

Subsist.

Legisla-
tion

SENATE COMMITTEE REPORT

DATE: 9/28/99

FURTHER: FINANCE

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 9/28/99

Resources Committee considered: CS HOUSE JOINT RESOLUTION NO. 202(FINANCE) AM

(proposing amendments to the Constitution of the State of Alaska relating to use of renewable resources for subsistence by residents)

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>[Signature]</i>	X	<i>[Signature]</i>		✓	
<i>[Signature]</i>	✓	<i>[Signature]</i>			✓
		<i>[Signature]</i>		✓	
		<i>[Signature]</i>		✓	
CHAIR: <i>[Signature]</i>		CHAIR: <i>[Signature]</i>		✓	

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

GOVERNOR	9/27		2001 11.5
FISH & GAME	9/27		10,000 (+)

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

Bill Version: CSHJR 202 (JUD)

(H) Publish Date: 9/27/99

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Office of the Governor
 Title Constitutional Amendment: Subsistence BRU Elective Operations
 Component General and Primary
 Sponsor House Judiciary Committee
 Requester House Judiciary Committee Component Serial No. 22

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual		1.5				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	1.5	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1.5				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	1.5	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. However, only six measures can be printed on an 8-1/2 by 14 inch ballot. If this measure requires printing an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by Gail Fenumai *Gail Fenumai* Phone 465-3935
 Division Division of Elections Date/Time 9/27/99 8:57 AM
 Approved by C Lt. Governor Fran Ulmer *Fran Ulmer* Date 9/27/99
 Agency Lieutenant Governor's Office

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FISCAL NOTE

STATE OF ALASKA 1999 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) _____ Dept. Affected Fish and Game
 Title Constitutional amendment for a subsistence preference BRU ComFish, Boards, Subsistence
 Component _____
 Sponsor House Rules
 Requester House Judiciary Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	10,000.0					
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	10,000.0					
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	10,000.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

If the legislature places a constitutional amendment before the Alaskan voters before October 1, 1999, the US Congress has authorized \$10,000.0 to go to the State of Alaska to implement a unified system of subsistence management and to provide support to the state boards of fish and game and local and regional fish and game advisory committees. The authorization for the department of fish and game to receive and expend these funds is contained in Section 8 of Chapter 84 SLA 99.

Prepared by Geron Bruce
 Division Commissioner's Office
 Approved by Commissioner Frank Rue *Geron Bruce for*
 Agency Department of Fish and Game

Phone 465-6143
 Date/Time 09/27/99
 Date 9/27/98

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FISCAL NOTE

No. 1
 Bill Version: SLA 201
 (S) Publish Date: 9-22-99

STATE OF ALASKA
 1999 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) _____ Dept. Affected Fish and Game
 Title Constitutional amendment for a subsistence BRU ComFish, Boards, Subsistence
preference Component _____
 Sponsor Rules
 Requester Governor Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
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						
CHANGE IN REVENUES ()	10,000.0					

FUND SOURCE (Thousands of Dollars)

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ANALYSIS: (Attach a separate page if necessary)

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Prepared by Geron Bruce GB
 Division Commissioner's Office
 Approved by Commissioner Frank Rue
 Agency Department of Fish and Game

Phone 465-6143
 Date/Time 09/20/99
 Date 9/20/98

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FISCAL NOTE

No. 2
 Bill Version: SJA 201
 (S) Publish Date: 9-22-99

STATE OF ALASKA
 1999 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) _____ Dept. Affected _____ Office of the Governor _____
 Title Constitutional Amendment: Subsistence BRU Elective Operations
 Component General and Primary
 Sponsor Rules
 Requester Governor Component Serial No. 22

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual		1.5				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	1.5	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)

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Prepared by Gail Fenumia *Gail Fenumia* Phone 465-3935
 Division Division of Elections Date/Time 9/21/99 9:28 AM
 Approved by Lt. Governor Fran Ulmer *Fran Ulmer* Date 9/21/99
 Agency Lieutenant Governor's Office

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TONY KNOWLES
GOVERNOR



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Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

September 22, 1999

SJR 201

The Honorable Drue Pearce
Senate President
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Pearce:

On October 1 the federal government will take over management of subsistence fishing on nearly 60 percent of Alaska's rivers and lakes. That date will mark a historic reversal of Alaska's independence. Our state will lose the right to manage a significant portion of the fish and wildlife within its borders, a right that was at the heart of the battle for Alaska Statehood. Today I am once again putting forward the only approach that will prevent this federal takeover—a simple, permissive constitutional amendment to be placed before the voters at the next general election.

In the past, the consequences of inaction by the Legislature have been postponed by the action of our Congressional delegation and the Secretary of Interior, but the messages from Washington now are loud and clear: No one is going to bail us out again; there are no more reprieves. Either the Legislature acts to bring the state into compliance with the provisions of ANILCA, or the federal government will expand its current management of game resources on federal lands to include the management of fisheries for subsistence on inland rivers and lakes within and adjacent to federal public lands.

The potential impact of fisheries management is far greater than that of game management. Because of the complexity of fishery management, the federal government's reach, under the federal case law principle of "extra-territoriality," could well extend to fish now managed by the state in waters distant from federal lands.

This joint resolution calls for a vote on a state constitutional amendment to permit a preference to rural residents for subsistence uses of renewable natural resources, a principle a majority of Alaskans support. Subsistence defines the special tie we as Alaskans have to our land. It makes us unique among the 50 states. In rural Alaska, subsistence is the special bond that defines the very essence of the rural way of life.


The Honorable Drue Pearce
September 22, 1999
Page 2

The language of the amendment is similar to what I have proposed in the past and what has been recommended by the Governor's Subsistence Task Force and rural legislators. When the amendment is coupled with appropriate statutory changes, it will enable the state to comply with ANILCA, thereby retaining complete management of fish and regaining management of wildlife on all land and water in Alaska.

Over the years, we have studied many options for resolving the subsistence issue. Now, we are down to two. We can place a simple, permissive constitutional amendment on the ballot to be decided by Alaskans, or we can relinquish, without a whimper, some of our most precious assets to the heavy hand of federal management. There are no other alternatives.

Every public opinion survey says Alaskans want us to act to preserve state sovereignty and the culture of rural residents. As elected leaders, I urge you to demonstrate your faith in Alaskans by allowing a vote on this measure that will avert a federal takeover.

Sincerely,



Tony Knowles
Governor



COMMITTEE: SENATE
RESOURCES

Subject of meeting: ①
SUBSISTENCE LEGISLATION

DATE: SEPTEMBER 22, 1999

SIGN-IN

PLEASE PRINT!
NAME

ADDRESS (MAILING) & (ZIP)

PHONE

REPRESENTING

DO YOU
WANT TO
TESTIFY?

* Rob HOCT	P.O. BOX 489 TALKEETNA, ALASKA 99616	907 733/2723	ALASKA PROFESSIONAL HUNTERS ASS.	YES
* Mike Williams	BOX 27 AKIAK, AK 99552	907 765-7426	ALASKA INTER- TRIBAL COUNCIL	yes
Mary Bishop	1555 Gus's Grind 99709	455-6151	self	yes
Julie Kitka accompanied by	AFN Anch. 1574 C St. S. 300 99501	214-3611	AFN	yes
Ms. Yoh Yon Pharn Mr. Chris Lyon				} yes
Mr. David Oliver Rev. William Green.				
Rev. Mark Boess.				
* Eileen Norbert Mary	Box 1858, Nome, AK 99762	443-5231	Kawerak	
* David Bedford	526 Main Juneau 99801	463-5030	Juneau	yes
* Caleb Pungowiyi	BOX 948 Nome, AK	443-5231	Kawerak	



COMMITTEE: SENATE
RESOURCES

Subject of meeting:
SUBSISTENCE LEGISLATION

DATE: SEPTEMBER 22, 1999

SIGN-IN

PLEASE PRINT!
NAME

ADDRESS (MAILING) & (ZIP)

PHONE

REPRESENTING

DO YOU
WANT TO
TESTIFY?

✓ DAN COFFEY	207 E. NORTHERN CT3 BLDG #200 ANCHORAGE AK 99503	274 3385	BOARD OF FISHERIES	✓
✓ Harold Brown	122 First Ave, Ste. 600 Fairbanks, AK 99701	452-8251	Tanana Chiefs Conference	No
✓ TONILEE JACKSON	PO BOX 165 COPPER CENTER, AK 99573	822 5241 WORK	AHTNA	No
✓ Carlene Pete	PO BOX 101 Copper Center AK 99573	822-5468	Native Village	NO
✓ Dawey ^{Tomorrow} George	Box 210 225 Anke Bay, 99824	790-4452	my wife's family	well soa
Shirley Millie	11229 Copper Center, AK 99573	822-3724	CRWA	NO
David G. Kelleyhouse	POB 478 Tok, AK 99780	883-5384	self	Yes
✓ Johnny Goodlatow	Box 364 - 99588 GLENNA ALLENAS	907-822-5036	SELF	NO
✓ Timothy Pete	256 COPPER CENTER, AK 99573	907-822-348	Self	NO
✓ DICK BISHOP	1555 BUS'S GRIND FAIRBANKS AK 99709	455-6151	ADC	Yes



COMMITTEE: SENATE
RESOURCES

Subject of meeting: (3)
SUBSISTENCE LEGISLATION

DATE: SEPTEMBER 22, 1999

SIGN-IN

PLEASE PRINT!
NAME

ADDRESS (MAILING) & (ZIP)

PHONE

REPRESENTING

DO YOU
WANT TO
TESTIFY?

Veronica Nicholas	P.O. Box 94 Cantwell AK. 99729	768-2591	Native Village of Cantwell	<input type="radio"/> NO
Clifford Luke	P.O. Box 52 Ft. Yukon AK 99702	1062 3186	NATIVE Village of Ft. Yukon	<input type="radio"/> NO
DEBORAH VO	431 W 7 th Ave Ste 201 ANC 99501	523-9334	AI-TC	NO
MIKE WILLIAMS	431 W 7 th Ave Ste 201 ANC 99501	523-9334	ALASKA INTER TRIB. COUNCIL	YES
Paul White, Jr.	Box 22356 Juneau 99802	789-4264	Huna Tokem	Yes
Shulay A. Domiant	EA 229 Second Ave	4563318	Fairbanks Native Assoc	Yes
Andy Jimmie	Box 6 Minto AK 99758	798-7292	MINTO	NO
Jesse VanderZander	AOC	455-4262	AOC	YES



COMMITTEE: SENATE
RESOURCES

Subject of meeting: (3)
SUBSISTENCE LEGISLATION

DATE: SEPTEMBER 22, 1999

SIGN-IN

PLEASE PRINT!
NAME

ADDRESS (MAILING) & (ZIP)

PHONE

REPRESENTING

DO YOU
WANT TO
TESTIFY?

✓ Gilbert Vart	P.O. Box Allakaket AK 99720 614 Goldsack Rd	968-2225		
✓ GERRY HOPE	P.O. Box 72 Sitka, Alaska 99835	747-3359	ALASKA NATIVE BROTHERHOOD SITKA CAMP #1	YES, ON THURSDAY 9/22
✓ Eleanor Dement	Box 14 Cantwell. 99729	768-2368	Cantwell	
✓ Ken Johns	Copper Center		Copper River	
Stanley Noel	Allakaket AK 99720	See & Simple Sign up	Talk to the Senate is like a fart in a Billiard	at council not
✓ Karl Jensen	P.O. Box 30 Anvik AK 99558	907-663-6522	Anvik	NO

TESTIMONY OF MIKE WILLIAMS, CHAIR

ALASKA INTER-TRIBAL COUNCIL

To the Alaska Senate Committee on Natural Resources

September 22, 1999

Mr. Chairman, members of the Committee:

Thank you for this opportunity to testify on behalf of the Alaska Inter-Tribal Council. AI-TC is a statewide tribal consortium that was established in 1993, around the time the Department of Interior published its list of 226 federally recognized Alaskan tribes. 180 of those tribes are members of AI-TC.

