

SCR

3



Alaska State Legislature

Please enter into the record my testimony to the SR&S
committee name

committee on SCR 3, dated 4-5-00

Dear Senator bill # / subject

To keep my testimony short I read only those underlined testimony on pages 716, 717, & 718.

I believe that Ron Sommerhill was also an observer while this discussion was taking place.

But otherwise I see this is how honest concerns become deluted during the politic-process

Thanks you

(9 PGS ATTACHED)

Signed: Wale Bondurant

Testifier

The Alaska Constitutional Legal Defense Fund

Representing (Optional)

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April 5, 1978
 Committee on Energy & Natural Resources
 Washington D.C.

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that the Department of Interior is equipped to perform an oversight responsibility.

Mr. STEVENS. Well, all they had to do was veto that international commission recommendation, and we could have gone back and worked something out with a bargaining chip in our hand, right, and because of the international extreme environmentalist pressure, and that's all it was, acknowledge. They sided with them.

Now, I'm really concerned that there are people being sold a bill of goods, and I'll tell you what. In Anchorage the young man who's done the research for this University of Alaska, of a problem of wolves and caribou, told me it was not the wolves that had been bothering our caribou, it was the Alaskan Natives.

And he supports the provision in title 7, because he says only the Federal Government will have the courage to stand up to the political pressure of the Alaskan Native, and do you agree with that?

Mr. MITCHELL. Well, I can't agree with whether or not he made the statement.

Senator STEVENS. I can tell you that he made it to me with a long and circuitous argument, and we finally got to be split up because I have a tendency to lose my temper once in a while. But I'm really disturbed. I think you were present on the phone, I had that phone call discussion with the people in the Bethel region.

Mr. MITCHELL. Yes, sir, there was.

Senator STEVENS. I'm disturbed that the Alaskan Native people believe that title 7 will put the Federal Government on their side, in any future disputes between nonarea residents. It's not an ethnic problem, it's a rural people versus urban and city people.

Mr. MITCHELL. That's correct.

Senator STEVENS. But the Alaska Native people are most concerned about that rural problem, and they think this means the Federal Government is going to be on their side. And if you look at the problem of the wolves, and I think the Alaskan Native people agreed with the wolf control program, the Alaskan Natives in the State legislature authorized it, voted for it.

If you look at the whale decision, you look at the decisions that were made back during territorial days when the Federal Government in fact had the control, in fish traps and in other issues. I cannot think of one time without regard to the administration, whether it be Republican or Democrat, where the national administration has sided with the Alaskan Native people, or the rural Alaskan people, vis-a-vis national organized pressure groups.

Now, if you can tell me one, I'll reconsider by position on title 7.

Mr. MITCHELL. Senator, I think that there has been a lot of emotion over the issue of Federal participation, or oversight in the management of subsistence resources. But I think that I've been as close to rural Alaska as anyone during the development of this legislation, and the rural Native people are not trying to get the Federal Government on their side. They're trying to get the State on their side.

Senator STEVENS. Well, it's a strange way to do it, to get the Secretary of Interior, to get him veto power over the State fish and game management plan.

Mr. MITCHELL. Senator, it is a strange way to do it, but rural Native people have seen time and time and time again, and I'm sure that

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the AFN President Mallot will back me up on this. They have seen the legitimate needs of rural people, and the legitimate need of wild-life resources in the rural areas of the State, sacrificed to the interest of Anchorage and Fairbanks sportsmen.

I have monitored most of the hearings that Commissioner Scooby has conducted on the Governor's proposed regionalization plan, the board of game and the board of fish go into the rural areas of State and they hear for days that this is critical. They go to Anchorage and they go to Fairbanks, and they hear that everything is fine.

And most of the people who live in Anchorage and Fairbanks have never been to a Native village and have no intention of going.

Senator STEVENS. Don't despair.

Mr. MITCHELL. I'm not.

Senator STEVENS. We had 80 percent votes against the Alaska Native Lands Claims Act, and we passed it anyway, and we've got a provision, a provision in my bill that requires the regional subsistence boards that the Governor is proposing.

Mr. MITCHELL. Senator, with all due respect, the provision of your bill does not provide for regionalization. It provides only for a subsistence preference.

Senator STEVENS. On a geographical basis.

Mr. MITCHELL. Well, that is—again, with all due respect.

Senator STEVENS. It's the only constitutional piece I know. I don't think yours is constitutional, despite your opinion. It's just not constitutional, that's all. I don't think you can take away from a State part of its sovereign powers as opposed to all other 49 States. Now, I've read your brief and I understand your position, but I'm convinced that mine is constitutional because it does provide for regional boards, and if there is a limitation on taking preference must be given to the residents of that region.

Now, that is the one thing that I can assure the Alaska Native people, and the rural Alaska, will mean, in any case where there's a limitation they will receive preference. And mind you, every annual regulation dealing with fish and game is a limitation.

Mr. MITCHELL. Senator, today one of the biggest problems we have had is trying to get a State limitation on the taking of resources. Almost without question, and in fact you might know this better than I, with the exception of the current position of the Arctic Slope on the western Arctic caribou herd, in my personal knowledge I do not know of a single instance in which rural villages have gone to the board of game with a request to do other than restrict taking.

And it's the question of trying to get the board of game to restrict taking before wildlife resources are depleted.

