statehood result in the transfer of the management of fish and wildlife on all lands and waters from Federal agencies to the State." From APSA Briefing Paper, 25 June 1990, by Ric Davidge.

<sup>3</sup>Five hundred million dollars (\$500,000,000) of this settlement figure came from the State of Alaska.

<sup>4</sup>This figure of 44,000,000 acres did not include the total amount of land authorized under individual allotments (possibly over 1.5 million acres). Native Corporations, established by ANCSA, selected lands for their economic, cultural, and subsistence resources that took precedence over previously authorized State land selections.

<sup>5</sup>APSA Briefing Paper, supra.

<sup>6</sup>APSA Briefing Paper, supra.

When the Statehood Compact was passed and Alaska was made the 49th State, among other provisions of Alaska's Constitution, Congress ratified these

**"ARTICLE I: This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry, that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.**

**ARTICLE 1, SECTION 15: ...No law making any irrevocable grant of special privileges or immunities shall be passed...."**

**ARTICLE VIII, SECTION 3: Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use"**

**ARTICLE VIII, SECTION 4: Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses".<sup>7</sup>**

**ARTICLE VIII, SECTION 17: Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.**

From the Constitution of the State of Alaska.

When Congress passed the Alaska National Interest Lands Conservation Act (ANILCA)<sup>8</sup> in 1980, it included a subsistence priority on federal lands and allowed subsistence hunting on national interests lands. ANILCA requires that subsistence rights be given only to "rural" residents. Section VIII of ANILCA mandates federal management of fish and wildlife resources on federal lands in Alaska if Alaska's subsistence law does not conform with the provisions of ANILCA.

Today we see a massive and organized campaign against hunters and hunting.

---

<sup>7</sup>Under Alaska's Constitution, there can be a preference for uses, but not a preference for users. Thus, under Alaska's Constitution, subsistence can have a preference over sport or commercial uses, but one subsistence user cannot have a preference over another subsistence user.

<sup>8</sup>16 U.S.C.A., Sections 3101-3233.

Preservationist groups, so called "Friends of Animals", "People for the Ethical Treatment of Animals" (PETA), various humane societies, anti-gun groups, and others know that the best way to end hunting is to first divide the hunters. We need only look at what happened at St. Paul Island in the Pribilofs to see the adverse effects that result when hunting rights once enjoyed by everyone are eroded into a special privilege for the very few. As a result of the passage of the Marine Mammal Protection Act, only Native people could take marine mammals. The hunting of polar bear, whale, walrus, seal, sea lion, and fur seals ended for all non-Natives<sup>9</sup>. With only a small group of hunters (Natives) who still possessed rights to take fur seals, it was very easy for the government to end the taking of fur seals in the Pribilofs. When only the Natives were legally able to take these animals, there were no large pressure groups of hunters left to protest the government's shut-down of the fur seal industry on St. Paul. By obtaining special rights, rights that others did not possess, Native people, and especially those on St. Paul became the real losers<sup>10</sup>. When they had to stand alone, without the support of other hunters, their right to harvest fur seal in the Pribilofs was easily ended<sup>11</sup>.

We now see more and more hunting areas closed to any but Native or subsistence hunters. We see sport and trophy hunters vilified in the press<sup>12</sup>, we see the direction of the Alaska Department of Fish & Game changed away from supporting hunting, we see management of our fish and wildlife resources being mandated by initiative and referendum, we see commercial fishermen pitted against sport and subsistence fishermen, we aren't even cutting spruce bark beetle infested trees because some "crazies" object, and we see "crackpot" schemes like sterilization of wolves being seriously considered by state officials.

"Divide and conquer" is proving to be an effective technique here in Alaska and elsewhere. Unless we can get Alaskans together in supporting our Constitution, we will remain divided, and one by one, we will lose the right to pursue both the outdoor activities that make life here so special and even our ability to earn a livelihood.

In passing Section VIII of ANILCA, Congress reversed itself from the position it

---

<sup>9</sup>The State of Alaska did little or nothing to oppose the Marine Mammal Protection Act.

<sup>10</sup>With the passage of the Marine Mammal Protection Act, the Natives also lost the potential of establishing a thriving guide industry for taking non-residents hunters out for polar bear and other Marine Mammals. With no one (other than Natives) able to hunt these animals, there were no "Outside" hunters who could legally hire Native guides to hunt these animals.

<sup>11</sup>The battle to end hunting continues unabated.

<sup>12</sup>Just last year, an archer who took a trophy moose, with an 80+ inch set of antlers, was highly criticized by some Alaskans who sent letters to the editor in the Anchorage Daily News. When the Make-A-Wish Foundation granted a young man's dying wish to hunt brown bear, it was threatened with a boycott and it, and the boy himself, received other threats.

took in approving Alaska's Constitution. In passing Section VIII of ANILCA, Congress violated the compact it had with the people of the State of Alaska!

Instead of challenging this abrogation of portions of the Statehood Compact by Congress, the Alaskan legislature and several governors attempted to comply with Section VIII's provisions. Despite many Alaskans' demands that the federal law be challenged, the State opted to "go along to get along" by enacting subsistence laws providing for a rural preference. As a result, several Alaskans (including a Native Alaskan who lived in an urban area) took the State to court. And in a decision rendered in 1989, the Alaska Supreme Court held that a rural preference for subsistence violated the Constitution of the State of Alaska.<sup>13</sup>

As stated, Section VIII of ANILCA provides for federal management of fish and game resources on federal lands if the State's laws regarding subsistence are not in compliance with the federal law. As a result of the McDowell decision, Governor Cowper, and now Governor Knowles, either sought to amend Alaska's Constitution or otherwise bring Alaska into compliance with ANILCA. They failed and continue to fail to realize, however, that even if they were able to bring Alaska's laws into compliance, there would still be federal management of fish and wildlife in Alaska. Section VIII of ANILCA authorizes any aggrieved party to seek federal court review of Alaska's subsistence laws and regulations. Thus, as long as Section VIII exists, the federal courts will exercise their authority to review any attempts by the State of Alaska to manage fish and wildlife resources. To obtain such federal review, all that is necessary is to allege that the State's actions interfere with subsistence rights.

The only way to resolve the mess that we are in regarding Federal management of fish and game in Alaska, the only way to resolve the conflicting laws regarding subsistence, is either get Congress to repeal the Section VIII provisions of ANILCA, or challenge Section VIII as violative of the Statehood Compact, taking the issue to the U.S. Supreme Court for a final determination. As stated, Section VIII of ANILCA may also be violative of ARTICLE X of the U.S. Constitution. It also would appear to be in violation of ARTICLE IV of the U.S. Constitution, which reads:

**"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state where they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the US, nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."**

From the United States Constitution

---

<sup>13</sup>McDowell v. State, 785 P.2d 1 (Alaska 1989)

These avenues of legal argument, and others, also need to be pursued,<sup>14</sup> and pursued aggressively by the State of Alaska. Unfortunately, our current Governor dismissed one lawsuit challenging the Federal takeover, and though the Legislature sought to carry on that lawsuit, it was unsuccessful.

---

We have a courageous Alaska Supreme Court which has been the number one protector of Alaska's constitutional guarantee regarding the allocation of fish and game resources. The legislature has also, but to a lesser extent, attempted to involve itself in that protection.

The problem with subsistence, right now, is the Governor! Until this State elects a Governor with more backbone than a banana, a Governor with an aggressive Attorney General who is willing to stand up for State's Rights<sup>15</sup>, we will continue to be ground under the heel of intrusive, outrageous, and overbearing federal regulations... and we can expect things to only get worse.

Once Alaskans can get fish and wildlife issues away from improper interference by the Federal Government, Alaskans of good will can work together to solve the subsistence issue on our own. Provisions for subsistence can be incorporated into management techniques so

---

<sup>14</sup>The so-called "Public Trust Doctrine" would also be a good issue to raise. Article VIII, Section 3, incorporates the "Public Trust Doctrine" into Alaska's Constitution. This doctrine holds that natural resources are reserved for common use. The provisions of SECTION VIII of ANILCA appear to violate that doctrine because they give one group of users priority over another.

There are also recent federal court decisions involving "unfunded mandates" and other issues that hold that a state cannot be forced to comply with a federal regulation. Again, the issues should be raised in litigation brought by the State of Alaska.

<sup>15</sup>The Governor and the Attorney General took oaths of office to "support and defend" the Constitution of Alaska. ART. XII, Section 5, of Alaska's Constitution states: "All public officers, before entering upon the duties of their offices, shall take and subscribe to the following oath or affirmation: 'I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as \_\_\_\_\_ to the best of my ability....'" One can only wonder how these men can reconcile their oath with their public statements calling for changes to our Constitution. How can the Governor and the Attorney General legitimately state that they are supporting and defending our Constitution while, instead of supporting and defending it, they actively seek to change it? It would appear to this author that their actions advocating a rural preference are violative of their oath of office.

that those Alaskans who rely on our fish and game resources can be accommodated.<sup>16</sup>

---

<sup>16</sup>In 1983, Swedish hunters harvested 232,000 moose. During the same year, Alaska harvested only 10,000 moose. Sweden is 1/3 the size of Alaska. Sweden attributes their great moose harvest, in part, to intensive forest management. Wisconsin had 800,000 deer hunters in the field during its annual 10 day deer hunt. During its season, Wisconsin had twice as many people carrying guns as served at any one time in Vietnam! There were 5 to 6 times the number of hunters we have in an entire year in an area one tenth the size of Alaska. Three hundred fifty thousand deer were taken during only ten days.

In Alaska, instead of managing our fish and game resources intensively, as mandated by Article VIII, Section 4, of our Alaskan constitution, we have a Governor who cancels wolf hunts, allows "referendums" on game management, and entertains crackpots who advocate wolf sterilization!

Subsistence needs can easily be accommodated through proper and intensive management and through regulations governing seasons and bag limits, methods and means.

9-27-97

Mr Chairman

I was in attendance at your public hearing on subsistence in Anchorage, but had to leave before I was called to testify. Therefore, I request that you accept my comments in writing.

I was born and raised in Alaska. Over the years, I have hunted, fished and trapped around the state. I participate in subsistence hunting and fishing programs, as well as deep sea fisheries. Fish and game that I gather is an integral part of my diet and yearly sustenance. I also have a garden, and pick a variety of berries each fall. I have a job in Anchorage in the private sector. I am opposed to any kind of a rural preference for access to fish or game.

Enclosed are a couple of pictures depicting modern day subsistence activity using customary and traditional means by rural residents. There is nothing customary, traditional, or rural about heavy equipment made by Caterpillar. The very essence of the activity engaged in in the photographs is urban and modern.

I fail to see how a rural resident has any different or preferential right to fish and game resources than I do. Just because someone lives in Bethel or Barrow or some other community doesn't mean that they have a greater right or need to fish or game resources. We are all Alaskans.

and should all have equal access to the resources. Any kind of a rural preference violates the equal access rights of all Alaskans. I fail to see how or why a person with a government job in Kipmuk for example should have a greater right to fish and game than an unemployed resident of Palmer. If anything, subsistence priority should be usage based, not residence based. However, the fair thing is to have equal access for all.

The real problem with the subsistence issue rests with ANILCA and the federal government.

ANILCA must be amended and our Congressional delegation must be pressured to eliminate any rural or subsistence preference from ANILCA. The Congressional delegation have no assurance that any other amendments to ANILCA will work either. What is needed is an honest attempt and commitment to attempt to amend ANILCA from our Congressmen.

I do not understand why the state has not pursued a lawsuit challenging the legal authority of the federal government to oversee a state resource. Much of the subsistence issue has been shaped by state and federal courts. There is no provision or agreement that if the state Constitution is amended, the legal challenges will cease. Attempts to amend the Constitution or ANILCA may be misplaced in light of the role the courts have played on this issue.

There is currently pending before the US Supreme Court a case on the issue of Indian country in Alaska. It seems that Alaskans may be undermining the strength of a Supreme Court opinion if action is taken to amend the Constitution while the court decision is pending. If the state prevails, the state may be in a strong position to amend AMILCA. Why send a message to the Supreme Court of a potential weakening in the state's position by attempting to amend the Constitution.

In closing, I wish to point out that people throughout the state use the same modern methods and means to take fish and game. In times of shortage for fish and game, Alaskan residents do one of two things: they go to work to buy food or they go on government aid. No one starves in this day and age, because no one truly subsists in Alaska anymore. What we are talking about is rural and urban Alaskans who like to hunt and fish. Methods, means and needs are all the same. My activities are as customary and traditional as those of any villager. There is no basis for a rural preference based on need or tradition. Alaskans should all have equal access to the fish and game resources. I remain opposed to any rural preference for subsistence.

Thank you for considering my testimony

David Pease

345-6322

September 25, 1997

Mark W. Gordon  
HC01 6131 AB  
Palmer, AK 99645

RECEIVED

SEP 27 1997

File #.....

Senate Resources Committee  
P.O. Box 670190  
Chugiak, AK 99567

Ladies and Gentlemen:

When I first heard of this subsistence problem at least a dozen years ago, like most Alaskans, I felt that there should be a dominant patent to harvest fish and wildlife ensured to the appropriate wilderness entities. I no longer feel this way.

All these years of debate have exposed both the good will and the selfishness of the participants of all sides of this issue.

For example, at a recent subsistence celebration event promoted by native groups a doctrine was released to the public. It espoused the belief that subsistence was primarily native based, not rural based. Urban natives should enjoy the same subsistence priority that rural natives should. Then, amazingly, the last point stated that subsistence is a basic human right.

I failed to perceive any inkling that the author may have considered the possibility that I and other non-natives might be human too.

I am of creole cajun descent. Both sides of my family went to California during the Depression/WWII era. My father's side came from a subsistence lifestyle in the bayou:

I was born in Los Angeles. When I was young we moved to a growing suburb in Orange County, escaping city life for a newer, safer environment. But we were just the first. Waves of social and cultural refugees followed us to Orange County. I hated it. When I graduated in 1974 at the age of seventeen I successfully urged my parents to sign a consent form so I could enlist in the Army with a guarantee of station in Alaska. Within two years I had met and married a local girl of the Matanuska Valley. I have rarely eaten beef or purchased poultry or fish since then. We eat our own homegrown

greens and vegetables along with harvested moose, caribou, venison, salmon, halibut, clams, trout, berries, and homegrown apples. —

But look at the Valley now. Again I was just among the earlier social or cultural refugees. I have been followed. I am not happy with this "progress".

So this population growth I did not want justifies giving someone else "more rights" than me on public lands? That land is no more theirs than mine or the taxpayers in Gary, Indiana.

And the basic truth demonstrated by my life experience?: Like my parents before me and the refugees who followed me, we are but grains of sand on the beach. They will keep coming. You cannot stop them.

If someone negates my subsistence lifestyle because I live in Palmer, and guarantees someone else's because they live in the Bush, I will move to the Bush.

I bet I will just be among the first. I will be followed.

It's interesting how forbearing our federal delegation was after federal authorities stole game management authority over federal lands a few years ago. They insisted that Alaskans needed to reach consensus over a solution. Their patience seemed to run out quick when the feds were set to steal authority over fisheries. There are more big-dollar entities involved with fisheries.

As a personal use/subsistence fisherman, I have been completely disgusted with state management of fisheries. Federal management won't be any better, but it can't get worse (can it?).

Frankly, I don't fear federal management. Their subsistence priority law will not stand constitutional challenge any better than state subsistence law withstood state constitutional challenge. Proponents of constitutional amendment betray their fear of U.S. Supreme Court challenge.

And, further, since so few remain content with federal management of anything, what goes around will be very certain to come back around, anyway. As ridiculous as AOC official Rod Arno's suggestion of succession sounds to many, we should all be concerned that it sounds like a just and inevitable solution to the subsistence issue as well as many other problems.

If the feds want more rope, give it to them. We can marvel at the creative noose the entangle themselves with.

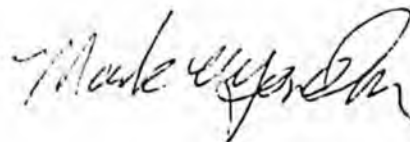
The disaster regarding this devil-may-care approach is the "Balkinization" of our people. Resentment and hatred will grow. This is what central planning has achieved for all the peoples of the world.

Leave the state constitution alone. Congress itself approved it, along with its common use clause, in 1959 with the Alaska Statehood Act.

Although I believe the whole intent and black-letter of ANILCA is illegitimate, the subsistence clause is simply and clearly a violation of the spirit of equal access guaranteed by the Fourteenth Amendment of the U.S. Constitution. It is also an illegal affront to the rights of states guaranteed by the Tenth Amendment of the U.S. Constitution.

It should not and will not stand.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark E. Matheson".

*GT*   
**Carol Jensen**  
4800 East 112th Avenue  
Anchorage, AK 99516-1612  
(907) 346-3321

September 25, 1997

State of Alaska  
House Resources Committee  
✓ Senate Resources Committee

Committee Members:

RE: SUBSISTENCE PREFERENCE

I am not able to testify at the public hearings, so I am sending this letter as written testimony.

I have lived in Anchorage since 1973 and am an avid follower of political issues. Many of you have received my letters and POM's over the years on a variety of issues. I have file folders full of newspaper articles, letters to the editor and other information on subsistence, the state and federal hunting proposals and adopted regulations, seasons, bag limits, etc. as well as government financial aid that goes to Natives and villages. Following are my views and opinions:

1. I oppose a Native or location-based preference. I am opposed to the task force's recommended amendment. The word "may" doesn't fool anyone. You could just as well say "will". I agree with Mr. Mallott on that point.
2. Many of our wildlife species in many parts of the state are dwindling at a fast pace due to overhunting, weather conditions, disease, natural cycles, migration, habitat deterioration and removal of habitat by man's encroachment. The Federal Subsistence Board and Board of Game have been very liberal in granting rural residents and Natives hunting and fishing seasons and bag limits. If anything, I notice the Federal board is more liberal than the State, which is probably why some of the Natives would be happy with Federal control. However, we need to keep in mind the fact of our limited wildlife resources and what impact a location-based or Native preference (with such strong influence by Native committees) will have on the wildlife.
3. I believe, contrary to what our Congressional delegation is saying, that we should try either through the courts or Congress, to change the preference clause in ANILCA. The Natives gave up their traditional/customary use in exchange for millions of acres of land and money. If they want to go back on that agreement, then they must give back the land and money. The U. S. Constitution, our state constitution and the Bill of Rights specifically prohibit racial discrimination and guarantee equal rights to everyone. Native preference should be easy to fight on a legal basis.

4. Any type of allocation program needs to take into consideration other food sources available to specific locations. Race should not be a factor, nor should place of residency. Natives would ban (as they do now) non-Natives from hunting or fishing on their lands. If you tie a preference to residency, then you run in to the headaches of designation. You remember the uproar over designating the Kenai Peninsula as "rural" or the Mat Valley for subsistence purposes. Location based preference would also extend to non-Natives in that area, which would upset the Natives who feel they, as a race, should be the only ones to get the preference. The question comes up as to boundaries for hunting/fishing in an area designated for subsistence. Would these residents qualify to hunt under subsistence bag limits and seasons throughout the state? If the caribou or moose population in their immediate vicinity plummet, would they still be allowed to kill the "last one"?

5. I agree with the people who have stated that hunting and fishing is not a "right" but a privilege. Many Natives do not hunt or fish using "traditional" methods. They use snowmachines, airplanes and high powered guns with scopes. They are capable of doing a lot of damage to wildlife and cases of wanton waste by so-called subsistence hunters and fishermen are not scarce. I am firmly opposed to using subsistence as a defense for illegal hunting or fishing. There is NO defense for that. How can anyone justify a hunting or fishing subsistence preference for someone of Native heritage, living in Anchorage and earning \$50,000 or more a year? That is another reason you can't tie it to race. Natives would demand unlimited hunting and fishing rights to the exclusion on non-natives.

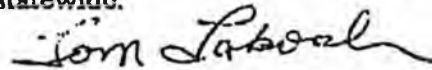
6. Because of ANILCA and ANCSA, Alaskan Native tribes are not on the same level or have the same situation as tribes in the Lower 48. They did not have land taken away from them. They RECEIVED an enormous amount of land and money and they have developed much of that land into very profitable enterprises. The state or Federal government doesn't "owe" them anything. The governments certainly should not be going against the words and intent of its own establishment documents which guaranteed equal treatment and access for ALL.

Thank you,

  
Carol Jensen

P-O-M To The House and Senate Natural Resources Committees 9/29/97

The ruling of the Honorable Dana Fabe in the Kenitza Case, finding that subsistence is an inherently local activity, is your only hope of reconciling the federal rural subsistence priority with our constitutional provision of common use, Article VIII Section 3. Please require allocation for a local subsistence priority statewide.



Tom Lakosh  
P.O. Box 100648  
Anchorage, Ak. 99510  
Phone/Fax: (907) 338-1606

7/21/97

**SUBSISTENCE**  
**"Local Preference"**  
Art Mathias

Alaskans have been arguing over subsistence for far too many years. It's time to put the issue and the politics that drive it behind us -- to work together to solve the issue and to do what is best for all Alaskans. There is a solution that will work for all of us. But before we talk about solutions, it is important we take a brief look at the history of the issue in light of what is happening currently.

Alaska's Constitution was adopted in 1956, with sections that declare that our fish and game resources are "reserved to the people for common use" and that all persons are equal and entitled to equal rights and protections. Congress and the citizens of Alaska subsequently passed the Statehood Compact, which remains in effect today. It is a legal "contract" outlining the responsibilities of our state and federal governments. It states that the State of Alaska is to manage the vacant, unappropriated, and unreserved lands belonging to the Federal Government in Alaska, for which we are to receive 90% of the potential revenue from those lands (the so called "90-10 split").

On December 18, 1971, Congress, and the State of Alaska, including a large representation of Alaska Natives, came to an agreement known as the Alaska Native Claims Settlement Act (ANCSA). As settlement for any claims of "aboriginal title" and "aboriginal hunting or fishing rights" the Alaska Native peoples received \$962 million and 44 million acres of land. Section 2 of ANCSA made it very clear that this measure settled all claims "with certainty" and "without establishing any permanent racially defined rights or privileges."

After reading all these documents, a rational person could rightly assume the issue settled. Article X of the US Constitution clearly provides that the federal government may not interfere with any state's fish and game resources as such powers are reserved to the individual states, unless specifically granted to the federal government. The Alaska Constitution and our Statehood Compact clearly state that the resources are to be shared by all Alaskans. In addition, ANCSA was supposed to settle all aboriginal claims.

What happened?

In 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA). They included a subsistence priority on federal lands and declared that subsistence rights be given only to "rural" residents. Section VIII of ANILCA also requires federal takeover of fish and wildlife resources on federal lands in Alaska if Alaska's subsistence law does not meet the provisions of ANILCA.

Amazingly, by passing Section VIII of ANILCA, Congress reversed itself from the position it took in approving Alaska's Constitution, our Statehood Compact, and ANCSA. Congress violated our legal contract!

Instead of immediately challenging this violation, the Alaska Legislature and several governors since ANILCA was passed have attempted to comply with Section VIII's provisions by enacting subsistence laws providing for a rural preference. As a result, several Alaskans took the State to court. In the 1989 McDowell Decision, the Alaska Supreme Court correctly held that a rural preference for subsistence violates Alaska's Constitution.

So much for the legal history! Now the question is: "Where do we go from here?"