As you know, the issue of subsistence is of critical interest to Alaska's tribal peoples. I think it is important in this forum to draw your attention to the intent of Congress in including Title VIII as part of the Alaska National Interest Lands Conservation Act. The best and most accurate record of the legislative intent for ANILCA's subsistence title is contained in a presentation made to Congress on November 12, 1980 by the House Manager for ANILCA, the late Congressman Morris Udall.

Congressman Udall made reference to the fact that Title VIII grew directly out of Congress' wish to fulfill the promise it made to Alaska's Native people even as it extinguished our aboriginal hunting and fishing rights with the passage of the Alaska Native Claims Settlement Act of 1971. Udall said:

"I am particularly proud of the subsistence language in [ANILCA] because it fully reflects the commitment that was made to the Alaska Native people at the beginning of the 95th Congress. At that time, we promised that any law would recognize the importance of subsistence and would contain management provisions which recognize the responsibility of the Federal government to protect the opportunity from generation to generation, so that Alaska Natives now engaged in subsistence uses, their descendants and their descendants' descendants, will determine for themselves their own cultural orientation and the rate and degree of evolution, if any, of their Alaska Native culture."

For those who have criticized ANILCA's subsistence protections as a violation of the rights of Alaska's non-Native citizens, I wish to point

out the next point made by Congressman Udall as he laid out Congress' intent in adopting Title VIII of ANILCA. He said:

"Although there are many non-Natives living a subsistence way of life in rural Alaska (which may be an important national value), the subsistence title would not be included in the bill if non-Native subsistence activities were the primary focus of concern. Rather, the subsistence title and the other subsistence provisions are included in recognition of the on-going responsibility of the Congress to protect the opportunity for continued subsistence uses in Alaska by the Alaska Native people, a responsibility [which is] consistent with our well recognized constitutional authority to manage Indian affairs."

In other words, Mr. Chairman, Title VIII of ANILCA did not happen in a vacuum – nor was it an arbitrary step by the federal government to move in on the State's authority to manage its own fish and game. Alaska's tribes view Title VIII as a demonstration of the federal government's awareness of its trust responsibility to Alaska's indigenous populations – our Alaskan tribes.

Mr. Chairman, members of the Committee:

You all have been sworn to uphold the State's laws and its Constitution as part of your service to the people of the State of Alaska. Among Alaska's citizens are some 80,000 members of 226 Alaskan tribes. Each of those tribes has a government of some sort that is distinct and separate from the city and borough governments established under Title 29 of State law. Some tribes re-established their governments with councils created according to the Indian Reorganization Act of 1936. Some tribes maintained their ancient traditional councils rather than re-organize as IRA councils. Some tribes call themselves the "Native Village of Such and Such". What they all have in common, however, is a government-to-government relationship with the United States that is mandated by the Indian Commerce clause of the United States Constitution.

'What does that have to do with subsistence?' you may ask. 'A great deal,' is our response. Title VIII was included in ANILCA after a hard-fought battle between those protecting Native interests and those who said they stood for the State of Alaska's interests. In the end, Native people settled in good faith with the Congress and the State of

Alaska accepting the agreement to institute a "rural" rather than a "Native" subsistence preference on Alaska's federal public lands. Title VIII was Congress' way of living up to that agreement.

The State, on the other hand, has yet to fulfill its own part of that agreement. Instead, we have seen Title VIII attacked as some sort of un-American or "un-Alaskan" conspiracy to rob non-Native Alaskans of their hunting and fishing rights.

We Alaskan tribes stand on our inherent right to maintain our communities, our tribal members and our way of life, which is supporting ourselves and enriching ourselves from our traditional lands and resources. We respect the authority of the State of Alaska inasmuch as it touches our lives – but we do not support the State of Alaska when it attempts to undermine our authority as tribes, as tribal governments, nor do we support any attempt to diminish our tribal hunting, fishing and gathering rights.

For this reason, on September 2 I wrote to Interior Secretary Babbitt to inform him of AI-TC's opposition to any legislative resolution that would "permit" rather than "require" the Alaska Legislature to bring

State laws into compliance with the federal subsistence protections contained in Title VIII of ANILCA. Mr. Chairman, I would like to submit a copy of that letter along with my testimony, to be included in the record of this hearing.

Alaska's tribes wish you, Mr. Chairman, members of this Committee, and the rest of your colleagues in the Alaska Senate and Alaska House, the best of luck and the guidance of your God as you address the subsistence issue this week.

Thank you once again for this opportunity to testify.

MW:me



Alaska Inter-Tribal Council

431 W. 7th Avenue, Suite 201, Anchorage, Alaska 99501
Telephone 907/563-9334 · Fax 907/563-9337 · Toll Free: 1-888-560-AITC

September 2, 1999

Secretary Babbitt
U.S. Department of the Interior
Washington, DC

Dear Secretary Babbitt:

As you know Governor Tony Knowles has called for a special legislative session on subsistence to be convened at 1:00 p.m. on September 22, 1999. At that time the governor is expected to propose that the Legislature adopt a resolution allowing the question to be placed before Alaska's voters in the 2000 general election, in the form of a constitutional amendment.

The constitutional amendment proposed by Governor Knowles contains language that *permits* rather than *requires* the Legislature to enact State statutes to comply with the current federal subsistence protections contained in the Alaska Lands Act [ANILCA, Title VIII]. The Alaska Inter-Tribal Council cannot and will not support this (or any other *permissive* amendment to the State constitution) for the following reasons:

- A permissive constitutional amendment does not require the passage of a statute to bring the State into compliance with ANILCA, and thereby moves the onus for protection of tribal hunting and fishing from its proper place within the Department of Interior, to the discretion of the Alaska State Legislature. This would directly violate the government-to-government relationship between Alaska's tribes and the federal government and would amount to an abrogation of your responsibility and authority to take action on behalf of the tribes in this matter.
- It is futile to expect the current legislative majority to take action based on a permissive direction from Alaska's voting populace, given their inability to succeed in addressing the question over the past decade. A permissive constitutional amendment begs the question, "Why should Alaska's voters direct the Legislature to use their own discretion?"
- The adoption of a permissive constitutional amendment will create a *de facto* extension of the current moratorium on federal subsistence management to December 1, 2000. Alaska's tribes opposed the initial moratorium and have been vociferous in their opposition to its three extensions. The prospect of allowing a hostile Legislature to have an additional fourteen months to pursue amendments to ANILCA does not tempt us to support a permissive constitutional amendment.
- A permissive constitutional amendment will effectively put the question of subsistence "on hold" to be decided by the next (and potentially Republican) administration. That is a daunting prospect for Alaska's tribes, who have supported your efforts to ensure that this issue is settled "on your watch".

We recognize this has been a more than difficult issue for your administration to deal with. We are aware that Governor Knowles would view almost any constitutional amendment adopted by the current Legislature as a positive step – but we would like to remind you and the governor of what is at stake for those who will be most directly impacted by any resolution of this matter. Thank you for your attention and consideration.

Sincerely,

Mike Williams
Chairman

Advocating for Tribal Governments across Alaska

I am addressing this testimony to those individuals with the political strength to alter forever the subsistence lifestyle that has been passed down to me by ancestors of thousands of years and my inherent right which I am now forced to defend.

My name is Eleanor Dementi and I am a member of the Ahtna Regional Corporation and an Athabascan Native American. I live at "Yedatene'Na" or a place known to most of you as "Cantwell". Yedatene'Na is an Athabascan "place name" descriptive of the land itself. Descriptive of the mountains, rivers and landforms of that area, and referred to by that name by my people for an estimated 6-8000 years. Our people used place names to direct each other to hunting grounds and areas proven to sustain survival, because, as you know, we were a hunting and gathering culture, and although we have accepted western culture for what it is, we are not willing to relinquish our right to provide for our family's in the manner we know is one of the last rights of our culture.

Yedatene'Na is located on the corner of the Parks and Denali highways. As this hunting season passes and hundreds of hunters descend on our land I have to wonder where they go when they are not in the village. I live here year-round, I am not passing through nor am I here for the sole purpose of a hunt. Yes, I did choose to live here, as did my ancestors and as do my children, and yes, this is a rural area. But I don't feel that living in a rural area should require my native subsistence lifestyle be threatened and I will fight for the right to continue my subsistence lifestyle in the land that is my home.

I am discouraged by 40' recreational vehicles pulling 2-4 four wheelers, as I can't believe they really need that meat. I hunt because it is necessary and I am accustomed to the taste of moose and caribou. This is the food I grew up with and fed my children their entire lives. As the majority of the local hunters come home empty handed and the local Fish and Game official confiscates one to two illegal kills a day, I have to wonder "What is wrong with these people, have they no respect for what God provides"? I had the misfortune to view an illegal kill and as I looked at this unrecognizable mass of dirt, grass and leaves I was stunned to realize I was looking at a rib cage. The waste is sickening. I am unable to muster any sympathy for the hunter responsible for that kill, nor will I believe he or she was a subsistence hunter. I do not, however, dispute that person's right to hunt, whether it be for sport or subsistence. I do not believe in sport hunting but I am not disputing a person's right to do it. I am simply a subsistence hunter and cannot understand the desire to kill an animal unless it is to provide for my family and sustain our lifestyle.

We need the protection of a Constitutional Amendment for rural preference. Not because of *where* we live but to protect the *way* we live. We have little left of our cultures and only have been able to keep hold of subsistence because it is such a large part of which we as Alaskan Native People are and have remained for thousands of years. To those who claim a rural preference for subsistence hunting is unfair treatment of urban residents, please reconsider and try to understand how inherent subsistence is to our culture and what it will mean if we Alaskan Natives lose it.

Respectfully,



Eleanor Dementi
Native Village of Cantwell



KAWERAK, INC.