Senator STEVENS. The Fairbanks people did that, the Anchorage people did that, that's not a rural proposition. The organization was formed in Anchorage, it was formed for the purpose of limiting the taking of fish and game, and the sportsmen associations are on record to limit the taking of fishing and game. I don't think it's a rural versus a nonrural position to limit the taking of game, to the carrying capacity of the lands involved.

The question is the preference that is to be given in terms of the limitation, and I disagree with you. I think my bill is very clear. I would be glad to have it, if you would point out to me where it is defi-

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cient in terms of providing for a priority for those in the region in the event of any limitation on taking.

Mr. MITCHELL. Senator, it does do that. But what we're saying is that there are more limitations that should be opposed than have been presently opposed.

Senator STEVENS. Wait a minute, what is defective about the proposal, how will any Alaskan Native be harmed if you have a limitation and preference is given to the people who live in that area.

Mr. MITCHELL. Senator, the Alaska Natives will not be harmed, however, giving that preference, getting it put into legislation is what this effort is all about.

Senator STEVENS. Wait a minute. We can limit on Federal lands the right of the State to regulate the taking, we've done it in the Sykes Act. It defines the current relationship now, and you're familiar with that, you wrote it in your brief. I know you are. My provision says to the State that you may, the State of Alaska, may continue to regulate the taking on Federal lands provided it establishes a regional geographic system of fish and game boards.

And one of the provisions of those fish and game boards must be that if there's a limitation on the taking of any fish or game, priority for that taking must be given to the residents of Alaska who live in the area involved. Now, I know that's constitutional, I hope you agree.

Mr. MITCHELL. I assume it's constitutional.

Senator STEVENS. What's the defect, why do we need title 7?

Mr. MITCHELL. We need title 7, Senator, because in and of itself your legislation as drafted, in the opinion of not myself, but a wide—

Senator STEVENS. I see your good friend sitting up here, I know he's worked very hard, he's a very distinguished lawyer, and I've had many discussions about it. But again, you've not told me where there's a defect because there would be no taking on Federal lands until that provision is lived up to by the State of Alaska.

Mr. MITCHELL. Senator, a defect is not in setting down a policy. The State of Alaska has had on paper a policy similar to what you have in your legislation, for years. The problem, Senator, is performing the ongoing management process to provide for rural needs and to protect the wildlife.

One of the very interesting things we've had when we were trying to get control-use area put in in the lower Yukon, in the moose herd, was that the board or the department didn't even know what the scortique was, much less what the local food requirements were. Everybody was shooting up that herd. They didn't know what the safe level of harvest of that resource was before they could even get into an allocation situation.

And one of the things we have in title 7 that is not included in the legislation is the requirement that we've got to come up with a comprehensive plan for the management of these resources before we lose more of them.

If you'll look at the legislative history of the Alaska statute, it sets out the subsistence of section of title GE of the State code. If you go back and look at that, you'll see that Jimmy Huntington, who is the prime sponsor, who is an Alaskan Native of the interior of Alaska.

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wanted that legislation although that—with all due respect to the department—is not particularly artfully drafted because of the concern of those villages, because of the decimation of that herd in there, and even because of outside hunting.

That went on the past 5 years before the problem started in the Yukon. We've got to perform the process, and as Senator Durkin pointed out, the political pressures in Alaska, on the Governor and on everyone, makes it impossible to do that without some kind of Federal oversight. I am the last person to say that it would be helpful to the situation if the secretary ever in fact exercised his oversight authority and took over all management of fish and game in Alaska.

We know that would be disastrous. But just the way—

Senator STEVENS. That will be in this bill over my dead body because I fought for statehood and I fought against the people who wanted to put that in there at the time. This is just coming back from the people who oppose statehood, the people who are now articulating this position, who are in fact outspoken opponents of statehood. And they tried to kill our statehood bill with this provision.

Now, I'm not going to go back and fight that fight over again, and if people want to see a filibuster around here, there is a first-class filibuster. That's what it's going to be if they try to take statehood away from us by degrees. Now, that's what that provision is, and if you want something that protects the Natives, but don't tell me you have to get back to the Federal Government to have control over hunting, all hunting.

Now, title 7 goes to all hunting. If the Secretary doesn't like the provision to protect subsistence, he takes back all hunting and fishing rights on Federal lands in Alaska. Now that is excessive and it is a piecemeal replication of the statehood grant to our State, and it's not going to happen. And they're going to carry me off that floor before that happens.

And you let the people know who are advocating it, they had better realize it.

Mr. MITCHELL. I, and we understand your position on this, and what we are saying, and I also am familiar with the legislative history of section 6E, and I agree with you that in my judgment it was a cheap shot from the environmentalists.

Senator STEVENS. Yes; and I was there, every word of it, through the whole time, and I couldn't believe it happened. But we had to take it, and we took it because the distinguished predecessor of the other Secretary sitting here, who understood it and served in the Senate and said, relax, we will see to it that this is abided by. But we will also see to it that Alaska becomes a State, and we are a State now.

Certification was made with the Secretary of Interior, and there is no way, constitutionally, that that can be taken back in my opinion.

Mr. MITCHELL. Senator, the motivation for section 6E came from the environmental community. The motivation for title 7 comes from the rural Alaskan community. Now another thing about section 6E—

Senator STEVENS. It's being used a little bit by the national environment community, you will admit.