There are really only two ways for Alaskans to maintain management of fish and game, and to resolve the conflicting laws regarding subsistence. We must either get Congress to repeal or amend the Section VIII provisions of ANILCA, or remove its effect by successfully challenging it at the US Supreme Court level as a violation of the Statehood Compact.

If Section VIII of ANILCA remains in effect, anybody claiming interference with subsistence rights may seek federal court review of Alaska's subsistence laws. As long as it exists, Alaska will be subject to federal control in managing its fish and game resources.

The stumbling block introduced by ANILCA is the requirement for "rural preference" and the definition of "rural" and "rural preference." In our age of air travel "rural" preference does not protect the resource, or provide for the needs of the subsistence user. What if a rural area is experiencing a shortage of fish, and residents of a different "rural" area want to fish in the area of a shortage? Should Dillingham residents be allowed to fish in Naknek if there is a shortage in Naknek? The answer is "NO," but under the "rural preference" system this is legal. The real issue is to protect the resource in times of shortage and to provide for subsistence needs.

I believe a better solution is "Local Preference," a system of backyard, neighborhood, or traditional hunting and fishing areas in times of shortage. The neighborhood or traditional hunting and fishing areas could be current game management units or a combination of them. If the Alaska Department of Fish and Game were to declare a shortage in an area(s), it would be closed to everyone except those who live there. There are 26 game management units in Alaska and each of these has an advisory council that could also serve as the local subsistence board. I propose that these advisory boards be given a true voice in the management of the local fish and game and that the budget for the department of fish and game be increased to provide for the best possible scientific management so that we do not have shortages.

"Local Preference" will protect the resource and provide for the subsistence needs of the local resident, and apply to all Alaskans equally. It would also give the local resident a bigger voice and more control over their local area.

Frankly, no one wants to travel to an area to hunt or fish if the resource is limited. No one wants to take food out of the mouths of the local residents who need it to feed their families. I believe that if we can get past the term "rural" we can find a solution that will work for all Alaskans.

We must solve our own problems. The answer is not found in caving in to the federal government or in amending our constitution. We must amend ANILCA to provide for "Local Preference" in a time of shortage of the resource. If Alaskans can agree on a solution, I believe the feds will comply with our wishes.

**from the desk of**

DR. KENNETH J. MEARS, D.D.S., M.S.D.  
1941 WICKERSHAM DR. • ANCHORAGE, AK 99507

TO SEN. RICK HALFORD'S TASK FORCE  
Re "SUBSISTENCE"

DEAR SIR

THREE ELEMENTS ARE NOTED  
#1 FED. RULES BASED ON A SNEAKY  
STATE LAW (PASSED IN EARLY JUNE  
WITHOUT MAJORITY INPUT AND LATER  
RULED ILLEGAL BY OUR SUPREME CT.)

WHY OUR LIBERAL POLITICIANS HAVE  
SUPPORTED THIS APATHETIC AND DONE  
NOTHING TO CHANGE FED POLICY IS  
OPEN TO DEBATE & SHOULD BE ASKED!

#2 2/3 OF ALASKA RULED BY FED.  
GOVT AND RURAL CORPORATIONS!

#3 IN ORDER TO HAVE H. & F. FOR  
THE FORGOTTEN 80% AND ACHIEVE  
PARTIAL BALANCE WE SHOULD REALLY  
COUNTER THIS EXTORTION ATTEMPT BY  
ALLOWING A VOTE FOR URBAN  
PREFERENCE ON STATE LANDS. I HATE TO  
TELL MY KIDS TO SELL THEIR RODS & RIFLES  
BECAUSE WE GAVE UPON THEIR RIGHTS!

A. THANK YOU KINDLY  
KEN MEARS

Edwardson

September 25, 1997

State of Alaska  
1997 Subsistence Hearing  
Anchorage, Alaska

To Whom it May Concern:

I have attached six (6) exhibits. Exhibits One (1) and Two (2) are statements by Governor Hammond on August 20, 1977 for the Hearings of the Subcommittee on General Oversight and Alaska Lands wherein Hammond defines the parameters of "genocide."

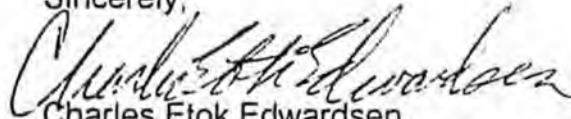
Exhibit Three (3) is a statement by Byron Mallott. Mallott had faithfully predicted that the present language in ANILCA was to be struck down as an unconstitutional exercise of power. See page fifty-three (53) of his statement on August 20, 1977.

Exhibit Four (4) is a statement from Secretary of Interior Udall wherein he makes a frail attempt to discuss the constitutional question without any depth outside of Article XII, Section 12 of the Constitution of the State of Alaska.

And, Exhibit Five (5) from the Inuit Liaison Office in Washington, D.C. outlines our view that the State of Alaska has made an attempt to diminish the constitutionally protected rights of the Eskimos, Indians, and Aleuts in their commerce as protected under Article I, Section 8 of the United States Constitution. Therein customary trade by Eskimos, Indians, and Aleuts is recognized as international trade and is not limited by a dollar cap. This is established for the United States by John Quincy Adams in the Treaty of 1824 between the United States and the Imperial Government of Russia.

Exhibit Six (6) is my analysis of the recent Alaska Inter-Tribal Council Subsistence Conference in Anchorage at the end of August 1997.

Sincerely,



Charles Etok Edwardson

Inupiat Community of the Arctic Slope  
c/o Box 211  
Barrow, Alaska 99723

Statement on Behalf of

THE STATE OF ALASKA

By

Governor Jay S. Hammond

For the Hearings of the

SUBCOMMITTEE ON GENERAL OVERSIGHT AND ALASKA LANDS  
OF THE HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

on

ALASKA'S LAND SELECTION ENTITLEMENT

Fairbanks, Alaska

August 20, 1977

## ALASKA'S LAND SELECTION ENTITLEMENT

The Alaska Statehood Act embodies a bargain struck by the people of the State of Alaska and the United States of America, a "compact" which may not be altered unilaterally by either party.

One of the most important elements of this compact is the grant to the State, under Section 6 of the Act, of 103,350,000 acres of federal land. This grant of land differed from the statehood land grants made by Congress to all previously-admitted states. Because of the special needs of the new state and the desire of Congress to ensure its economic survival, the Alaska Statehood Act grant was not an "in place" grant of specifically identified lands. Instead, recognizing the inadequacy of existing information about Alaska's land resources, Congress chose to give Alaska the right to select its statehood lands from the vast pool of available federal lands within the new state. Though the lands granted to Alaska were, for that reason, indeterminate as to their location when the grant was made, the Statehood Act grant operated, in legal terms, in praesenti. That is to say, equitable title would vest in the State as to specific lands upon the selection of those lands by the State's

filing of a selection application valid under Interior Department regulations. If land is available for selection\*, the filing of a selection application initiates a chain of events which, subject only to the identification of prior valid existing rights, vests equitable title in the State. No subsequent attempt at withdrawal, reservation, grant or other action by the federal government may intrude upon or take precedence over this chain of events once initiated.

In perfecting its rights to acquire these federal lands, rights which were the principal inducement to accepting the responsibilities attendant upon Statehood, the State has over the years selected approximately 70.5 million acres of federal land. Of this, 21.1 million acres have been patented to the State. The State regards itself as the equitable owner of the remaining 49.4 million acres of selected and tentatively approved land.

\* Legal questions as to the claimed unavailability of federal lands for state selection, based upon their alleged prior use and occupancy by Native Alaskans, were laid to rest by Section 4 of the Alaska Native Claims Settlement Act of 1971. All state land selections were validated by that section as against any claims that the lands to which those selections applied were unavailable for selection due to Native use and occupancy.

In the context of the pending congressional deliberation over Alaska "national interest" lands legislation, two important aspects of this Alaska Statehood Act land grant must be kept in mind. They were and are substantial elements of the bargain made in 1959.

First, the Alaska Statehood Act did not require the fledgling state to race to the Bureau of Land Management in 1959 with selection applications for the entire 103,350,000 acres of land. It provided instead for a 25-year period within which the State might complete its selection of the acreage granted to it by Congress. This term of years (1959 to 1984) was accepted by all parties to the statehood compact as a reasonable time frame within which the State might be expected to make rational land selection decisions, given indeterminacies as to state development policy, incidence of resources, and the like. It was never intended that the State would be forced by other federal legislative actions to make hasty selections in an accelerated time frame, nor did any party expect that the State's right to select during the statutory 25-year period might somehow be impaired by federal actions taken in response to later competing claims for the available federal lands.

Second, the value of Alaska's right to acquire its lands, by the very nature of that right, depends substantially upon the size and diversity of the pool of available federal lands from which Alaska's selections may be made. In the eyes of the Congress, and in the eyes of the people who voted for Statehood, "selection" clearly meant choice among reasonable alternatives,

Subsequent to the attainment of Statehood in 1959, a series of federal actions have placed the State in a bind, a bind which has become progressively more serious, and one which was not contemplated by the authors of the Statehood Act nor by the Alaskan citizens who voted to accept Statehood under the terms of that act. The bind has arisen from the fact that other, competing demands upon available lands -- principally, the Native land claims settlement and the administrative actions in aid of so-called "national interest" land legislation -- have effectively reduced the size of the pool from which the State may select its statehood land grant. This reduction of the pool has been so rapid and so substantial that it threatens to frustrate Alaska's legitimate expectations that it could use its entire 25-year selection period in order to select Statehood Act lands from a pool of federal lands of sufficient size and composition to offer meaningful choices among reasonable alternatives.

In the course of this gradual erosion of the Statehood Act grant, the State of Alaska has made various major concessions to the United States in response to changing social needs. Indeed, it has voluntarily subordinated its Statehood Act land rights in favor of the interests of other constituencies, as an act of comity and cooperation under circumstances in which Congress might not constitutionally compel it to do so. Some of the more conspicuous events in this seemingly inexorable erosion of Alaska's rights are well known to all who follow Alaska land issues.

First came the Secretarial land freeze and "super freeze" orders of the 1960's. On the heels of the land freeze came the Alaska Native Claims Settlement Act. This generally laudable act entailed two substantial sacrifices on the State's part. It not only reduced the pool of lands available for state selections by granting the Native corporations priority rights to select approximately 40 million acres of the best resource-rich lands from that pool; it also included a granting-back to the United States for reconveyance to the Native corporations approximately 2,735,000 acres of very valuable lands already tentatively approved to or selected by the State in key locations.

This subordination of the State's land grant rights in order to settle Native claims had another aspect, Section 17(d)(2) of the Settlement Act. By inclusion of that provision in the Native Claims Settlement Act, Alaska was faced in essence with an extension of the earlier land freeze for another five years with respect to up to 80 million acres of land, over and above the vast quantities that were to be set aside for Native corporations selections. The State tolerated this further land freeze even though it was plainly in derogation of state land selection rights. But it did so only upon the terms set forth in Section 17(d)(2) itself -- that is, provided that the pool of available lands for state selection would be reduced by no more than 80 million acres under Section 17(d)(2), and provided that the 80 million acres would not remain frozen beyond December 15, 1978 except insofar as they might be included in the federal "national interest lands" legislation contemplated by that section.

The Secretary's March 1974 public land order, the so called "over-riding Section 17(d)(1) withdrawal," added insult to injury. All remaining federal lands were set aside, including a prohibition against state selection, pending classification under a new system which has, even to

this day, never been implemented. The dregs remaining in the federal land pool for available state selections (after that pool has been severely depleted by the Native corporations under the Settlement Act and further bled dry by the withdrawals and associated Secretarial actions under Section 17(d)(2)) were drained by this action early in 1974.

Alaska's entitlement under the Statehood Act to select 103,350,000 acres of land from a larger pool of federal lands over a 25-year period has thus been substantially impaired by each of the foregoing actions. In the 18 1/2 years since Statehood, Alaska has enjoyed only 10 years within which to freely select its entitlement. Congress, during its Claim Settlement Act deliberations, rejected the concept of free floating Native selections, specifically to allow Alaska's selection of its statehood entitlement to continue from lands not withdrawn for Native selections. However, Congress did not envision the tremendous over-selection of land by the Native corporations which has frustrated state selections, nor the absence 6 1/2 years after enactment of regulations to implement Section 17(d)(1) of the Act. With only 6 1/2 years left in which Alaska must complete its selections, there is nothing within sight which would lead Alaska to believe that the federal government will remove those obstacles to its land selections by 1984.

Certainly Alaska would not maintain that in the Statehood Act Congress committed the United States to preserve intact the entire pool of federal lands then available for state selection so that the State would have the opportunity to select any of those lands at any time in the course of its 25-year selection period. Neither could anyone maintain, at the opposite extreme, that the parties to the Alaska Statehood Compact expected that this pool of federal lands would be diminished during the 25-year selection period by other federal actions to the point where the State was left with no choice whatsoever as to the lands it would select. Everyone would agree that Congress had in mind some less drastic scenario. It clearly anticipated that the State would enjoy the benefit of its bargain -- an uninterrupted 25-year selection period during which time the pool of available federal lands from which state selections were to be made would remain sufficient in size and composition so that it would present a meaningful opportunity for choice by the State.

in  
after  
of the  
action

to

in  
by 10  
Congress,  
the  
to

;) (1)

must  
high

84.

STATEMENT OF STATE REPRESENTATIVE STEVE COWPER  
BEFORE THE  
SUBCOMMITTEE ON OVERSIGHT AND ALASKA LANDS  
OF THE  
HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS  
ON  
ALASKA NATIONAL INTEREST LANDS  
AUGUST 20, 1977

Mr. Chairman and members of the Subcommittee, my name is Steve Cowper, Suite D Nerland Building, Fairbanks, Alaska 99701. I am privileged to represent Fairbanks and North Pole in the Alaska House of Representatives, where I serve as Chairman of the Finance Committee. I am also Chairman of the Steering Committee for Alaska Lands, a statutory committee funded by the State of Alaska consisting of three state Senators; three state Representatives; one member of CMAL who is, incidentally, a mining engineer; the Alaska representative of the National Audubon Society; a member of the Alaska native community; the state Commissioner of Natural Resources; and the State Co-Chairman of the Joint Federal-State Land Use Planning Commission. The Committee's purpose is to reconcile the sometimes conflicting positions advanced by groups within Alaska on the matter of National Interest Lands, and, once that formidable task has been performed, to do everything possible to see that these views are adopted by the Congress.

As the Steering Committee is only a month old, no official positions have been adopted. Thus I address you as an elected official from this district of Alaska.

Initially, I would like to comment on a subtle undercurrent which has colored some of the testimony elicited by this subcommittee and the Subcommittee on Fisheries and Wildlife Conservation and the Environment. I am referring to the notion that the State Legislature is made up of a working majority of mad developers who do the bidding of big business, and thus any land in State or private ownership will be ravaged as soon as possible for a fast buck.

For the past three years the Alaska Legislature has been subjected to the most virulent attacks imaginable from some special interests who would like to convert the public's land and resources into fast profits. Their views have been trumpeted by sympathetic media barons. Most of us who want to proceed carefully with the development of our resources, leaving a valuable legacy for the generations to come, have been called "no-growthers", "anti-business", and even "socialists" by those who should know better.

The facts are quite clear. The Alaska Legislature has established more parks and refuges in the last three years than in any similar period in the state's history. One major park, Wood River-Tikchik, was opposed by the residents of the area, mostly Alaska natives, and I am confident that those differences will be resolved and that the bill will pass.

The Legislature repurchased, under the threat of condemnation, oil leases in Kachemak Bay because drilling activities might threaten marine life in the area. We passed one of the

toughest tanker bills in the country. It was the Alaska Legislature which took the lead in the investigation of alleged cost overruns in the construction of the Trans-Alaska Pipeline. And as to the state's largest landholders, the native corporations, the record shows that most of their selections were made for the very purpose of assuring that the land will remain in its present state: productive of wildlife and conducive to the traditional lifestyles of people who have lived in harmony with this land for thousands of years.

Mr. Chairman, Alaska's lands and waters will maintain their essential integrity, with or without federal protective legislation. We like them that way.

Having addressed that point, I should like next to speak to what I believe is a flaw in the philosophy of the present version of HR 39.

The United States of America, through the federal government, has an entirely legitimate interest in the Alaska lands to which it holds title. The most logical thing to do with public land anywhere is to determine the highest and best use in terms of the national interest. In order to determine the highest and best use, one must first define the alternatives. Some areas so clearly deserve to be protected that they should be immediately placed in some appropriate status. I don't think many Alaskans would tolerate any abuse of Mount

aska  
at  
ands  
tain  
tive  
to  
e  
l  
aska  
do  
best  
nine  
na-  
t  
tus.  
unt

McKinley, or of Lake Clark, or of the valuable archaeological sites at Cape Krusenstern, no matter what riches may lie under the ground there.

But as to much of the land which is classified as wilderness in HR 39, our information is pretty slender. By classifying these lands without knowing what they contain, you do keep them in their present state indefinitely. If no one knows whether there's copper under there, certainly there will be only minimal pressure to mine it.

That reasoning assumes that if someone knows the copper is there, one of these days a future government will allow the copper to be mined, and that when it does, the place will look like Ducktown, Tennessee, where the effluent from a copper smelter has created a moonscape extending into three different states in which nothing can live but ever-adaptable man.

Mr. Chairman, that is visiting the sins of the fathers upon the sons. That is saying, in effect, we have no faith in the America of the future. Under proper management and using the technology of the future, I believe it will be possible to obtain necessary minerals from the land without despoiling the surface. I believe that sooner than anyone here realizes, it will be possible to transport minerals through pipelines from one end of this nation to the other without leaving so much as a trace on the topsoil.

Perhaps, through the proper use of governmental restraints, we should prevent development in some areas until technology of this sort is available. But I do not believe it is in the best interests of this country to foreclose any possibility of alternative uses on these lands because we remain haunted by the visions of past abuses. In short, Mr. Chairman, I recommend that this legislation be amended to provide for a thorough resource inventory in order to allow future generations to exercise the options that may be available to them.

HR 39 provides for subsistence use of fish and wildlife on the national interest lands classified in the bill. Other institutions, such as the Joint Land Use Planning Commission, have stressed the desirability of cooperative wildlife management.

I believe that these are simply two aspects of the same problem: that is, the setting of priorities for the consumptive use of fish and wildlife resources. Assuming that subsistence use is a Congressional priority, I would suggest that the State be divided into management areas which correspond with the realities of range: for instance, fish might be managed on the basis of a particular drainage or watershed, and migratory animals on the basis of their known range.

Within those areas, classes of users should be set in order of preference. First would come persons who live in the area or who have traditionally used the area for

food and necessities, based on economic need. Second on the order of priority would be persons who live in the management area whose traditional lifestyles include subsistence hunting or fishing, although they may be economically independent. This latter group might be allowed a smaller harvest than those who depend on the resource for their lives.

After these two classes of subsistence users would be commercial takers, which of course would apply almost exclusively to commercial fishermen, and then sport hunters and fishermen who live in the state of Alaska. If there is enough left over, then out-of-state and foreign permits could be issued. State and federal rules should be the same, through identical statutory vehicles or through a duly authorized cooperative management agreement. I also believe that the Alaska Department of Fish and Game is the proper management authority for all lands in Alaska, working in close association with the U. S. Fish and Wildlife Service.

I expect to have some suggested language incorporating this concept drafted very soon and I will furnish the Subcommittee with it within a week or ten days.

One aspect of HR 39 which creates unnecessary friction between the federal government and the state is the provision revoking existing statehood selections where those selections fall within the boundaries of the lands classified under the bill. If adopted, the section in question

will generate much ill will here in Alaska, and it is also certain to lead to bitter and protracted litigation between parties who should be making every effort to cooperate in the management of the resources of Alaska. I believe that if the revocation provisions are stricken from the bill, substantially the same result may be reached through exchanges and management agreements.

One last matter which I should like to bring to the attention of the Subcommittee is probably important to only a few people in Alaska, but I happen to be one of them.

Proposed Section 202(a)(1) of HR 39 changes the designation of the Clarence Rhode National Wildlife Range to the Yukon Delta National Wildlife Range. Mr. Chairman, Clarence Rhode was a great Alaskan who disappeared in a light plane in the course of his duties with the U. S. Fish and Wildlife Service. He gave a great deal of himself to Alaska, and it <sup>is</sup> fitting and proper that he be honored by one of the largest wildlife refuges in the country. His daughter now lives in Washington, and his son, Jim Rhode, is an economist for the House Finance Committee and a prominent Alaskan in his own right. I ask that whatever the final configuration of the refuge, the name Clarence Rhode shall remain.

Thank you for coming to Fairbanks and for allowing the people of our town to testify on this important legislation.

Mr. SEIBERLING. My time has expired. Mr. Young wants to yield some time.

Mr. YOUNG. Before I yield the time, I would like to comment. People are coming up here because there is a special cut rate. Your comments about zoning by outsiders are true. Where are they when it is 70 below zero? I don't see many people up here other than Alaskans who want to undergo that hardship.

The zoning is taking place for the pretty months, nice months. I happen to think the winter months are pretty also. We are zoning for 3 months out of the year for a small group.

I think this is a real problem. You hit it on the head.

Mr. SEIBERLING. If the gentleman would yield, I would like to ask Mayor Gillam or Mr. Yonkers: Suppose gold were discovered at the very top of Mount McKinley, and it was feasible to mine it, you wouldn't advocate taking 300 feet off the top of Mount McKinley to get the gold, would you?

Mayor GILLAM. One nice thing about examples is sometimes they border in the realm of absurdity. Obviously there isn't gold at the top of Mount McKinley.

Mr. SEIBERLING. The point is, at some point we draw the line and say, this has more important value than the minerals. That is all. The only question is: Where do you draw the line?

Mayor GILLAM. Nature has drawn that line for us. They didn't put any gold there. [Applause.]

Mr. CARLSON. If gold were found on top of Mount McKinley, you can bet someone would try to figure out a way to get it out of there.

Mr. SEIBERLING. Thank you.

Mr. CARLSON. Even at \$147 an ounce. It might not be economically feasible.

Mr. SEIBERLING. It may not be today, I agree.

I want to thank you, Mr. Carlson, for constructive suggestions. Thank you.

Our next witness is Mr. Byron Mallott, after whom we will break for lunch.

#### STATEMENT OF BYRON MALLOTT

Mr. SEIBERLING. Mr. Mallott, I was delighted to be in your town, Yakutat, the other day. It was a magnificent day. We went around and looked at some of the salmon spawning areas.

Mr. MALLOTT. Thank you, Mr. Chairman.

Just a brief comment with respect to your example. From my front porch in Yakutat, I have a stupendous view of the second highest mountain in North America, Mount Logan, which reaches 19,000 feet. I wouldn't mind 300 feet taken off Mount McKinley, because I could have the view of the highest mountain in North America. [Laughter.]

Mr. Chairman, I will summarize my statement. I have submitted to you both my prepared statement—a legal brief that was done by AFN D-2 counsel, Stewart Udall—on the constitutional issues surrounding subsistence as well as nine pages of amendments to H.R. 39 on the subsistence issue and on the land bank.

Mr. Chairman, we have studied H.R. 39 with great care through the course of your public hearings in Alaska. Native regional and village

organizations and individuals have voiced their support or objections to various provisions of H.R. 39.

Today, on behalf of the Alaska Federation of Natives, I respectfully submit for your consideration several amendments which we feel are necessary for H.R. 39 to be responsive to the needs of the Native Alaskans. I would like to briefly discuss some of the major issues which our proposed amendments address.