P.O. BOX 948 • NOME, ALASKA 99762

TELEPHONE: (907) 443-5231 • FAX: (907) 443-3708

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VILLAGES OF:

BREVIG MISSION
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GOLOVIN
KING ISLAND
KOYUK
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NOME
SAVOONGA
SHAKTOOLIK
SHISHMAREF
SOLOMON
STEBBINS
ST. MICHAEL
TELLER
UNALAKLEET
WALES
WHITE MOUNTAIN

KAWERAK, INC. RESOLUTION NO. 98-04

TITLE: Kawerak's position on Subsistence

WHEREAS, Kawerak, Incorporated is the regional Native non-profit consortium, authorized by the region's twenty federally recognized tribes to provide services throughout the Bering Straits Region of Alaska;

WHEREAS, the Alaska Native people of the Bering Straits Region have depended on animal and plant resources for thousands of years to provide sustenance for themselves and their families;

WHEREAS, to this day the cultures of Alaska's indigenous people continue to be based on hunting, fishing and gathering activities, while the technology has changed, our dependence on the resources has not;

WHEREAS, our non-Native friends, family members and neighbors in rural Alaska also depend on subsistence resources to feed their families;

WHEREAS, subsistence is primary and essential to the economy of rural Alaska;

WHEREAS, our ability to gather food and live off the land today and on into the future is core to our identity as Native peoples, our culture and spiritual well being;

WHEREAS, our ability to live our culture is a basic human right, one which Congress sought to protect when it passed the Alaska National Interest Conservation Act in 1980 which provided a preference for subsistence use of resources on federal lands in rural Alaska;

WHEREAS, in 1989 the Alaska Supreme Court ruled that the Alaska Subsistence law which provided a rural preference was unconstitutional;

WHEREAS, in 1990 the federal government took over management of subsistence hunting on federal lands;

WHEREAS, since 1990 we have had dual management in the State of Alaska with the Federal Government managing subsistence on federal lands and the State of Alaska managing fish and game on state lands and navigable waters;

WHEREAS, in 1994, the Ninth Circuit Court of Appeals ruled that the subsistence priority applies to those navigable waters in which the United States has reserved water rights;

WHEREAS, for the past two years, the Alaska Congressional delegation has placed a moratorium on spending federal funds to implement final federal regulations for managing subsistence fishing in federal reserved water;

✕ WHEREAS, even though a majority of Alaska's voters favor a constitutional amendment for subsistence, the Alaska State Legislature has consistently refused to place a constitutional amendment on the ballot and has abrogated its responsibilities to deal with this issue at the State level for the past seven years;

✕ WHEREAS, under state law, all Alaska residents in the State of Alaska are considered to be subsistence users and all are eligible to apply for a Tier II hunting permit during times of resource shortage;

✕ NOW THEREFORE BE IT RESOLVED that Kawerak opposes any amendments to ANILCA except those that strengthen rural and Native subsistence protections;

✕ BE IT FURTHER RESOLVED that Kawerak will support a state constitutional amendment if one is placed on the ballot which:

- 1) contains language that a rural preference shall be provided,
- 2) will strengthen rural and Native subsistence protections;

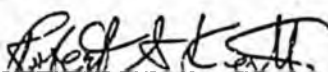
✕ BE IT FURTHER RESOLVED that Kawerak shall seek to insure that the accompanying legislation shall:

- 1) provide for a strong regional council system similar to the federal model;
- 2) allows co-management initiatives between Rural and Native Alaskans, their representative bodies and the State of Alaska.

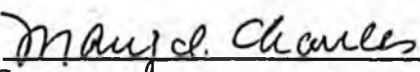
✕ BE IT FURTHER RESOLVED that Kawerak will strongly object to any constitutional amendment that would adversely affect rural subsistence priority;

BE IT FURTHER RESOLVED that Kawerak will appropriate necessary resources to protect the rural subsistence priority.

PASSED AND APPROVED by Kawerak board on this 9 day of April, 1998 at a regularly scheduled quarterly meeting.



Robert Keith, Chairman of Kawerak Board

ATTEST: 

Secretary

SUMMARY OF POINTS

BOARD OF FISHERIES POSITION PAPER ON SUBSISTENCE

The Board of Fisheries has prepared a Position Paper on the pending federal takeover of Alaska's subsistence fisheries which is available on request. The following is a Summary of that Position Paper.

1) The Board of Fisheries regulates all of Alaska's fisheries: subsistence, personal use, commercial, sport and guided sport. The Board is uniquely qualified to comment on the effects of a federal subsistence takeover.

-If the federal government takes over subsistence fisheries in Alaska, the effects on our billion dollar commercial fisheries and our multi-hundred million dollar sport fisheries is incalculable.

-The Board takes comprehensive approach to all fisheries when adopting regulations. Federal management of subsistence fisheries will be done without regard to the effect on other fisheries.

2) All members of the public have easy access and full participation in the management and regulation processes of Alaska's fisheries.

-There will be virtually no access to the Federal Subsistence Board for most Alaskans.

-Efforts by the Board of Fisheries to work with the Federal Subsistence Board were rebuffed by the Federal Subsistence Board

3) There is currently a subsistence priority in effect in the State of Alaska which the Board recognizes and strongly supports.

-If a rural or place of residence priority for subsistence is established in Alaska, there will be virtually no change in the regulation and management of Alaska's fisheries.

4) Alaska's personal use fisheries are in substantial jeopardy if the federal government takes over subsistence management.

-The personal use fisheries afford Alaska residents opportunity to harvest substantial numbers of salmon for personal consumption.

-The Kenai River and the Copper River Dip Net Fisheries are both at risk.

CONCLUSION

The Board of Fisheries believes that we, as a State, should take all steps necessary to avoid a federal take over of our subsistence fisheries. Board members are present in Juneau to respond to any inquiries from the Legislature.

POSITION PAPER ON SUBSISTENCE
ALASKA BOARD OF FISHERIES

FOR CONSIDERATION BY THE MEMBERS OF
THE ALASKA STATE LEGISLATURE

In response to questions from some of Alaska's Legislators the Chairman and Vice Chairman of the Board of Fisheries prepared this Position Paper for presentation to the Legislature. The Position Paper has been reviewed and approved by the other members of the Board of Fisheries.

The Board of Fisheries consists of seven (7) members. These members have a wide perspective on Alaska's fisheries. Some members live in rural areas, while others live in urban areas. Some members are subsistence users. Some are native. Some are non-native. Regardless of their differences, all Board members support this Position Paper.

As the public body charged with the regulation of subsistence, personal use, sport, guided sport and commercial fisheries throughout the state of Alaska, the Board of Fisheries is uniquely qualified to comment on the existing subsistence practices of the state of Alaska and the effects of the pending federal take over of Alaska's subsistence fisheries. While the federal take over of Alaska's fisheries purportedly effects only navigable waters that flow adjacent to and through federal lands, the reach of the federal take over will extend into every aspect of every fishery in Alaska. In short, allowing a federal take over of Alaska's fisheries will take the state back to territorial days when the federal government managed (many say mismanaged) Alaska's fisheries. The history of Alaska's statehood efforts is that management of our own resources was a primary objective of statehood.

The points outlined below are based on the Board's considerable experience and knowledge in regulating Alaska's numerous and diverse fisheries, including all of its extensive subsistence fisheries. These points are also based on the Board's specific efforts, made during the last nine (9) months, to reach agreements with the Federal Subsistence Board on fish management practices. The Board's efforts were directed towards the establishment of a dual management system which would protect the fish resources, all of the fisheries of the state and those dependent upon them. All of these efforts were rebuffed by the Federal Subsistence Board which rejected any and all dual management proposals. Frankly, the Federal Board is simply not

interested in having the state involved in the management of subsistence fisheries within its jurisdiction.

This short Position Paper is not the place to try to detail all of the specific facts which support the points made below. However, the Board will have its Vice Chairman in Juneau during the special session to provide detailed information which supports these points should the Legislature wish to hear from the Board. It is the Board's hope that the Legislature will consider this Position Paper in its deliberations and, to the extent that it has questions about the Board's position, it will ask the Vice Chairman for additional information.

The Board asks you to consider the following points:

1) Alaska currently has the best regulated and managed fisheries in the United States, if not in the world. Year after year of record salmon returns since statehood conclusively demonstrate this fact. Despite some concerns in some areas of the state, Alaska's record on salmon fishery regulation and management is the envy of every other state. This year, for example, the Board of Fisheries received an award as the best fisheries regulatory body in the western United States based on its sustainable fisheries work and the development of its committee process. The Board of Fisheries and the Department of Fish and Game have, as charged by our Alaska Statute, "preserved and developed" our fisheries very, very successfully.

2) Under the current statutes and regulations which govern the regulation and management of Alaska's fisheries, there is a priority given to subsistence users. This priority has been in place since statehood. The Board of Fisheries recognizes and strongly supports this priority.

When runs are low, other fisheries are reduced or eliminated to preserve fish for subsistence uses. The vast amount of subsistence users in Alaska live in rural areas. In fact, the major population centers of the state are currently classified as non-subsistence areas (Anchorage, Fairbanks, Juneau, Ketchikan). If an urban resident in a non-subsistence area wishes to subsistence fish, the resident must go to a subsistence area to fish. This rarely occurs.

Also, the Board of Fisheries provides for "personal use" fisheries which meet the needs of the vast majority of urban Alaskans. For example, the dip net fishery for sockeye on the Kenai River in Cook Inlet, results in thousands of Cook Inlet area residents getting all of the sockeye they need for their own

consumption. The same can be said for the Copper River dip net fishery which provides sockeye to thousands of Fairbanks residents. Both the Kenai dip net and the Cooper River dip net fisheries are in substantial jeopardy if the federal government takes over subsistence management.

3) The federal record on fisheries management during territorial days in Alaska was abysmal. The last time we had federal management, our fisheries were run for the benefit of large processors located in Seattle. Alaskan's got a few table scraps. Now, we are letting the federal government back in to manage one part of complicated multi-part fisheries.

The greatest harm from federal management of subsistence fisheries (which will be done in a vacuum without regard to Alaska's other fisheries), will be to the resource itself. It is impossible to properly manage only one type of fishery when there are multiple users of the resource. The consequences of federal subsistence management on our billion dollar commercial fisheries and our multi-hundred-million dollar sport and personal use fisheries is incalculable.

Under federal management, federal subsistence fisheries will be run without regard for Alaska's legitimate resource concerns; by federal bureaucrats who are answering to a political agenda far different from that of the majority of Alaskans; by federal bureaucrats who do not have the knowledge, expertise, nor adequate management plans to manage our subsistence fisheries; and finally, by politicians and bureaucrats who don't care about the long term well being of our state or all of our fisheries.

4) Alaska's Board of Fisheries' practices and procedures provide extensive public access to the regulatory process in a manner which is unprecedented anywhere else in the Country. The public and the stakeholders in our fisheries participate actively and effectively in the Board of Fisheries' regulatory process. Try getting in touch with a federal bureaucrat whose only concern is a subsistence fishery, let alone persuading that bureaucrat to do something which might benefit some other fishery besides subsistence. Talk about an impossible task.

With the Board of Fisheries and the Department of Fish and Game, the regulatory process and the review of management practices of the Department of Fish and Game are open and easily accessible to the public. That is simply not the federal way. The Federal Subsistence Board has already conducted closed door meetings from which the public was excluded.

5) Once the federal government takes over our subsistence fisheries, the already existing divisions among Alaskan's (urban/rural and native/non-native) can only be increased. There will definitely be haves and have nots under federal management. Absent some action by the Legislature, there will be a rural preference for subsistence managed by the Federal Subsistence Board. However, the rural preference will not be uniform in its application. Thus, many rural residents will bear a tremendous and disproportionate amount of the burden of federal (mis)management.

6) If the federal government takes over subsistence fisheries, the result will be the creation of a resource regulation and management system. This takeover will provide a fisheries resource regulation and management economy where none exists today. If the state ever resolves the issue of management of subsistence fisheries by either winning a lawsuit or by bringing the state into compliance with ANILCA, the restoration of state regulation and management will create further divisions among our citizens.

CONCLUSION

The Board opposes a federal take over of our fisheries. The Board can clearly see the negative consequences of such an action. More than any other state public agency, the Board, which manages all of Alaska's fishes, knows what the federal management of one fishery will mean for Alaskans engaged in the other fisheries.

The Board also knows the realities of our subsistence fisheries. If the people of Alaska were to adopt a rural preference, the management and regulatory systems would be virtually identical to those currently in place. There would be no recognizable change in the way in which Alaskans would harvest their fish resources.

For these reasons, the Board believes that we, as a state, should take all steps necessary to avoid a federal take over of our subsistence fisheries.