Mr. MITCHELL. Senator, if the truth be known, I think the shoe is on the other foot, I think it's the other way around.

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Senator STEVENS. That would be great, I wish we could get that shoe on that foot, it would be a good thing. If I thought the environmentalists were actually trying to protect the Natives, you tell me this. You show me when the environmentalists will agree to a rural control program, similar to the one that's on the Canadian side today, in the very areas that Justice wants to make a wilderness area.

On his side there is a wolf control program over there now. Now, you show me when you are ready to have a wolf control program in the Arctic Wildlife Range to protect the Natives subsistence interest in the caribou, and then I might listen to you.

Mr. MITCHELL. Senator, we are not down the line with the environmentalists, we are saying there are areas, just as there are areas with the State and the Department of the Interior, of common interest. And on the narrow issue of title 7, the environmental community has in fact given rural Alaskan support.

That does not mean that rural Alaskans support every action or every position of the national environmental community, right on down the line. And the other group of the people, right on down the line. Some do, some don't.

Senator STEVENS. This administration was elected on a program that at least there are substantial number of people, and this is not a political comment, it's just a fact. We are opposed to hunting per se.

We have a substantial number of people in the Department of the Interior now that are in the fish and wildlife areas who are opposed to hunting per se. Now, you want me to look the Alaskan Natives in the eye and tell them they are better protected by these people who oppose hunting by anybody. And they are, by exercising their rights as Alaskans, and the Alaskan Legislature, whether it's not this feeling, this built-in feeling, against their own way of life.

Now, do you deny that?

Mr. MITCHELL. Senator, one of the other provisions of title 7, that is of equal importance to dealing with the State, is dealing with precisely the environmental interest groups that you flag. One of the things that is in title 7, but again is not in your legislation, is a guarantee of a continuation of access for subsistence uses on all of this conservation unit.

Without that guarantee, Senator, it is quite possible that some of those managers and those conservation units will be hostile to subsistence.

Senator STEVENS. Let me tell you about that guarantee. We had a guarantee when Mount McKinley Park was created. The miners opposed it, they put in a bill that created Mount McKinley Park, they guaranteed mining that would forever be permitted, until the day it started.

Once it started, we will pass a little bill here, which I opposed. The Alaskans opposed it that were involved in it, from the State legislature, the Governor, who was then Governor Egan, Senator Bell, myself, there would be no question about it.

At the time that Mount McKinley Park was created, money would be permitted. As soon as it started it was cutoff. I can tell you a whole lot of guarantees we've had. How about the guarantee in section 17D2, the compromise that we could consider, establishing up to 80 million acres of land for national interest, we would consider it.

Now we're dealing with bills, none of them deal with less than 80 million acres, and it's not a consideration, it's a demand. Often they think we can't refuse.

Mr. MITCHELL. Senator, the Rural Cap committee has never taken a position on H.R. 39, but I would say parenthetically, however, that it's my reading of that statute that I think we are guaranteed. It might be a little strong.

Senator STEVENS. It says up to 80 million acres. And I was there, I would be glad to get the records out of this committee and show you that the compromise was very specific up to 80 million acres. Not that we would withdraw and establish at least 80 million acres, but to these people here who advocate this, you could think that the shoe is on the other foot.

All I'm telling you is, if by any chance a provision you advocate for title 7 becomes law, you will live to see the day that you will be petitioning Congress to overrule action of the Secretary of the Interior, denying the right of Alaskan Natives to hunt on Federal lands.

Mr. MITCHELL. Senator, if the political pressure comes to shut down the right of the Native people to hunt on the parks of Alaska, that political pressure comes. Now, it can come without title 7 through the form of either administrative action by the Secretary of Interior, or through the form of passing a congressional statute to that effect similar to what apparently went on with the McKinley Parks issue.

But at least under our legislation, Senator, under our legislation, the new legislation to get rid of subsistence uses, would have to overcome a presumption of the validity of those uses.

Senator STEVENS. No; you missed the point. Under existing law they would have to do it in every State, they could not do it just for Alaska. What you are suggesting is a provision that would apply only to Alaska, and, therefore, it takes us out of the protection of the resistance of other States to have it in their sovereignty, similarly invaded.

Senator DURKIN. Would the Senator yield for a question?

Senator STEVENS. Yes; I'm through.

Senator DURKIN. No, no—

Mr. MITCHELL. Senator, if I could just respond to that. The National Park system, I believe, is run on a statute by statute basis for the most part. What is allowed in McKinley by statute would be different from what is allowed in the case of the Arctic.

Senator STEVENS. I think that would be great. I suggested, and we agreed there would be a separate statute for each area created under section 17D2. It would be a wonderful thing if we had a separate statute for McKinley Park and a different one for Glacier Bay, and a different one for the Wrangles, just like they have a different one for Yellowstone and a different one for Yosemite, and a different one for Grand Canyon.

But we're not to be treated like other States, we're going to have 100 and some odd million acres in one bill.

Mr. MITCHELL. Senator, I understand that, my only point was that the legal mechanism exists to shut off this kind of uses on national parks in Alaska. While that might be permitted in other national park system units in the lower 48. And I just wanted to make that point—
Senator Durkin, do you have a question for me?