No. 1. With respect to subsistence. Subsistence users should be those residents and their descendants who at the time of passage of ANCSA were using the resources of public lands for subsistence purposes, and subsistence use of fish and game and plant resources should be the priority use among all such uses on public lands.

No. 2. "Subsistence uses" should be defined to include those customary, traditional and regular uses made of renewable resources for food, shelter, fuel, clothing, tools, transportation and, for the production and selling of traditional articles of handicraft and clothing, methods of taking should allow those traditionally and presently employed.

No. 3. The Alaska Federation of Natives believes this legislation should confirm the subsistence rights of the Alaska Natives, not just to the D-2 lands, but, as Congress plainly intended when it wrote its conference report, to all Native subsistence uses on all Federal public lands.

Congress should protect the subsistence uses of other Alaska residents who regularly and customarily have utilized subsistence resources.

No. 5. The Alaska Federation of Natives is convinced the best and most workable subsistence system will be one which has a strong element of involvement by subsistence users. We also believe that it would be wise and logical for the initial subsistence zones to conform to the 12 regions previously organized by Congress in ANCSA.

No. 6. It is also vital that subsistence users in each of the zones serve on the boards, be they State regional fish and game board's or subsistence management boards which manage the subsistence programs.

And finally, we also have a strong conviction that if it is to succeed, any subsistence program must be keyed to the wise management and conservation of the renewable resources in each zone, which we address partly with our land bank proposal.

You are aware from previous rough drafts of legislation that we have given you that we have researched the possibility of Natives only subsistence approach.

Frankly, the major reason we have researched the Natives only subsistence system is that while our lawyers feel certain that Congress has the power to create a native subsistence system which will withstand any attack on constitutional grounds, they are concerned that if a broader subsistence system which includes nonnatives is established, it might be struck down as an unconstitutional exercise of power.

If the Congress feels it can protect our rights, constitutionally, by writing subsistence legislation which covers Native and nonnative users, which our language does, we will abide by the words of Congress on this issue.

Today, 5 years after the passage of the Claims Act, the need for decisive protection of subsistence options is even more evident.

The Department of the Interior has failed to take any action under four different Secretaries; and the steps taken by the State have been timid and inconclusive. Recently, a State superior court nullified State subsistence efforts by declaring them unconstitutional.

In order to enhance the quality and quantity of Alaska's resources, there will be created, by our amendments, the Alaska Native land bank program.

Under this program a Native corporation may place up to 90 percent of its land in the land bank at any one time. While land is banked it will not be available for development, and will be exempt from State and local property taxes, and it will not be subject to adverse possession.

In addition to protecting the subsistence resource base on Native-owned lands, the land bank program will help insure a well-planned pattern of resource development and protective management throughout Alaska.

I would like to emphasize that while the primary purpose of our proposed amendments is to protect the economic and cultural dependence of Native Alaskans upon subsistence, it is not our intent to curtail the legitimate subsistence activities of nonnatives, nor to limit sports hunting and fishing.

As long as fish and game resources are available for those dependent upon subsistence, we see no reason to restrict such other uses of fish and game. In fact, we anticipate that our proposed amendments will greatly assist in minimizing potential conflicts between various groups utilizing fish and wildlife resources.

Of equal importance to the Alaska Federation of Natives and Native people throughout Alaska is the protection of the economic development options of Alaska Native corporations. If the regional and village corporations are to survive and make significant economic contributions to the future of their Native shareholders, they must have the ability to develop the resources on and beneath their lands.

The Alaska Federation of Natives opposes any classification of national interest lands which would block the access needed to transport equipment, supplies and raw materials to and from Native lands.

This must be avoided. I urge your committee and other members of Congress to carefully consider the testimony of various Native corporations which address these issues.

It is our belief that very restrictive land management on some public lands should not place undue restraints on adjacent Native landowners to develop their resources. Native landowners should be as free as any private landowner to use their land as they wish.

AFN itself has not taken a position on specific land classifications and the number of acres which should be included in each. The Alaska Federation of Natives' board of directors has urged each regional corporation to make those recommendations to you as their regional interests may dictate. We hope that during the course of your hearings these recommendations have or will be made.

It is our conviction that Native regional corporations should not lose their right to select their lands because areas were withdrawn for D-2 classification by a former Secretary of the Interior.

We urge that where there are dual withdrawals, the selections of regional corporations be given preference over the D-2 status. The

specific, detailed testimony of regional corporations supporting their selection rights should be carefully considered.

We also feel it is appropriate and consistent with the intent of ANCSA that title be conveyed to Native-selected lands before vast areas of D-2 lands are classified as national interest lands. To this end we ask your assistance in expediting the conveyance of title to Native-selected lands.

I appreciate the time and effort this committee has taken in recently holding a public hearing in Washington regarding ANCSA land conveyance problems.

It is clear that the easement provisions of ANCSA have been abused to the serious disadvantage of Alaska Natives. Resolution of the easement problem is the overriding stumbling block to the prompt conveyance of the Native lands.

It is also clear that both the Federal and State governments have sufficient existing legal authority to obtain easements through the exercise of eminent domain and condemnation authority. Therefore, we propose that the public easement provisions of ANCSA be repealed in D-2 legislation.

In conclusion, I would like to express our appreciation for your efforts to travel throughout Alaska to hear the feelings and thoughts of the people. We will be glad to further discuss any aspects of our proposed amendments with members of your committee and staff.

I will submit to the committee staff, with your permission, a copy of our draft subsistence and land bank language and a copy of a paper prepared at my request by our D-2 counsel, Stewart Udall, on the constitutional issues affecting subsistence.

The amendments we offer at this time are our best efforts to date, but do not preclude further modifications, especially of the administrative language which, even to us, appears cumbersome and overly complicated.

The great import D-2 legislation has for all Alaskans and people throughout America is worthy of all the care and consideration you can give it. In your deliberations, we hope you will pay particularly close attention to the needs and desires of Native Alaskans who have lived with the lands and waters of Alaska for a long, long time, and who expect to be here far into the future.

Contrary to what I have heard from some of the testimony this morning about your presence in Alaska, your presence in Alaska leaves me somewhat reassured.

Thank you.

[Prepared statement of Mr. Mallott may be found in the appendix.]

The CHAIRMAN. I want to thank Mr. Mallott for a sensitive and sensible set of suggestions here. I looked through the amendments you proposed. There are things there that the subcommittee will want to look at carefully, and I know we will have a better bill because of the attention you have given it in your presentation here today.

If I had to list off a dozen major impressions I will leave Alaska with tomorrow, one of them would be the intense attachment of the Alaskan Native people to the land and the desperate importance to them of their subsistence way of life. There are not many places left on Earth where we still have the chance—I am a little pessimistic—

but we have a chance to give people who want to stay close to the land that opportunity.

In the Navajo, Hopi reservations in my State, there are the same set of conflicts and values that we see here. We have an obligation to the Natives of Alaska to give them that opportunity. I hope we can write a bill to do just that.

We have had a number of witnesses out in the villages who tell us what very large quantities of land it takes to provide the subsistence way of life. One individual estimated that to sustain a family on a subsistence basis in one of these remote areas requires 30,000 acres just for one family. You need immense expanses of land so that moose, bear, sea walrus, and other animals that provide the subsistence way of life will not be depleted. It seems to me in Alaska, as big as it is, it does not have enough acreage to go much beyond the kind of populations now which take part in the subsistence way of life. You indicate that in your testimony. You not only want the D-2 lands made available, but you hope other Federal lands which remain in the four systems and outside would be available.

Would you like to comment on the extent to which there is land and resources in Alaska to support the present number of Natives who might choose the subsistence way of life?

Mr. MALLOTT. There is no question that at the time we were working on the Native Claims Settlement Act that we recognized from the work we had done that even the 40 million acres that seemed to be shaping up at that time would not be sufficient with respect to overall subsistence use. And we made very strong arguments to include subsistence provisions within ANCSA in recognition of that concern.

We have again in recognition of that concern in our definition of "subsistence user" tried to limit it to those people involved with subsistence prior and at the time of passage of ANCSA. That is pretty much an arbitrary judgment.

Again, there is evidence, and we are concerned that the subsistence way of life does require huge acreage in order to ultimately survive.

The CHAIRMAN. I see trouble down the road here. All the people who want growth and development and the same old pattern continue. I notice in your statement the population of Alaska has doubled in 10 years. The number of fishing and hunting licenses have doubled in 10 years. I wonder what will happen if you redouble in the next 10, and redouble after that in the years following.

The caribou here, some people think it is a tenth of what it was a few years ago. Even in this land there are limits to activities of man that can be supported.

I thank you.

Mr. SEIBERLING. Thank you much.

Mr. Young?

Mr. YOUNG. Where does the figure double the population in 10 years occur?—325,000 was the last census figure, and 375,000 is the number now. That is not double. Should subsistence users be required to obtain a special permit like is mandated in H.R. 39?

Mr. MALLOTT. I do not think so. We have that type of registration program in the legislation that we have given to you here this morning. But upon our own reflection in the last week or so where we have

close to the  
re the same  
obligation to  
hope we can

who tell us  
subsistence  
family on a  
50,000 acres  
that moose,  
subsistence way  
big as it is,  
the kind of  
of life. You  
lands made  
in the four

ere is land  
Natives who

ere working  
on the work  
be shaping  
overall sub-  
include sub-  
concern.  
definition of  
involved with  
SA. That is

subsistence  
y survive.  
the people  
n continue.  
doubled in  
ve doubled  
the next 10,

at it was a  
ties of man

ation in 10  
5,000 is the  
be required

registration  
this morn-  
ere we have

tried to run out what the administrative process would entail, that thing kind of bothered us. We do intend to take another look at it.

Mr. YOUNG. I appreciate that. I think permits would be tremendously inoperative and totally restrictive, and cause a lot of problems. I believe that Alaskans are all one. I have real reservations about this bill. I do not agree with you that subsistence should be based on ethnic qualities at all. I think subsistence use should be recognized for those residing in the area and who take supplemental dietary need.

We can discuss that later. Subsistence users should be designated as those using renewable resources, et cetera.

Do you consider trapping subsistence use, or would that be excluded under your definition?

Mr. MALLOTT. Our feeling is that trapping seems to be an element of overall subsistence use. Whether or not you would define subsistence taking for trapping purposes where there is obviously a commercial involvement for other than the traditional handicrafts that you have included there, I am not sure that that would fit.

I guess my point would be that subsistence in most instances is incidental to trapping, and that the two are not mutually exclusive.

Mr. YOUNG. The chairman had a discussion the other day in Kotzebue that he did not quite support the concept of cash returns for trapping. That is why the majority of people, including myself, have trapped. Not for food or clothing, but for the cash return to purchase other things.

I think it has to be spelled out clearly that it is on the subsistence level. I can see the friend of the animal organization saying, "Wait a minute. He did not eat that wolverine. So he consequently cannot sell fur."

One other question: What do you think about the land bank, the Stevens, Hammond, Young proposal? We have a land bank provision. Have you seen that?

Mr. MALLOTT. Yes, sir. It is part of the cooperative management effort.

Mr. YOUNG. You are included on a volunteer basis into that bank?

Mr. MALLOTT. That is right.

Mr. YOUNG. Primarily to keep your land from being taxed as private lands?

Mr. MALLOTT. Our feeling is that management of those lands should be passive, as opposed to being active. And that use to which those lands in the bank could be put would be very minimal, and have to do with only nonconsumptive use, recreation, subsistence, so forth. But we will not want to be part of any system that involved active management.

Mr. YOUNG. I agree.

One other question: In your amendments, you never pose an access question from your lands to other lands or to a railhead or seaport. Under the act, it says "For your social and economic benefit."

Mr. MALLOTT. Right. My testimony does. I hope, state strongly that we are opposed to any classifications which would preclude transportation of Natives—who comprises that organization—are they all tions in that regard to the regional corporations who might be affected themselves to respond to.

Mr. YOUNG. You are in support of access for economic reasons?

Mr. MALLOTT. Yes.

Mr. YOUNG. My time has expired.

I thank you gentlemen for being here.

Mr. WON PAT. Thank you very much.

Mr. Mallott, I would like to ask this question: The Alaska Federation of Natives—who comprises that organization—are they all Natives, indigenous, non-Natives?

Mr. MALLOTT. It is a completely Native organization. The only members of the Alaska Federation of Natives are the regional corporations established under the Alaska Native Claims Settlement Act. At the present time 10 of the 12 regional corporations are members and owners of the Alaska Federation of Natives.

Mr. WON PAT. How many members do you have in the organization?

Mr. MALLOTT. Through the regional corporations AFN represents about 50,000 Alaska Natives.

Mr. WON PAT. Does that comprise all of the Natives of Alaska?

Mr. MALLOTT. It does not comprise all of the Natives of Alaska. It excludes the membership of two regional corporations. The 50,000 figure is in my judgment a conservative one. I can be more precise. The total population enrolled in the corporation is 80,000. The membership of AFN at this time is about 16,000. So we have a little more than 60,000 Native people represented through the 10 regional corporations in the Alaska Federation of Natives.

Mr. WON PAT. Your present population, according to the census, is 375,000. What percentage is the Native population?

Mr. MALLOTT. I also have trouble with math. In any event, 80,000 among 400,000 is between 20 and 25 percent. We are a major, significant portion of the Alaska population. There is no question about that.

Mr. WON PAT. Do you feel that the Natives' indigenous habitats are represented in your State government as well as in the Federal Government?

Mr. MALLOTT. Yes. I do not think there is any common belief among Alaska Natives that they are inadequately represented in a general sense. We have specific concerns as any other group has from time to time about how our interests may be responded to. But we view ourselves absolutely as members of Alaskan society, as are any other group of people.

Mr. WON PAT. You do not feel there is discrimination between Natives and non-Natives?

Mr. MALLOTT. Racial discrimination exists in any society. If we accept that as given, I think we are being realistic. But I do not think it is a major problem for us here in Alaska.

Mr. WON PAT. I am glad to know about that. I see no evidence of such discrimination. I do think it is important that the group you represent be given special privileges with respect to subsistence. They should be allowed to live the way they have been used to. Today the main thing is to provide these people the kind of living they have. Today they do not use the bow and arrow, the spear. So today, and I

sons?

understand this change has come about, but they have to adjust accordingly.

The Government comes in and provides a system. You said you have \$40 million. How much money are the poor people getting here in terms of the welfare system?

Mr. MALLOTT. I do not have any idea in terms of dollar terms or general terms. There is no question that if subsistence were wiped out, inadvertently or otherwise, within the next decade, that reliance on that kind of Government assistance would be tremendously increased.

Mr. WON PAT. I want to say that the people of Alaska are much better off than my own people. We have a small area.

My time has expired.

Mr. BYRON. I want to get specific with one thing, and I think it is a good point. You recommended certain amendments to H.R. 39, page 3. You recommend that the Congress should protect subsistence use of other Alaska residents and regularly and customarily utilize subsistence resources.

What about non-Natives? How do you feel about that specifically?

Mr. MALLOTT. Our definition, as I said earlier, does at this time exclude nonresidents and nonsubsistence users—residents who are not subsistence users at the time of the Alaska Native Claims Settlement Act.

Mr. BYRON. A nonresident from another State or country should not be able to hunt more than other Alaskans?

Mr. MALLOTT. Not able to hunt and fish as a subsistence user does. One of the things we must be careful of in this whole issue is that in our judgment, subsistence priority, the use of a strong subsistence definition would only come into play where you are faced with resource depletion. Without resource depletion, all users, nonresidents, residents, non-Natives, would have access to the land.

Mr. BYRON. I have not heard anybody say when an administrator says there is not enough game, who relies on subsistence or who does not.

Mr. MALLOTT. When faced with resource depletion, the subsistence resource users would be those people using subsistence prior to the time and at the time of the ANCSA period.

Mr. BYRON. You would assume whoever was writing the regulations could provide for the resident—the resident who hunts one moose a year to make up the deficiency in his food budget?

Mr. MALLOTT. He could take advantage of existing State fish and game laws and regulations.

Mr. BYRON. There has been a suggestion in this act that the State not be involved exclusively in setting hunting goals.

Mr. MALLOTT. Only for subsistence purposes. For all other use of the fish and game resources, the State would have total responsibility.

Mr. BYRON. You would recommend that?

Mr. MALLOTT. Yes.

Mr. BYRON. You would recommend we continue having the State manage all nonsubsistence hunting and fishing?

Mr. MALLOTT. Yes, sir.

Mr. SEIBERLING. Mr. Mallott, I have a couple of questions.

a Federa-  
they all

only mem-  
porations  
et. At the  
ibers and

o in the  
represents

aska?  
Alaska. It  
he 50,000  
ecise. The  
embership  
more than  
porations

census. is

ent, 80,000  
ior. signi-  
ion about

abitats are  
Federal

ief among  
a general  
m time to  
view our-  
any other

tween Na-

. If we ac-  
not think

vidence of  
group you  
nce. They  
Today the  
they have.  
lay, and I

My personal view is that the Congress has made some commitments to the Natives in Alaska which we must move on. That refers to not only protection of their land, but protection of their subsistence rights. In my view, and I have been thinking this through and discussing it with various people—at least my view at the present time—is we have a constitutional power to say if there is an insufficient amount of game to supply all the needs, that the Natives will get the first priority. I think we not only have the power to do that, but we have the legal as well as moral obligation to do that. I hope we will write that in this bill.

I will read with great interest your proposed amendments, and also the brief that Stewart Udall prepared for you.

Assuming that there is sufficient resources to take care of the subsistence rights of the Natives, then I think we have the problem of how to manage—how to handle the additional game. It seems to me that there it is a matter of defining “use.” I think we would give—we ought to work out some way of giving non-Native subsistence use a priority over recreational use.

In other words, non-Native residents who want to hunt and fish for subsistence use ought to have a priority over sport hunting.

I wonder if you care to comment on that? Does that sound right and feasible?

Mr. MALLOTT. In our research we were led to, in our language, the creation of a severability among Native and non-Native subsistence users, while attempting to make subsistence to the maximum degree possible a nonracial kind of use, simply recognizing the political realities over time, having lived here in Alaska.

What our legislation does say, however, is that if nonracial subsistence is struck down by court challenge, then there should be language in D-2 that protects Native subsistence use through Congress exercising its constitutional authority.

Mr. SEIBERLING. The more I think about it, the more I see no way to protect the Native subsistence rights except by putting it strictly on a racial basis, which I think we need to take care of the rest of the use by defining “subsistence use” versus “recreational use.”

I am going to try to dig into this further, and with the kind help you have given us, I think we can resolve it.

I want to comment on one other thing. I think your specific proposals are really the kind of input we need, and we appreciate them very much. Representative Anderson made the point that they had workshops—there should be workshops in all of the rural communities on H.R. 39, and then we would have discussions. Bethel did this, for example.

Really, the question is not whether every person in Alaska understands H.R. 39, but whether we in Congress understand the interest and concerns of Alaska citizens. That is why we spent all of the time we have listening to them in rural villages and areas. I think we have seen a section of Native and rural Alaskans and we do have a sufficient information base to act intelligently. If we do not, we want to cross-check with you and others to make sure we do.

Thank you very much.

Mr. MALLOTT. Thank you very much for the opportunity to be heard.

indigenous people, holding original title, remain in peaceful occupancy. The Inuit not only hold original title but our claim to sovereignty and peaceful coexistence and a continuous display of our authority over our lands is contrary to the claim of the United States which has based their claim on the titles of discovery, of recognition by treaty and of contiguity, i.e. titles relating to acts or circumstances leading to the acquisition of sovereignty; they have, however, not established the fact that sovereignty so acquired was effectively displayed at any time. We, the Inuit, concur with the precedent set in the United States vs. Netherlands, wherein the United States lost its claim to inchoate title. (Palmas Island Arbitration, 1928).

For want of jurisdiction and possession, the United States government maintained in its negotiations with Russia concerning territorial questions that dominion cannot be acquired but by a real occupation and possession, and an intention to establish it is by no means sufficient. The mere desire and political ambition of the Russians and the United States throughout the negotiations of the Treaty of Cession of 1867, cannot extinguish the principle of the continuous and peaceful display of the functions of occupation by the Natives of Alaska within the territory of Alaska and is a constituted element of territorial sovereignty which is a recognized principle of international law.

We, Inuit, must now apply through the written word against their desires as written in their Constitution of September 18, 1787. From the period of 1776 to 1787, it was known to many colonists that the issue of sovereignty was not resolved by their Declaration of Independence. The concept of "sovereignty" continued to be the most important theoretical question throughout the decades following the Declaration.

The creation of American sovereignty was done on a theoretical plane and drawn upon blank sheets of paper. The confederation the colonists formed, therefore, was not a sovereign government. John Adams reflects this weakness in his diary in 1787:

"Regarding the greatest Question yet agitated---the idea of sovereignty, that in all civil states it is necessary that there should some where be lodged a supreme power over the whole---this was the heart of the Anglo-american argument that led to the Revolution."

Almost every writer, British or American, who groped for an acceptable compromise that would prevent the breach, had sooner or later stumbled over this problem of sovereignty. The doctrine of sovereignty, by itself, compelled the imperial debate to be conducted in the most theoretical terms of political science. It was the single most important abstraction of politics in the entire Revolutionary era.

In the contest between the states and Congress, the ideological momentum of the Revolution lay with the states, but in the contest between the People and the state governments it decidedly lay with the People. For the Continental Congress had realized that the Articles of Confederacy was not a government and the Articles held no sovereignty. In Massachusetts the General Court proclaimed, "In every government there must exist somewhere a 'supreme sovereign absolute' and an uncontrollable power."

"But this Power resides, always, in the body of the People, and it never was, or can be delegated, to one Man, or a few. In one sense this was a traditional utterance, for no one doubted, even most Tories, that all power ultimately resided in the people."

A P P E N D I X

---

Additional Material Submitted for the Hearing Record

---

TESTIMONY OF

GOVERNOR JAY S. HAMMOND

BEFORE THE

HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE

SUBCOMMITTEE ON ALASKA LANDS

FAIRBANKS, ALASKA

AUGUST 20, 1977

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE. IT HAS BEEN  
MANY MONTHS SINCE WE HAD OUR INITIAL DISCUSSIONS REGARDING  
D-2 LANDS AT YOUR COMMITTEE AND IN YOUR OFFICES IN WASHINGTON.  
SINCE THEN, MUCH HAS HAPPENED, AND I AM SURE YOU HAVE LEARNED,  
AS WE ALL HAVE, MUCH ABOUT THE DYNAMICS OF THIS VOLATILE ISSUE.  
IN ADDITION, I AM SURE YOU HAVE LEARNED EVEN MORE ABOUT THE  
FACTS OF THE ISSUE, AND THE MERITS OF VARIOUS ARGUMENTS. WE

HAVE HAD FRANK AND THOROUGH DISCUSSIONS REGARDING THE PHILOSOPHIES OF D-2, AND THE COMMON GOALS THAT ALL OF US WISH TO ACCOMPLISH IN THIS LEGISLATION. BOTH MY CABINET MEMBERS AND I HAVE PRESENTED SPECIFIC SUGGESTIONS, AS WELL AS GENERAL DIRECTIONS TO THIS COMMITTEE PREVIOUSLY. TODAY, I WOULD LIKE TO SUM UP THE ASPECTS OF THE D-2 ISSUE THAT ARE OF HIGHEST IMPORTANCE TO THE PEOPLE OF ALASKA, TO STRAIGHTEN OUT SOME MISPERCEPTIONS THAT SEEM TO BE GROWING, TO OFFER EXPLICIT SOLUTIONS TO PROBLEMS BEFORE YOU, AND TO ONCE MORE OFFER THE POSITIVE HELP AND EXPERT INPUT OF THIS ADMINISTRATION AS YOU PREPARE YOUR FINAL BILL.