It is hoped by the Board that this Position Paper will be of some help to the Legislature in its deliberations. We all thank you for the opportunity to present this Position Paper and your consideration of the facts presented. We look forward, through our Vice Chairman, to answer any questions you may have concerning the positions taken in the paper.

WRITTEN TESTIMONY OF; GERRY HOPE, PRES. SITHA A.N.B.

✓ TITLE VIII OF A.N.I.L.C.A.; NO CHANGES.

✓ STATE CONSTITUTIONAL AMENDMENT.

SJR 201 SEC. 19 THE LEGIS. MAY STRIKE MAY ADD SHALL

✓ THERE'S YRS. OF TESTIMONY OF MANY PEOPLE.

I'M HOPING WHAT MAKES THIS NEW ROUND OF TESTIMONY WILL FINALLY MAKE A DIFFERENCE.

✓ THANK THOSE STATE LEGISLATORS WHO SUPPORTED.
~~THE~~ STATE CONSTITUTIONAL AMENDMENT.

~~THOSE WHO WERE OPPOSED ARE THE LEGISLATORS~~

✓ OVER THIS SPECIAL LEGISLATIVE SESSION ON
SUBSTANCE, ~~IT IS HOPED THERE WILL BE~~

~~THE LEARNING~~ THE DIALOG THAT WILL TAKE PLACE - I

HOPE - WILL BE CONVINCING ENOUGH THAT THE LEGISLATURE
WILL FINALLY HAVE ENOUGH VOTES TO PASS A
CONSTITUTIONAL AMENDMENT.

STATE VS. FEDERAL

LOCAL CONTROL IS BETTER - STATE.

HOWEVER, WE ALASKA NATIVES CANNOT GIVE UP ANY MORE THAN WE HAVE GIVEN UP ALREADY.

CECILIA KUNE SAID;

"TOOK OUR LAND, NOW YOU WANT MY APPETITE TOO,"

A.N.I.L.C.A.'s TITLE VIII IS ONE OF THE FEW LEGAL TOOLS LEFT THAT HELPS PROTECT WHAT LITTLE IS ~~REMAINING~~ REMAINS WHAT IS CRITICALLY IMPORTANT AND ESSENTIALLY VALUABLE TO ~~US~~ ALASKA NATIVES.

AK. NATIVES USE VERY LITTLE OF THE RESOURCE - AROUND 4%. ~~HOW MUCH~~ IT BEGS THE QUESTION, DOES THE NON-NATIVE NEED THE TOTAL RESOURCE, AT THE EXPENSE OF ALASKA NATIVES?

IF THE CHOICE IS - FEDERAL CONTROL VS. ALASKA NATIVES LOOSE ANILCA-TITLE VIII PROVISIONS. THEN I WOULD - REGRETFULLY CHOOSE FEDERAL CONTROL.

**A Discussion Regarding
Alaska's Sovereign Title
To Submerged Lands,
Navigable Waters and the
Natural Resources Within Those
Lands and Waters**

Compiled for the

**Alaska Legislature
September 22, 1999
Special Session on Subsistence**

**Alaska Wildlife Conservation Association
1625 Old Steese Highway
Fairbanks, Alaska 99701**

**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, 1997 Press Release from Office of the Governor.

² 72 F.3d 698 (9th Cir. 1995)

³ 16 U.S.C. 3102.

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

⁵ Section 6(n) 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(3)(a).

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 . . .⁸

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

⁸ *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 it 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 Levengood, Executive Director of:

ALASKA WILDLIFE CONSERVATION ASSOCIATION
1625 Old Steese Highway
Fairbanks, Alaska 99701
(907) 456-1992

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 Lands 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).**

Section 1. Article VIII, sec. 4, Constitution of the State of Alaska, is amended to read:

- (b) Consistent with the sustained yield principle, non-wasteful and non-commercial use of wild native fish and game resources for personal and household nutrition shall be the preferred use of these resources whenever there is a historically unusual shortage.

Whenever it is determined that an unusual shortage of a wild native fish or game resource exists in a local area characteristically dependent upon subsistence use of that resource, subsistence use for human nutritional purposes may be accorded a preference among uses of that resource until such time that abundance can be restored.

This constitutional amendment, should it be approved by the voters of Alaska, shall not go into effect until such time as the Alaska National Interest Lands Conservation Act (1980) is amended to restore all traditional fish and game management authorities to the State of Alaska, as accorded to all other states. This amendment in no way precludes the State of Alaska from challenging the constitutionality of the federal subsistence law to restore all state fish and game management authorities.

Dewey & Kelly George
Box 210225
Auke Bay, Alaska 99821
Sept. 21, 1999

To: Fran Ulmer
Lieutenant Governor - State of Alaska

Mrs. Ulmer:

I write to you for your consideration of my wife, my children, and their people. The topics that I would like to address are subsistence and relationships. On the surface, one might surmise that the intent of the Federal Government has been to protect the rights of the natives, since federal regulations on federal lands restrict subsistence practices to "rural" residents. State policies and practices, on the other hand, appear to have a history of leaning towards the promotion and protection of the economic interests of the citizens of the State of Alaska. And although I have spent much time listening to the comments of many people from many different backgrounds, I still am not convinced that there are many who have a true grasp of the concept of subsistence or the impacts of its alteration.

I will not go into a detailed description at this time, but will only offer that Subsistence was a complete way of life that provided harmony for a people and their surroundings in a manner that few of today's cultures can comprehend. Because of their simple ways their attributes as a culture were little understood, and even less accepted, by their European "replacements." But nonetheless, the fact remains that, as a culture, the beliefs and practices of the native cultures far exceeded any and all of the environmental and natural resource management practices of their contemporaries. Their way of life is gone now and only a shattered remnant of their people still survive.

So, since subsistence is soon coming to the table, I offer the people of the State of Alaska a proposal for their consideration and promotion. From its inception of Statehood, the native cultures of Alaska have been forced into a situation of assimilation and the effects from this continued policy and practice are all too obvious. The native cultures are a separate people and, if they wish to remain such, should not only be allowed, but even supported in their efforts to do so. The positive attributes of this culture also need to be identified, recognized, and implemented for the benefit of all cultures, native and non-native alike in order to insure a peaceful and prosperous future for all residents of the State of Alaska. True prosperity is a result of the adherence to the principles of peaceful co-existence and the best way to insure this prosperity is to insure that these principles can (and will) always be implemented.

And with these basic concepts in mind, I would encourage the elected officials of the State of Alaska to adopt a policy of the subsistence way of life that allows (and encourages) the native cultures to practice the "subsistence" ways of their ancestors if they so choose. If other non-native rural residents wish to do the same, then allow those to do so by separate license or State Permit.

And if it be the desire of the resident body of the State of Alaska to protect and preserve its remaining wildlife and still abundant (but diminishing) resources, I would encourage the residents to consider the practices and policies of Alaska's native cultures, and to perhaps even authorize jurisdiction for such to the native governments. The time has come for us to recognize the importance of protection of our natural resources, as well as the consequences that result for our failure to do so. Peaceful co-existence between all men and other life forms should be our goal, but this goal will never be attained until its "Promise" can be realized!

Sincerely

Dewey P. George

*
P. O. Box 718
Pelican, Alaska 99832
17 September 1999

To Whom It May Concern,

If you could solve the State's Subsistence dilemma tomorrow, would you?

If you could do so without having to amend Alaska's State Constitution, would you?

If you can honestly answer "yes" to these questions, then I sincerely request that you read the enclosed proposal.

Please, please, please try to struggle through the poor wording, misspelling, and typos to get at the intent of the concepts. I realize that my phrasing is awkward, which makes the concepts hard to grasp and maybe even unclear. But, I sincerely feel that this is a workable solution.

Also, please remember to keep in mind that this proposal is a STRAWMAN. The wording can and probably should be changed. The priorities may need to be altered. The concepts should be clarified and maybe changed. This is just an idea that I think should be discussed, and possibly worked into an acceptable concept for a bill that could be passed.

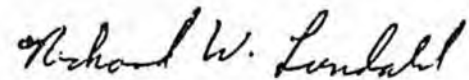
And finally, but of greatest importance, this proposal is for a bill, not for an amendment to the State's Constitution. It could probably be passed, signed, and enacted within a week. If this happened, the State would be in immediate compliance with ANILCA.

Even if the Feds decided this proposal/bill didn't meet the intent of ANILCA and we weren't in compliance, they would have to take us to court and we would have until the courts ruled against us (if they did) to find an acceptable solution.

And I don't think that would happen, because I truly think this proposal does comply with ANILCA and is acceptable.

Thank you.

Sincerely,



Richard W. Lundahl

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ECNETSISBUS
(pronounced Ec-net-sis-bus)
(a strawman/draft proposal for a subsistence bill)

by Richard W. Lundahl
2/24/90
(revised 5/15/90, 12/20/90, 6/20/1997, and 9/12/1999)

AUTHOR'S PREFACE

With the enclosed draft/strawman bill proposal, I am attempting to solve the State's subsistence dilemma without amending the State's Constitution.

Why do I think that this draft bill "ECNETSISBUS" can solve Alaska's Subsistence Dilemma without amending the State's Constitution?

Because we have already done so!

In 1970, we amended Art. VIII Section 15. of the State's Constitution to allow us to limit entry into any fishery for various listed reasons (see Appendix IV).

I am attempting to solve the dilemma, then, by using the definitions and concepts set forth in ANILCA and further defining some of the troubling and fear-invoking terms therein. And further, I am attempting to frame strategies and concepts which the Alaska Boards of Fish and Game have been using to protect Alaskan resident users of fish and game since Statehood.

It may be that I didn't need to define some of the terms that I did, such as, "Alaska Resident" or "Residence". Fine, then eliminate them. I was just trying to get ideas down on paper to be considered.

I am a very poor writer. My wording is awkward. My phrasing is difficult. This all tends to make the concepts difficult to understand. I am sorry. Further, I am not a lawyer. The punctuation, numbering, wording, and concepts will have to be gone over and "nitpicked" by one.

Finally, you may feel that the courts have already forced us into a particular type of approach to subsistence. I disagree. I feel that the courts have ruled the way they have because of the lack of a clear definition of subsistence, and therefore, the lack of a clear approach to the subsistence issue. I feel that legislation should come from the legislature and not from the courts. Further, I feel that if the legislature adopts this proposal, or one like it, then the courts will "accept the will of the people", review their decisions and reverse them where necessary to comply with ANILCA and "ECNETSISBUS". (i.e. the \$17,000 subsistence barter sales of herring roe on kelp, etc.).

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INTENT OF PROPOSAL (continued)

CATEGORIES OF SUBSISTENCE EMERGENCIES AND SUBSISTENCE USERS.

This proposal establishes 8 categories of Subsistence Emergencies and seven categories of Subsistence Users.

PRIORITY LIST

I hope and think that "ECNETSISBUS", as it is currently written, establishes the following priority of users for times of resource crisis. All of these users must be legally licensed and/or Permitted.

1. The rural Alaskan village resident Personal Subsistence User and Subsistence Barter.
2. The Alaskan City resident Personal Subsistence User and Subsistence Barter. And also, the rural Alaskan village resident Subsistence Commercial Fisherman.
3. The rural Alaskan village resident Sport Fisherman. And also, the Alaskan City resident Subsistence Commercial Fisherman.
4. The Alaskan City resident Sport Fisherman. And also, the non-Alaskan resident Commercial Fisherman.
5. The non-Alaskan resident Sport Fisherman. And also, the all participants of Alaskan Sport Fishing Derbies.
6. All Non-Alaskan U.S. resident commercial fishermen who are legally fishing but who don't hold Alaska Licenses and/or Permits. Also, all foreign citizen Sport Fishermen who are legally licensed.
7. All other legal fishermen not included above, including foreign commercial fishermen and ventures.