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Senator STEVENS. Thank you, Mr. Chairman. Let me close. I think you do an admirable job in representing the people of your area. I know we've had disagreements and I have a disagreement with Mr. Mallot, who is going to come behind you. But again, I don't think we're in disagreement as to the goal. I just think based on my experience of now some 25 years of dealing with people in the Department of Interior, of both political persuasion, that I have no confidence in the ability of the Department of Interior to put the needs and the rights of Alaska's rural people ahead of the demands of the national pressure groups.

Mr. MITCHELL. Senator, I would like to say that we also understand that you share our commitment to the ultimate objectives of this legislation, and we hope that while we do have procedural differences, that we can continue to engage in this or other types of dialog, to try and come up with a result that will do the job.

Senator STEVENS. Thank you, that will be ongoing, and thank you, Mr. Chairman.

Senator DERRIN. Thank you, Ted. I have an observation. I spent 3 days in Mount McKinley National Park last year, and I have a feeling that all of the animals had been sold to the Tokyo Zoo. I spent 3 days there, and there were very few animals out in those 3 days.

Senator STEVENS. We sent two to China and when I got there one was dead. I do remember that.

Senator DERRIN. The basic thrust was that I'm not sure what we're doing in Mount McKinley National Park, but there were damned few animals afoot in the 3 days we were up there.

Senator STEVENS. I'll tell you why you can't see animals in Mount McKinley National Park, they won't let us pave the road. No respectful animal would come near that blasted road with that dust there. You know, you go through a dust bowl that's following behind the enormous buses, you wouldn't stay within 1½ miles of it yourself unless you had to. Now, that's the problem, it's a great park but you can't see anything. You can't get to it unless you've got a backpack and you are backing in. That's the problem.

Most people traveling into that park are my age, not yours, and that's a compliment.

Senator DERRIN. Well, be that as it may. I was a little disappointed that there were very few animals afoot, other than the ones on the bus. But, Senator, it is my understanding that the Natives, and the groups that you are trying to protect, have signed off on title 7.

Senator STEVENS. They sign off on title 7, Mr. Chairman, because they have been led down the primrose path that I've been led down before, and I hope I've convinced them not to go down there. Now, it's one thing to have an oversight, and to have some sort of cooperative management concept. It's another thing to give the Secretary of Interior veto rights. And on the pretext of saying that the subsistence provisions in Alaska law are not adequate to protect Alaskan Natives, to give him the right to take back into the Department of Interior the total right to control fish and game on Federal lands in Alaska only.

In violation of the general statute of the United States, the Sikes Act, and in violation of what I consider to be the inherent constitutional rights of the State to equality. We are an equal partner in the Union, and we should not be treated that way. Now, if they want to go

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into some cooperative management program, where the Federal Government gives its advise and participates in it, and if it appoints a joint board, that's one thing.

But, to have this veto power and the right to preempt our State is wrong.

Senator DUNKIN. I don't think the Senator from Alaska is going to argue for all time that Alaska should be treated equally. I've sat on other committees where I've heard that Alaska is unique and should be treated with due respect to its unique character.

Senator STEVENS. That's when it comes to money.

Mr. MITCHELL. Senator, one additional thing that I think is critical that I neglected to mention in title 7, is that a major part of the problem in Alaska, with State management, has been the lack of money. And I just happened to think about it when you brought that subject up.

We've had the local fish and game advisory board system now for a number of years, and it's worked very, very poorly. Aside from the inherent unworkability of the structure that was set up, the major reason that it hasn't worked is because it was never funded. It takes money to have biologists, it takes money for enforcement. Alaska and everyone thinks that we are oil rich, and we all know we're not.

And title 7, if I could just finish. Senator, we do include Representative Young, with the support of Rural Cap, and the other rural Native groups, including a provision that would say that if all of this falls into place there will be some Federal participation in this, there will be some recognition that while there are Federal interests at stake here, the State cannot be expected to exercise all of its massive responsibility without some additional Federal moneys for subsistence. I think that's part of it.

Senator STEVENS. That financial system is up to half the cost, it's up to \$5 million. That reminds me of the little carrot that was involved in the Marine Mammal Protection Act. I'm sure you know the history of that. After 4 years now, the Federal Government is one-by-one turning back to the State of Alaska, the management of ocean mammals because they were unwilling to commit the moneys that were necessary to protect the mammals when we were willing to commit much more. You cannot show that we have been unwilling to commit the amount of money that was necessary for protection of wildlife in Alaska. That is not so.

We have far outstripped the Federal Government on the amount of money that's been put out.

Mr. MITCHELL. Senator, that may be the case. I can show that the State has, until very, very recently, refused to adequately fund its own fish and game advisory board system. And my point is—

Senator STEVENS. I agree with that, that's another matter. Now, that's the advisory board system.

Mr. MITCHELL. That's what I was just talking about, not marine mammals. My point is that there is a Federal responsibility, regardless of title 7, the Federal Government has an interest out there. They can enforce. And all we do with the oversight provision, and I again expect the Senator respectfully to disagree with me, is to force the Secretary of Interior to do something positive for a change. He's got that latent oversight authority.

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Senator STEVENS. He does not have it today, the Sikes Act does not give him that right, he has the right to close the area to hunting. He does not have a right to take away from the State the right to manage hunting. Now, under this bill he would be entitled, again under the pretext that the State subsistence provisions for natives was not sufficient to take over the entire management of all Federal lands, military, forest, BLM, park land, fish and wildlife land, on the pretext of one incident. He could take the whole thing back.