TODAY I WANT TO DEAL WITH FIVE MAJOR TOPICS, AND TO DEAL WITH THEM ON A LEVEL THAT WILL BE OF PRACTICAL HELP TO YOU IN THE NEXT STAGE OF YOUR LEGISLATIVE CONSIDERATION. I WANT TO DISCUSS THE

OPPORTUNITY YOU HAVE BEFORE YOU TO ASSIST FAIRLY AND EQUITABLY  
IN CONVEYANCE OF NATIVE AND STATE LANDS, AS WELL AS ESTABLISHMENT  
OF NATIONAL INTEREST LANDS.

I WANT TO MAKE SPECIFIC SUGGESTIONS AS TO HOW COOPERATIVE  
MANAGEMENT MIGHT BE STRUCTURED TO MEET SOME OF THE OBJECTIONS  
THAT YOU CONSERVATIONISTS HAVE CONTINUALLY RAISED. IN  
ADDITION, I WOULD LIKE TO SUGGEST THE SIMPLEST, MOST RATIONAL  
APPROACH TO SUBSISTENCE, TO OFFER OUR SPECIFIC SUGGESTIONS  
AS TO DETERMINATION OF BOUNDARY LINES.

GENTLEMEN, THERE HAS BEEN MUCH POSTURING AND PONTIFICATING  
BEFORE YOUR COMMITTEE IN RECENT WEEKS REGARDING THE STATE'S  
SELECTION "RIGHTS", THE "UNFAIRNESS OF IT ALL", AND VARIOUS  
ALLEGATIONS REGARDING THE ABROGATION OF THE STATEHOOD COMPACT  
BY H.R. 39. I DO NOT INTEND TO EITHER POSTURE OR PONTIFICATE,

MENT

BUT I HOPE THIS COMMITTEE TAKES THESE ALLEGATIONS VERY SERIOUSLY AND THOUGHTFULLY ADDRESSES THEM IN YOUR RESULTANT LEGISLATION. IN THAT REGARD, I AM SUBMITTING FOR THE RECORD A POSITION PAPER I HOPE YOU WILL READ AND CONSIDER CAREFULLY. THE FACT IS, THERE WERE EXPECTATIONS FAIRLY DRAWN FROM THE STATEHOOD COMPACT AND THEN DENIED UNFAIRLY. RIGHTS GRANTED AT STATEHOOD HAVE UNDENIABLY BEEN ERODED. THE PEOPLE OF ALASKA HAVE CONSCIOUSLY AND IN GOOD FAITH MADE MAJOR CONCESSIONS TO THE UNITED STATES IN RESPONSE TO CHANGING NEEDS. IN THE PAST ALASKA HAS VOLUNTARILY SUBORDINATED ITS STATEHOOD RIGHTS IN FAVOR OF OTHER CONSTITUENCIES. THOUGH NOT CONSTITUTIONALLY COMPELLED TO DO SO, ALASKA ACQUIESCED TO THE SECRETARIAL FREEZE ORDERS OF THE 1960'S AND SUPPORT FOR CERTAIN ASPECTS OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT ITSELF ARE GOOD EXAMPLES.

MORE RECENTLY, HOWEVER, EVENTS SUGGEST ALASKANS MAY HAVE BEEN BADLY SUCKERED. THE SO-CALLED "OVERRIDING SECTION (D)(1) WITHDRAWAL" ADDED INSULT TO INJURY. AT THAT TIME ALL REMAINING FEDERAL LANDS WERE CLOSED TO STATE SELECTION, PENDING CLASSIFICATION UNDER A NEW SYSTEM WHICH HAS, EVEN TO THIS DAY, NEVER BEEN IMPLEMENTED. NOW H.R. 39 SUGGESTS THAT ALASKA STATE LAND SELECTIONS TOTALLING ALMOST EIGHT AND ONE-HALF MILLION ACRES BE REVOKED, WITH THE SOP TOSSED IN THAT THE STATE MIGHT SELECT "OTHER PUBLIC LANDS OF APPROXIMATELY EQUAL ACPEAGE."

GENTLEMEN, IT IS ABSOLUTELY ESSENTIAL THAT CONGRESS AND THE CITIZENS OF ALASKA WORK TOGETHER TO RESOLVE THESE PROBLEMS THROUGH SPECIFICS RATHER THAN RHETORIC. A LARGE PART OF OUR POPULATION WOULD HAVE THIS ADMINISTRATION LITIGATE TO SQUEEZE

EVERY LAST VALUE FROM STATE SELECTIONS, REGARDLESS OF COMPELLING NATIONAL OR NATIVE INTERESTS. ANOTHER CONSTITUENCY GROUP WOULD HAVE B.L.M. EVENTUALLY PARCEL OUT TO US AS MUCH AS THEY WANTED TO OF OUR REMAINING STATEHOOD ENTITLEMENT, ACCORDING TO THEIR RULES, GIVING THE STATE NO "SELECTION" OR CHOICE IN THE MATTER. IN THE MEANTIME, ALASKA NATIVES HAVE SEEN TITLE TO VERY LITTLE LAND. I SUGGEST THAT THIS CONGRESS, BEGINNING WITH YOUR COMMITTEE, CAN RESOLVE THE STATE AND NATIVE LAND ENTITLEMENT ISSUE ON CONSTRUCTIVE MIDDLE GROUND. FURTHER, I SUGGEST THAT YOU MUST DO IT NOW AS PART OF D-2 IN ORDER AT LONG LAST TO REMOVE ROADBLOCKS STANDING BETWEEN ALASKA NATIVES, THE STATE AND THEIR RESPECTIVE LAND. I URGE YOU TO ACT SPECIFICALLY IN THE FOLLOWING WAYS.

FIRST, THE D-2 BILL PASSED BY THE CONFERENCE COMMITTEE NEXT AUTUMN SHOULD CONVEY MOST, IF NOT ALL, OF REMAINING STATE AND NATIVE ENTITLEMENTS. TO ASSIST IN THIS, THE STATE WILL, WITHIN THE NEXT 90 DAYS, IDENTIFY APPROXIMATELY 60 MILLION ACRES PRESENTLY INCLUDED IN D-1, NATIVE OVERSELECTED, AND D-2 LANDS, AS LANDS WE ARE MOST INTERESTED IN EVENTUALLY RECEIVING. BY DOING THIS, WE ARE NOT QUESTIONING THE NATIVES' PRIORITY RIGHT TO SELECT THEIR FULL ENTITLEMENT FROM THE OVER 80 MILLION ACRES THAT THEY PRESENTLY HAVE UNDER SELECTION. NOR ARE WE QUESTIONING CONGRESSIONAL RIGHT OR INTENT TO ESTABLISH NATIONAL INTEREST LANDS UNDER SECTION 17(b)(2) BEFORE STATE SELECTIONS ARE DEALT WITH. HOWEVER, CERTAINLY AT THAT POINT OUR TURN SHOULD FINALLY COME. AT THE VERY

LEAST WE WOULD EXPECT LANDS THAT WE NOMINATE NOW, WHICH ARE NEITHER RETAINED IN NATIVE SELECTIONS OR ESTABLISHED AS NATIONAL INTEREST LANDS, TO BE CONVEYED TO US IN AUTUMN OF 1978, WITH NO STRINGS ATTACHED.

SIMILARLY, CONGRESS SHOULD CERTAINLY CONVEY FULL ENTITLEMENT TO ALASKA'S NATIVES AT THAT TIME. THE NATIVES HAVE SELECTED OVER 80 MILLION ACRES OF WHICH THEY WILL OWN APPROXIMATELY 44 MILLION. WE INTEND TO NOMINATE ABOUT 60 MILLION ACRES, FROM WHICH WE ARE ENTITLED TO ABOUT 35 MILLION ACRES. ALL PARTIES SHOULD SIT DOWN WITH THESE NOMINATIONS TO WORK OUT AGREEMENTS SO THAT CONGRESS MAY SETTLE THE OWNERSHIP QUESTION ONCE AND FOR ALL NEXT FALL. IF YOU MEAN WHAT YOU HAVE BEEN SAYING PUBLICLY, AND I BELIEVE YOU DO, YOU SHOULD BE PLEASED TO DO THIS. AND IF YOU IN FACT DO IT, YOU WILL SAVE YEARS OF

HEARTACHE, LITIGATION AND MISTRUST, WHILE ADDING STABILITY TO ALASKA LAND MANAGEMENT AND OWNERSHIP YEARS BEFORE IT COULD HAPPEN THROUGH THE ALTERNATE, TORTUOUS ADMINISTRATIVE PROCESS.

SECONDLY, I WOULD URGE THIS COMMITTEE TO QUESTION THE REASONING BEHIND SECTION 704 (B) OF H.R. 39. THE AUTHOR OF THIS SECTION APPARENTLY ASSUMED THAT, IN ALASKA, ONE ACRE OF PUBLIC LANDS IS EQUAL TO ANY OTHER. ONE OF THE MOST BENEFICIAL SPINOFFS OF YOUR VISIT TO ALASKA IS RECOGNITION OF THE FACT THAT IS SIMPLY NOT THE CASE.

LAND SELECTIONS BY THE STATE WERE MADE BECAUSE THE STATE SAW MORE VALUE IN THE ACRES IT SELECTED THAN IN ACRES NOT SELECTED. IT IS AS SIMPLE AS THAT. ANY ATTEMPT AT REVOCATION OF EXISTING SELECTIONS IN EXCHANGE FOR EQUAL ACREAGE TO BE MADE UP FROM

THE DREGS IS SIMPLY NOT EQUITABLE. CONGRESS MUST NOW ATTEMPT TO REVOKE STATE SELECTIONS. IF FOR SOME REASON THE COMMITTEE FEELS THAT A GIVEN STATE SELECTION IS ABSOLUTELY ESSENTIAL TO A NATIONAL INTEREST AREA, AND THAT COOPERATIVE MANAGEMENT WOULD NOT PROTECT NATURAL INTERESTS SUFFICIENTLY, IT WILL FIND THE STATE WILLING TO DISCUSS IN GOOD FAITH A LAND EXCHANGE SO THAT LAND OF EQUAL VALUE MIGHT BE CONVEYED TO THE STATE IN LIEU OF THOSE ACRES RETURNED TO FEDERAL OWNERSHIP. SUCH COOPERATIVE EFFORT BETWEEN THE STATE AND CONGRESS COULD AVOID THE SPECTER OF MUTUALLY UNWANTED LITIGATION THAT UNILATERAL ACTION WOULD EVOKE.

NOW LET ME TALK ABOUT COOPERATIVE MANAGEMENT. OF SIGNIFICANCE IS THE FACT THAT THE COOPERATIVE MANAGEMENT CONCEPT NOW HAS THE SUPPORT OF ALL THE CONGRESSIONAL DELEGATION, THE LAND

USE PLANNING COMMISSION, AS WELL AS MYSELF. INFORMED DEVELOPERS AND CONSERVATIONISTS SEE IN COOPERATIVE MANAGEMENT THE POTENTIAL FOR A LAND MANAGEMENT SYSTEM WHICH COULD BETTER MEET THE CONCERNS OF EACH. THE DEVELOPER SEES THE OPPORTUNITY TO DO SOME THINGS ON SOME LANDS WHICH OTHERWISE WOULD BE FORECLOSED IN RETURN FOR WHICH THE CONSERVATIONIST SEES THE MOTIVATION FOR UPGRADING THE QUALITY OF LAND MANAGEMENT ON BORDER LANDS WHICH OTHERWISE COULD BE DESECRATED AT THE WHIM OF THE RESPECTIVE STATE OR PRIVATE OWNER.

MEMBERS OF THIS COMMITTEE HAVE ENDORSED COOPERATIVE MANAGEMENT AS AN IDEALISTIC CONCEPT. AT YOUR SUGGESTION, I HAVE DISCUSSED COOPERATIVE MANAGEMENT WITH MEMBERS OF NATIONAL INTEREST GROUPS, AND HAVE LEARNED MUCH ABOUT THEIR SPECIFIC CONCERNS ABOUT ITS APPLICATION. GENTLEMEN, YOUR COMMITTEE IS

PERS

TIAL

CERTAINLY CREATIVE ENOUGH TO DEAL WITH THESE CONCERNS AND  
OF SUFFICIENT COURAGE TO STRUCTURE A COOPERATIVE MANAGEMENT  
SYSTEM FOR THE GREATER BENEFIT OF ALL.

D

LET ME RUN DOWN SOME OF THE CONCERNS I HAVE HEARD ABOUT  
COOPERATIVE MANAGEMENT, AND SUGGEST HOW EASILY THEY MIGHT BE  
ADDRESSED.

IT

THE FIRST CONCERN IS THAT CONGRESS MIGHT ABROGATE ITS  
RESPONSIBILITY TO THE NATION AS A WHOLE IF IT GIVES AWAY  
AUTHORITY TO CONTROL WHAT HAPPENED ON FEDERAL LANDS. WE  
HAVE NEVER ASKED FOR THAT. ACCORDING TO OUR LONG STANDING  
PROPOSAL, SOVEREIGNTY WOULD REMAIN WITH THE RESPECTIVE  
SECRETARY CHARGED WITH MANAGING THE LAND. HE COULD VETO ANY  
ACTION THAT OCCURRED ON FEDERAL LAND UNDER HIS PROPRIETARY  
CONTROL. THE COMMISSION WOULD CLASSIFY WHAT USES COULD BE

ALLOWED ON THOSE LANDS, AND THE SECRETARY (OR THE GOVERNOR, IN THE CASE OF STATE LAND, OR THE PRIVATE LANDOWNER) COULD AS WELL BY VETO REJECT THIS CLASSIFICATION. BY ALLOWING A COMMISSION TO GIVE ADVICE ON FEDERAL LANDS, THE PEOPLE OF THE OTHER STATES WOULD GAIN THE RIGHT TO GIVE ADVICE ON STATE LANDS THROUGH THEIR COMMISSION MEMBERS. SUCH CERTAINLY COULD IMPROVE THE MANAGEMENT OF ALL LANDS SO INVOLVED. SUCH REQUIRES NO ALIENATION OF ANY PROPRIETARY OR SOVEREIGN RIGHT FOR ANY PARTY.

NEXT, I HAVE HEARD A WHOLE SERIES OF ASSERTIONS REGARDING HOW THE COMMISSION COULD BE STACKED OR LOADED FROM ONE SIDE OR ANOTHER. CONSERVATIONISTS FEAR THAT THE COMMISSION WOULD BECOME A TOOL OF DEVELOPERS; DEVELOPERS FEAR THAT THE COMMISSION WOULD BECOME A TOOL OF CONSERVATIONISTS; AND MEMBERS OF CONGRESS FEAR THAT THE COMMISSION WOULD BE OVERLOADED WITH

PEOPLE WHO RESIDED IN ALASKA AND, THUS, WERE TOO PROVINCIAL.  
WHY NOT SIMPLY STRUCTURE THE COMMISSION SO THAT THESE THINGS  
CANNOT HAPPEN? WHY NOT DEFINE THE MEMBERSHIP OF THE COMMISSION  
TO ELIMINATE THIS CONCERN?

A THIRD CONCERN REGARDING COOPERATIVE MANAGEMENT ARISES FROM  
A CONFUSION BETWEEN MANAGEMENT AND ADVICE. THE COMMISSION  
WE HAVE SUGGESTED IS A CLASSIFICATION COMMISSION. IT DOES NOT  
HIRE PEOPLE TO DO RESEARCH, SURVEY LANDS, HELP TOURISTS,  
GIVE LEASES, OR DO ANY OTHER OF THE ADMINISTRATIVE TASKS THAT  
A LEGITIMATE MANAGEMENT AGENCY DOES. THE LANDS UNDER THE  
COOPERATIVE MANAGEMENT SYSTEM WOULD BE ASSIGNED BY THE  
RESPECTIVE OWNERS TO THE APPROPRIATE MANAGEMENT AGENCIES (I.E.,  
PERHAPS THE FISH AND WILDLIFE SERVICE OR PARK SERVICE ON FEDERAL  
LANDS, THE DIVISION OF LANDS ON STATE LAND, THE PRIVATE OWNER

ON PRIVATE LANDS) TO MANAGE UNDER THE COMMISSION'S GUIDELINES.

THE COMMISSION WOULD NOT BE ANOTHER MANAGEMENT AGENCY; IT WOULD BE A CLASSIFICATION COMMISSION.

FINALLY, THERE HAS BEEN MUCH CONFUSION OVER WHAT WOULD BE ALLOWED OR NOT ALLOWED ON COOPERATIVELY MANAGED LANDS. THE COMMITTEE HAS SEVERAL CHOICES IN THIS REGARD. THE "STEVENS BILL" SUGGESTS THAT COOPERATIVE LANDS BE OPEN TO ALL PRESENT USES UNTIL THOSE USES WERE CLASSIFIED CLOSED BY THE COMMISSION. ON THE OTHER HAND, THE LAND USE PLANNING COMMISSION'S SUGGESTED LEGISLATION SAYS THAT CONGRESS SHOULD ESTABLISH PRIME USES OF THESE LANDS, AND THAT THE LANDS WILL BE CLOSED TO ALL OTHER USES UNTIL CLASSIFIED OPEN BY THE COMMISSION. A COOPERATIVE MANAGEMENT SYSTEM COULD BE DERIVED TO GIVE ANY AMOUNT OF

LD

FLEXIBILITY ALONG THIS ENTIRE SPECTRUM. I SUGGEST THAT YOU NOT SHY AWAY FROM IT JUST BECAUSE IT COULD BE AN OVERLY PERMISSIVE SYSTEM, OR CONVERSELY BUY IT JUST BECAUSE IT COULD BE AN OVERLY RESTRICTIVE SYSTEM. I AM SUGGESTING THAT THE BENEFITS OF MUTUAL COOPERATION, AND RATIONAL MANAGEMENT OF LANDS FAR BEYOND THOSE CONTAINED IN THE NATIONAL INTEREST LANDS, COULD BE ACHIEVED IF YOU WOULD MAKE THE DECISION AS TO HOW COOPERATIVE LANDS SHOULD BE STRUCTURED AND MANAGED, RATHER THAN AVOIDING THIS DECISION IN FEAR THAT SOME WILL BELIEVE IT EITHER TOO RESTRICTIVE OR PERMISSIVE.

D

MEMBERS OF THE COMMITTEE, I WOULD EARNESTLY ASK YOU TO LOOK AT THESE CONSIDERATIONS AS PROBLEMS TO BE SOLVED, RATHER THAN INSURMOUNTABLE BARRIERS BETWEEN YOU AND A CONCEPT YOU ALL PROFESS TO BELIEVE IN PRINCIPLE.

THE THIRD TOPIC I WANT TO ADDRESS TODAY IS SUBSISTENCE. HERE AGAIN IS A TOPIC IN WHICH WE ALL AGREE IN CONCEPT. THE

SUBSISTENCE WAY OF LIFE SHOULD BE PRESERVED IN ALASKA FOR AS LONG AS POSSIBLE. I THINK THAT THIS GOAL CAN BE ACCOMPLISHED IF WE ALL REALIZE THAT WHAT WE REALLY ARE CONCERNED ABOUT ARE THESE TWO BASICS:

FIRST, THE RESOURCE ITSELF -- THE FISH AND WILDLIFE -- MUST BE MAINTAINED IF SUBSISTENCE IS TO PERSIST AS A WAY OF LIFE.

THIS REQUIRES TWO THINGS: FIRST, PROTECTIVE MANAGEMENT OF THE RESOURCE-SUSTAINING HABITAT, AND PROFESSIONAL, COORDINATED, SCIENTIFIC MANAGEMENT OF THE WILDLIFE OR FISH SPECIES ITSELF.

SECOND, THERE IS CONCERN ABOUT REDUCING COMPETITION BETWEEN THE SUBSISTENCE USER (USUALLY RURAL OR "LOCAL" PEOPLE) AND NON-SUBSISTENCE USERS (USUALLY URBAN "SPORT" HUNTERS) WHEN NECESSARY TO PROTECT THE RESOURCE. THEREFORE, MANY WANT THE RESOURCE ALLOCATED TO THE SUBSISTENCE USER AS A PRIORITY.

ALL CONCERNS ABOUT SUBSISTENCE CAN BE BOILED DOWN INTO THESE

S  
ED  
BE  
HE

BROAD CATEGORIES, AND ANY DISCUSSION REGARDING RACIAL DEFINITIONS OF SUBSISTENCE; FEDERAL MANAGEMENT OF WILDLIFE FOR SUBSISTENCE, OR SIMILAR ITEMS, ARE ALL MERELY SUGGESTIONS AS TO HOW TO BETTER ACCOMPLISH THE TWO BASIC AIMS. I WOULD URGE AS STRONGLY AS I CAN YOU NOT MISTAKE THE TREES FOR THE FOREST IN THIS INSTANCE. INSTEAD LET US CONCENTRATE ON THESE BASICS.

FIRST, HOW CAN WE PROTECT THE SUBSISTENCE RESOURCE ITSELF? THE DESIGNATION OF CORE AREAS IN ALASKA COULD, OF COURSE, PROTECT MUCH HABITAT. HOWEVER, WHAT ABOUT PRIME SUBSISTENCE HABITAT ON THE REMNANT TWO-THIRDS OF ALASKA? THE LAND USE PLANNING COMMISSION HAS CALCULATED, AND I AM SURE WILL MAKE AVAILABLE TO YOU, THE INFORMATION THAT ONLY APPROXIMATELY 20 PERCENT OF THE RESOURCE BASE FOR SUBSISTENCE LIVING IS TIED TOTALLY TO FEDERAL LANDS. FULLY 80 PERCENT OF THAT RESOURCE BASE DEPENDS UPON THE MANAGEMENT OF STATE OR PRIVATE LANDS.

IN FACT, THEY CALCULATE THAT LESS THAN 5 PERCENT OF THE  
SUBSISTENCE RESOURCE BASE IS TIED SOLELY TO D-2 LANDS. EVEN  
IN THE FACE OF THIS, THERE SEEMS INSUFFICIENT RECOGNITION  
THAT THE ESTABLISHMENT OF COOPERATIVE MANAGEMENT SYSTEMS COULD  
LEAD TO THE RATIONAL PROTECTION OF A MUCH GREATER RANGE OF  
PRIME SUBSISTENCE HABITAT THAN OTHERWISE WOULD BE THE CASE, AS  
BOTH STATE AND NATIVE OWNERS WOULD BE MOTIVATED TO ASSURE  
ADEQUATE PROTECTION OF AND PROVISION FOR SUBSISTENCE CAPABILITY.  
WITHOUT THIS, THE ULTIMATE GOAL OF PRESERVING THE SUBSISTENCE  
WAY OF LIFE CANNOT BE MET BY EVEN 100 PERCENT PROTECTION ON  
D-2 LANDS ALONE. I FEEL THAT A COOPERATIVE MANAGEMENT SYSTEM  
IS ABSOLUTELY ESSENTIAL TO THE LONG-TERM PROTECTION OF THE  
ENTIRE SUBSISTENCE RESOURCE BASE.

SECONDLY, CRUCIAL TO PROTECTION OF THE RESOURCE IS COORDINATED,  
SCIENTIFIC WILDLIFE MANAGEMENT THAT MANAGES ANIMAL POPULATIONS  
REGARDLESS OF WHERE THEY MAY ROAM, SPAWN, MIGRATE OR BE TAKEN.