ECNETSISBUS
(pronounced Ec-net-sis-bus)
(a strawman/draft proposal for a subsistence bill)

by Richard W. Lundahl
2/24/90
(revised 5/15/90, 12/20/90, 6/20/1997, and 9/12/1999)

INTENT OF PROPOSAL

The word "subsistence" has been fear invoking because of a lack of common understanding about what is being discussed. To one person "subsistence" may mean eating out of garage cans in order to "subsist". Another may subsist on fine wine, filet mignon, and caviar. There is no common and complete definition of "subsistence" and of all of the terms used in its official definition.

This subsistence proposal, "ECNETSISBUS", (which is just the word "subsistence" spelled backwards), then, does four major things:

PARADIGM SHIFT

"ECNETSISBUS" should allow and maybe force the State and Federal Governments and the Courts to review their paradigm of subsistence and their approach to it. Subsistence is not welfare and should never be viewed as such.

DEFINITIONS

This proposal defines many of the terms used in ANILCA but which until now have been fear invoking because of a lack of common understanding about just what is being discussed. One of these terms is "customary trade".

From Statehood until the passage of ANILCA in 1979, subsistence was a part of commercial fisheries; namely: The Subsistence Section of the Commercial Fishing Division of the Department of Fish and Game. ANILCA invoked a lot of fear and Subsistence became a whole new, fearful Division of the Department. "ECNETSISBUS" would just bring us back to the days before ANILCA, with the paradigm shift that Commercial Fishing, Barter, Manufacture of Handicraft Articles, and much of Personal Use (but not Sport Fishing and not Sport Charter Fishing) would become Sections of the Subsistence Division of the Department.

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ECNETSISBUS
(pronounced Ec-net-sis-bus)
(a strawman/draft proposal for a subsistence bill)

by Richard W. Lundahl
2/24/90
(revised 5/15/90, 12/20/90, 6/20/1997, and 9/12/1999)

Be it hereby enacted:

TITLE X

Sec. Y. (a)

1. That for the purposes of fish and game laws and regulations the phrase "Alaskan resident" shall mean: any living, real U.S. citizen who is currently living in the state of Alaska, and has lived within the state of Alaska for the preceding year, and who intends to remain living within the State for at least another year, and who is eligible for an Alaska Permanent Fund Dividend. And,
2. That further, for the purposes of fish and game laws and regulations the "residence" of an Alaskan resident shall mean, and shall be determined by: the permanent physical address to which eligible Alaska Permanent Fund Dividends are sent. And,
3. That for the purposes of subsistence, the State of Alaska hereby adopts the definitions of subsistence as defined in ANILCA, Title VIII, Sec. 803. The State of Alaska further defines, breaks down, and clarifies that definition. As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaskan residents of wild, renewable resources:
 - a). for direct personal or family consumption, as food, shelter, fuel, clothing, tools, or transportation;
 - b). for the making and selling of handicraft articles out of the nonedible by-products of fish and wildlife resources taken for Personal Subsistence Use;
 - c). for barter, or sharing for personal or family consumption;
 - d). and for customary trade.

For the purposes of this section, the term:

- e). "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis;
- f). "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses:
 - (1) for other fish or game or their parts; or
 - (2) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature; and
- g). "customary trade" means any and all commercial harvesting of fish and game as has been legally allowed in, licensed by, and or permitted by the State of Alaska, the International Pacific Halibut Commission, and or the National Marine Fisheries Service to this date, especially Alaska Limited Entry Commission Permits, and NOAA IFQs. And,

- *
- h). "rural" means that the location of the principal home or dwelling of the Alaska resident is in Alaska and is either --
- (1) "isolated" meaning that a round trip to and from the nearest Alaskan city with a population of more than 8,000 would normally take more than one hour and cost more than fifty 1970 dollars (\$50.00) per person; or
 - (2) "semi-isolated" meaning that a trip to Seattle would normally only involve a normal local trip to the local airport and boarding only one flight of a major commercial airlines (i.e.. Alaska, Delta, Northwest, United, etc.).

Further, for the purposes of this section, the use:

- i). as described in Sec. Y (a) 3). a). above namely "for direct personal or family consumption, as food, shelter, fuel, clothing, tools, or transportation" shall be called "Personal Subsistence Use"; and a person who is legally exercising that use shall be designated a "Personal Subsistence Use Fisherman";
- j). as described in Sec. Y (a) 3). b). above namely "for the making and selling of handicraft articles out of the nonedible by-products of fish and wildlife resources taken for Personal Subsistence Use" shall be called "Personal Handicrafts Subsistence Use"; and a person who is legally exercising that use shall be designated a "Personal Handicrafts Subsistence User";
- k). as described in Sec. Y (a) 3). c). above namely "for barter, or sharing for personal or family consumption" shall be called "Subsistence Barter"; and a person who is legally exercising that use shall be designated a "Subsistence Barterer";
- l). as described in Sec. Y (a) 3). d). above namely "and for customary trade" shall be called "Customary Subsistence Trade" and a person who is legally exercising that use shall be designated a "Customary Subsistence Trade Commercial Fisherman" and such a person must meet the criteria set forth in this Section especially Sec. Y. (a) 3. g).

4. That for the purposes of Subsistence as defined in ANILCA, the State of Alaska, hereby designates eight categories of Subsistence Emergencies for its fish and game resources as hereby defined.

- A. "No Subsistence Emergency" shall mean that no level of emergency exists and all peoples (Category 0 thru 6 Ushers) may harvest fish and game in any manner legally provided for by Alaska laws and/or regulations.
- B. A "Class 6 Subsistence Emergency Closure" shall mean that a very low level of subsistence emergency exists and all Category 6 Ushers (defined in item 5. G) shall be prohibited (excluded) from harvesting the resource designated.
- C. A "Class 5 Subsistence Emergency Closure" shall mean that a low level of subsistence emergency exists and all Category 5 Users (defined in item 5. F) shall be prohibited (excluded) from harvesting the resource designated.

- *
- D. A "Class 4 Subsistence Emergency Closure" shall mean that a medium level of subsistence emergency exists and all Category 4 Users (defined in item 5. E) shall be prohibited (excluded) from harvesting the resource designated.
 - E. A "Class 3 Subsistence Emergency Closure" shall mean that a higher level of subsistence emergency exists and all Category 3 Users (defined in item 5. D) shall be prohibited (excluded) from harvesting the resource designated.
 - F. A "Class 2 Subsistence Emergency Closure" shall mean that a very high level of subsistence emergency exists and all Category 2 Users (defined in item 5. C) shall be prohibited (excluded) from harvesting the resource designated.
 - G. A "Class 1 Subsistence Emergency Closure" shall mean that the highest level of subsistence emergency exists and all Category 1 Users (defined in item 5. B) shall be prohibited (excluded) from harvesting the resource designated.
 - H. A "Conservation Class Emergency Closure" shall mean that the very resource itself is threatened and that the highest possible level of resource emergency exists and that it is both realistic and possible by strict adherence to sound biological methods and management to bring that resource back to health and all Category 0 Users (defined in item 5. A) shall be prohibited (excluded) from harvesting the resource designated.
5. That for the purposes of Subsistence as defined in ANILCA, the State of Alaska, hereby designates seven Categories of Users of its fish and game resources.
- A. Category 0 Users shall include:
 - a). All Category 1 Users, and
 - b). All isolated rural Alaskan resident Personal Subsistence Use Fishermen, Personal Handicrafts Subsistence Users, Subsistence Barterers, and hunters, and trappers.
 - B. Category 1 Users shall include:
 - a). All Category 2 Users, and
 - b). All semi-isolated rural Alaskan resident Personal Subsistence Use Fisherman, Personal Handicrafts Subsistence Users, Subsistence Barterers, and hunters, and trappers.
 - c). All isolated rural Alaskan resident Customary Subsistence Trade Commercial Fishermen, (and holders of isolated rural Alaska resident trapping licenses).
 - C. Category 2 Users shall include:
 - a). All Category 3 Users, and
 - b). All isolated rural Alaskan resident sport harvesters who hold valid Alaska (rural?) resident licenses,
 - c). All semi-isolated rural Alaskan resident Customary Subsistence Trade Commercial Fishermen, (and holders of semi-isolated rural Alaska resident trapping licenses).

- *
- D. Category 3 Users shall include:
 - a). All Category 4 Users, and
 - b). All semi-isolated rural Alaskan resident sport harvesters who hold valid Alaska (rural?) resident licenses,
 - c). All commercial harvesters who reside outside of the State of Alaska and who hold valid Alaska resident licenses, and/or permits (such as: An Alaska resident trapping license, or an Alaskan Commercial Fisheries Entry Permit, or NOAA IFQs.

 - E. Category 4 Users shall include:
 - a). All Category 5 Users, and
 - b). All non-Alaskan nonresident U.S. citizen sport harvesters who hold nonresident Alaska sport fish, hunting or trapping licenses.
 - c). All official and all non-official Alaska fishing derbies and trophy hunts and their participants.

 - F. Category 5 Users shall include:
 - a). All Category 6 Users, and
 - b). All non-Alaska resident U.S. commercial harvesters, who do not hold valid Alaska licenses, and/or permits (such as U.S. trawlers and U.S. factory trawlers), but are harvesting legally.
 - c). All foreigners holding valid Alaska nonresident sport fishing, hunting or trapping licenses.

 - G. Category 6 Users include:
 - a). Any and all other legal users not mentioned in the previous categories 0 thru 5 including foreign (non U.S. citizens) commercial fishing and hunting operation participants.

OTHER PROVISIONS THAT MAY BE NEEDED IN THE PROPOSAL.
(after debate and discussion).

Emergencies which arise could be recognized by:

1. Alaska Board of Fisheries and/or Game,
2. Alaska Department of Fish and Game,
3. Appropriate Regional ADF&G Advisory Council,
4. Appropriate Local ADF&G Advisory Committees,
5. Local City, Town, or Village Council,
6. Petition by concerned groups or individuals.

Emergencies, including which species and areas were involved, and class or seriousness of emergency would be determined jointly by:

1. The Appropriate Alaska Board of Fisheries and/or Game,
2. The Alaska Department of Fish and Game, and
3. The Appropriate Regional ADF&G Advisory Council, with the Appropriate Local ADF&G Advisory Committees required in attendance.

Definitions for "general", "overall" conservation closures for entire regions or the entire state may be needed and enacted.

Provisions and/or regulations for declaring and implementing these closures must be written and passed.

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DETAILED DISCUSSION IN FAVOR OF THIS PARTICULAR BILL PROPOSAL DRAFT
and/or
THIS TYPE OF SUBSISTENCE LEGISLATION
2/24/90
(revised 5/15/90, 12/20/90, and 9/12/99)

The following three pages of discussions are fairly detailed and are best studied with the applicable Sections of ANILCA in hand (see Appendix III & Appendix VI) and after the proposal itself is read and understood.

DISCUSSION OF BENEFITS AND EFFECTS OF THIS (OR THIS TYPE OF) PROPOSAL

Determination of eligibility to harvest fish and/or game in any particular legal manner will be easily made based on:

- a). Status of resource.
- b). Place of residence.
- c). Legal licenses and permits held.

A person may become eligible or ineligible to harvest if they move, or (commercially) if they buy or sell their permit. Commercial permits should migrate back to the rural villages without direct government involvement as they become valueless to nonresidents if that class emergency is declared.