Mr. MITCHELL. Senator, my point is there has only been a judicial decision in Alaska that is on appeal, that squarely holds that under the property clause of the Constitution, the Secretary has that authority any way, and what I'm saying, and as far as—

Senator STEVENS. I'm familiar with the gentleman's decision, but it's very limited now.

Mr. MITCHELL. The argument is made—

Senator STEVENS. It doesn't give him the right to take over the management of forest military lands on the pretext of a deficiency with regard to an entirely different matter.

Mr. MITCHELL. Senator, one of the independent bases of the decision, as I read it, is that in any event the Secretary has authority under the property clause of the Constitution, notwithstanding section 6E of the Statehood Act, to do that. In any event, Mr. Chairman, it is quite obvious that this is a very controversial issue, and there's been an incredible amount of work that has gone on in the House, on the part of all groups on this issue.

And I would hope that when you consider this issue, during your deliberations on this legislation, that in addition to Senator Stevens' views, which are well taken, and I think well known, that there would be ample understanding that there are other interest groups involved, who have in their own judgment perhaps a different interpretation of what is best, and at least at the moment the Department of Interior and a number of others. I think, responsible interest groups are in agreement with us on that. Thank you.

Senator DURKIN. That's why I expressed amazement that it hadn't been resolved. But I think we had better move on, if you don't have any further questions. And I hope the reporter has recorded that Alaska should be treated with equality and is not unique, and we'll save that for future efforts.

Is Mr. Mallot present?

Senator STEVENS. Mr. Chairman, may I apologize. Byron, I have to go, I'm the host of a luncheon.

STATEMENT OF BYRON MALLOT, PRESIDENT, ALASKA FEDERATION OF NATIVES

Mr. MALLOT. Thank you, Mr. Chairman. My name is Byron Mallot, I am president of the Alaska Federation of Natives. I have a prepared statement, and I would like to submit it for the record.

Senator DURKIN. Without objection, it will be included.

Mr. MALLOT. I will briefly summarize my statement. I would like to state that I had a feeling in listening to Senator Stevens in his dialog with Don Mitchell, and I would like to state that the arguments put forth by Mr. Mitchell are shared very strongly by the Alaska Federation of Natives.

FISCAL NOTE

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

BILL NO. SCR 3

Revision Date/Time (Note if correction) _____ Dept. Affected _____
 Title Sovereignty of the State; Resources BRU _____
 _____ Component _____
 Sponsor Senator Taylor _____
 Requester Senate Resources Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

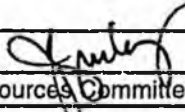
Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This resolution is anticipated to have no fiscal impact on state agencies.

Prepared by: Juli Lucky  Phone 465-4907
 Division Senate Resources Committee Date/Time 3/30/00 5:20 PM
 Approved by _____ Date _____
 Agency _____

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ACCORDING TO:

- THE U.S. CONSTITUTION; AND
- THE U.S. SUPREME COURT;

THE POWER TO CONTROL FISHING IS AN ESSENTIAL ELEMENT OF STATE SOVEREIGNTY AND THE U.S. CONGRESS DOES NOT HAVE ANY SIMILAR POWER IN ALASKA'S NAVIGABLE WATERS.

"[T]he States entered the federal system with their sovereignty intact."

Blatchford v. Native Village of Noatak, 501 U.S. 775, 779 (1991)

"Under the federal system established by the Constitution, the States retain a 'residuary and inviolable sovereignty.'"

Alden et al. v. Maine, 98-436 (Decided June 23, 1999 - Citing *The Federalist* No. 39, p. 245)

"Being an instrument of limited and enumerated powers, it follows irresistibly that what is not conferred [to the Federal Government by the Constitution] is withheld, and belongs to State authorities."

New York v. United States, 505 U.S. 144, 156 (1992)

"[I]f a power is an attribute of state sovereignty . . . it is necessarily a power the Constitution has not conferred on Congress."

New York v. United States, 505 U.S. 144, 156 (1992) Referencing *United States v. Oregon*, 366 U.S. 643, 649 (1961); *Case v. Bowles*, 327 U.S. 92, 102 (1946); and *Oklahoma ex. Rel. Phillips v. Guy F. Atkinson Co.*, 313 U.S. 508, 534 (1941)

"Ownership of submerged lands - which carries with it the power to control navigation, fishing, and other public uses of water - is an essential attribute of [Alaska's] sovereignty."

United States v. Alaska, No. 84 Orig. (Decided June 19, 1997)

ACCORDING TO:

- THE UNITED STATES CONGRESS;
- THE U.S. SUPREME COURT; AND
- THE U.S. JUSTICE DEPARTMENT;

TITLE TO ALASKA'S NAVIGABLE WATERS AND SUBMERGED LANDS BELONGS TO THE STATE OF ALASKA

"[N]ew States are admitted to the Union on an "equal footing" with the original 13 colonies and succeed to the United States' title to the beds of navigable waters within their boundaries."

United States v. Alaska, No. 84, Orig. (Decided June 19, 1997)

"The State [of Alaska] received at statehood all navigable waterways . . ."