AS YOU KNOW, FISH AND WILDLIFE HAVE LITTLE REGARD FOR BUREAUCRATIC BOUNDARIES AND, SO FAR AS I AM CONCERNED, THIS IS ARGUMENT ENOUGH IN ITSELF AGAINST SEGMENTING THE MANAGEMENT OF A SINGLE SPECIES OR POPULATION ACCORDING TO LAND OWNERSHIP OR USER GROUPS. SPLIT MANAGEMENT OF A SINGLE LIVING RESOURCE MAY MAKE SOME MARGINAL SENSE IN THE CONTEXT OF POLITICAL SCIENCE; BUT IT MAKES ABSOLUTELY NO SENSE WHATSOEVER IN THE CONTEXT OF BIOLOGICAL SCIENCE.

THIS COMMITTEE HAS BEEN LEARNING IN ITS TOURS AROUND THE STATE THAT MANY PEOPLE ARE LESS THAN ENAMORED WITH EXISTING STATE WILDLIFE MANAGEMENT POLICY AND EXECUTION. I AM QUICK TO ACKNOWLEDGE THIS FACT, AND AM TRYING TO DO SOMETHING ABOUT IT. LET ME SAY AT THE OUTSET THAT THERE ARE TWO PARTS TO THIS DISENCHANTMENT. THE FIRST, AND I THINK A MAJOR PART, MIGHT BE CALLED "DISSATISFACTION WITH THE TAX COLLECTOR." FRANKLY, ANYONE WHO MAKES THE HARD DECISIONS WHICH RESTRICT PEOPLE'S

ACCESS TO FISH OR WILDLIFE, THE SUPPLY OF WHICH LAGS FAR BEHIND DEMAND, IS NOT GOING TO BE MOST POPULAR. I SUSPECT THAT EVEN IF JIMMY CARTER, J. P. JONES, THE A.F.N., JOE VOGLER AND BELLA ABZUG WERE SETTING OUR MOOSE SEASONS, I'M SURE SOMEONE WOULD STILL THINK HE AS BEING DISCRIMINATED AGAINST UNFAIRLY. THUS, WHEN THE BOARD OF GAME SEVERELY RESTRICTED HUNTING OF THE ARCTIC CARIBOU HERD, SOME EVEN HURLED THE CHARGE THAT SUCH WAS PROMPTED BY ATTEMPTED "GENOCIDE", EVEN THOUGH IT IS CLEAR TO THOSE INFORMED THAT THEY COULD SIMPLY NOT DO OTHER THAN RESTRAIN THEIR HARVEST. IRONICALLY, SOME OF THOSE WHO CHARGED THERE WERE SUFFICIENT CARIBOU TO CONTINUE THE ANNUAL SLAUGHTER UNABATED VERY STRIDENTLY DEMANDED INCREASED WOLF CONTROL TO HELP DANGEROUSLY DECLINING CARIBOU POPULATIONS.

ANYONE WHO HONESTLY AND CONSCIENTIOUSLY ATTEMPTS TO REGULATE HUNTING AND FISHING WILL BE CRITICIZED BY THOSE WHOM HE IS REGULATING.

ONE FACET OF SUCH CRITICISM WHICH CONCERNS ME MUCH IS THE PERCEPTION THAT STATE REGULATION HAS EITHER FAVORED URBAN HUNTERS TOO MUCH, OR NOT FAVORED RURAL HUNTERS ENOUGH WHEN THE DIFFICULT ALLOCATION DECISIONS WERE MADE. STATE POLICY UNDER THIS ADMINISTRATION HAS EXPLICITLY STATED THAT SUBSISTENCE WILL HAVE PRIORITY WHEN THERE IS A CONFLICT AND A THOROUGH REVIEW OF RECENT FISH AND WILDLIFE REGULATIONS WILL SHOW SCORES OF CASES WHERE THE LOCAL RURAL USER HAS BEEN FAVORED IN REGULATION. NEVERTHELESS, THE PERCEPTION PERSISTS, AND WITH SOME JUSTIFICATION.

THE ALLOCATION OF RESOURCES TO COMPETITIVE CONSUMERS IS A DIFFICULT PROBLEM AT BEST. THUS, I WOULD HOPE THIS CONGRESS ESTABLISHES THE PRIORITY OF SUBSISTENCE USE WHERE THERE IS A CONFLICT ON NATIONAL INTEREST LANDS. I BELIEVE THIS IS A LEGITIMATE SUBJECT FOR LEGISLATION, AND HOPE THAT THIS PRINCIPLE, WHICH HAS BEEN STATE POLICY FOR SOME TIME, IS ENACTED INTO

## FEDERAL LAW.

IN ADDITION, I INTEND TO DO SOMETHING ELSE TO BRING MORE MEANINGFUL REPRESENTATION TO ALASKA'S RURAL PEOPLE IN THE MANAGEMENT OF FISH AND WILDLIFE. YEARS AGO WHILE IN THE STATE LEGISLATURE, I WAS INSTRUMENTAL IN THE CREATION OF LOCAL FISH AND GAME ADVISORY BOARDS AS AN EFFORT TO INCREASE LOCAL INPUT INTO REGULATIONS GOVERNING MANAGEMENT OF THESE RESOURCES. WHILE THESE BOARDS VASTLY INCREASED LOCAL CITIZEN INVOLVEMENT OVER WHAT HAD PREVIOUSLY BEEN THE CASE, MANY FRUSTRATIONS HAVE CAUSED PEOPLE TO CONCLUDE THAT THE PRESENT ADVISORY BOARD SYSTEM IS SIMPLY INADEQUATE TO ADDRESS SUCH THINGS AS RESOURCE ALLOCATION, SUBSISTENCE NEEDS OR STOCK DEPLETION.

INCREASED PEOPLE PRESSURES AND DECLINING RESOURCES HAVE INCREASED THE DEMAND FOR GREATER LOCAL INVOLVEMENT, PARTICULARLY IN THOSE AREAS WHERE SUBSISTENCE CAPABILITIES SEEM THREATENED. ACCORDINGLY, I AM REVIEWING A PROPOSAL I SUGGESTED SEVERAL

YEARS AGO REGARDING THE CREATION OF REGIONAL OR SO-CALLED  
"SATELLITE" FISH AND GAME BOARDS. THEY WOULD FORMULATE REGIONAL  
REGULATORY PROPOSALS WHICH WOULD BE CONVEYED TO A MASTER BOARD  
COMPRISED OF ONE MEMBER FROM EACH REGIONAL BOARD. THE MASTER  
BOARD WOULD THEN BE OBLIGATED TO PROMULGATE INTO REGULATIONS  
REGIONAL PROPOSALS UNLESS THE MAJORITY WERE CONVINCED THAT BY  
SO DOING THEY DID VIOLENCE TO THE BROAD PUBLIC INTEREST OR  
SOUND CONSERVATION PRACTICE.

WHEN I FIRST SUGGESTED THIS, IT WAS CLEARLY PREMATURE. URBAN  
SPORTSMEN FELT IT COULD CONSTRAIN THEIR ACTIVITIES.

PROFESSIONAL FISH AND GAME MANAGERS WERE MADE RESTIVE BY  
THE POSSIBILITY THAT SUCH MIGHT NOT SIGHT IN PRECISELY ON  
THESE "OPTIMUM HARVEST" TARGETS THAT THEY HAD LEARNED TO  
SHOOT FOR BACK IN SCHOOL. MOREOVER, THE COSTS AND  
COMPLEXITIES OF SUCH A SYSTEM DID NOT SEEM TO WARRANT FURTHER  
STUDY. TIMES HAVE CHANGED, HOWEVER, AND IN FULL CONSULTATION

WITH SUBSISTENCE USERS AND URBAN HUNTERS ALIKE, I HOPE TO PROPOSE STATE LEGISLATION WHICH COULD FAR BETTER AND LESS TRAUMATICALLY ADDRESS THE SUBSISTENCE ISSUE THAN ALTERNATIVES BEFORE YOU. PERHAPS THE REPRESENTATIVE OF ANY LARGE FEDERAL LANDOWNER IN THE REGION (FOR EXAMPLE, THE PARK SUPERINTENDENT OR REFUGE MANAGER) SHOULD SIT ON SUCH A REGIONAL BOARD TO ASSURE FEDERAL INPUT AND COOPERATION WITHOUT ABUSING STATE MANAGEMENT PREROGATIVES OR CREATING CHAOS.

I HOPE THIS COMMITTEE KEEPS THESE THINGS IN MIND WHEN DEALING WITH THE SUBSISTENCE ISSUE: FIRST, SUBSISTENCE HABITAT SHOULD BE RATIONALLY PROTECTED ON ALL LANDS, NOT JUST D-2 LANDS. SECOND, THE MANAGEMENT MUST BE UNIFIED, PROFESSIONAL, NOT SPLINTERED AND POLITICIZED. THIRD, SUBSISTENCE MUST BE GIVEN PRIORITY ON NATIONAL INTEREST LANDS, AS IT HAS BEEN GIVEN PRIORITY IN STATE LAW AND POLICY ON ALL LANDS OF THE STATE. FOURTH, LOCAL PEOPLE ARE DEMANDING GREATER SAY IN REGULATION

OF FISH AND GAME HARVESTS IN THEIR AREAS AND TO THE EXTENT  
THEY CAN BE ACCOMMODATED WITHOUT DOING VIOLENCE TO SOUND  
CONSERVATION AND BROAD PUBLIC INTEREST, THIS SAY SHOULD BE  
PROVIDED. ATTENTION TO THESE PRINCIPLES WILL PRESERVE THE  
POSSIBILITY FOR THE SUBSISTENCE WAY OF LIFE FOR THE INDEFINITE  
FUTURE, NOT SIMPLY ON D-2 LANDS BUT ALL ACROSS ALASKA.

ON ANOTHER SUBJECT: I AM NOT GOING TO SIT HERE AND ARGUE ACREAGE  
WITH YOU. BUT I WOULD LIKE TO EXPRESS STRONGLY THAT WHAT IS  
FAR MORE IMPORTANT IN THIS WHOLE ISSUE THAN HOW MANY ACRES GO  
INTO WHAT MANAGEMENT SYSTEM IS WHICH OF THOSE ACRES GO INTO WHICH  
SYSTEM. YOU ARE AWARE OF THE STATE'S RESOURCE INVENTORY SYSTEM.  
AND I ONCE MORE WOULD UNDERSCORE THE HELP THIS CAN BE TO YOU  
IN STRUCTURING THIS LEGISLATION. THIS INVENTORY, AS YOU  
PROBABLY KNOW, WAS NOT DESIGNED TO PROVE ANY POINT ONE WAY  
OR ANOTHER REGARDING D-2.

IT WAS DESIGNED TO AID THE STATE IN DECIDING WHICH LANDS TO SELECT TO FULFILL OUR STATEHOOD ENTITLEMENT. ONLY AFTER THE INFORMATION WAS IN PLACE WAS IT APPLIED BY COMPUTER TO VARIOUS D-2 PROPOSALS. I THINK THIS IS THE BEST PROOF POSSIBLE OF THE UNBIASED NATURE OF THE INVENTORY. THE INVENTORY SIMPLY SHOWS WHICH LANDS ARE MOST VALUABLE FOR WHICH RESOURCES.

OBVIOUSLY, A COMPUTER CANNOT DRAW YOUR BOUNDARY LINES, FOR MANY UNKNOWNNS AND VALUE JUDGMENTS ARE INVOLVED. HOWEVER, IT IS CLEAR THAT SLIGHT ALTERATIONS IN BOUNDARIES CAN MAKE MAJOR ALTERNATIONS IN IMPACT. BOTH POSITIVE AND NEGATIVE, OF YOUR RESULTANT LEGISLATION. WITH THIS IN MIND, I HAVE INSTRUCTED MY DEPARTMENT OF NATURAL RESOURCES NOT ONLY TO MAKE RAW DATA AND THE COMPUTER CAPABILITY AVAILABLE TO YOUR COMMITTEE AND STAFF DURING MARK-UP, BUT TO GO ONE STEP FURTHER. WE WILL HAVE AVAILABLE VERY SHORTLY A SERIES OF DETAILED MAPS DEPICTING THE H.R. 39 AREAS. I HAVE AN EXAMPLE WITH ME HERE TODAY.

THESE MAPS WILL DEPICT FOUR THINGS: FIRST WILL BE LANDS TO WHICH THE STATE ALREADY HOLDS EQUITABLE TITLE. THESE I HAVE ASKED YOU TO AVOID ENTIRELY EXCEPT FOR COOPERATIVE MANAGEMENT OR EXCHANGE PURPOSES. SECOND WILL BE LANDS IN WHICH THE STATE HAS A SELECTION INTEREST BECAUSE OF RESOURCES FOUND UPON THEM. THE COMMITTEE WILL THEN KNOW WHETHER IT IS DEALING WITH A TOWNSHIP THE STATE HAS AN INTEREST IN OBTAINING. THIRD, TOWNSHIPS ARE MARKED THAT, ACCORDING TO KNOWLEDGE WE HAVE TODAY, HAVE A PARTICULARLY HIGH RESOURCE VALUE. YOU CAN LOOK AT A TOWNSHIP, AND IMMEDIATELY KNOW WHETHER IT IS AMONG THE TOP PROSPECTS FOR OIL AND GAS, HARD ROCK MINERALS, COAL, URANIUM, AGRICULTURE, SUITABILITY FOR SETTLEMENT, OR OTHER RESOURCES. YOU WILL THEN KNOW VERY CLEARLY WHAT EFFECT YOUR DECISION WILL HAVE ON A KNOWN RESOURCE VALUE. FINALLY, THE MAPS WILL DEPICT AREAS WHICH ARE ESPECIALLY IMPORTANT TO FISH AND WILDLIFE MANAGEMENT: SUCH AS POTENTIAL HATCHERY SITES, HIGH QUALITY HUNTING AREAS, AND OTHER AREAS. THESE DEPICT MANAGEMENT PRIORITIES RATHER

THAN RESOURCE VALUES PER SE.

IN THE SPIRIT OF COOPERATION, I AM MAKING OUR BEST INFORMED STAFF PEOPLE AVAILABLE TO YOU AT YOUR PLEASURE, AND I URGE THAT YOU DISCUSS THESE DATA AT LENGTH WITH THEM OVER THE NEXT SEVERAL WEEKS.

IN CONCLUSION, LET ME WISH YOU GODSPEED ON A COURSE THAT WILL HOPEFULLY RESOLVE THIS VERY COMPLEX AND EMOTIONAL PROBLEM TO THE BEST INTEREST OF ALASKA'S AND THE NATION'S PEOPLE AND RESOURCES. AND LET ME UNDERSCORE ONCE MORE THE GOOD FAITH IN WHICH ALASKANS HAVE UNDERTAKEN THE STEWARDSHIP OF THIS GREAT LAND IN WHICH WE LIVE. GENTLEMEN, NO RATIONAL PERSON CAN SEE THE STATE OF ALASKA AS ANYTHING BUT A LEADING PROGRESSIVE STATE IN BOTH RESOURCE MANAGEMENT AND CONSERVATION. ASK YOURSELVES WHY ALASKANS CAME HERE, OR WHY THEY STAY. THE GREAT BEAUTY AND WILDNESS OF OUR STATE IS A PRIME REASON.

I HAVE YOU REMEMBER IN YOUR TESTIMONIES THAT WE ALREADY HAVE THE LARGEST STATE PARK SYSTEM IN AMERICA, AND MILLIONS OF OTHER ACRES IN STATE WILDLIFE REFUGES, SANCTUARIES AND CRITICAL HABITAT AREAS. WE LOVE OUR NATURAL VALUES AND WOULD PROTECT THEM ON STATE LANDS. LET ME ASK THIS COMMITTEE TO REMINISCE A BIT. WHICH GOVERNMENT WAS THE LEADER IN THE RAPACIOUS ENVIRONMENTALLY INSENSITIVE, ACCELERATED O.C.S. LEASING PROGRAM? THE FEDERAL GOVERNMENT. WHICH STATE ARGUED LOUDEST FOR MODIFICATION BACK TO A RATIONAL PACE AND LEVEL OF ENVIRONMENTAL CONSTRAINTS? THE STATE OF ALASKA. WHICH GOVERNMENT REMOVED ALL BIOLOGICAL RESTRICTIONS ON THE TAKING OF POLAR BEARS AND WALRUS? THE FEDERAL GOVERNMENT. WHICH GOVERNMENT HAD MANAGED WALRUS ACCORDING TO POPULATION PRODUCTIVITY, AGE AND SEX, AND HAD LIMITED THE TAKE OF POLAR BEARS? THE ALASKA GOVERNMENT. WE HAVE DEMONSTRATED A SENSITIVITY TO OUR NATURAL ENVIRONMENT, AND MOST ALASKANS I KNOW SHARE THAT SENSITIVITY.

HOWEVER, AS WELL WE RECOGNIZE THAT WE ARE SADDLED WITH RESPONSIBILITIES AS AMERICA'S LAST GREAT STOREHOUSE OF RESOURCES. WE CONTAIN MOST OF THE NATION'S REMAINING ENERGY RESERVES AND MOST OF HER POTENTIAL MINERAL RESERVES. THE PRESSURE IS ON US FROM OTHER CONGRESSIONAL QUARTERS TO MAKE THESE THINGS AVAILABLE TO THE NATION. AS I HAVE SAID BEFORE, IT IS NOT EASY TO BE BOTH OIL BARREL TO THE NATION AND NATIONAL PARK TO THE WORLD. I WOULD HOPE THAT YOUR VISIT HAS BROUGHT REALIZATION THAT ALASKANS ARE SINCERE IN THEIR RESOLVE TO SEEK OUT WAYS TO BRING BOTH THE STATE AND NATIONAL INTERESTS IN TO HARMONY SO THAT OUR OUTSTANDING NATURAL VALUES ARE PROTECTED WHILE YET PERMITTING RATIONAL DEVELOPMENT OF OUR RESOURCES; NOT ONLY ON ENCAPSULATED FEDERAL ENCLAVES BUT ACROSS THE ENTIRE WIDTH AND BREADTH OF THIS GREAT LAND. WE ALL SEEK A SOLUTION IN GOOD FAITH, AND HOPE THAT YOU WILL REALLY LISTEN TO AND ADDRESS THESE SPECIAL CONCERNS THAT I HAVE VOICED TO YOU TODAY.

UNITED STATES SENATE  
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

Chairman, Senator Daniel Inouye

May 23, 1992  
Anchorage, Alaska

Charles Edwardsen, Jr.  
Kasigluk Elders Conference



INUIT  
LIAISON OFFICE

Phone/Fax (202) 625-0556

2400 Pennsylvania Avenue, N.W.  
Suite 809 • Washington, D.C. 20037

HUNTING, FISHING, AND TRADING RIGHTS SINCE TIME IMMEMORIAL  
INUIT VIEW OF ORIGINAL UNDERSTANDINGS

Inuit unwritten sovereignty over Alaska since time immemorial has now come into conflict with the claim of the United States, for their laws are written in the form of a constitution.

The Americans have an assumption of superiority based upon written words copied upon paper. However, Inuit laws are original, customary, traditional, unwritten, and inherent. We, Inuit, must now apply the test of the written laws of the United States against their desire and causes of action against their very own constitution.

Our hunting, fishing, and trading rights do not derive from the written word but are inherent within ourselves. Our Creator has provided us with land, water, weather, animals, and birds plentiful to harvest, appropriate to season, and a desire for the longevity of our people. Inuit hunting, fishing, and trading rights are not derived from the United States constitution nor United States treaties.

Our claim to jurisdiction is inherent and it is for the Natives of Alaska to determine the destiny of our territory and not the territory to determine, from afar, the destiny of the Natives of Alaska. Inuit hunting, fishing, and trading rights have not been yielded to the United States during peacetime, at war, nor through the conveyance of a treaty. In United States v. Winans, (198 U.S. 371), the Supreme Court found that the right to resort to the fishing places in controversy was a part of larger rights possessed by the Indians, upon the exercise of which there was not a shadow of impediment, and which were not much less necessary to the existence of the Indians than the atmosphere they breathed. New conditions came into existence, to which those rights had to be accommodated. Only a limitation of them, however, was necessary and intended, not a taking away. In other words, the treaty was not a grant of rights to the Indians, but a grant of rights from them---a reservation of those not granted. And the form of the instrument and its language was adapted to that purpose . . . There was an exclusive right of fishing reserved within certain boundaries.

We, Inuit, challenge the Marshall Trilogy as these three Supreme Court cases do not apply to Natives of Alaska. Hence, the claim to jurisdiction in Alaska is based upon conquest which has never occurred. These three cases are titled Fletcher vs. Peck, Johnson vs. McIntosh, and Worcester vs. Georgia. Therein the legal theory for the United States is based upon sovereign right of first purchase which refers to the exclusive rights that European explorers claimed over territory they discovered in the "New World". According to this policy, the first to discover new territory obtained instant property rights against all other European explorers. These exclusive rights included the ability to "purchase" this land from the Indians and to establish settlements on the land.

For Alaska the case for the Inuit is of a different footing than the Indians of the Lower 48 states where formal and informal conquest occurred by colonial powers and the United States. Any claim that conquest has occurred in Alaska is without constitutional footing and a formal or informal declaration of war has never been declared by the United States Congress. The Marshall Trilogy is not applicable against Alaska Native (Inuit) Nations or their legal status. Moreover, on November 4, 1988 the United States elected to become civilized by signing the Genocide Treaty and the Senate gave its advice and consent.

In a review of our original understanding of the constitution and its requirements for civilized activity, the desire of the American administration was to create inchoate title. It was the intent of the United States to perfect title over time. However, we, the

indigenous people, holding original title, remain in peaceful occupancy. The Inuit not only hold original title but our claim to sovereignty and peaceful coexistence and a continuous display of our authority over our lands is contrary to the claim of the United States which has based their claim on the titles of discovery, of recognition by treaty and of contiguity, i.e. titles relating to acts or circumstances leading to the acquisition of sovereignty; they have, however, not established the fact that sovereignty so acquired was effectively displayed at any time. We, the Inuit, concur with the precedent set in the United States vs. Netherlands, wherein the United States lost its claim to inchoate title. (Palmas Island Arbitration, 1928).

For want of jurisdiction and possession, the United States government maintained in its negotiations with Russia concerning territorial questions that dominion cannot be acquired but by a real occupation and possession, and an intention to establish it by no means sufficient. The mere desire and political ambition of the Russians and the United States throughout the negotiations of the Treaty of Cession of 1867, cannot extinguish the principle of the continuous and peaceful display of the functions of occupation by the Natives of Alaska within the territory of Alaska and is a constituted element of territorial sovereignty which is a recognized principle of international law.

We, Inuit, must now apply through the written word against their desires as written in their Constitution of September 18, 1787. From the period of 1776 to 1787, it was known to many colonists that the issue of sovereignty was not resolved by their Declaration of Independence. The concept of "sovereignty" continued to be the most important theoretical question throughout the decades following the Declaration.

The creation of American sovereignty was done on a theoretical plane and drawn upon blank sheets of paper. The confederation the colonists formed, therefore, was not a sovereign government. John Adams reflects this weakness in his diary in 1787:

"Regarding the greatest Question yet agitated---the idea of sovereignty, that in all civil states it is necessary that there should some where be lodged a supreme power over the whole---this was the heart of the Anglo-american argument that led to the Revolution."