Costs of collecting and analyzing great amounts of individual and community historical use data will be eliminated or greatly reduced.

Fish and Game managers will be able to determine harvest levels for particular species in relatively broad or very specific areas as the biology, habitat, movement, population, etc. of that species dictates.

Obviously, general and overall "Conservation Class Emergency" and "Class 1 Subsistence Emergency" and Class 2 Subsistence Emergency" Closures are exceptional cases indicating that the entire State's (or Region's) resource management has failed or is failing.

Specific species or specific area Conservation or Subsistence Emergency Closures would be more common. The harvest of one species of fish and/game may be severely restricted in an area while another species in the same area is being harvested commercially by all users.

DISCUSSION OF CUSTOMARY TRADE (See Appendix III)

Notice in first sentence of ANILCA Sec. 803 (See Appendix III) that the definition of subsistence is broken down into 4 uses by the use of the semicolon ";" as follows: "Sec. 803. As used the term "subsistence" means for the customary transportation; for the making consumption; for barter consumption; and for customary trade. The word "for" is used four different times for four different uses of subsistence.

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This proposal, "ECNETSISBUS", defines the term "Customary Trade" which is used in the ANILCA Section 803 definition of "subsistence uses". Notice that the term "Barter" in the ANILCA Sec. 803. definition of "Subsistence Uses" is separated from the term "Customary Trade" by a phrase and by a semicolon. This strongly implies that, although "barter" is a noncommercial use of the resources, "customary trade" may, in fact, be a commercial use. It further implies the term "customary trade", since it is not defined in ANILCA, is open to State interpretation and the legislative definition thereof. "ECNETSISBUS" does just that.

DISCUSSION OF CATEGORIES OF SUBSISTENCE USERS (See Appendix III)

This proposal, "ECNETSISBUS", creates "categories of subsistence users" which is in complete compliance with the "preferences for subsistence uses" as stated in ANILCA Section 804. (see Appendix III). ANILCA'S intention seems obviously meant to protect the rural Alaskan resident both "personal use-wise" and "commercial use-wise" or as in "ECNETSISBUS" both "Personal Subsistence Use" and "Customary Subsistence Trade".

ANILCA just as obviously seems to mean to protect the urban Alaska resident both "personal use-wise" and "commercial use-wise", but on a lower priority level. As discussed previously [in this paper and in ANILCA Section 804.(1)] both rural and urban commercial user has customary and direct dependence upon the resource as the mainstay of livelihood. Between the rural and urban Alaska commercial user, only their "availability of alternative resources" [ANILCA Section 804.(3)] is different and it is severely limited in both cases.

And the State's Constitution in Art. VIII Section 15. (see Appendix IV) allows us "... to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood". In fact, when the State established the Salmon Limited Entry System and "grandfathered" the various permits, it used the personal history of past participation, the economic dependence upon that fishery, and the availability of alternative occupations of the different applicants to award the permits. Two of those same criteria were used in the awarding of the initial "grandfathered" IFQs for black Cod and Halibut by the IPHC and NMFS.

The second sentence of ANILCA Sec. 804. (see Appendix III) states "Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria:

- (1) customary and direct dependence upon the population as the mainstay of livelihood;
- (2) local residency; and
- (3) the availability of alternative resources.

This implies that the Alaska commercial fisherman is a subsistence user. In fact, close reading of ANILCA Sec. 804. (see Appendix III) almost demands that the rural Alaska resident commercial fisherman be designated a subsistence user.

DISCUSSION OF SOLVING PREVIOUS LEGAL PROBLEMS IN COMPLYING WITH ANILCA

This type of proposal should require no constitutional amendment for the State to come into complete compliance with ANILCA for Fisheries based on the following logic.

1. The constitutional amendment which enabled limited entry to be enacted enables us to discriminate between fisheries users based on conservation needs.
2. Limited Entry further allowed us to discriminate between fisheries users based on past participation.
3. All this proposal does is recognize conservation needs and, in compliance to ANILCA, spreads the discrimination over several categories of users based upon the severity of the emergency, the customary and direct dependence upon the resource populations as the mainstay of livelihood, the availability of alternative resources, and subsequently upon a person's residence.

This type of proposal should require only a minor constitutional amendment for the State to come into complete compliance with ANILCA for Game based on the following logic.

1. Addition of only the two words "AND GAME" to the 1970 amendment which allowed limited entry should allow the legislature to enact this proposed bill and thus come into complete compliance with ANILCA.

This type of proposal seems legal under ANILCA, our past Alaska legislation, and (with minor amendment) our State Constitution.

DISCUSSIONS IN FAVOR OF A NEW AND DIFFERENT TYPE OF APPROACH

The following three pages of discussion, together with the previous more detailed discussion, should show that the intent of the ANILCA subsistence sections can be acceptably implemented by the enactment of this (or this type of) bill proposal.

DISCUSSION OF TYPES OF ATTEMPTS MADE TO DATE TO COMPLY WITH ANILCA

All attempts to date by the State to comply with ANILCA have relied upon and have been built upon:

- A. Individual's History of Subsistence Use Data;
- B. Community's History of Subsistence Use Data;
- C. Individual's History of Areas of Subsistence Use Data;
- D. Community's History of Areas of Subsistence Use Data;
- E. Individual's History of Species of Subsistence Use Data;
- F. Community's History of Species of Subsistence Use Data;

This type of data is extremely prejudicial, biased and discriminatory. Too much so. It is also too costly to collect and too subjective.

People throughout Alaska and especially in the rural areas truly do rely upon their renewable resources. This type of data does not allow for the real and/or changing needs of either individuals or their communities. It does not allow for changes in fish and wildlife populations, especially from area to area. It leaves no alternatives if a particular species suffers a severe population decline. It cannot react timely to changing populations. It involves too much litigation from individuals and communities. It is unacceptable.

DISCUSSION OF ATTEMPTS MADE BY THE STATE TO COMPLY WITH THE SUBSISTENCE NEEDS OF ITS CITIZENS BOTH PRIOR TO AND AFTER ANILCA

Pelican ADF&G Advisory Committee has gone on record in 3/3/82 with its views of the subsistence issue. At its 3/3/90 meeting it again unanimously supported the exact same position. This position supports State control of its fish and game resources and requests the State to demand its right to do so. See Appendix I for that position paper.

The importance of commercial fishing to the town of and the residents of Pelican plus the frustration over the constant curtailment thereof lead the Pelican ADF&G Advisory Committee to consider their resolution of 11/16/91 (see Appendix V). Although it didn't pass in 1991, it was reconsidered and passed in the mid 1990s.

DISCUSSION OF INTENT OF ANILCA (PLACE OF RESIDENCE - RURAL ALASKA)

ANILCA (as far as subsistence is concerned) obviously intends (or means) to protect the life-style, culture, and livelihoods of rural Alaskans from the urban Alaskans and from the residents of the south 48 and from foreigners. This is because the rural Alaskan has absolutely no (or almost) no alternative life-style, culture, or livelihoods to fall back on if their supply of fish and game is significantly diminished or wiped out. They absolutely depend on their wild renewable resources.

DISCUSSION OF INTENT OF ANILCA (NATIVE VERSUS NON-NATIVE)

ANILCA is basically an Act about Lands in Alaska which are of National Interest. Although ANILCA has large portions dealing with Native lands and the Alaska Native Claims Settlement Act, ANILCA very specifically and clearly states, in Section 801.(1) (see Appendix III), that, as far as subsistence is concerned, Natives and non-Natives are to be treated alike.

DISCUSSION OF INTENT OF ANILCA (CUSTOMARY TRADE VERSUS COMMERCIAL USE)

"Customary Trade" (as used in ANILCA Section 803) (see Appendix III) can be easily defended as meaning that for purposes of fish and game laws and regulations, "any and all commercial harvesting of fish and game as has been legally allowed, licensed and/or permitted by in the State of Alaska to this date".

Clearly, Alaska residents had the history of some 60 years of U.S. Law and Regulation and Management before Statehood to decide what was acceptable commercial practice ("customary trade") in the harvesting of its wild renewable resources.

With Statehood (when Alaska residents received the right to make laws and regulations based on these decisions) many changes were implemented (i.e.. elimination of fish traps). After a further 15 year history, Alaska amended its constitution to allow for the protection of its residents from non-Alaskan residents and entrepreneurs (i.e.. Limited Entry in the commercial fisheries).

The enactment of Commercial Fisheries Entry Legislation brought about an almost immediate migration of permits (opportunities of livelihood) out of the rural areas of the State to the urban areas of the State and to an even greater extent out of the State entirely. This is probably the chief reason for the enactment of the Subsistence Section (Title VIII) of the ANILCA legislation. And it happened within 6 years of the (final) enactment of limited entry.

The past twenty years of trial and error regulations designed to implement ANILCA subsistence have been very frustrating, unproductive, and extremely fear provoking. (ANILCA subsistence could very possibly destroy the very life-style, culture, and livelihoods is was designed to create).

It should be clear from a perusal of the history of the regulations designed for the protection of Alaskan residents, especially rural residents, who in many cases are commercial users, that ANILCA's clear intent is to protect the commercial user; and it can do so by defining customary trade as in the following bill proposal.

DISCUSSION OF INTENT OF ANILCA (PLACE OF RESIDENCE - URBAN ALASKA)

Further, this perusal of the history of Alaska law and regulations and ANILCA (as far as subsistence is concerned) can easily further be interpreted to intend (or mean) to protect the life-style, culture, and livelihoods of urban Alaskans from the residents of the south 48 and from foreigners (see ANILCA Section 804 in Appendix III). This is because the urban Alaskans have almost no (or very little) alternative life-style, culture, or livelihoods to fall back on if their supply of fish and game is significantly diminished or wiped out. They also very much depend on their wild renewable resources.

DISCUSSION OF INTENT OF ANILCA (SPORT VERSUS COMMERCIAL HARVESTING)

Sport hunting and fishing (and trapping?) as now separated from "Personal Use" hunting and fishing (and trapping?), can be viewed either as a direct use of the resource for recreation or an indirect use of the resource for livelihood (as in the case of sport fishing and hunting suppliers, outfitters, guides, and lodges).

Commercial fishing and trapping (and hunting?) can be viewed as a direct use of the resource for livelihood.

Study of ANILCA, then, in its Section 803 (see Appendix III) definition of subsistence uses, seems to give commercial fishing and trapping (and hunting?) a higher priority than sport fishing and hunting.

Study of ANILCA Sections 801.1 and 801.4 (see Appendix III) seems to give the same interpretation.

Study of ANILCA Sections 801.3 (see Appendix III) seems to allow for a use priority schedule such as is given in this proposal.

*

QUESTIONS TO ASK YOURSELF

1. OVERVIEW Do we want to support this type of legislation?
Generally?
Specifically?
Can you support it individually?
2. Are there gross errors in the proposal or in the discussion.?
3. Is each user group in the category you would like to see it in?
And can you support your preference?
4. Are there other user groups not included that should be?
5. What about Sport Commercial Charter Boats? Are they in the correct category? Where should they fit into the category range? Should they be required to buy a Power Troll Permit?
6. What about Commercial Guides?
7. How should emergencies be recognized and by whom? Who should see that they are actually responded to?
8. What about elderly people who have lived off the land in rural communities but are now forced to live in urban areas because of ill health and the need to be near medical facilities?
9. Will this proposal cause a migration of nonresidents into rural areas instead of a migration of commercial permits into these areas, creating even worst situations?
10. How extensive should Subsistence Class Closures be? Should "Conservation Closure" and "Class 1 and Class 2" Subsistence Emergency closures "kick in" limited to their areas only?
11. DOES THIS PROPOSAL REALLY DO WHAT WE THINK IT DOES?

PELICAN'S POSITION ON SUBSISTENCE

PELICAN ADF&G ADVISORY COMMITTEE

SUBSISTENCE COMMENTS

3/3/82

In attempting to come up with Pelican's definition of subsistence we have come to realize that:

1. Every man "needs" to subsist;
2. Every man will utilize any resource to stay alive and/or to keep his family alive, be it fish, fowl, flora, or fauna, a renewable resource or a non-renewable resource;
3. That our governments ((community, state, and federal) have been created to safeguard these basic needs and rights;
4. That our Alaska Boards of Fisheries and of Game, in particular, have been created to and have been doing just that.

We have also come to recognize the Con Game of the ANILCA subsistence issue for what it is:

1. An insidious method of gaining further Federal control over Alaska's resources, and
2. A method for lawyers, attorneys, Federal bureaucrats, and other Con Men to milk the public.

We citizens are tired of expending great amounts of time, effort, and monies in "good faith" attempts to sit down with highly paid attorneys and bureaucrats to develop realistic definitions and laws for resource management, only to find that we have wasted our family lives and exhausted our personal finances, while the attorneys have been getting rich, and further, only to find that once the issues, definitions, and laws have been ironed out and agreed upon in "good faith" and enacted, that these same lawyers and bureaucrats will then "take the other side" and further drain our treasuries and pocket books by representing various groups (supposedly wronged by legislative or regulatory oversight) in court using legal loopholes.

We recognize the Con Game for what it is --- a highly evolved and very expensive method for milking the public under the guise of protecting our rights, our interests, and our resources.

We feel that the Alaska Boards of Fisheries and of Game do now, and always have had the Alaskan citizen's interests at heart; and that they have shown exceptional sensitivity in meeting subsistence needs of the Alaskan without the expensive Con Game of statutes, definitions, and regulations. We feel that the State of Alaska has a very good batting average in the management of its resources -- at least the few that it is allowed to manage.

*

On the other hand, we feel that the Federal Government has shown a real lack of understanding of Alaskans and the needs of Alaskans, and consequently, has a history of insensitivity to Alaska's needs; witness:

Clearcut logging,
The Marine Mammal Act,
Wolf control, etc., and now
The subsistence issue.

We feel that the State of Alaska should at this time take a strong stand against federal control of subsistence in Alaska and/or federal mandates to Alaska concerning subsistence. The State should sue the federal government if necessary. We should be demanding our State's rights to manage our own renewable resources. We fought for these rights at Statehood and we should not be letting the Federal Government abridge them.

We feel that the Federal Government should re-examine the implications of ANILCA and back off.

Our nation was founded with the concept of all men being equal under the law. We ask, then, that the Federal Government re-examine the ANILCA Subsistence Sections as creating classes of people with different rights:

Subsistence users over "others",
Rural over urban,
Traditional user over "??????".

Further, we ask that the United States Government cease and desist this practise of taking over State's rights and authorities under the guise of righteously protecting its citizens.

APPENDIX II

4

AUTHOR'S REASONS FOR PROPOSAL

DISCUSSION OF THE AUTHOR'S REASONS FOR THIS PAPER AND PROPOSAL

Although I am on the Pelican ADF&G Advisory Committee and wholeheartedly support its position on Subsistence and State's rights (see Appendix I), it is my opinion that:

1. The Federal government will continue to usurp our State's rights, despite their obvious ignorance of our traditional, customs, and needs.
2. The State of Alaska, The Office of the Governor, The Alaska State Legislature, The Boards of Fisheries and Game, and The Department of Fish and Game either lack the desire, the will, the muscle, and/or the courage to fight the Federal government; or they truly know that they would lose this battle at further loss to the State.
3. The Boards of Fisheries and Game have occasionally (but very rarely) bowed to political pressures and put the interest of the urban users above the needs of the rural user (i.e. the Cook Inlet/Kenia River Subsistence issue).
4. Many other State agencies do not have the protectionist attitude toward "subsistence" and "personal use" rural users that the Alaska Boards of Fisheries and Game has shown (i.e. the clearcut, no buffer strip policies of the Alaska Department of Natural Resources).

It is for these reasons that I submit this paper. I do so with great reluctance as I feel that State will take any alternative it can to avoid this very necessary battle over its right to govern itself, regardless of the lack of existence of acceptable legislation for compliance to ANILCA.

It is with these reservations, therefore, that I submit this paper. I feel that, notwithstanding the need for a strong stand over Alaska's right to govern itself, the preceding approach to compliance with ANILCA Subsistence is the least disruptive to the State and the customs, life-style, and livelihoods of its citizens both rural and urban. It should, I believe, allow the State to manage its fish and game resources pretty much as it has in the past.

If we accept this proposal, however, the State will continue to be ruled by our absentee owners in Washington D.C. and we will continue to have many such conflicts in the future (i.e. the Tongass Reform issue, the Glacier Bay Park versus Commercial Fishing issue).

SINCERELY,

Richard W. Lundell

TITLE VIII—SUBSISTENCE MANAGEMENT AND USE

FINDINGS

16 USC 3111.

Sec. 801. The Congress finds and declares that—

(1) the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands and by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence;

(2) the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses;

(3) continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened by the increasing population of Alaska, with resultant pressure on subsistence resources, by sudden decline in the populations of some wildlife species which are crucial subsistence resources, by increased accessibility of remote areas containing subsistence resources, and by taking of fish and wildlife in a manner inconsistent with recognized principles of fish and wildlife management;

48 USC 1601
note.

(4) in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress to invoke its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents; and

(5) the national interest in the proper regulation, protection, and conservation of fish and wildlife on the public lands in Alaska and the continuation of the opportunity for a subsistence way of life by residents of rural Alaska require that an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.

POLICY

16 USC 3112.

Sec. 802. 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, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized

scientific principles and the purposes for each unit established, designated, or expanded by or pursuant to titles II through VII of this Act, the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so; * Ante, p. 2377.

(2) nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands of Alaska when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population, the taking of such population for nonwasteful subsistence uses shall be given preference on the public lands over other consumptive uses; and

(3) except as otherwise provided by this Act or other Federal laws, Federal land managing agencies, in managing subsistence activities on the public lands and in protecting the continued viability of all wild renewable resources in Alaska, shall cooperate with adjacent landowners and land managers, including Native Corporations, appropriate State and Federal agencies, and other nations.

DEFINITIONS

SEC. 803. As used in this Act, the term "subsistence uses" means 16 USC 3113.
the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption, as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. For the purposes of this section, the term—

(1) "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses—

(A) for other fish or game or their parts; or

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

PREFERENCE FOR SUBSISTENCE USES

SEC. 804. Except as otherwise provided in this Act and other 16 USC 3114.
Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. When-
ever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the 16 USC 3114.
continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria: Priority criteria.

(1) customary and direct dependence upon the populations as the mainstay of livelihood;

(2) local residency; and

(3) the availability of alternative resources.

RESOLUTION OF
THE PELICAN ADF&G ADVISORY COMMITTEE
CONCERNING
INCLUDING COMMERCIAL FISHING WITHIN SUBSISTENCE

11/16/91

Whereas, Pelican is an isolated and rural town of about three hundred in Southeast Alaska,
and

Whereas, Pelican's primary industry is commercial fishing, and

Whereas, The economy of Pelican would completely fold, property values would drastically
drop, and its residents would go bankrupt and be forced to move from the area
since there is no significant number of alternative occupations available in
Pelican if commercial fishing was closed in Southeast Alaska for any extended
period of time, and

Whereas, We feel that the same phenomenon would occur in almost all isolate, rural villages
and towns throughout Southeast Alaska if commercial fishing was closed in
Southeast Alaska for any extended period of time, and

Whereas, We peoples of Pelican and of Southeast Alaska do to a large percentage depend
directly upon Commercial fishing for our livelihoods and ways of life, and

Whereas, We feel that this is what ANILCA is addressing in its Subsistence Sections;

Therefore, We, the Pelican ADF&G Advisory committee, do hereby adopt in essence the idea
and concept of the Richard Lundahl Subsistence Proposal as previously submitted
and as attached; and

Further, We request that the Southeast Regional ADF&G Council, the State of Alaska, and the
U.S. Federal Government do the same.

among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

Cross references. — See note to Alaska Const., art. VIII, § 15.

NOTES TO DECISIONS

Legislative intent. — The provisions in this article were intended to permit the broadest possible access to and use of state waters by the general public.

Wernberg v. State, 516 P.2d 1191 (Alaska 1973), rehearing denied, 519 P.2d 801 (Alaska 1974).

Section 14. Access to Navigable Waters. Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

Opinions of attorney general. — The owner of the uplands has been stated to have the right of access for the purpose of navigation, but no right of possession of the land below high water mark as against another. 1959 Op. Att'y Gen. No. 1.

In Dalton v. Hazelet, 182 F. 561 (9th Cir. 1910), it was recognized that the right of free and unobstructed access may be exercised by means of a wharf or other structure over shoal water from the upland property

to deep water. 1959 Op. Att'y Gen. No. 1.

The mere physical passage is not the only right involved in the right of access. The upland owner has the right to use the foreshore in such manner as is necessary for the complete enjoyment of his right. 1959 Op. Att'y Gen. No. 1.

Any use of tidelands in such a manner as to deny the upland owner access to the navigable waters would be actionable. 1959 Op. Att'y Gen. No. 1.

NOTES TO DECISIONS

Legislative intent. — The provisions in this article were intended to permit the broadest possible access to and use of state waters by the general public. Wernberg v. State, 516 P.2d 1191 (Alaska 1973), rehearing denied, 519 P.2d 801 (Alaska 1974).

The Alaska Constitution allows the state to take riparian or littoral property rights for "beneficial or public uses" other than in aid of water navigation. Wernberg v. State, 516 P.2d 1191 (Alaska 1973), rehearing denied, 519 P.2d 801 (Alaska 1974).

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. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Cross references. — For provisions relating to the limitation of entry into the fisheries of the state, see AS 16.43.

Effect of amendments. — The amendment effective October 14, 1972 (7th Legislature's HCS CSSJR 10 (1971)) added the last sentence.

Opinions of attorney general. — This section was derived from the White Act, 48 U.S.C. §§ 221, 222. 1961 Op. Att'y Gen. No. 3.

Under the language of the White Act (48 USC § 222) the Secretary of Interior was prohibited from granting any exclusive or several right of fishery in favor of the Natives on the Karluk River on Kodiak Island. The court held that the prohibition against granting and exclusive right of fishery applied to

commercial fishing by natives equally with fishing companies, and that the secretary could not grant to the occupants of an Indian reservation the privilege of exclusive commercial fishing rights. 190 Op. Att'y Gen. No. 9, citing Hynes v. Grimes Packing Co., 12 Alaska 348, 337 U.S. 86, 69 S. Ct. 968, 93 L. Ed. 1231 (1949).

AS 38.05.082, which authorizes shore fishery leases, does not create an exclusive right of fishery and therefore is not unconstitutional under this section. 1983 Op. Att'y Gen. No. 03.

AS 38.05.082 can be amended to limit the issuance of state tidelands leases for fisheries development to residents of Alaska. 1983 Op. Att'y Gen. No. 03.