Judicial Admission by Elizabeth Ann Peterson – Attorney for U.S. Justice Department – during oral arguments re: The Alaska Legislative Council, Alaska State Legislature, et al., v. Bruce Babbitt, Secretary of The Interior, et al. held in the U.S. Court of Appeals for the District of Columbia on Thursday, April 8, 1999.

"In 1953 . . . Congress enacted the Submerged Lands Act . . . That Act 'confirmed' and 'established' State's title to and interest in 'lands beneath navigable waters within the boundaries of the respective States.'"

United States v. Alaska, No. 84, Orig. (Decided June 19, 1997)

"The Alaska Statehood Act expressly provides that the Submerged Land's Act applies to Alaska."

United States v. Alaska, No. 84, Orig. (Decided June 19, 1997)

"As a general matter, then, Alaska is entitled¹ under both the equal footing doctrine and the Submerged Lands Act to submerged lands beneath tidal and inland navigable waters, and under the Submerged Lands Act alone to submerged lands extending three miles seaward of its coastline."

United States v. Alaska, No. 84, Orig. (Decided June 19, 1997)

¹ *Black's Law Dictionary*, West Publishing Co., 1990 Edition: "Entitle. In its usual sense, to entitle is to give a right or legal title to."

“State sovereignty over submerged lands rests on the Submerged Lands Act of 1953.”

United States v. Alaska, 442 U.S. 184, 188 (1975)

“Section 6(m) of the Alaska Statehood Act of July 7, 1958, provides 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.’”

United States v. Alaska, 442 U.S. 184, 188 (Footnote 3) (1975)

“The Alaska Statehood Act expressly provides that the Submerged Lands Act applies to Alaska.”

United States v. Alaska, No. 84, Orig. (Decided June 19, 1997)

THE SUBMERGED LANDS ACT OF 1953

“Sec. 1311 (a) Confirmation and establishment of title and ownership of lands and resources; management, administration, leasing, development, and use. It is determined and declared to be in the public interest that

(1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands 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 applicable State law be, and they are, subject to the respective States . . .”

Public Law 31, 83rd Congress, Second Session: 67 Stat. 29

**THE SUBMERGED LANDS ACT AMOUNTS TO A QUIT CLAIM DEED. HENCE,
ALL LEGAL AND JUDICIAL ROADS LEAD TO THE FOLLOWING:**

- Title to Alaska’s Submerged Lands belongs to the State of Alaska.
- Alaska holds title to and owns all the natural resources in all her Submerged Lands.
- Alaska holds title to and owns all the natural resources in all her Navigable Waters.
- The right and power to manage all Alaska’s Submerged Lands and Navigable Waters belongs to the State of Alaska and is subject to State law (not Federal law).
- The right and power to manage all natural resources (including fish) in Alaska’s Navigable Waters belongs to the State of Alaska and is subject to State law (not Federal law).

ALASKA HOLDS SOVEREIGN TITLE TO AND MANAGEMENT AUTHORITY
OVER ALASKA'S SUBMERGED LANDS, NAVIGABLE WATERS AND THE
NATURAL RESOURCES ON AND WITHIN THOSE LANDS AND WATERS

In his September 2, 1999 press release announcing his call for the September 22, 1999 special session on "subsistence," Alaska Governor Tony Knowles was quoted as stating:

"It would be irresponsible to turn over our right and responsibility to manage Alaska's fish and game to the federal government, a right that was at the heart of Statehood which we are celebrating on the 40th anniversary this year."¹

However, as shown below, it was Governor Knowles himself who has tried the hardest to surrender that right to the federal government.

During his term of office, Governor Hickel brought a lawsuit in the Federal Courts titled *State of Alaska v. Babbitt*.² He challenged federal intervention and defended Alaska's sovereign "title" and right to manage its submerged lands, navigable waters and the resources therein according to State law.

The primary discussion in *Babbitt* concerned the definition of "public lands" in Section 102 of the Alaska National Interest Lands Conservation Act ("ANILCA").³ The federal government argued that the definition of "public lands" includes navigable waters within and adjacent to federal uplands, by virtue of the implied reservation of water rights doctrine.⁴ The State of Alaska objected, pointing out that "title" to Alaska's submerged lands and navigable waters had definitively been transferred to Alaska at statehood. Therefore, according to the Equal Footing Doctrine of the U.S. Constitution and the Submerged Lands Act of 1953,⁵ ownership of and management of those lands, waters and the natural resources therein are subject to state law - not federal law. The State also pointed out that ANILCA itself clearly provides

¹ September 2, 1999 Press Release from Office of the Governor.

² 72 F.3d 698 (9th Cir. 1995)

³ 16 U.S.C. 1102.

⁴ See discussion in *State of Alaska v. Babbitt*, 72 F.3d 698 (9th Cir. 1995).

⁵ Section 6(m) of the Alaska Statehood Act of July 7, 1958, provides 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." 72 Stat. 343, note following 48 U.S.C. c.2 Section 2 of the Act provides: "The State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereto, now included in the Territory of Alaska." 72 Stat. 339, note following 48 U.S.C. c.2.

that federal "public land" does not include "land validly . . . granted . . . to the State under any other provision of Federal Law."⁶

Once again, *Babbitt* was an "ownership" case defending Alaska's "title" to its sovereign lands and resources and Alaska's sovereign right to manage those lands and resources according to State law. It had nothing at all to do with who could hunt or fish on Alaska's submerged lands or in Alaska's navigable waters.