Almost every writer, British or American, who groped for an acceptable compromise that would prevent the breach, had sooner or later stumbled over this problem of sovereignty. The doctrine of sovereignty, by itself, compelled the imperial debate to be conducted in the most theoretical terms of political science. It was the single most important abstraction of politics in the entire Revolutionary era.

In the contest between the states and Congress, the ideological momentum of the Revolution lay with the states, but in the contest between the People and the state governments it decidedly lay with the People. For the Continental Congress had realized that the Articles of Confederacy was not a government and the Articles held no sovereignty. In Massachusetts the General Court proclaimed, "In every government there must exist somewhere a 'supreme sovereign absolute' and an uncontrollable power."

"But this Power resides, always, in the body of the People, and it never was, or can be delegated, to one Man, or a few. In one sense this was a traditional utterance, for no one doubted, even most Tories, that all power ultimately resided in the people."

During the federal convention debate of 1787, Benjamin Rush said: "The people of America have mistaken the meaning of the word 'sovereignty'. It is often said that the sovereign and all other power is seated *in* the people. This idea is unhappily expressed for it should be all power is derived *from* the people."

The confusion continued surrounding the concept of "sovereignty". During the federal convention Noah Webster argued with great persuasiveness that Americans could not have their constitutional remedies without the evils and that all of the developments and devices of the decade since Independence were inextricably bound together "leading eventually, if not totally repudiated, to a subversion of all government." Webster wrote:

"A fundamental maxim of American politics is that sovereign power resides in the people. Written constitutions and bills of rights can never be effective guarantees of freedom. Liberty is never secured by such paper declarations, nor lost for want of them."

Webster continued:

"The truth is that government takes its form and structure from the genius and habits of the people, and if on paper a form is not accommodated to those habits, it will assume a new form, in spite of all the formal sanctions of the supreme authority of a State.

To credit a perfect wisdom and probity in the framers of the Constitution is both arrogant and impudent. The very attempt to make *perpetual* constitutions, is the assumption of a right to control the opinions of future generations and to legislate for those over whom we have as little authority as we have over a nation in Asia."

Finally, it was to remedy the defects of the Articles of Confederacy that the convention was called to frame the federal constitution. Under this constitution the United States became a government. For it is true, as a matter of history, that some new states are formed out of the sovereignty of the old, whereas others are created in violent opposition to the former territorial sovereign. Is it not reasonable to suppose, therefore, that a distinction between original and derivative titles are relevant to the proper interpretation of the change of territorial sovereignty that takes place when a new State is created, as in the case of the United States? The confusion surrounding the concept of sovereignty in the United States is rooted in its derivative title from England, versus the original sovereignty and title of the Inuit.

It has been said that the truth is stranger than fiction. In truth, the United States Constitution never conferred power over Alaska Natives. Today, we have two-hundred years of decisions by the United States Supreme Court and legislation by Congress and the President, lacking Constitutional authority over Natives of Alaska. The United States has also abrogated the liberty and the property of Alaska Natives under the color of the Constitution. This abrogation, however, was no part of the original understanding. If the

United States, the Congress, the President, or the Supreme Court has any authority, with respect to Natives of Alaska, then the Constitution must confer it. And, any such provisions at one and the same time establishes and limits the scope of the power. Notwithstanding assignments of a plenary power to the United States, it remains competent to inquire whether the Constitution confers it or whether subsequent legislative or judicial glosses on the Constitution have, because "the Union meant more," concocted the power.

The Inuit inquiry into the original understanding about Natives of Alaska takes three forms. What does the text of the Constitution state and mean? What did the Framers intend? To what motives did they give effect through the text? What powers does the structure of the Constitution necessarily imply, and did the Framers necessarily intend, without declaring them?

This is all the Framers said and recorded in the Federal Convention about the relation of Native Americans and the Constitution. First, the Indian commerce clause has been cited for a plenary legislative authority in Congress over Native Americans, but the analysis demonstrates that the clause conferred no such power. Secondly, the treaty clause, the property clause, and the war powers have each been cited to confer upon the federal government constitutional authority over Native Americans, but the Framers never mentioned Native Americans during their recorded debates about the treaty clause, the property clause, or the war powers of the Congress. Thirdly, Congress has since been embellished with a status and power of guardianship of Native American tribes, but the Constitution does not establish and the Framers never discussed such a status and plenary power.

We will now analyze the Constitutional text and the Framers' deliberations. This reveals that the original understanding of the national power with respect to Native Americans comprehended only two principles. First, the few Native Americans within the jurisdiction (not limits) of a state and taxed by that state would augment that state's proportions of taxation and representation. However, the three-fifths clause did not require members of Congress to represent these Native Americans or their interests; the formula only determined the ratio of representation and taxation among the states. Native Americans, like women and African Americans, were not actually represented.

Secondly, the national legislative power is limited to commerce with Native American tribes, and extends no farther. The Framers restricted Mr. Madison's proposal of a separate and broad legislative power, "To regulate affairs with the Indians as well within as without the limits of the United States". This became a more partial and narrower power when abridged to; "To regulate Commerce with . . . the Indian Tribes."

The original understanding---that no plenary power exists in the national government---implies that many acts of the United States respecting Native Americans were and are *ultra vires* and therefore these acts cannot become "constitutional" even through Congress enacted them, the President signed them, and the Supreme Court upheld them. Nor could the United States confer upon states powers over Native Americans or Native American lands which the United States did not have itself, such as taxation, civil jurisdiction, criminal jurisdiction, jurisdiction over hunting and fishing rights, and jurisdiction over water rights.

The Inuit inquiry to the original understanding regarding Natives of Alaska should examine not only the Constitution's text and the debates, but also whether the Constitution's structure necessarily implies and the Framers necessarily intended any powers without declaring them. The United States Constitution forever remains silent for Natives of Alaska. The Natives of Alaska are unrestrained by those United States Constitutional provisions specifically as limited on Federal or State authority. United

States vs. Kagama, (118 U.S. , 383), Talton v. Maves, (163 U.S. , 396), and Santa Clara Pueblo v. Martinez, (436 U.S., 49).

The State of Alaska has been less inclined than has the National government to introduce humanity into their transaction with the Natives of Alaska and have themselves undertaken to dominate and to destroy Native tribes of Alaska. This occurs in the guise and pursuant to the Tenth Amendment of the United States Constitution. The Tenth Amendment, of course, does not vest new powers in the States and cannot exceed its original bounds. Under the Tenth Amendment the Natives of Alaska would not be subject to the jurisdiction of the State nor of the States in Congress assembled. By voiding National authority, this original understanding, therefore, implicates much more serious practical consequences for Natives of Alaska and the result is catastrophic as in the McDowell vs. State of Alaska.

The State of Alaska has exercised powers over Natives of Alaska, their lands, without authority, in taxes, in civil jurisdiction, criminal jurisdiction, zoning, hunting and fishing rights, water rights, religion, and general police powers. Congress mandated these activities without the consent of the Natives of Alaska. This mandate is in direct violation of the Compact of the 1959 Statehood Act for Alaska, Article XII, Section 12. The delegation of federal authority to the the State of Alaska, under Public Law 280, without the consent of the Nativews of Alaska, has now exposed this activity as an illegal and unconstitutional assault upon the integrity of real Inuit self-determination. This unconstitutional taking of powers not granted to the United States government and the unjust claim for jurisdiction by the State of Alaska is without United States Constitutional footing. This desire and claim for jurisdiction has created a cause of action for the Inuit, as the unconsented taking of jurisdiction falls under the color of the United States Constitution for the test of the supreme law of the land.

We, the Inuit of Alaska, or Natives of Alaska, conclude that the Statehood Act in no way restricts or diminishes the inherent rights of the Inuit nor their acts. The present claim of Walter J. Hickel, Governor of the State of Alaska, to "One People, one government" cannot muster the constitutional test in McDowell v. State of Alaska. In McDowell, the Supreme Court of Alaska declared the 1986 Alaska Subsistence Law as violative of several sections of the Constitution, namely Article VIII, sections 3, 15, and 17.

The State of Alaska Constitution does not exist in a vacuum. Its genesis is rooted in the Constitution of the United States. Specifically, when congress enumerated the Property Clause of the constitutuon; "The Congress shall have power to dipose of and make all needful rules and regulations respecting the territory or other property belonging to the United States . ." (U.S. Constitution, Article IV, Section 3, Clause 2).

Accordingly, the people of Alaska implicitly acknowledged the powers reserved to congress under the property clause when they agreed in the Alaska State Constitution that:

"The State of Alaska and its people forever disclaim all right and title in or to any property belonging to the United States or subject to its disposition, and not granted or confirmed to the State or its political subdivisions, by or under the act admit-  
ting Alaska to the Union. The State and its people further disclaim all right or title in or to any property, including fishing rights, the right or title to which may be held by or for any Indian, Eskimo, or Aleut, or community thereof, as that

right or title is defined in the act of admission. The State and its people agree that, unless otherwise provided by Congress, the property, as described in this section, shall remain subject to the absolute disposition of the United States. They further agree that no taxes will be imposed upon any such property, until otherwise provided by the Congress. This tax exemption shall not apply to property held by individuals in fee without restrictions on alienation.

Against this background, the State of Alaska must sustain a heavy burden to show that Congress lacks the authority under the Property Clause to change the subsistence priority set forth by the Alaska National Interest Land Conservation Act of 1980. (ANILCA), and including State of Alaska selected lands.

The State of Alaska's primary argument against congressional power to enact ANILCA is blatantly unconstitutional. Factually, the present ruling in McDowell cannot, by itself, reverse the intent of the United States Constitution in Article IV, Section 3, Clause 2, nor the Alaska State Constitution, Article XII, Section 12. ANILCA, Section 810, is nothing more than an exercise of congressional power under the Property Clause to dispose of and make needful rules for the public property.

It appears that the Governor of Alaska and the shifting majority of Alaska's Supreme Court have left the scope and intent provided by the people for the affirmative vote of the Statehood Act and Compact with the Native People of Alaska. And, in recent times, 1982, Alaskan voters rejected the measure of Proposition No. 7 by a vote of 111,770 to 69,679. (Personal Consumption of Fish and Game). This rejection disclaimed the present notion of "One people, one government." This recognition of Inuit sovereignty is still intact within both the U.S. Constitution and by the people of Alaska.

In a third instance, the people of Alaska, with a resounding vote, created the Statehood Commission of Alaska, thereby recognizing the government to government relationships among the Natives of Alaska, the United States government, and the State of Alaska.

Although the United States has granted sovereignty to itself, it fell short of the Constitutional test to conquer, to defeat in war, to honor in peace, to enter into treaties for cession of lands now occupied by Natives of Alaska. The desire and the original transaction of Russia and the United States is infected with fraud. But, the real party, the Natives of Alaska, the Inuit, have not, with their agents, obligated the acts for the transfer of any rights to the Russians or the United States. Therefore, we are charging the United States and Russia for treaty fraud in the alleged purchase of Alaska. The United States and Russia cannot perfect and grant to themselves sovereignty to the territory and historical waters presently occupied and used by Natives of Alaska. Neither can the United States or Russia grant sovereignty they do not possess as on September 16, 1991 in the United States and the Russian Maritime Boundary Agreement.

The United States-Soviet Maritime Boundary Agreement was signed by Secretary of State Baker and Foreign Minister Shevardnadze on June 1, 1990, after 9 years of negotiation, and was submitted to the Senate for its advice and consent last September, 1991. The Foreign Relations Committee held a hearing on the treaty on June 19, and ordered it reported on June 27, 1990 with the recommendation that the Senate consent to its ratification. On September 16, 1991, the U.S. Senate gave its advice and consent to the new United States and Soviet Maritime Boundary Agreement.

The Maritime Boundary Agreement addressed these conflicts: 1) declaring that the 1867 Convention Line is the maritime boundary between the United States and the Soviet Union. 2) establishing a precise geographic depiction of the line; and 3) providing for the transfer of jurisdiction and sovereign rights in four potential special areas. A treaty wherein negotiations involve fraud is invalid. Whereas the United States and Russia have granted to themselves claims of sovereignty within the territorial dominion of the Natives of Alaska; the Natives of Alaska, themselves, never assented nor consented in treaty to the United States and Russian negotiations. This is now a cause of action for the Natives of Alaska to terminate the military occupation of Alaska by the United States and Russia set forth on September 16, 1991. This can be best defined by Chief Justice Marshall in America Insurance Company vs. Peters. (United States Supreme Court, 1828, 1 Peters 542), : "The usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace."

On the other hand, Alaska as occupied territory, is generally considered to be part of the occupant's realm as far as belligerent purposes are concerned. This common view was expressed long ago by the Supreme Court of the United States in the well-known case of Thirty Hogsheads of Sugar v. Boyle. (1815, 9 Cranch 191), when it held that, : "Although acquisitions made during war are not considered as permanent until confirmed by treaty, yet to every commercial and belligerent purposes, they are considered as a part of the domain of the conqueror, so long as he retains the possession and government of them." Any attempt to supplant the legitimate sovereignty of the Natives of Alaska by absorption of occupied territory during the course of negotiations must be considered as an unlawful premature annexation, whether in 1867 or 1991.

The United States and Russia have created for themselves an international incident of world class folly. Therefore, in lieu of international arbitration over the sovereignty dispute of third parties, the Inuit, or Natives of Alaska, recommend a world class conference for the deliberation of legitimate and permanent sovereignty for the Inuit.

We, the Inuit, Natives of Alaska, recommend to the United States Senate through the leadership of the Senate Select Committee on Indian Affairs with the appropriate committees; Senate Foreign Relations, Senate Judiciary, Senate Committee on Energy and National Resources, under the Senate Rule XXV Standing Rules of the Senate, to convene a joint hearing and an International Conference for the creation of the Republic of the Arctic with the United States and Russia to submit to the United Nations. This to be voted upon by the General Assembly for a final vote for the self-determination of the Inuit and their Republic of the Arctic.

THE ALASKA NATIVES AND THEIR  
SUBSISTENCE RIGHTS:  
A DISCUSSION OF THE CONSTITUTIONAL QUESTIONS

Prepared by  
Stewart L. Udall  
July 1977

SOME HISTORY

Since their ancestors crossed the Bering Strait, the Alaskan Natives have thrived in what others would consider a hostile setting largely because they possessed skills which enabled them to make wise use of the rich array of renewable resources which surrounded them. Of necessity, these Natives developed intimate ties with land and its creatures, and the survival skills they perfected were grounded in an unwritten conservation ethic. All resources were used efficiently, and this dominant element of thrift was exemplified by the harvesting of seals: the meat of the seal supplied food, but its by-products also supplied oil to be used in lamps for heat and light, skins for clothing and shelter, raw materials for arts, handicrafts, and utensils--and even materials for the construction of kayaks and dog sleds.

It was the rigors of climate, and the necessity of traveling long distances to procure food by hunting, fishing, and gathering which produced the singular lifestyles of the Alaska Natives. Activity flourished in the summer to gather and prepare the food required for the coming winter. The Natives knew that if plenty of food was stored, winter would not be a hard season. Even when nature was inhospitable, hunters had to gather whatever was available so their families and neighbors would not go hungry. The concept of sharing has always been a vital part of the life of Alaskan Natives, and this meant that in times of shortages, everyone lived lean so there would be enough to go around.

-2-

The cycle of the seasons dominated existence in the Far North, and when winter came, most of the time would be spent indoors where the telling of stories and histories, and the making of arts, handicrafts, and utensils added other elements to Native cultures.

In bush Alaska today, these living patterns are still dominant, and the lives of individuals are still closely attuned to the land and its promises and limitations. Natives who subsist to a substantial degree on renewable resources are instinctive conservationists: they know they will be the big losers if nature is not allowed to replenish its fish and wildlife populations.

For the Alaska Natives, subsistence rights involve far more than normal outdoor recreation: the right to hunt and fish and gather food on the land which surround their homes is the very essence of the Native way of life. And it is now clear that unless positive action is taken to protect Native subsistence rights, the unique Native cultures of Alaska are doomed.

Restrictions on the rights of Natives to subsist is already causing heavy impacts on their lives. In addition to destroying a part of their culture-- which in itself would be sufficient reason to allow the continuation of subsistence--there is now a growing danger that the slow strangulation of subsistence rights will destroy the economy of bush Alaska.

Yet the subsistence question is admittedly a very complicated one for it involves federal and state laws and policies as well as the growing demands of non-natives who are interested

in increasing their consumption of Alaska's renewable resources. Complicating the problem even further in 1977 is the unwillingness to this date of either the State of Alaska or the Department of the Interior to take meaningful action to protect the subsistence rights of the Alaska Natives.

This memorandum is intended as a terse discussion (written for lawyers and laymen alike) of the crucial legal and constitutional questions which must be resolved before the traditional subsistence rights of the Alaskan Natives can receive the protection promised when the Alaska Native Claims Settlement Act (ANCSA) was enacted in 1971.

#### THE CONGRESS AND SUBSISTENCE

Congress passed the Alaska Native Claims Settlement Act in 1971 to settle land claims based on what is known in law as aboriginal title. Aboriginal title is a central concept of U. S. Indian Law. Simply stated, it is a form of legal title based on the use and occupancy of land. It is not a true legal title, however. The term applies only to land used and occupied in the United States by American Indians or Natives. The aboriginal title holder is allowed to continue use and occupancy of the land until the aboriginal title to the land is either voluntarily given up or is extinguished -- with or without compensation -- by Congress or the Courts. As long as the land is held by aboriginal title, it cannot be sold, leased, used, or developed by the claimants. And until Congress takes active

-3a-

steps to extinguish the title, the Indian claimants can take legal action only against those who trespass on their land.

In order to gain a fully recognized legal title to at least a portion of the lands they claimed by aboriginal right, the Alaskan Natives petitioned Congress for a settlement of their claims. Previously, in all cases where either Congress or the Courts have settled Indian claims of aboriginal title, part of the settlement process has always involved the extinguishment of the aboriginal land claims as part and parcel of the overall solution. This, of course, was the pattern also followed in the enactment of ANCSA. In return for fee simple title to 40 million acres of land and approximately one billion dollars, the Alaskan Natives allowed all their aboriginal claims to land in Alaska to be extinguished. Sections 4(b) and (c) of ANCSA accomplish the termination of these rights.

But some who fail to grasp this principle of law have incorrectly interpreted these sections to mean that Alaskan Natives no longer have any right to subsist by hunting and fishing. The fallacy of this argument is revealed by the legislative history of ANCSA, for while Congress cancelled the old inchoate rights with one hand, with the other it directed the Secretary of the Interior to take action to protect the existing subsistence activities of the Natives on the federally owned lands of Alaska. The legislative history of ANCSA further reveals that it was anticipated that the State of Alaska could -- and would -- assist the Secretary in evolving policies which would likewise

-4-

protect the subsistence activities of Natives on the lands granted to the state under the Alaska Statehood Act.

From the beginning of Congressional deliberations on the Native claims settlement the subsistence problem was identified as a major issue. The first "foundation document" submitted to the Congress was a massive compilation of data about Alaska's natural resources and the uses made of those resources by the Natives which was prepared at the request of Senator Henry M. Jackson, the Chairman of the Senate Committee on Interior and Insular Affairs, and was entitled "Alaska Natives and the Land." This document was compiled in 1968 by the Federal Field Committee for Development Planning in Alaska and it offered the conclusion that:

"There is no dispute that the right of Alaska Natives to go upon federal lands for the purpose of taking fish and game should continue."

When this report was published, the economic and environmental realities of bush life in Alaska compelled such a conclusion and the same realities exist today.

When evaluating the many settlement proposals advanced during the years 1967 to 1971, Congress looked long and hard at the subsistence question. S. 35, the final bill considered by the Senate in 1971, contained a subsistence provision. The Senate Committee Report concluded that the Natives did not need to own the land they used to harvest subsistence resources, and likewise determined that one of the reasons these lands should remain in federal ownership was to ensure the protection of Native subsistence rights. The Committee stated its awareness that "Native livelihoods depend upon the biotic resources of millions of acres," and it is clear that the Senate felt it would not be difficult to protect the existing subsistence rights of the Alaska Natives.

In its report, the Senate Committee said:

"Despite the passage of control and management over resident fish and wildlife to the State, the federal government still holds the power to control the disposition of and entry upon federal lands. This legislation directs the Secretary of the Interior to classify land for priority use as subsistence resource habitat and authorized the temporary closure of lands to entry for hunting and fishing except for subsistence use where an emergency exists with respect to depletion of these resources."

There were important differences, however, between the Senate's proposals and the approach taken by the House of Representatives. The House Committee felt the subsistence question did not need to be resolved in the Settlement Act. Instead, it anticipated that subsistence would be achieved by other means. The House Committee Report concluded that:

"The 40,000,000 acres is a generous grant by almost any standard. The number of Natives is estimated to be about 55,000, but less than 40,000 of them live in Native Villages. The rest of them live in cities in Alaska or live outside the State of Alaska. The acreage occupied by villages and needed for normal village expansion is less than 1,000,000 acres. While some of the remaining 39,000,000 acres may be selected by the Natives because of its subsistence use, most of it will be selected for its economic potential. The land selected is not required to be related to prior use and occupancy, which is the basis for a claim of aboriginal title. Moreover, there will be little incentive for the Natives to select land for subsistence use because during the foreseeable future the Natives will be able to continue their present subsistence uses regardless of whether the lands are in Federal or State ownership."

These differences were ultimately resolved in the Conference between the two bodies when, in haste to produce a settlement before the end of a session of Congress, the Senate yielded to the House position that no legislation was needed because the Secretary of the Interior had authority through existing administrative powers to protect the rights of the Natives. The Conference Committee explained its decision in these words:

"The Senate amendments to the House bill provided for the protection of the Native peoples' interest in and use of subsistence resources on the public lands. The Conference Committee, after careful consideration, believes that all Native interests in subsistence resource lands can and will be protected by the Secretary 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 non-residents when the subsistence resources of these lands are in short supply or otherwise threatened. The Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives."

Although Congress honestly felt it had provided guidelines which would result in a satisfactory solution, events soon demonstrated that it had actually created uncertainty and confusion which have led to what can only be described in 1977 as a "subsistence crisis" for the Natives of rural Alaska.

THE SECRETARY OF THE INTERIOR AND THE STATE OF ALASKA

Nearly six years have elapsed since ANCSA became law. During that interval there have been four incumbent Secretaries

Senate's  
representatives.  
not need  
anticipated  
the House

ber  
,000,  
ative  
ties in  
aska.  
eded  
han  
aining  
e Natives  
f it  
ntial.  
e  
ich  
title.  
ve for  
ence  
ure  
hair  
ate

of the Interior who have served under three different Presidents. That not one of these Secretaries has taken any action whatsoever to implement the subsistence solution recommended by Congress is an indication either that they consider the proposed Congressional plan unwise, or feel the Department lacks authority to set up and administer a rational subsistence system in Alaska. In any event, in the absence of any subsistence system supported by law, clouds of doubt have begun to gather over the subsistence rights of the Alaska Natives.

Although no Secretary of the Interior has taken steps to carry out the Congressional mandate, the State of Alaska did make an effort in 1975 to set up a limited subsistence system covering part of Alaska's renewable resources. This plan adopted by the Alaska legislature (Alaska Statute 16.05.257) was limited to subsistence hunting only and instead of establishing rules to deal with subsistence problems on a statewide basis it provided only for the creation of subsistence areas when a minimum of 100 residents--Native or non-Native--of any area requested the establishment of a subsistence plan. However, this modified scheme was not intended as a measure to protect the rights of the Alaska Natives, and it studiously ignores any mention of the Alaska Natives as a special class of citizens.

It is not surprising that the Alaska legislature dealt gingerly with the Native subsistence issue and made no effort to deal with the rights of the Alaska Natives as a special class of citizens. Under its Constitution it is patent that the Alaska legislature cannot grant meaningful subsistence

-8-

rights to the Alaska Natives--or to any other group of citizens. Article I, Section 1 of the Alaska Constitution states unequivocally that "...all persons are equal and entitled to equal rights, opportunities, and protection under the law." This clause in the Constitution was given special meaning in a subsequent section (Article VIII, Section 3) which refers to Alaska's renewable natural resources and says:

"Whenever occurring in their natural state, fish, wildlife and waters are reserved to the people for common use."

Thus the State cannot under its Constitution single out its Natives--or any other distinct class of citizens--and grant them special subsistence rights. This is particularly true with respect to fishing, for Article VIII, Section 15 of the Constitution prohibits the legislature from creating "any exclusive right or special privilege of fishery."

As a consequence, inhibitions contained in Alaska's Constitution have combined with inaction by the Office of the Secretary of the Interior to put the Alaska Natives and their subsistence rights in a legal limbo. Today Natives risk prosecution for violating the State's criminal laws every time a salmon is taken or a moose is shot, and their traditional rights are being gradually whittled away by the Alaska Courts.

All these developments since ANCSA have underscored the paramount conclusion that there can be no subsistence program worth the paper it is written on unless the Congress uses its power under the U.S. Constitution and grants such rights to the Alaska Natives.

CONGRESS AND THE CONSTITUTION

It is beyond argument that the United States Congress has the power to set up a resource management regimen for the Alaskan Natives and confirm their right to subsist on the public lands of Alaska owned by the people of the United States.

Congress derives its authority over Natives from two sources. Article I, 58, cl. 3 of the U.S. Constitution gives Congress plenary authority to regulate "commerce with" the Indian tribes; and the treaty making power of the President confers similar authority. The federal trust responsibility over all American Indians has evolved out of the exercise of these Constitutional powers, and innumerable Federal statutes have been written defining the rights and fixing the responsibilities of Indian citizens.

Unfortunately, a few individuals unfamiliar with Indian law persist in arguing that it is somehow objectionable or invidious to ask Congress to pass "racial" legislation benefiting only Indians. This argument is based on a complete misunderstanding of the provisions of the U.S. Constitution which give all Indians a unique status. From the beginning of this country, every piece of Indian legislation which has been passed is racial in the sense it was deliberately enacted to change the status or the condition of a special class of citizens--Indians. It is a legal non-sequitur (as a unanimous U.S. Supreme Court has pointed out so emphatically in recent cases) to argue that Congress violates the equal protection clause when it writes laws which single out Indian lands or Indian rights for special

treatment.

This principle was recently reiterated in Morton v. Mancari, 417 U.S. 525 (1974), a case which upheld a 1934 law granting Indians a preference in hiring and promotion within the Bureau of Indian Affairs. In it the Court said in a unanimous decision that "the plenary power of Congress to deal with the special problems of the Indian is drawn both explicitly and implicitly from the Constitution itself." The Court said that "As long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians, such legislative judgments will not be disturbed."

Similarly, in United States v. Antelope, \_\_\_\_\_ U.S. \_\_\_\_\_ (1977), Indians tried and convicted under the Federal Major Crimes Act claimed that they were discriminated against since a non-Indian would have been tried in the court of the state in which the crime was committed. Had the case been tried in the state court, the burden of proof assumed by the prosecution would admittedly have been more stringent. As a consequence of being tried under the Crime Act, the Indians were convicted on less evidence than would have been necessary in the state court. In yet another unanimous decision, the Court revisited the subject of Native rights and the Constitution and stated:

"The decisions of this Court leave no doubt that federal legislation with respect to Indian tribes, although relating to Indians as such, is not based upon impermissible racial classification. Quite the contrary, classifications expressly singling out Indian tribes as subjects of legislation are expressly provided for in the Constitution and supported by the ensuing history of the Federal Government's relations with Indians."

-11-

Since the Alaskan Natives use subsistence resources to supply both physical and cultural needs, Congress clearly has the authority to set up a subsistence system giving preference to the Natives which satisfies the U.S. Constitution and is "tied rationally to the fulfillment of Congress's unique obligation toward the Indian." When this authority is combined with the plenary power Congress also has under the property clause to regulate the use of the renewable resources of the public lands there can be no doubt that where this issue is concerned, a fateful burden rests on the Congress of the United States: only Congress has the power to establish a workable subsistence system for Alaska Natives which can withstand any challenge from any quarter.

August 31, 1997

Alaska Inter-Tribal Council  
Membership and Communities

Dear AITC Membership,

This is an overview of what happened at the August 1997 Alaska Native Subsistence Conference in Anchorage. I was there at the beginning of the land claims and so I know the origins of current treaties, statutes and laws and how we became entangled in this misrepresentation of justice.

At the conference, and for the past twenty plus years, the State of Alaska never has answered Article XII (Twelve), Section 12 of the Constitution of the State of Alaska. Article XII (Twelve), Section 12 recognizes Eskimos, Indians, and Aleuts as the people whose inherent rights are "disclaimed" by those people making a plea for the status of "statehood". In order for those people to be awarded "statehood" by the United States government, those people had to first "disclaim" all rights and title to our lands, including fishing rights, forever. No "Eskimo, Indian, or Aleut" is to be intimidated or arrested for feeding his or her family. This includes all forms of barter, including all national monies. The State of Alaska dare not answer or address Article XII (Twelve), Section 12 because their attorneys know that the state will lose on that legal ground. That is why Eskimos, Indians, and Aleuts are arrested for practicing hunting, fishing, or trading and then, after an average of two years, with no jail time, the case is dismissed. Only the Eskimos, Indians, and Aleuts who plead guilty are taken, by their own lack of will and with the purposeful wrong advice of malpracticing attorneys, to a State of Alaska jail. Otherwise, with Article XII (Twelve), Section 12 of the State of Alaska Constitution our inherent rights cannot be alienated.

The state constitution doesn't say the disclaimer is good until 1971, it says forever. Please obtain a copy of the State of Alaska Constitution and read of our special status for yourselves. This is the basis of our rights in federal and international law. And, understand that the Alaska Native Claims Settlement Act was not a jurisdictional act. That means that all of our rights still stand. No matter that our own Native legislators encourage us to back an amendment to the state constitution in order to save themselves the embarrassment of standing apart from the non-Native legislators. As Irene Nicholai said, "The problem is not solved, or else we wouldn't be here." Are, we the problem? In other words, if we disappear, then will the problem be solved? Or is her lack of will and legal scholarship the problem? Why must we be asked to characterize ourselves as a "problem" for the non-Native people.

Neither have the governors, much less the consecutive Alaska state legislatures, answered the Federal Supremacy Clause of the State of Alaska Constitution which is Article XII (Twelve), Section 13. This federal supremacy clause simply means that the State of Alaska is subject to the sovereign powers of the United States of America. This has great import for ourselves as we continue to establish our government to government position within our homeland of Alaska.

Again, regarding Article XII (Twelve), Section 12, the State of Alaska and the Western states west of the Mississippi, are all "disclaimer" states. Had ANILCA language reflected this State of Alaska Constitutional Disclaimer Clause, there would be no constitutional issues raised in Alaska. Understand that the federal government made, as a pre-existing condition for statehood, the disclaimer clause, for the western states.

You might wonder how in the world did the word "rural" come to be in ANILCA rather than the specific recognition in the disclaimer clause of Eskimos, Indians and Aleuts. The self-same person who spoke to the Second Guiding Principle during our August 1997 conference brought that word into ANILCA on August 20, 1977; thus causing division and strife and undermining our recognition in favor of the State of Alaska. "Rural" is a dehumanizing term similar to the term "subsistence" which, in the eyes of the citizens of the State of Alaska, undermines our social and political status. That person is Byron Mallott. At the conference he reminded us that Guiding Principle Two still stands for "rural". Mr. Mallott now has the opportunity to prove himself to be a senior statesman and to correct the errors and suffering he has caused the Eskimos, Indians, and Aleuts. In 1977 he was president of the Alaska Federation of Natives and in that year he substituted the words "rural preference" and "residents" when the issue could have been legally resolved by inserting "Eskimos, Indians, and Aleuts" as in the disclaimer clause.

In order for Eskimos, Indians, and Aleuts to have cultural continuity and to establish our legal relationships it would be best that ANILCA reflect the same language as Article XII (Twelve), Section 12. The State of Alaska is out of compliance with ANILCA, which is Indian legislation, and we have to change a few words in ANILCA. ANILCA and ANCSA have already been amended over 2,000 times. My point is that we ought to agree upon established legal continuity and intent of already existing legal precepts all the way from the time of Great Britains arrival to the present.

The disclaimer clause (Article Twelve of the State of Alaska Constitution) originated to ensure that the United States gained the most from the Eskimo Indian, and Aleut traders (trappers, hunters, and fishermen). Eskimo, Indian, and Aleut trade is, I repeat is in the arena of international trade. (ie. government to government) Once you understand this, it becomes more apparent why the

State of Alaska is so anxious for us go along with their fraudulent plan to amend the state constitution.

This is the legal chronology of the disclaimer clause: First the Royal Proclamation of 1763. Then, those principles carried over into the Jay Treaty and the Treaty of Paris. This recognition of the Eskimo, Indian, and Aleut hunting, fishing, and trading rights was also a condition between the United States and Russia in 1824. There, the Secretary of State, John Quincy Adams, articulated that commerce with the Northwestern Natives was to exist between themselves (The United States) and the Natives (Eskimos, Indians, and Aleuts) and that it was to exist "unmolested." In other words, our status as Eskimos, Indians, and Aleuts is to exist "unmolested" for the monetary and material benefits of the government to government trading rights of the United States federal government.

It is important for you to know that the issue of "tribes" is a phony issue. The United States has already recognized the existence of tribes in the 1824 treaty between the United States and Russia. And, more recently in the list of recognized governments from the desk of Assistant Secretary of the Interior, Ada Deer.

The McDowell case only deals with privileges and licenses for natural resource management for citizens of the State of Alaska. As the recognized Eskimos, Indians, and Aleuts of Alaska, we have inherent rights derived from historical use and occupation. We have an ancient right, not created under state law. Had McDowell been an Eskimo, Indian or Aleut, his defense would have been the strict enforcement of Article XII, Section 12. This is the difference and is meant to focus your attention upon the very real racist crimes against humanity which are occurring here under the guise of "one people" under statehood. We are the Americans, so to speak. No one can question our loyalty. Our National Guard and veteran achievements speak for themselves. Now we must ask the State of Alaska and their representatives; "Are you loyal to the precepts of the treaties and federal supremacy clauses of the United States of America?"

And, as one Yakutat man put it at the evening hearing: "Why aren't certain legislators proud of us, proud to be the recipients of knowing us as distinct peoples?" We are Alaska. Our languages and ourselves have been created from this land, water, weather, animals, and plants. Instead, we are threatened with withdrawal of state support. As if we must prostitute ourselves to be recognized as Eskimos, Indians, and Aleuts. At this 1997 Subsistence Conference former governor Jay Hammond even attempted to instill fear with a veiled threat of violence against ourselves; a former governor inviting violence by way of prediction. That was a backhanded insult. But, then, so are many

recent policies of the State of Alaska; including "Limited Entry". "Limited" to whom?

The Equal Protection Clause, or Section VIII (Eight) of the State of Alaska Constitution, as differentiated from Section XII (Twelve), is for the non-Native citizens within the State of Alaska. The State of Alaska cannot ignore its compact with Eskimos, Indians, and Aleuts in Section XII (Twelve) because the State of Alaska must comply with the federal supremacy clause of its own constitution. For example, in the Genocide Convention Treaty signed by the United States in 1948 it is written: "Any act designed in whole, or in part, to destroy a people, is genocide." (That is Section 4 of ANCSA.) The limitations of equal protection only occur when racist non-Native people decide that they have been wronged. The State of Alaska Supreme Court is silent on Article XII (Twelve), Section 12 as a condition for enforcement of the supremacy of its entire constitution. Please note, that the 1988 Genocide Convention is applicable backwards and forwards in time and naturally supercedes a lower court act designed as a quick fix for the oil companies; namely ANCSA.

The 1971 Alaska Native Claims Settlement Act was not a jurisdictional act and it did not intend to deny Eskimos, Indians, and Aleuts their historical inherent rights to survive as recognized Peoples. If that is the intent, then that is one of many faces of genocide. "Extinguishment" is not now, nor ever has been, acceptable to civilized peoples. We do not want to disappear just to appease the state legislature. We are Eskimos, Indians, and Aleuts; not "rural". There is no "Rural Tribe". More specifically, we are Inupiat, Yupik, Tlingit, Haida, Gwich'in, and so on.

The State of Alaska does not make a great effort to explain that it lost a sovereignty case in 1974. (6 to 2) In United States v. Alaska the State of Alaska tried to establish Cook Inlet as a historical bay. This would have awarded it sovereignty which the state never had. Instead, the United States Supreme Court decided that the State of Alaska is a derivative state. Meaning, it derives from the sponsorship of the U.S. Congress and it is subject to the supreme law of the land. This is why the State of Alaska does not want to enforce itself against Article XII (Twelve), Section 12 upon its own lands. Because the state would lose every time.

So you see, the disclaimer states have such disclaimers only for the purpose of enforcing federal supremacy. The State of Alaska again lost in 1997 in U.S. vs. State of Alaska. Again in a 6 - 2 margin in a case regarding general revenue sharing. The state lost on the grounds that it is derivative of the federal government and therefore not entitled to receive monies as a sovereign. They (State of Alaska) cannot have sovereignty and so neither can the Eskimos, Indians, and Aleuts. This political fight, like the stock market, is actually emotionally run. And, the basis is greed. Behind the smooth demeanor and

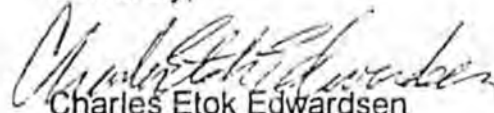
carefully chosen English words is the face of greed. What they cannot have we are not to have. However, our rights are inherent and the State of Alaska has arrived to our homelands under federal supremacy.

Also, Article I, (One) Section 8, or the Commerce Clause, of the United States Constitution, must be executed by the federal government to maintain international trade with Eskimos, Indians, and Aleuts on the high seas. In Alexander v. United States in the Ninth Circuit there was established the definition of "customary and traditional trade" with which the State of Alaska cannot interfere. All State of Alaska attorneys know these laws and those who hide this knowledge from you are practicing fraudulent deception upon yourself as an Eskimo, Indian, or Aleut.

In closing, please remember that RurAL CAP and AFN cannot speak for the tribes because they, the tribes, have never waived their sovereign immunity. This created a false sense of security at the 1997 August Subsistence Conference; as if they, RurAL CAP and AFN, did something when, in fact, they did nothing but through lack of will became co-conspirators in the obstruction of justice and crimes against peace against Eskimos, Indians, and Aleuts. (The phrase "crimes against peace" is from the Genocide Treaty Convention and upholds our inherent rights in international, federal, and state law.)

We have perceived veiled threats against the maintenance of our status. However, in Title 31 of the U.S. Code, it is prohibited that any state, including the State of Alaska, should arbitrarily use federal revenue funds in a discriminating manner. At this conference we felt the whip of the Democrats. When the legislature reconvenes we'll feel the whip of the Republicans. Remember that our rights of continuity as distinct Peoples were upheld, admittedly for the purposes of trade, by the United States even before the Democratic or Republican parties were formed.

Sincerely,



Charles Etok Edwardson  
Inupiat Community of the Arctic Slope  
c/o Box 211  
Barrow, Alaska 99723

Sept 26 1997

John D. Riley  
4125 PARMINGAN TERRACE  
ANCHORAGE, ALASKA 99516-4056

SENATE RESOURCES COMMITTEE  
P.O. Box 670-190  
CHUGIAK, ALASKA 99567-0190  
RECEIVED  
SEP 29 1997

ATTN: SENATOR RICK HALFORD

SUBJECT: SUBSISTENCE HEARINGS

THE ENCLOSED EXPRESS MY VIEW  
OF THE SUBSISTENCE HUNTING & FISHING  
PROBLEMS, AND THEIR SOLUTIONS MUCH  
BETTER THAN I COULD.

I HAVE HIGH-LIGHTED GOVERNOR  
HAMMOND'S 3 ESSENTIALS WHICH SEEM  
TO BE NECESSARY TO A SUCCESSFUL  
SOLUTION.

AN EARLY AND FIRMLY RECOMMEND-  
ATION BY THE SENATE RESOURCES COMMITTEE  
IS VITAL.

RESPECTFULLY SUBMITTED,

John D. Riley

# Legislators, let public vote on subsistence

PORT ALSWORTH — When Gov. Tony Knowles requested House Speaker Gail Phillips, Senate President Mike Miller, ex-Attorney General Charlie Cole, Byron Mallot, and me to join Lt. Gov. Fran Ulmer and him on a "subsistence task force," a staff member facetiously dubbed us The Magnificent Seven. Others thought "malevolent," "misguided," or "misinformed" more appropriate adjectives. However, none were so rude as to suggest "moronic," though some might doubt the sanity of anyone volunteering to march into the subsistence minefield.

Because of remarkably astute staff work, liaison with the congressional delegation and Interior Secretary Bruce Babbitt, plus abundant cooperative effort, I believe we met our assignment as best as it can possibly be met. That assignment: assuring that Alaskans will continue to manage their fish and game rather than having the federal government wrest such management from us, while also assuring that those dependent upon subsistence resources are accommodated to the best and fairest degree possible.

However, we fashioned only the skeletal structure. Left up to the Legislature and Fish and Game boards was the addition of muscle and sinew.

A Frankensteinian monster? Only if you the voters permit it to be so construct-



**JAY  
HAMMOND**

ed. And even if so, you'll have ample opportunity to drive a stake through its heart at the ballot box. The creature will have three major segments, none of which can stand by itself. All must be voter-approved or it dies aborning. Those segments are 1. a constitutional amendment permitting, not mandating, a rural preference; 2. amendments to state statutes which, among other things, fine-tune the definition of "rural"; and 3. ANILCA amendments reducing potential for federal manipulation or mischief.

That all seven members signed off on our proposal demonstrates only that we feel we met our assignment as best as possible and that the public should be permitted to vote on the package. Therein lies my major concern.

There are some legislators so opposed to amending our constitution or discriminat-

*There are some legislators so opposed to amending our constitution or discriminating further between Alaskans that they would prefer to hazard a federal takeover rather than compromise "principle."*

ing further between Alaskans that they would prefer to hazard a federal takeover rather than compromise "principle." Ironically, their staunchest allies may well be those who will oppose passage in the belief the federal government will vastly increase discrimination on their behalf. The former seem to believe they can pummel an opponent's fist into submission by thumping it with their nose, while the latter will gleefully cheer them on and cry for more blood.

Hopefully, those who would stand on principle will not be so duped but instead couple courage of conviction with courage of confrontation and take their arguments to the public arena. Let the public assess them and then vote accordingly. To do otherwise indicates either lack of conviction that those arguments have sufficient merit or an insufferably paternalistic attitude reflecting belief that voters are not to be trusted. Despite suspicion their own election may bol-

ster that premise, I would hope they'd rise above same and give voters a shot at the package.

Meanwhile the governor has fulfilled his obligation to come up with a viable plan. Now it's up to the Legislature to let the public accept or reject it. If it's shot down and a federal takeover occurs, let the public be the ones to have manned the Gatling guns. Don't bury this land mine of an issue deep in committee and thereby permit timorous cohorts to tiptoe around it unscathed.

Legislators for years have failed to solve this dilemma; perhaps for good reason. So now, legislators, make your case to the public, and if they deem it valid, they will so vote. If the voters don't buy your case, you'll not have lost honor and will at least be off the hook upon which you'll otherwise dangle, to be targeted by every Alaskan who is dismayed by the outcome.

□ Jay Hammond was governor of Alaska from 1974-1982.

11  
of  
re  
t-  
d  
y  
a  
it  
s  
y  
t-  
t  
e  
:  
t  
t-  
t-  
e

# Subsistence train wreck must never occur

9-7-97  
To best protect Alaskans' subsistence rights, let us all put Alaska first.

If we let the federal government take over by default, we will forever regret what we have done.

Gov. Tony Knowles' subsistence panel, working with Alaska Natives, sportsmen and the public, has fashioned a workable solution. Sen. Murkowski and Congressman Young have done the same.

A constitutional amendment alone will not solve the problem. Changes in federal law are necessary to recognize the state's primary role in fish and wildlife management. Changes in state law are needed to define what is rural and to decide who, in time of shortage of a resource, has first call.

I've always felt that people living on a river system, who depend on local fish to live, should have that preference in time of shortage, based on lifestyle and need. In-state management will meet those goals; out-of-state management can't be guaranteed to do so.

The subsistence plans put forward do not answer every question. But they leave it to us, as Alaskans, to settle the problems rather than delegate them to a place that is distant, with decision-makers who don't know our unique part of the world.

Some Native leaders have told me they believe they could get a better deal by let-



**WALLY  
HICKEL**

ting control cede to the federal government. Yes, current federal law would bring in managers with one objective in mind — protection of subsistence. But other issues all Alaskans care about could be swept aside. Unlike Alaska, Uncle Sam has no mandate to care for our commercial and sport fisheries — or our sport hunting.

If we cede control of our fish and game to Uncle Sam, how long will it be before subsistence is something we can't protect?

As those involved in subsistence whaling, for example, if we as Alaskans don't have to defend our lifestyle in Washington — and in far-off meetings of world powers — virtually every year. The United States could decide to deal our whaling rights away — because it has the power to manage that resource.

Some of our elected conservative leaders have told

me they don't support the solution. Their reasons vary — from the idea that a train wreck on this issue will help replace Knowles to the idea that the statehood compact guaranteed Alaskan control of our fish and game and therefore we should be challenging the federal law that could take it away in court.

Statehood did not take away the federal government's special relationship with Alaska Natives. Our compact gave us control of fish and game, but it clearly did not resolve a number of issues pending then between Uncle Sam and Alaska Natives, and subsistence is one that remains.

If Uncle Sam were to run our fish and game to the detriment of our commercial and sport fisheries, we might then have a legal case that says our compact was broken, but I sure wouldn't want to get that far.

As for those who would replace Knowles, let me say this: Subsistence is one issue where all sides — political friends and political adversaries — have to get into the tent if we're going to keep our basic rights as a state.

This problem can't be solved without a bipartisan solution, and it should be solved this year. There's plenty of time — and plenty of issues — next year to fight for, or against, Knowles' reelection.

Subsistence is not a "Native" thing; it is an Alaska

thing. Subsistence means food. Some of us who live here depend on the land and the sea to put food on the table. I have no doubt the framers of our constitution intended that those who need a fish to eat should have it. As for how we do it, we can — and will — work it out. We've had a point system that worked before, and there are ways to make it work again.

A core part of our state's constitution says the resources of the state belong to us all. We do nothing to water that down when during a shortage we allow an appropriation of some of those resources to a group in need. It is no different from helping the poor, providing for the public health or providing for special education when there is a need — all of which the state does now with its money and resources.

While I believe it is in Alaska's best interest overall to make these changes, it is clear to me that some groups — on all sides — find it more beneficial to see a train wreck.

I ran for governor in 1990 on the theme of bringing our decision-making home — and it would be a sad, sad thing for this state if we couldn't lay down our differences enough to be united on this issue now before we lose it all

□ Wally J. Hickel is a former secretary of the interior and two-term governor of Alaska.

## The Anchorage Times

Publisher: BILL J. ALLEN

"Believing in Alaskans, putting Alaska first"

Editors: DENNIS FRADLEY, PAUL JENKINS, WILLIAM J. TOBIN

The Anchorage Times Commentary in this segment of the Anchorage Daily News does not represent the views of the Daily News. It is written and published under an agreement with former owners of The Times, in the interests of preserving a diversity of viewpoints in the community.

# Some legacy

**I**T'S A REAL shame to think of the legacy this Legislature appears willing to leave. A reputation of achievement that the majority caucus worked so hard to earn is about to be tossed out the window.

Let's consider the achievements first.

Just a few years ago, experts were sounding an alarm that the state was on a suicide course to economic disaster. Alaska's annual spending was climbing sharply, income was declining rapidly, and it was only a matter of time until all available state savings were tapped out.

The crisis, some folks said at the time, demanded drastic action. Among the options put forward were establishing a state income tax, doing away with the Permanent Fund dividend program and making the Longevity Bonus program needs-based.

The public said phooey to these ideas, and the Legislature listened. The Republican leadership designed a different, more direct solution to address the problem — it simply cut state spending.

For three years in a row, it has found ways to make cuts — bravely confronting the howling protests of bureaucrats and professional agitators who prefer more, not less, state spending.

As a result, the impending fiscal crisis is no longer atop the state's priority list. It isn't considered as urgent as it was. To their credit, House and Senate leaders are determined to make additional reductions in the coming year. And based on its past performance, the Legislature can be expected to make good on the commitment.

Fiscal restraint isn't the only accomplishment. The majority has passed laws to reduce government red tape, address crime and to strengthen family values. Legislators can point to a long list of new laws they've produced to meet Alaska's priorities. Except on one issue.

Subsistence.

The inability to come to grips with this problem is not the leadership's fault. The House speaker and Senate president helped Gov. Tony Knowles and others design a fair, bipartisan solution. It's one that all Alaskans could live with — except, perhaps, for the bull-headed.

Unfortunately, a number of these are members of the legislative majority. Their number appears to be sufficient to thwart giving Alaskans the opportunity to vote on the issue.

Like some obstinate character in a Dr. Seuss storybook tale, these legislators appear willing to hand over state fisheries management to the federal government.

Years from now, it won't be the accomplishments that Alaskans will recall about this Legislature. It will be the tragic fact that it let the state down on subsistence.



Official Business

**COMMITTEE:**

SENATE RESOURCES

DATE: 17 OCTOBER 1997

**SIGN-IN****Subject of meeting:**INTERIM HEARING  
ON SUBSISTENCE.

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Steve Ginnik	P.O. Box 382 Ft. Yukon, AK	662-3078	Walter J. Jolly, Jr. Ft. Yukon Tribal Council	yes
Joe Drucks	Chalkitsik	NO phone	Village of Chalkitsik	yes
Peter David	Allakaket	968-2282	Village of Allakaket	yes
JIM STEVENS	3705 ARCTIC #2156 ANCHORAGE AK 99503	243-2513	SELF	YES
Elwina Jackson Jr	P.O. Box 10 Shoowuk, AK 99665	473-8239	<del>IRASHAGLUK</del> I.R.A. Tribe	YES
Edna Ungudruk Peters	Box 129 Ruby, AK 99768	468-4408	Ruby Tribal Council	yes
PAUL KINDSEN	Box 999 GALENA, AK 99741	656-1883	GALENA SCHOOL	yes
Parry Walker	Box 43 Holy Cross, AK 99602	MESS 476-2162	Holy Cross Tribal Council	yes
Carl Jerue Jr	Box 10 Anvik AK 99558	663-6322	Anvik Tribal Members	YES
		656-1217	Galena Robert Thurmond	No

JNU INFO  
elder

64052884

14:40

001 2970



Official Business

**COMMITTEE:**

S. Resources

**DATE:** 10-17-97

**SIGN-IN**

**Subject of meeting:**

SUBSISTENCE - GALENA

PLEASE PRINT!

NAME

ADDRESS (MAILING) & (ZIP)

PHONE

REPRESENTING

DO YOU WANT TO TESTIFY?

Sid Huntington	PO Box 47 Galena AK 99741	656-1212	ALASKA'S people	?
Ebbe Sim	# 122 First Ave. Fairbanks, AK. 99701	451-8416	Huslia, AK.	Yes
Adrienne Blatnick	P.O. Box 359 Galena, AK 99741	656-2117	Urdakleet, AK & PECS	yes
Marie Chiklak	P.O. Box 359 Galena, AK 99741	656-2116	Mtn. Village, AK & PECS	YES
George Yaska	P.O. Box 60691 Fairbanks, AK. 99706	452-8251	myself	yes
Marie Huntington	P.O. Box 124 Galena AK 99741	656-1809	myself	yes
Glenda Huntington	P.O. Box 124 Galena AK	656-1809	self	Yes
Charles Sink	PO Box 111 Galena AK	656-1606	Gana-a Yoo, Ltd.	Yes
Ebbe Nickich	Box 64 Graveling Hill	453-5133	Graveling	Yes
Dan Patrick	Box 66 Galena Hill	656-1278	Self	NO



Official Business

## COMMITTEE:

SENATE RESOURCES

DATE: 17 OCTOBER 1997

## SIGN-IN

## Subject of meeting:

INTERIM MEETING  
ON SUBSISTENCE.

PLEASE PRINT!

NAME ADDRESS (MAILING) &amp; (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?

MAX HUTENDORF	Box 329, GALENA, AK, 99741	909 656-1223	SELF	Yes
Jenny Pelkola	P.O. Box 227 Galena, AK 99741	656-1369	Self	yes
Orville H. Huselup	P.O. Box 71 Galena, AK 99741	656-2004	Self	Yes
Don Stokman	P.O. BOX GALENA, AK, 99741	656-1206	SELF	yes
ROGER HUNTINGTON	Box 10 GALENA 99741		SELF	YES
Violet Dayton	Box 176 Galena		Self	yes
Benedict Jones	Box 47 KOVUKUK, 99754		KOVUKUK TRIBAL	Yes
Pat D Sweetser	WOODEN TRIBAL COUNCIL Box 244, Galena		WOODEN TRIBAL COUNCIL	YES
Angela Huntington	Galena <del>Box 16 Galena, AK 99741</del>		<del>Self</del> <del>Galena</del>	yes
Mary Verneti	Box 16, Galena, AK 99741		SELF	yes!



Official Business

COMMITTEE:

S. Resources

DATE: 10/17/97

# SIGN-IN

Subject of meeting:

SUBSISTENCE - GALENA

PLEASE PRINT!

NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
<sup>Dore</sup> Frank Madros sr	KILTAQ AK 99948		self	yes
Shirley Wice	457 Cindy Dr., FBKS, AK 99701		self	yes
Shannon Carroll	Box 359 Galena Alaska 99741		self + everyone	yes
Lillian Olin				

2004

## Huslia

1. Fred Bifelt
2. Jack Wholecheese - 1<sup>st</sup> Chief Huslia
3. ~~R~~ Catherine Atla
4. Rose Ambrose
5. Franklin Simon
6. Sidney Henry - written statement  
read by Ceza
7. Ceza Sam

## Nulato

1. Victor Nicholas - Chief
2. Teckla Esmailka
3. Morris McGinty
4. Michael Stickman - 2<sup>nd</sup> Chief
5. Andy Durney
6. Peter Demoski - tribal administrator
7. Walter Stickman - Councilmember
8. Simeon Mountain
9. & Shirley Christian

COMMITTEE TAPE LOG

COMMITTEE: S. RESOURCES DATE: 17 OCT '97 TIME: 11:15

SUBJECT: SUBSISTENCE

MEMBERS: HARPOD, TAYLOR, TORBERSON, LEWAN, LINCOLN

SPEAKER	TAPE#	SIGNIFICANT INFORMATION
SEN. LINCOLN		
MARVIN YODER		CITY MANAGER, GAUONA
BEV HUNDORF		
WILL MAYO		TANANA CHIEFS CONFERENCE
STEVE GIMMS		CHIEF - FT YUKON, CHAIR AITC (AK INTER-TRIBAL COUNCIL)
JOE DRUCK, SR.		
SIDNEY HUNTINGTON		
FRED		#1 HUSLIA
		#2 HUSLIA
CATHERINE		#3 HUSLIA
ROSE		#4 "
FRANKLIN SMY		#5 "
SIDNEY HENRI		#6 WRITTEN STATEMENT (READS IN RECORD)
CESA SMY		#7 HUSLIA
PETER DAVID, ALAKAKET		
JIM STEVENS (ANCHORAGE)		
ELUSKA JOHN JR		
VICTOR NICHOLAS		MAYOR OF NULATO
		#2 NULATO
MORRIS MCGINKY		#3 "
MICHAEL		#4 " (2ND CHIEF NULATO COUNCIL)
ANDY GUERNY		#5 "
PETER DEMOSKY		#6 " TRIBAL ADMINISTRATOR
WALTER STICKMAN		#7 " TRIBAL COUNCIL MEMBER
SIDNEY MOUNTAIN		#8 "

HUSLIA  
2:123

GAUONA  
3:1:48

NULATO  
03.10



The testimony I am about to give is really a recommendation to the two opposing parties involved in this legal battle over the use of Alaska's wildlife resources. Let me first state that if the present situation of Laws and Policies are to continue to exist, I am going to vote for a *rural* ~~preference~~ preference. I have always been a subsistence user and will continue to be one as long as the Law allow. I also understand the need that all hunters have, to be able to hunt and fish when the seasons are open.

When ethical hunters and fisherman utilize the resources in any area they may happen to be, you hardly ever see complaints from the local people of that ~~area~~<sup>area</sup>. It is the unethical hunter and fisherman that creates problems for all of us and leaves us with these problems to sort out. The biggest problem we see with the present situation is the waste of wildlife meat that has been going on for many years with little or no improvement. We will hear both parties accusing "Well, they also waste meat", but that's not the point. The point is, if everyone is to have access to the resources we have to have a system where those resources are utilized and not wasted.

What I would like to recommend is that laws and policies are based on the caring and utilization of wildlife meat with little, ~~if no~~<sup>if no</sup>, allowances of those laws. We need harsher penalty's and fines of those violating the laws and to deter others from doing the same thing. When you have laws based on the caring of wildlife meat there is little room for excuses and loopholes of those laws. The bottom line is that you have to make every effort humanly possible to utilize the meat for human consumption. For this to happen both parties must work together in drawing up policies on how the meat is to be used.

The hunters that go out and harvest ~~the~~ wildlife resources for their own use need to bring it back as soon as possible so that the meat will reach its' final destination before spoilage. The hunter that would like to give their meat away would also have to get it back before spoilage, and they can work with the local area people or villages to distribute it out to the people most in need.

As for the laws and penalties in existence today, they are almost a laugh. Take for example when an outside hunter comes to Alaska and has no desire to take care of or return home with the meat, they simply accept the fine and revoked license for a year and return home knowing that it is by far cheaper than paying the cost of freight all the way back home. They don't even need to take this route, all they have to do is plead "not guilty" and the case will rarely ever go to court. As for the guided hunters that continue to accept the current fines and penalties and abuse the system, their guides also need to be accountable for their actions and have their licenses taken or severely restricted for future use.

These types of laws and policies based on use and caring of meat has many possibilities and is a tool that can be made to benefit everyone.

Respectfully,

Wayne Huntington

October 17, 1997

Senator Halford  
P.O. Box 670190  
Chugiak, Alaska 99567-0190

Dear Senator Halford,

I'm disappointed I did not get to participate in the Senate Resource Committee meeting today, you did not give us enough time to hear everyone's testimony on subsistence. I'm glad your group met in a village and tasted all the delicious native foods that we eat. Subsistence is so very important to us, in the rural villages. The dictionary states, means of supporting life, but why are you having only a one day meeting with us to hear our views when the subsistence issue concerns the rest of our lives? PLEASE PUT THE ISSUE ON THE 1998 BALLOT AND LET US DECIDE FOR OURSELVES!

On behalf of our native people here in Ruby, I would like to tell you our native ancestors and the native people here have all lived the subsistence lifestyle, since before the white man came to tell us what to do. We have hunted, trapped and fished and we are concerned about it, due to the wolf lovers and what I call big game hunters come out our way and go back home with only moose horns, they proudly display as they are driving by Ruby in their big fancy boats. They end up giving away their meat, they have some lame excuses like we have too big of a load or it's going to spoil. I believe all they care about is the moose rack! If they really wanted the meat they should find priority ways to send it home. THE KOYUKUK RIVER WILL EVENTUALLY END UP THE WAY THE NOUTNA RIVER IS RIGHT NOW, WITH ONLY COW MOOSE!!!!!!

The prices in our stores are outrageously high, you people that are trying to control our lives have sales at the super-markets, which we never have, maybe if you all come and live in the village for a few years you will understand where we're coming from. If we were not able to go out and subsist from our land the moose, fish, bear, caribou, rabbits, beaver, muskrats, porcupine, ducks, geese, grouse, ptarmigan, and **spruce** chickens which we take care of right away by cleaning, wrapping, freezing, canning or drying, we would probably go pretty darn hungry, due to the limited jobs and high unemployment rate here. We not only harvest the above but also berries, herbal plants, wild onions, mushrooms, wild chubarb and so on, and we also provide for our families that live in urban area.

In closing, please don't discriminate against us on the subsistence issue, it's our way of life, and our inherent right and always will be.

Sincerely, *Lena McCarty*

Lena McCarty

cc: Senator Georgianne Lincoln  
Representative Irene Nicholas

David R Martin

HC-2 Box 660

Clam Gulch, AK - 99568

Oct. 15, 1997

Comments on the Governor's Task Force on Subsistence Report.

I can not support the Task Force Report as it is. The report needs to be amended to define Rural area as the State has defined Rural area. "A community or area of the State in which the noncommercial customary and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy or the community or area."

The make up of the Council is not fair. It needs to include a cross-section of the public and not comprised of a majority of subsistence users appointed by the Tribal councils and advisory Committees.

The current Federal subsistence game Board is a total mockery. They are making Customary and Traditional findings on animals that have never even been in the subsistence area. They are making C+T finding on implanted species within the last 20 to 40 years in an area using justifications as flimsy as "my fore-fathers thought about hunting that species. C+T finding must be implemented only with proof of use.

The Barter clause must be kept at an extremely low amount or it will be abused.

With these amendments incorporated into the Task Force Report I would then and only then support it. Thank you for your time and efforts.

David R Martin

"Comments on the Plan for Substructure Priority"

I can only support the recommendations

of the Governor's Task Force on Substructure of the personal use legislation is repeatable.

Right now personal use gives arbitrators priority to all Alaska residents no matter

where they live.

of personal use isn't repeated the

the possibility that personal use becomes a priority is a reality that we don't

want to have to deal with.

Steve Vaneke  
P.O. Box 103  
W. N. Michik, Ht. 99638  
567-3470  
Oct. 15, 1991

Newhalen Tribal Council  
P.O. Box 207 Iliamna  
Newhalen, Alaska 99606  
(907) 571-1410  
(907) 571-1537 FAX

RECEIVED  
OCT 07 1997  
AUSU.....

September 29, 1997

The Honorable Rick Halford  
Alaska State Senator  
Chairman of the Senate Resources Committee  
P.O. Box 670190  
Chugiak, Alaska 99567

Dear Honorable Halford:

I would like to submit written testimony on behalf of the tribal members of Newhalen for the state's subsistence impasse.

The only access to Newhalen is by plane and we are 195 miles southwest of Anchorage. Today, Newhalen remains a fishing village with commercial catches from Bristol Bay and subsistence fishing in Lake Iliamna and Newhalen River.

The Newhalen economy relies on salmon runs, with many of my people relocating to Naknek 90 air mile to fish for the canneries during the summer season. Subsistence harvesting of fish and game is an important traditional source of food. However, the cash needs of my people are great and increases yearly. For heating fuel alone, living in Newhalen is very high; heating oil has been flown in for the past two years and sold at \$2.50 per gallon and \$2.85 for unleaded gas so, the average cost per household is over \$5,625.00.

There are few jobs in Newhalen. The unemployment rate fluctuates around 70%. There are occasional construction jobs, on local projects. In the past when such jobs were available there was usually one person who applied for each job. Recently, for every job that has opened there have been five or six applicants that in 1988 averaged \$18,000.00. This is because the seasonal income has dropped to approximately \$3,000.00- \$5,000.00 by 1996. It cannot even buy heat in many instances. My people desperately need job opportunities, not only so that we may live more comfortably but because it would improve our self esteem and raise us up spiritually.

The demographic community profile is as follows:

Population 178.....18 & over.....	82
Men.....	48
women.....	34
Men presently working.....	14
women presently working.....	15
Men commercial fishing.....46.....	19 Permit Holders
women commercial fishing.....6.....	4 Permit Holders

Another important consideration for the future of my people is that Welfare Reform has revoke the safety net that was once in place for women in my village. 54% of my people are children.

Since, July 1, 1997, the Newhalen Tribal Council has worked diligently to get more people employed. However, the 1997 commercial fishing season has been declared an economic disaster by Governor Tony Knowles. My people returned home without a penny in their pocket and huge debts. Again, the Newhalen Tribal Council has taken an active role in getting my people to work. We made sure that local contractor hired local people and those who could not get a job locally went to work for Arctic Storm (which was organized by the City of Newhalen). Bristol Bay Economic Development Corporation (BBEDC) is a co- owner of Arctic Storm. Arctic Storm has been a god sent to those who needed to work to buy their food and annual supply of heating fuel.

This year Newhalen has been quite fortunate with jobs because of local construction and Arctic Storm. However, the employment future of Newhalen residents will be limited next year because we don't have construction projects scheduled for Newhalen. Also, Senator Ted Stevens and Senator Frank Murkowski has co-sponsored a bill to eliminate off shore fishing factories. I'm only speculating what next years commercial fishing season will be like because the El Nino situation in high seas has been killing a lot of fish. So, next years fishing will be just as bad if not worst than this year. So, our subsistence way of life may be our only form of sustenance because my people won't have the money to purchase their food.

The Iliamna- Newhalen area is an international renowned sports hunting and fishing area. We try to cooperate with the tourists because we need the money that they bring into the communities. However, last year some of the meat that the sport hunters brought into the communities were spoiled and the meat could not be used for human consumption. But, this year the problem has escalated where most of the meat that is brought into the communities are spoiled. The Newhalen Tribal Council is in the process of encouraging the local Fish and Game Advisory Committee to revise its Wanton Waste Policy where the sport hunters will bring in the moose and caribou

Senator Halford  
Subsistence Impasse  
Page 3

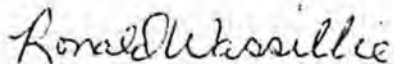
meat before it spoils and the meat can be used for human consumption. Wild fish and game has become a lot more valuable to my people because of the commercial fishing disaster and we are still trying to get heating fuel to my people at a reasonable cost.

I applaud the efforts that the State of Alaska is doing to resolve the subsistence impasse. However, the Newhalen Tribal Council would like to go on record in favor of rural preference on subsistence because subsistence hunting and fishing won't cost my people a lot of money that they don't have to feed their families.

Thank you in advance for your assistance with the subsistence impasse.

Sincerely,

NEWHALEN TRIBAL COUNCIL



Ronald Wassillie  
President

CC:

Raymond Wassillie, Lake Iliamna Fish & Game Advisory Committee  
Andrew Balluta, Federal Subsistence Board

RECEIVED

OCT 6 1997

FILE NO. ....

- 1 -

my name is Clara Stonea. I was born in Ruby, & raised in Hokirine for 10 years. It was while living there that my parents worked hard to put food on the table for their large family. In the summer at fish camp they cut, and dried fish caught with a fishnet my mother made and from a fishwheel my dad built. They always put in a large garden from which we ate all kinds of vegetables. They picked a lot of different kinds of berries which was made into jam, jellies, or relish, or put away with sugar in wooden barrels. In the fall they put away ducks, and geese salted down in barrels. These were used for holiday dinners, and made the best meals ever. I always think of these meals, & ~~relish~~ <sup>wish</sup> for them when I'm cooking. Thanks-giving dinner when they got a moose in Sept. they made dried meat, and since there was no electricity they bought a pressure cooker, and cans from the Sears Roebuck catalog and canned their fish, and meat for the winter. So nothing was spoiled, or wasted, and every thing was from the land. Except for a few staples, ~~nothing~~ hardly anything was bought from the store.

After I got married my husband and I raised our children the same way we also both worked hard

To put food on the table from the land for our large family, we always had a garden, and we used to take our children and go out in the hills to pick berries. We picked a lot of both Cranberries, and blueberries, this was used for Cranberry bread, jam, and jellies, and a Cranberry Pudding I used to often make for dessert in the winter months which the children just loved, and still talk about today. In the early 60's we still had no electricity in Ruby so much of the fish, and meat we got we put away by canning. By this time my parents couldn't do too much for themselves anymore so I canned moose meat (which was given to them by my brothers) for them also.

So ~~now~~ there again nothing was spoiled, or wasted.

Now today my children are all grown, living their own lives, raising their families in the subsistence life style also. They cut, and dry fish and can some for the winter. They go out pick berries, and make jam and freeze some, and share with me. In the fall they go out, and hunt moose which they put away, and always share with Don, and I. They also make dried meat, and package and freeze some.

~~Dear Senator Lincoln~~  
I thank God that now we have electricity so work is a lot easier for them than how it was for my parents, and for Don, and I.

Today I still live off the land and put away meat, fish, and berries. And occasionally I have the pleasure of taking care of some of my many grandchildren. If they are with me during school days, when they come home from school I give them snacks of dry meat, salmon strips, Cranberry pudding, or Cranberry nut bread. So you can see we are still "living off the land." I beg you, please do not take away our subsistence life style. Thank you and may God bless you, & keep you happy and healthy!

C.C.: Senator Georgianna Lincoln  
Representative Irene Nickolia

(C)

R17-1

OCT. 17 1997  
Time: 3:10 P.M.

RECEIVED  
OCT 20 1997

To whom it may concern?

I'm sure we've all been keeping up with local, state & Fed. issues. We're all aware that there has been cuts in <sup>state</sup> revenue sharing and there will continue to be cuts in the future. The welfare reform is also another ~~best~~ avenue to get people off welfare & into jobs. Would you please tell me where the job will materialize from? As far as I'm concerned ~~our~~ our subsistence life style is a year around job. We've been utilizing the renewable resources from our land and we'll continue to do so. It seems to me that if the state, federal & local people work together we can come to a consensus.

But we need to be heard in the outlying ~~and~~ areas, our testimony needs to seriously ~~not~~ ~~to~~ be considered. We're at the grass roots level, we're the one that will be affected by ~~the~~ the decisions be made today and ~~it~~ in the future —>

Subsistence cannot & probably  
will not ever be defined in  
a few words or on a piece of  
paper. In the mean time we  
will continue to live off  
the land; take only what is  
needed to put food on our table  
and hope that we can work and  
live together as common sense  
people keeping in mind the  
future of our children and their  
children.

Sincerely yours  
Charlotte M. Bifelt  
Charlotte M. Bifelt