NOTES TO DECISIONS

Applicability. — The right to lead subsistence lifestyles is not limited to Alaska Natives; the benefits of subsistence living are shared by all Alaskans and class of Alaska Natives could not bring a public

nuisance action based on interference with subsistence lifestyles because they could show no special injury different in kind from that suffered by the general public. Alaska Native Class v. Exxon Corp.,

Page 2 of 2

104 F.3d 1196 (9th Cir. 1997).

The first judicial application of this constitutional provision should properly be by an Alaska court. *Reetz v. Bozanich*, 397 U.S. 82, 90 S. Ct. 788, 25 L. Ed. 2d 68 (1970).

The White Act merely expressed the common law in prohibition against exclusive fishing rights. *Grimes Packing Co. v. Hynes*, 11 Alaska 154, 67 F. Supp. 43 (D. Alaska 1946), vacated and remanded on other grounds, 12 Alaska 348, 337 U.S. 86, 69 S. Ct. 968, 93 L. Ed. 1231 (1949).

It did not permit a monopoly of fishing in Indian citizens as a conservation measure. *Hynes v. Grimes Packing Co.*, 11 Alaska 564, 165 F.2d 323 (9th Cir. 1947), vacated and remanded on other grounds, 12 Alaska 348, 337 U.S. 86, 69 S. Ct. 968, 93 L. Ed. 1231 (1949).

The purpose of the 1972 amendment, which added the second sentence to this section, was to grant the state the power to impose a limited entry system in any fishery, notwithstanding any state constitutional provisions otherwise prohibiting such a system. *State v. Ostrosky*, 667 P.2d 1184 (Alaska 1983), appeal dismissed, 467 U.S. 1201, 104 S. Ct. 2379, 81 L. Ed. 2d 339 (1984).

Differential treatment not prohibited. — While this section does prohibit granting monopoly fishing rights, it was not meant to prohibit differential treatment by the Board of Fisheries of such diverse user groups as commercial, sports, and subsistence fishermen. *Kenai Peninsula Fisherman's Coop. Ass'n v. State*, 628 P.2d 897 (Alaska 1981).

Statute granting a preference to rural residents to take fish and game for subsistence purposes violated this section. *McDowell v. State*, 785 P.2d 1 (Alaska 1989).

A ban on the use of a means of fishing does not equal a creation of an exclusive right or a special

privilege. *Alaska Fish Spotters Ass'n v. State, Dep't of Fish & Game*, 838 P.2d 798 (Alaska 1992).

Regulation upheld. — A superexclusive use regulation prohibiting fishermen who operate in one of the superexclusive fisheries from participating in any other superexclusive fishery reflects an allocation decision which is both necessary and authorized under Article VIII, § 4 of the Alaska Constitution, and does not violate any of the Article VIII clauses prohibiting exclusive or special privileges to take fish and wildlife. *State v. Herbert*, 803 P.2d 863 (Alaska 1990).

A regulation allocating harvest levels of sockeye salmon did not violate either Article VIII, § 3 or Article VIII, § 17 of the Alaska Constitution, as the regulation was not arbitrary and capricious, did not create an exclusive right, and the affected fisheries were not "similarly situated". The regulation reflected an allocation decision authorized under Article VIII, § 4 which the Board of Fisheries must necessarily make between users involved in different fisheries. *Gilbert v. Department of Fish & Game*, 803 P.2d 391 (Alaska 1990).

Constitutionality of ch. 186, SLA 1968. — See *Bozanich v. Reetz*, 297 F. Supp. 300 (D. Alaska 1969); *Reetz v. Bozanich*, 397 U.S. 82, 90 S. Ct. 788, 25 L. Ed. 2d 68 (1970).

Quoted in Metlakatla Indian Community Annette Island Reserve v. Egan, 362 P.2d 901 (Alaska 1961), vacated and remanded, 363 U.S. 45, 82 S. Ct. 552, 7 L. Ed. 2d 562 (1961); *Isakson v. Rickey*, 550 P.2d 359 (Alaska 1976); *Commercial Fisheries Entry Comm'n v. Apokedak*, 606 P.2d 1255 (Alaska 1980); *State v. Alex*, 646 P.2d 203 (Alaska 1982); *Johns v. Commercial Fisheries Entry Comm'n*, 758 P.2d 1256 (Alaska 1988).

Cited in Wickersham v. State, Com. Fisheries Entry Comm'n, 680 P.2d 1135 (Alaska 1984); *State v. Morry*, 836 P.2d 358 (Alaska 1992).

Section 16. Protection of Rights. No person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law.

NOTES TO DECISIONS

Legislative intent. — The provisions in this article were intended to permit the broadest possible access to and use of state waters by the general public. *Wernberg v. State*, 516 P.2d 1191 (Alaska 1973), rehearing denied, 519 P.2d 801 (Alaska 1974).

The "use of water" language of this section is coterminous with riparian rights. *Classen v. State, Dep't of Hwys.*, 621 P.2d 15 (Alaska 1980).

This section affords protection against the involuntary divestment of private property rights for a superior beneficial use, such as the construction of a by-pass, by specifying that it shall be "only with just compensation and by operation of law." *Wernberg v. State*, 516 P.2d 1191 (Alaska 1973), rehearing denied, 519 P.2d 801 (Alaska 1974).

Property owner has private right of littoral access. — See *Wernberg v. State*, 516 P.2d 1191 (Alaska 1973), rehearing denied, 519 P.2d 801 (Alaska 1974).

There is little difference between land-access and water-access situations, at least where the

facts establish actual use of water access. *Wernberg v. State*, 516 P.2d 1191 (Alaska 1973), rehearing denied, 519 P.2d 801 (Alaska 1974).

The supreme court questioned the validity of a restricted definition of the private right of access in water cases, especially in view of the more realistic right of access recognized in land-access cases. *Wernberg v. State*, 516 P.2d 1191 (Alaska 1973), rehearing denied, 519 P.2d 801 (Alaska 1974).

A party was not entitled to compensation under this section when construction of a bridge destroyed his ability to use his residence on the river as a base for his floatplane air taxi service because although the construction made his floatplane operation more expensive and difficult, it did not actually prevent his use of the river for that purpose or interfere with traditional riparian rights. *Classen v. State, Dep't of Hwys.*, 621 P.2d 15 (Alaska 1980); *Ellis v. State, Dep't of Natural Resources*, 944 P.2d 491 (Alaska 1997).



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September 22, 1999

Senator Rick Halford, Chair
Senate Resources Committee
State Capitol, Rm., 121
Juneau, AK 99801-1182

Via Fax: 465-4928

Dear Senator Halford and Committee Members:

I am writing to provide written testimony on behalf of Shee Atiká, Incorporated's 2,442 shareholders for today's subsistence hearing.

Shee Atiká, Incorporated is the ANCSA Urban Corporation for Sitka. Shee Atiká has a long history of supporting efforts to implement a rural priority for subsistence hunting and fishing in the state. We are dismayed by the total lack of understanding displayed by the Alaska legislature of the importance of subsistence hunting and fishing to the Native peoples of Alaska. The lack of progress to resolve this impasse is not acceptable.

With proper management of state resources, subsistence is not a threat to either commercial or sport harvest of fish and game. In fact, compared to these two entities, the subsistence harvest is minute! Proper management requires local, not federal, control.

We urge you to end the impasse now and take those measures necessary, including a constitutional amendment, to implement the rural priority under state law and ensure that control of fish and game remains with the state.

We look to you and our other legislators to do the right and courageous thing.

Thank you for considering our opinion. Please make this letter part of the hearing record.

Sincerely,

Marta Ryman
Chairman of the Board



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the _____

Committee Name

Committee on _____ Dated _____

Bill / Subject

THIS OPINION IS RESPECTFULLY SUBMITTED FOR YOUR THOUGHTFUL CONSIDERATION. EQUAL RIGHTS FOR ALL ALASKANS IS SO FUNDAMENTAL AS TO BE BEDROCK TO THE ALASKA CONSTITUTION, AS WELL AS THAT OF THE UNITED STATES.

SIGNED:

[Signature]
Testifier

W.R. COX COL. USA RET.

SELF

Representing

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CoxII

WONDERING IF IT WAS WORTH WAS IT

Guest Opinion by Col. W. R. Cox USA Ret.

It's not unusual for a former soldier to look back at his career and wonder if it was worth it. This is one of those times for me. I spent 30 years in the US Army defending the values of the United States Constitution. It didn't matter whether I was a "shavetail Lieutenant" threatened with courts martial for standing up to a Sergeant-Major who was lying about the pay list, a field officer in combat, or post commander in "peacetime." My choice was to defend the US Constitution, and do what was right. I decided the risks, whether to my military career or in pitting my life and fighting skills against those of other men opposing freedom and human dignity, were worth it. The values of human respect and equality were worth taking those risks, even death.

With this as my past, I wonder what's gone wrong with equal rights for all Alaskans and our rights as a state in the subsistence issue. How can Alaskans even consider amending our state constitution to allow preference when the US Constitution and all federal laws, except ANILCA, forbid it? Preference for folks in need sounds noble, but we shouldn't get so emotional that we overlook this logical fact: you can't give one man preference without discriminating against another. To me granting preference violates the most important American principle, that all are equal under the law. I fought for that.

I don't have a problem with some folks having an advantage because they've worked harder or made other sacrifices to gain advantages. However, I can clearly see the difference between earning advantage and receiving preference because of where you live or who your ancestors chanced to be. It took this nation a long time to get over preference based on race, and I'm not about to go back to it.

I wonder how we've come to this. I'm no expert on ANLCA history or Native grievances, but I can certainly identify the main players pushing for the discrimination required by preference. It's no secret that Ted Stevens has family (if not monetary) ties to the law firm which has Cook Inlet Regional Native Corporation as its major Alaska client, and the last time I checked Ted's brother-in-law was chief lobbyist for the Alaska Federation of Natives in Washington DC. The same Ted Stevens says ANILCA can't be amended, but has quietly amended it dozens of times to benefit Alaska Native financial interests, in some cases specifically those of Cook Inlet Regional Corporation. He's also the Senate appropriations chairman who said he couldn't block federal funds to take over management and then made a deal with Bruce Babbitt to "buy" an Alaska constitutional amendment for \$10 million. Unfortunately, I've come to expect this from Stevens; I don't know what to expect from Senator Murkowski. If he were governor, would he stand up for Alaska?

Still, the guy who really confuses me is Governor Tony Knowles. Governor Knowles served his country at one time...the same Army as I, and apparently took some of the same risks. Yet, he's pushing preference as though it wouldn't result in discrimination and violate the principle that all men are created equal. I can't understand how a man who actually fought for his country can do a thing like that.

I have nothing but respect for those legislators who are willing to take a stand for equality under law regarding rural preference. I hope they can handle the pressure from those who want to do management the federal way so they can feel good and get back to making money with (and from) Alaska Natives. This crowd includes many of my former colleagues in the Chamber of Commerce.

For those who want to settle by accepting a federal law which doesn't uphold equality and lack the stomach to fight for equal justice for Alaska as a state and for all Alaskans, I have a sort of bemused contempt. I'm wondering if the risks I took fighting for the rights of these people were really worth it. They certainly don't seem to appreciate the principles for which I was willing to die, but, by the Grace of God, didn't have to.

To those who resist caving in to the feds, I say "Thank you for validating the risks I took in your service!"

Col. W. R. "Wally" Cox, a retired soldier, served in the Army for 30 years including 2.5 years of combat in Viet Nam, was post commander at Ft. Wainwright from May 1984 to August 1987, and president of the Fairbanks Chamber of Commerce for three years.