Shortly after taking office, Governor Knowles announced (in Fairbanks, at a luncheon meeting of the Alaska Outdoor Council) that he was dropping *Alaska v. Babbitt* because "some Alaskans felt it was "anti-subsistence." Later, at its annual convention, he told the Alaska Federation of Natives he dismissed the case to fulfill a political campaign promise. Attorney General Bothello supported that admission when he testified before the State Senate that the case was not dismissed for any "legal" reason.

By dismissing *Babbitt* "with prejudice," Governor Knowles unilaterally, without legal contest, agreed to forfeit control over huge tracts of Alaska's sovereign submerged lands, thousands of miles of Alaska's sovereign navigable waters, hundreds of thousands of Alaska's sovereign lakes and all of Alaska's sovereign natural resources within those lands and waters (including but not limited to fish) to the federal government. In other words, by dismissing "with prejudice," the Governor "consented" to the federal government's blatant attempt to narrow Alaska's sovereign domain - an act the U.S. Supreme Court has recently held to be without legal basis.⁷

Governor Knowles knew exactly what he was doing. He, not the Legislature, has caused the dilemma that is currently facing the State. He decided not to contest the federal government's position that Alaska's sovereign submerged lands and navigable waters in and adjacent to federal uplands are "Federal Lands." It was Governor Knowles who ceded management authority to the federal government - a position that is without legal authority and is a barefaced attempt to surrender Alaska's sovereign powers to the federal government.

Now, after personally attempting to remove all avenues of appeal to the courts, the Governor is telling the Legislature that they must initiate a change in the equality provisions of Alaska's Constitution or they will take the blame for a federal takeover of Alaska's resources. His recent call for a special session (like all others the

⁶ 16 U.S.C. 3102(j)(3).

⁷ *New York v. United States*, 505 U.S. 144, 182 (1992). "Where Congress exceeds its authority relative to the States . . . the departure from the constitutional plan cannot be ratified by the "consent" of state officials . . . The authority of Congress cannot be expanded by the "consent" of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States."

Governor has initiated) is indeed a thinly veiled appeal for the Legislature to join him in his surrender of Alaska's sovereignty to the federal government

Interestingly, the last paragraph of the Governor's September 2nd press release provides:

"Every public opinion survey says Alaskans want us to act to preserve state sovereignty and the culture of rural residents," Knowles said. "As elected leaders, we must now have the courage and foresight to take the actions necessary to achieve these worthy goals."

Here, the Governor is right. Without a doubt, Alaskans do want a Legislature (and a Governor) with the courage and foresight to take the actions necessary to preserve (not surrender) state sovereignty. In fact, each Legislator (and the Governor) has sworn an oath to do just that. It is abundantly clear that Alaska's elected leaders cannot act to preserve Alaska's Sovereignty by surrendering to the federal government the State's ability to manage or allocate Alaska's sovereign lands, waters and wildlife resources.

What actions can the Legislature (and the Governor) take to preserve Alaska's Sovereignty?

Each member must examine the legal foundation supporting Alaska's Sovereign title and Sovereign management authority. Then, the Legislature can forge an action plan based on solid legal grounds.

Three recent U.S. Supreme Court cases: a 1975 Alaska case; a 1997 Alaska case; and a 1997 Idaho case, very clearly address the matter of state sovereignty over submerged lands.

In 1975, in *United States v. Alaska*, a case that addressed who owned the submerged lands in lower Cook Inlet, the U.S. Supreme Court ruled:

State sovereignty over submerged lands rests on the Submerged Lands Act of 1953 . . .³

Section 6(m) of the Alaska Statehood Act of July 7, 1958, provides that the Submerged Lands Act "shall be

³ *United States v. Alaska*, 422 U.S. 184, 187 (1975).

applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder."⁹

Moreover, in June of 1997, in the Alaska case of *United States of America, Plaintiff v. State of Alaska*,¹⁰ a case that addressed who owned certain submerged lands in Alaska, Justice O'Connor, delivering the opinion of the U.S. Supreme Court, wrote:

Ownership of submerged lands – which carries with it the power to control navigation, fishing, and other public uses of water – is an essential attribute of [state] sovereignty.

Justice O'Connor then very clearly explained how Alaska obtained sovereign title to and became owner of her submerged lands. In this 1997 Alaska case, the U.S. Supreme Court said:

Under the doctrine of *Lessee of Pollard v. Hagan* . . . new States are admitted into the Union on an "equal footing" with the original colonies and succeed to the United States' title to the beds of navigable waters within their boundaries.

The Alaska Statehood Act expressly provides that the [1953] Submerged Lands Act applies to Alaska.

That [Submerged Lands] Act "confirmed" and "established" States' title to and interest in "lands beneath navigable waters within the "boundaries of the respective states."

The [Submerged Lands] Act essentially confirms States' equal footing title to tidelands and submerged lands.

As a general matter, then, Alaska is entitled under both the equal footing doctrine and the Submerged Lands Act to submerged lands beneath tidal and inland navigable waters, and under the Submerged Lands Act alone to submerged lands three miles seaward of its coastline.

⁹ *United States v. Alaska*, 422 U.S. 184 (footnote 3) (1975).

¹⁰ *United States of America, Plaintiff v. State of Alaska*, No. 84 Orig. (1997).

"Entitled" is defined as: "In its usual sense, to entitle is to give a right or legal title to."¹¹

The Court said the only exception to this automatic transfer at statehood was if the United States had "explicitly retained" specific submerged lands prior to statehood.

Then, in the 1997 case of *Idaho v. Coeur d'Alene Tribe of Idaho*,¹² the U.S. Supreme Court said:

As we stressed . . . lands underlying navigable waters have historically been considered "sovereign lands." State ownership of them has been "considered an essential attribute of sovereignty."

In consequence of this rule, a State's title to these sovereign lands arises from the equal footing doctrine and is "conferred not by Congress but by the Constitution itself."

There is no doubt. The U.S. Supreme Court believes Alaska's submerged lands are State "sovereign lands" and Alaska's ownership of them is "considered an essential attribute of [State] sovereignty."

In the 1992 case of *New York v. United States*,¹³ the U.S. Supreme Court ruled:

[I]f a power is an attribute of state sovereignty . . . it is necessarily a power the Constitution has not conferred on Congress.

The constitutional authority of Congress cannot be expanded by the "consent" of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States.

¹¹ Black's Law Dictionary, (1990 Ed.).

¹² U.S. Supreme Court No. 94-1474 (decided June 23, 1997).

¹³ *New York v. United States*, 505 U.S. 144, 156 (1992).

Clearly, according to very recent, clear and consistent rulings of the U.S. Supreme Court: State ownership of submerged lands is an "essential attribute" of sovereignty; the power to control fishing in the water covering a state's submerged lands is an "essential attribute" of state sovereignty; and, since the power to control fishing in those waters is an "essential attribute" of state sovereignty, it is necessarily a power the Constitution has not conferred on Congress.

But, that's not all.

Notice that both Alaska cases refer to the Submerged Lands Act of 1953. Most Alaskans have never read the Act and are unaware of how directly on point it is to the current conflict. The Act was passed in 1953 by Congress to once and for all clarify which sovereign (state or federal) holds title to, ownership of and management authority over submerged lands, navigable waters and the natural resources (including fish) within those lands and waters. The Submerged Lands Act is very simple and very clear. Anyone can understand it. The portion pertinent to the matter at hand provides:

Sec. 1311(a)(1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands 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 applicable State law be, and they are subject to the respective States . . .

Clearly, Congress intended the Submerged Lands Act to be a simple quitclaim deed. Then Congress provided, in the Alaska Statehood Act, that the Submerged Lands Act would apply to Alaska - even though Alaska became a State long after the Act was passed. Therefore, since the moment of statehood, Alaska's submerged lands, navigable waters and the natural resources within such lands and waters have belonged to Alaska and their management has been subject to Alaska law. Hence, according to the clear and consistent rulings of the U.S. Supreme Court in Alaska cases, the federal government has no ownership of or title to Alaska's submerged lands, navigable waters or the resources in those lands and waters and has no management power or authority over any of those lands, waters and natural resources (including fish). Once again, the power to control fishing in Alaska's navigable waters is "necessarily a power the Constitution has not conferred on Congress."¹⁴

¹⁴ *New York v. United States*, 505 U.S. 144, 156 (1992).

Now, it is abundantly clear why the federal government is doing everything it can to frighten and coerce Alaskans into surrendering their sovereignty and equality and to keep the merits of this issue from being argued in the courts! They know Alaska would win!

The foregoing white paper was researched and prepared by Ralph Seekins, Chairman and Lynn Levensgood, Executive Director of:

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Senator Robin L. Taylor

SPONSOR STATEMENT SCR 3

Relating to the sovereignty of the State of Alaska and the sovereign right of the State of Alaska to manage the natural resources of Alaska.

SCR 3 is based on the Constitution of the United States, the Constitution of the State of Alaska, the Alaska Statehood Act and the Alaska Statehood Compact, as well as U.S. Supreme Court case law. It asks the governor and the legislature to uphold their oaths of office and defend our sovereign rights as a state and as a people.

When Congress passes the Alaska National Interest Lands Conservation Act (ANILCA), the provisions of the Alaska Statehood Compact, the Public Trust Doctrine and the Constitutions of the State of Alaska and the Constitution of the United States of America were violated.

SCR 3 recognizes the need of the legislature to pursue a judicial solution to the conflicts between ANILCA and our State and Federal Constitutions. The resolution further requests the Governor to urge the Secretary of Interior to put the unresolved dispute before the U.S. Supreme Court for a final resolution. Finally, the resolution requests the Interior Department to allow fish and game management to remain with the state until the U.S. Supreme Court has ruled on the Constitutionality of ANILCA.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/25/99

FURTHER: Judiciary

Date of 5-Day Notice: 3/30/00
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 11/05/00

Resources Committee considered

SENATE CONCURRENT RESOLUTION NO. 3

Relating to the sovereignty of the State of Alaska and the sovereign right of the State of Alaska to manage the natural resources of Alaska.

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Adrian Taylor</i>	<input checked="" type="checkbox"/>	<i>Georgeanna Lind</i>			
<i>Lynne Meyer</i>	<input checked="" type="checkbox"/>				
<i>W. Kelly</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>Rich Halford</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Senate Resources	3/30/00	<input checked="" type="checkbox"/>	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill