

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 867267

671 SCOM122: ALASKA LANDS FILE 1977-78

ARCTIC NATIONAL WILDLIFE RANGE/REFUGE

The Steering Council is among those who believe that the future of the Arctic National Wildlife Refuge is probably the most difficult D-2 issue to decide. The balance between our nation's urgent need for domestic oil and gas production and the last untouched Arctic environment is a hard one to strike.

At present, H.R. 39 imposes a wilderness designation over the Range. In addition, Sections 905 and 603 provide for an Interior Department study covering 1.2 million acres of the existing Range.

Consistent with our wilderness policy, the Steering Council opposes the designation of the Arctic National Wildlife Refuge/Range as an instant wilderness area because it has not been studied for inclusion in the National Wildlife Preservation System and because a determination cannot be made at this time that said wilderness overlay will be beneficial to the wildlife populations residing in or migrating through the proposed Refuge.

The Steering Council has analyzed the study provision adopted by the House Interior Committee and has unfortunately concluded that a major flaw exists. As presently conceived, the only study allowable for oil and gas potential on the Range would be conducted by the Interior Department - which is already on record as stating that any oil or gas in this area should be the last ever extracted in the United States. Based on this position, giving the Interior Department exclusive study rights is fraught with potential for accusations of purposeful understatement of resources for failure to fully explore. There is little reason to believe that their study will receive the credibility needed for it to be valued as a basis for such an important future decision.

The Steering Council feels that the nation would be better served if a private industry study is also permitted over the same time period as the Interior study, but only if the private industry study is conducted under strict environmental regulations imposed by the Department of Interior. The Steering Council proposes that both studies be individually submitted to Congress upon completion and that the GAO should do an analysis and assessment of the two reports. At that point, a determination can be made by Congress as to whether or not any portion of the Arctic

National Wildlife Range should be open to exploration or extraction. This joint study concept should provide the adequate and unbiased information needed for a final decision and should do so without causing any significant environmental damage to this precious area.

MINERALS POLICY

Attached to our testimony is a summary of the major areas of conflict between mineral deposits and proposed Wildlife Refuges. We trust that you will consider these mineral deposits as one of the competing values to be assessed in reaching final decisions on Refuge boundaries, Refuge access and Refuge use.

We have also submitted a series of amendments concerning minerals study, exploration, development and access. These amendments would allow some exploration by private industry in Wildlife Refuges, incorporate existing mineral leasing law in nonwilderness Refuges, and provide access in Refuges for hardrock minerals. The amendments provide clear authority for the Secretary of Interior to deny entry for exploration, mineral leasing or extraction of hardrock minerals whenever those activities endanger wildlife populations.

The Steering Council supports permitting extraction of leasable minerals in Wildlife Refuges, consistent with existing practice in the continental United States. The most important leasable minerals are, of course, oil and gas. The substantial deposits of oil and gas in Alaska make the exploration or potential development of these areas critical to the national interest. If the bill we are considering is correctly named as a "National Interest Lands" bill, then we need look no farther than our daily oil import demand of approximately 8 million barrels to conclude that the "national interest" requires that, at a minimum, we study the oil and gas potential of these proposed National Wildlife Refuges and provide workable mechanisms for possible future exploration or extraction.

We have been asked to comment on the need to include Titles IX and X of H.R. 39 in final D-2 legislation. There is no simple answer. These sections, with certain improvements, are a necessity if the massive instant wilderness overlays that H.R. 39 still includes are not removed. Existing mineral and access law simply is not equipped to cope with the multitude of problems and exclusions produced by wilderness designations of such magnitude. With more reasonable wilderness designations, the value of Titles IX and X would be reduced. Our inclination is to recommend

the retention of these two Titles and improve them. One of our principal bases for this decision rests with the large amount of D-2 lands that will be designated as wilderness study areas. Although it is impossible to estimate how many of these acres will ultimately be designated as wilderness, there is a clear prospect that much of the D-2 land not designated in H.R. 39 will become wilderness in the next decade. As the result, we feel there is more to be gained by preserving and improving Titles IX and X than by eliminating them.

AQUACULTURE

The State of Alaska has an unparalleled record of devoting time and money to enhancement and protection of its fish resources. The Council has proposed an aquaculture amendment which provides for fish stocking, enhancement activities, and the development of small aquaculture sites in all areas of Alaska. The Council's proposal includes Parks and it includes wilderness. Fish, like waterfowl, pay no attention to the boundaries imposed by man. There are potential aquaculture sites in the Yukon-Kuskokwim Delta, the Alaska Peninsula, Togiak and Cape Newenham National

Wildlife Refuges. In the interest of proper fisheries management and sustained fish populations throughout the State, Alaska should not be precluded from developing these sites on Wildlife Refuges and other D-2 lands in an environmentally sound manner.

It is the opinion of the Steering Council that the authority and jurisdiction for determining fisheries management issues appropriately rests with the Merchant Marine and Fisheries Committee and that the Committee is not restricted solely to Wildlife Refuge lands on this issue.

COOPERATIVE MANAGEMENT

Mr. Chairman, your staff has asked us to comment on a suggestion from our Governor to establish an experimental cooperative management area including the proposed Togiak Refuge and the adjacent State lands in the Wood-Tikchik area. The Steering Council favors cooperative management and hopes it is embraced by your Committee. We endorse the Togiak/Wood-Tikchik experiment and, in fact, hope that cooperative management in some form is attempted in many more areas of the State.

CONCLUSION

Mr. Chairman, it is my hope and the hope of the Steering Council that these remarks have given the Committee a better understanding of the sentiment of Alaskans, their strong feeling of responsibility for their environs, and the changes in H.R. 39 that they and the Council believe are necessary to form legislation that truly serves our nation's interest. We believe that H.R. 39 has come a long way from its original form and hope that your Committee will help make the additional improvements needed to perfect this bill. We look forward to continuing the dialogue we have begun with you and stand ready to lend any assistance that we can.

Thank you very much for your time and consideration.

Steering Council For Alaska Lands

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PROPOSED AMENDMENTS TO H.R. 39,

WITH EXPLANATIONS

April 6, 1978

Proposed Amendments to Title III

CONFLICTS BETWEEN STATE SELECTED LAND UNDER THE ALASKA STATEHOOD ACT AND PROPOSED WILDLIFE REFUGE AREAS

EXPLANATION

The Steering Council's position is that the Alaska Statehood Act is a compact between the citizens of the State of Alaska and the United States government, thereby making it ineligible for unilateral repeal by the United States Congress. It is the Council's position that the Alaska Statehood Act guarantees that the State should have land selected by it conveyed ahead of d-2 lands specified by Congress.

The Merchant Marine and Fisheries Committee is probably not the proper forum for determining the legal status of statehood acts, but the Committee can determine rights, title, and use of land included within Wildlife Refuge boundaries specified in H.R. 39.

The Steering Council would prefer that the boundaries of the National Wildlife Refuges be redrawn in order to give the State title to lands it has selected. The next best alternative is to retain the boundaries within H.R. 39 and include special use provisions in certain wildlife refuges, if specified uses desired by and benefitting the State can be allowed without harming wildlife populations residing in or migrating through the wildlife refuge in question.

PREFERRED AMENDMENT

Section 305. All valid State of Alaska land selections heretofore made pursuant to the Alaska Statehood Act are hereby confirmed, subject only to valid existing rights, conveyances made pursuant to lawful selections filed by native village corporations on or before December 18, 1974 pursuant to section 12(a) or 12(b) of the Alaska Native Claims Settlement Act, 85 Stat. 688 (1971), as amended, and tentative approval and patent pursuant to Section 6(g) of the Alaska Statehood Act, where such selections conflict with National Wildlife Refuge boundaries specified in this section.

(1) Future valid State of Alaska land selection, when filed, shall be treated in the same manner as those existing State land selections specified in this subsection.

CONFLICT AREAS: STATE LAND SELECTIONS AND NATIONAL WILDLIFE REFUGE BOUNDARIES

Yukon Flats:

State land selections are in the Yukon and Charley River Valleys. The lowlands have agricultural potential and could serve as a transportation corridor. The mountainous terrain above the valleys are important for forestry resources and wildlife. Additional State selections are in the Circle-yukon Flats area and abut a State selection area on the western border. The area includes an important road corridor to the east central part of the State and is extremely valuable due to its high resource ratings and its intensive human use. State lands in this area have already been scheduled for homesite disposal.

Becharof:

Areas of high priority included in the refuge area are located to the south of Becharof Lake and to the southeast of Becharof Lake. The lands to the south of Becharof Lake were selected to provide access for fish and game purposes and are top land settlement and development capability lands. Southeast of Becharof Lake are two top priority townships designated for a fish hatchery site.

Nowitna:

Lands along the Yukon River, west of Fairbanks, are of primary interest for obtaining access to the Yukon River. Lands selected are in close proximity to State lands both north and south of the Yukon River and have been identified as agricultural and forestry potential lands.

Alaska Peninsula:

The State has identified 23 areas for selection. It is the recommendation of the State that the Alaska Peninsula be set aside as a special study area for future study to determine the most efficient and manageable land ownership patterns. If the State's recommendation is not included within the d-2 bill, then the State will continue to solicit information on specific land selection possibilities.

SPECIAL USE POSSIBILITIES

The two conflict areas between State selections and Wildlife Refuge boundaries that are of highest priority to the State include one area on the eastern side of the Yukon Flats Wildlife Refuge and another area on the western side. In the event these areas are retained in the Wildlife Refuge, the Steering Council suggests that, at the very least, a section be added to H.R. 39 providing the following:

1. For State selected lands designated as area No. 43 of approximately 1.5 million acres along the Steese Highway in the eastern portion of the Yukon Flats Refuge, a joint study be undertaken by the Secretary of Interior and the State of Alaska to determine whether any or all of the uses contemplated by the State (which include a transportation corridor, agricultural development, forestry and some mineral development) can be conducted in all or any part of this area without conflicting with the National Wildlife Refuge system's purposes. This study should have a time limit of no more than five and probably three years. The study should be required to specify areas in which any of these particular uses would be compatible with refuge management, what the damage (if any) would be to the refuge or the wildlife population in the event that such use were permitted, and the guidelines and restrictions that would necessarily be imposed in order for such use to avoid causing any damage to the refuge. In the event that study finds that certain uses are compatible with the refuge, then the Secretary of Interior would be empowered to provide special use permits to allow for said use under environmental regulations set out in the permit.

2. A study of the area designated as No. 48 on the western side of the Yukon Flats Refuge be initiated. In this area, the values sought by the State are primarily agricultural and would coincide with a likely agricultural development on native lands contiguous to the State selection. Here, the potential for an agricultural center (comprised of native and State and/or Federal lands) compatible with the wildlife populations in the area should be the focus of the study. The study should, as above, be limited to three to five years and special use permit authority should be provided if the study proves the area to be suitable for agricultural development without refuge damage.

March 29, 1978

Proposed Amendments to Title VI
WILDERNESS

DESIGNATION OF WILDERNESS AREAS
WITHIN THE
NATIONAL WILDLIFE REFUGE SYSTEM

Section 603. In furtherance of the purposes of the Wilderness Act (78 Stat. 892) and subject to valid existing rights, the following lands are hereby designated as wilderness and, therefore, as components as the National Wilderness Preservation System:

(1) Certain lands in the Alaska Maritime National Wildlife Refuge, Alaska, which comprise approximately two million four hundred and seventy thousand acres, as generally depicted on a map entitled "Alaska Maritime National Wildlife Refuge", dated September, 1977, and which shall be known as Aleutian Islands Wilderness (approximately one million three hundred thousand acres), Unimak Wilderness (approximately nine hundred and thirteen thousand nine hundred and seventy-five acres), and Semidi Wilderness (approximately two hundred and fifty-one thousand eight hundred and sixty acres).

(2) Certain lands in the Kenai National Wildlife Range, Alaska, which comprise approximately one million three hundred ninety thousand acres, as generally depicted on a map entitled "Kenai National Wildlife Range", dated September, 1977, and which shall be known as Kenai Wilderness.

(This ends Section 603)

WILDERNESS REVIEWS
WITHIN UNITS OF THE
NATIONAL WILDLIFE REFUGE SYSTEM

Section 604

(Section 604 may remain unchanged from the standpoint of its wording, but it will encompass far more acreage as a result of the change in Section 603. As presently written, Section 604 provides that all Wildlife Refuge land in Alaska not designated wilderness in Section 603 shall be studied for suitability as wilderness within the next three to seven years. As a result of our proposed amendment to Section 603, approximately twenty-nine million acres of unstudied wildlife refuges -- 13.4 million of those acres coming from the Arctic Wildlife Range -- would be transferred from instant wilderness in 603 to wilderness study in 604.)

EXPLANATION

The principle behind this proposed amendment to H.R. 39 is that imposition of a wilderness designation over a Wildlife Refuge can be either favorable or unfavorable for the wildlife populations within that refuge, depending on the individual conditions and characteristics of that refuge and the prospects for enhancement and management. As a result, instant wilderness overlays cannot be reconciled with the principal purposes of National Wildlife Refuges, *i.e.*, preservation of wildlife populations indigenous to those areas. In order for the purposes of wildlife refuge management to be satisfied, studies must first be conducted to determine whether wilderness overlays will be harmful or helpful to the wildlife populations residing within the refuges.

The two wilderness designations within National Wildlife Refuges that we retain are areas that have been studied pursuant to the Wilderness Act of 1964 and appear to be suitable for wilderness designation in compliance with the principles governing National Wildlife Refuge management.

Title III and Title VI

ARCTIC NATIONAL WILDLIFE RANGE/REFUGE

As stated in our proposed wilderness amendments, the Steering Council opposes the designation of the Arctic National Wildlife Refuge/Range as a wilderness area because it has not been studied for inclusion in the National Wilderness Preservation System and because it cannot be determined that said wilderness overlay will be beneficial to wildlife populations without such a study.

Sections 905 and 603 of H.R. 39 provide for an Interior Department study over five years of 1.2 million acres of the existing Arctic National Wildlife Range for oil and gas potential. At the end of the study, this area of the range may be added to the land available for possible "unlock" pursuant to procedures set up in Title IX. The Steering Council feels that this study concept is flawed because the only study allowable for oil and gas potential on the Range would be conducted by the Interior Department -- which is already on record as stating that any oil or gas in this area should be the last ever extracted in the United States. Based on this Interior Department position, giving them exclusive study rights is fraught with potential for accusations of purposeful understatement of resources or failure to fully explore.

The Steering Council feels that the nation would be better served if a private industry study, under strict environmental regulation by the Department of Interior, is permitted over the same time frame as the Interior study and that both studies shall individually be submitted to Congress upon completion. At that point, a determination can be made as to whether or not any portion of the Arctic National Wildlife Range should be opened to exploration or extraction. (The House Interior Committee has failed to furnish us with a copy of their language covering the Arctic National Wildlife Range study, therefore we cannot yet propose specific amendatory language covering the proposal described above.)

AQUACULTURE AMENDMENT

SEC. 607 (c) In accord with principles of sound fisheries management, the appropriate Secretary [of Agriculture] is authorized to permit fish stocking [activities], enhancement and development activities and development of small aquaculture sites within [national forest] wilderness areas and wilderness study areas designated by this Act, as he determines to be necessary and desirable to restore, augment, or sustain native fish populations. Structures for any such aquaculture site shall involve no permanent housing for personnel or equipment and only minimal facilities essential to the aquacultural operations and shall be constructed at such locations in such manner as to blend into the natural character of the area. In constructing such structures no alteration to the natural contours of the terrain shall be permitted.

Explanation. The purpose of this amendment is to allow for fish stocking, enhancement, and development activities and the development of small aquaculture sites in wilderness areas in Alaska. The Secretary of Interior or Secretary of Agriculture, depending on the wilderness area affected, is authorized to allow for such activities.

The bill reported out by the House Interior and Insular Affairs Committee allows for fish stocking and the development of small aquaculture sites only, in National Forest Wilderness areas. The potential for aquaculture sites should not be limited only to National Forest Wilderness areas. There are potential aquaculture sites in the following proposed National Wildlife Refuges, Yukon-Kuskokwim Delta, the Alaska Peninsula, Togiak and Cape Newenham.

In the interest of proper fisheries management and sustained fish populations throughout Alaska, the State should not be precluded from developing these sites in Wildlife Refuges or on other (d)(2) lands in an environmentally sound manner.

The proposed amendment refers to all wilderness areas, not just Wildlife Refuges. It is the opinion of the Steering Council that the authority and jurisdiction for determining fisheries management issues appropriately rests with the Merchant Marine and Fisheries Committee and is not restricted solely to Wildlife Refuge lands.

Steering Council for Alaska Lands
MINERAL AND REFUGE CONFLICTS

1. Arctic Wildlife Range:

Oil and Gas - North flank of the Range, including Marsh Creek anticline.

Minerals - Demonstrated mineral values are phosphate along north flank of Brooks Range (south of the oil and gas conflict); uranium, tin, and molybdenum deposits in the Mt. Michelson area, and copper occurrences associated with Cambrian volcanics are found east of Mt. Michelson.

Most of area is assured to have potential for stratiform (bedded) types of sedimentary or volcanic deposits based on the discovery of such deposits in the area west of the Range in Alaska and east of the Range in the Northwest Territories. Metals and non-metals likely to exist are lead, zinc, barite, and fluorite.

Analysis - The area has high mineral potential for a variety of materials; it is also one of the 3-4 highest preservation priorities in Alaska. The part of the Range which is most likely to be explored for oil and gas is the "North Slope". It makes sense for this appraisal to be made in the fairly near future - including drilling - so that the future of the pipeline can be planned.

2. Arctic Wildlife Range, Additions:

Potential ranges from moderate to very high.

3. Selawik:

Oil and Gas - Little conflict except in the southwest corner.

Hard Minerals - The main conflict is in southern 1/3 where rocks of Hogatza plutonic belt, favorable for uranium and thorium deposits, cross the refuge. There is some favorability for gold and other deposits.

Access - Selawik controls the southeast-west access out of the Ambler River mineral belt (the main mineral belt in the southern Brooks Range). In House Committee, about 160,000 acres were deleted for a corridor (Roncalio), but Fish and Wildlife will push for its reinstatement because of a conflict with the caribou wintering range.

Possibly a solution suitable to both FWS, the State and mineral companies can be worked out.

Analyses - The most important current problem is access in the next most important is the uranium potential in the southern portion of the refuge.

4. Kanut:

Oil and Gas - essentially in conflict.

Minerals - Refuge straddles 2 geologic boundaries separately, the Koyukuk Basin, (from hardrock terrain) and Hodzana-Kokvine Hills. The terrain on southeast side of this boundary has potential for tin, tungsten, and uranium deposits. Lesser potential for chromium near geologic boundary and for a variety of metals northwest of boundary.

Analysis - Possibly significant tin-tungsten area (BP located claims - unknowingly in d-2 lands - in 1977). Possible case for continued exploration.

5. Koyukuk:

Oil and Gas - Speculative possibility (Bureau of Mines rates low).

Minerals - Considered less favorable. Probably some claim conflicts.

6. Innoko and Clarence Rhode - Kuskokwim Yukon Additions:

Oil and Gas - No conflicts in Innoko; important oil and gas potential in Clarence Rhode.

Minerals - Innoko is mostly low land and has been poorly explored. The southwest side of the refuge is favorable and most likely metal is gold; also there is some potential for platinum and other metals; probably some claim conflicts. Most of the refuge (northwest part) has some favorability - but is essentially unknown.

7. Yukon Flats:

Oil and Gas - Core area of at least moderate potential.

Minerals - Except for uranium, which has speculative possibility in the basinal areas, conflicts are minor. The real conflict is in the southern part approaching the White Mountain area and the northwest part approaching the Chandalar area.

8. Togiak-Cape Newenham Additions:

Oil and Gas - Important conflict with oil and gas native oil and gas interests in the extreme southeast part of the area, northwest of Nushagak Bay.

Hard minerals - There are significant conflicts with gold, platinum metals, and possibly uranium in the northeasterly trending belt through the area; includes so-called Kenektok area.

9. Alaska Peninsula - Alaska Maritime:

Oil and Gas - Important potential extends through all the refuges on the southeast side of the Alaska Peninsula.

Minerals - Very high potential for porphyry type deposits of gold, copper and molybdenum on the southeast side of the Peninsula. These deposits run the length of the proposed refuge system.

Summary:

Oil and Gas - Major conflicts occurs in northern Arctic Wildlife Range, moderate potential for conflict occurs in the Clarence Rhode extension and the Alaska Peninsula. Small areas of serious conflict on the southeast side of the Togiak-Newenham.

Minerals - Partial conflicts with several areas because of highland terrain. The main conflict in terms of mineral potential and highest preservation values are in Arctic Wildlife Range.

High mineral potential is found in southern Selawik, the southern most region Yukon Flats, Kanuti, Togiak, and on the Alaska Peninsula. In other areas there is at least speculative potential.

The Steering Council for Alaska Lands
Summary of Proposed Amendments
to
Title IX (Minerals)

These proposed amendments to Title IX, Minerals, would accomplish the following:

1. Keep nonwilderness wildlife refuges open for mineral exploration, subject to reasonable regulation to protect the integrity of the refuge;
2. Continue the application of the Mineral Leasing Laws in wildlife refuges;
3. Establish a modified patent location system whereby claimant takes patent to the subsurface mineral rights and acquires surface-use rights;
4. Enable the Secretary of Interior to regulate all entry into the Refuge, and deny entry whenever that would endanger wildlife.

The development of sound mineral information on all of Alaska's lands is one of the primary goals of the Steering Council. Without adequate mineral information, sound land use planning is not possible. Therefore, the Steering Council supports mineral exploration by both public and private entities in nonwilderness Refuges and Forests. Proposed Amendment #3 provides for a right of entry to explore for minerals subject to reasonable regulation by the Secretary. Proposed Amendment #4 specifies the scope of the Secretary's regulatory authority.

Secondly, the Steering Council supports permitting environmentally safeguarded extraction of leasable minerals in Wildlife Refuges. This is consistent with existing practice in the Lower 48. Leasable minerals include oil and gas and uranium. The substantial deposits of oil and gas in Alaska make exploration and potential development of these areas critical to the national interest.

Thirdly, the Secretary's authority to permit access into Wildlife Refuges for purposes of extracting hardrock minerals is classified. Under existing law, Wildlife Refuges are subject to both the Mining Law of 1872 and the Mineral Leasing Laws, but no hardrock mining has been done to date in refuges. The Steering Council supports a modified patent location system for hardrock mineral deposits whereby the entryman takes patent to the mineral deposit but the title to the land and all surface resources remains in the United States.

Other amendments insure compliance with existing environmental law, define the Secretary's authority to regulate access into Wildlife Refuges, and require those entering Wildlife Refuges to repair the land and to post a bond.

PROPOSED AMENDMENT NUMBER 1
to
TITLE IX OF H.R. 39

Add the following paragraphs to Section 902:

(3) "Leasable Minerals" shall mean all leasable minerals including but not limited to oil, gas, uranium, and coal, which are subject to the Mineral Leasing Laws;

(4) "Locatable Minerals" shall include all other mineral resources which are not deemed leasable minerals under the Mineral Leasing Laws;

(5) "Valuable Mineral Deposit" as used in this Act shall mean one which would justify a person of ordinary prudence in performing work or making expenditures on or for the benefit of the claim or claims containing such deposits with reasonable expectation of developing a profitable mining operation;

(6) "Mineral Leasing Laws" shall mean the Act of October 20, 1914; the Act of February 25, 1920; the Act of April 17, 1926; the Act of February 7, 1927; and all Acts heretofore enacted which are amendatory of or are supplementary to any of the foregoing Acts.

PROPOSED AMENDMENT NUMBER 2
to
TITLE IX OF H.R. 39

Existing Mining Claims and Mineral Leasing
Rights in Wildlife Refuges

Section 904(a)(1). Delete in its entirety and insert in lieu thereof:

Section 904(a). Any person who is the holder on the effective date of this Act, of a valid existing mineral claim or lease on public lands located within the boundaries of any wildlife refuge/range in Alaska may carry out activities related to the exercise of the right under such claim or lease in accordance with the regulations promulgated by the Secretary that are in effect upon the effective date of this Act.

Section 904(a)(2). Delete in its entirety.

Explanation:

The present language in Section 904(a)(1) and (2) of H.R. 39 permits the Secretary to promulgate new regulations which would apply to existing mineral claims and leases. Consequently, the commercial value of the lease or claim could be eliminated or decreased by such regulations. The present language also makes Section 1202(c) guaranteeing access to all inholdings less valuable because that right of access is worthless if the claims' commercial potential can be reduced or eliminated.

This amendment does not just give the appearance of being a grandfather clause, rather it truly grandfathers all existing mineral claims and leases by insuring that present regulations will apply to their operations.

The above amendment also carries out the basic d-2 policy of the House Interior Committee and the Department of Interior that allows existing holders (i.e., homesteaders, trappers, hunters, miners) to maintain their lifestyle or holdings. It is future generations who are precluded from acquiring such rights on these lands.

PROPOSED AMENDMENT NUMBER 3
to
TITLE IX OF H.R. 39

Limitation of Judicial Remedy

Section 907(c). On Page _____, Line 19, delete the following language:

"which shall be awarded if the Court finds that such loss constitutes a taking of property compensable under the Constitution."

Explanation:

This amendment deletes the above language because said language unjustly limits the judicial remedy available to the holder of a valid mineral claim or lease.

PROPOSED AMENDMENT NUMBER 4
to
TITLE IX OF H.R. 39

Wildlife Refuges Not Subject to
§§905, 906, 907, 908, 909, 910, and 911
of this Act

Section 905(2). Delete in its entirety and renumber
Section 905(3) to Section 905(2).

Explanation:

This amendment will take nonwilderness Wildlife Refuges out of the Minerals Access Process which is established in Sections 905 through 911. Instead access to nonwilderness wildlife refuges will be controlled by our proposed Sections 912-918.

PROPOSED AMENDMENT NUMBER 5

to
TITLE IX OF H.R. 39

Exploration Entry

Section 912(a). The Secretary of the Interior may permit entry into wildlife refuges for the purpose of mineral exploration. The Secretary shall regulate such entry to insure that any disturbance caused by the mineral exploration activities to the surface of the wildlife refuge or to the wildlife in that wildlife refuge is minimized.

Section 912(b). Any party entering the wildlife refuge for mineral exploration purposes shall transmit the following information in duplicate to the refuge manager in Alaska and the Secretary of Interior at least 120 calendar days before the proposed entry:

- (1) The name and address of the entryman;
- (2) The acres proposed to explore;
- (3) The specific means and form of entry to be used;
- (4) The general methods of exploration;
- (5) Location of camps;
- (6) How surface disturbance will be minimized; and
- (7) How any surface disturbance will be repaired to the maximum extent practicable.

Section 912(c). Within 60 calendar days from the receipt of an application for exploration entry, the refuge manager shall advise the applicant whether the proposed entry in its original or reasonably modified form can be carried out without harming the wildlife refuge. If entry is deemed acceptable, the wildlife refuge manager may specify an acceptable plan or enter into negotiations with the entryman. Where the wildlife refuge manager determines entry is not possible, the applicant may appeal to the Secretary of the Interior.

Section 912(d). Where entry is made pursuant to Subsection (b) of this Section, the Secretary can also require the applicant to post a bond in the amount determined by the Secretary.

Explanation:

This amendment continues the current practice of permitting entry into wildlife refuges for purposes of mineral exploration. Section 902 of Title IX effectively delegates all mineral exploration to the Department of Interior, by authorizing it to continue mineral assessment on all d-2 lands, while any other mineral exploration requires an affirmative vote from Congress within 120 days in the form of a joint resolution subsequent to an affirmative recommendation by Interior.

Under the terms of this amendment, anyone satisfying Interior's regulations can enter a Wildlife Refuge to explore for minerals. The Secretary monitors the environmental impact of such entry by reviewing exploration plans and requiring those entering the wildlife refuge to post a bond.

PROPOSED AMENDMENT NUMBER 6
to
TITLE IX OF H.R. 39

Authority of Secretary to Promulgate
Regulations Concerning
Entry for Mineral Exploration

Section 912(e). The Secretary is authorized to promulgate regulations to implement this Section. These regulations shall specify:

- (1) The duration of entry and the time of year;
- (2) Set the terms and conditions of entry to implement the minimum standards of environmental protection; and
- (3) Impose any further stipulations to insure that all activities connected with the exploration of minerals are consistent with the purposes for which the wildlife refuge is established.

Explanation:

This subsection gives the Secretary the administrative discretion to regulate entry into the wildlife refuges for mineral exploration. For instance, the Secretary can prohibit entry when caribou are calving.

PROPOSED AMENDMENT NUMBER 7
to
TITLE IX OF H.R. 39

Continued Application of Mineral
Leasing Laws to Wildlife Refuges

Section 913(a). Notwithstanding any other provision of this Act, all laws pertaining to mineral leasing shall, to the same extent as applicable prior to the effective date of this Act, extend to all public lands in Alaska which are withdrawn for the National Wildlife Refuge Conservation System.

Section 913(b). Mineral leases, permits, and licenses covering lands within wildlife refuges shall contain such reasonable stipulations imposed by the Secretary to protect the wildlife and to insure that the mineral extraction activities do not interfere with the purposes for which the wildlife refuge was established.

Section 913(c). Entry into the wildlife refuge under a mineral development lease issued by the Secretary shall be subject to Sections 916 and 917 of this Act, which provide for land reclamation and bonding.

Explanation:

This amendment continues the Secretary's authority to issue a mineral development lease, under the Mineral Leasing Laws. Leasable minerals, the most important of which are oil and gas, also include coal, uranium, phosphates, sodium, and oil shale. Extraction of leasable minerals is done in Lower 48 Wildlife Refuges only when extraction is consistent with the purposes for which the wildlife refuge was established.

PROPOSED AMENDMENT NUMBER 8
to
TITLE IX OF H.R. 39

Extraction of Hardrock
Minerals in Wildlife Refuges

Section 914(a). The Secretary may permit entry into all nonwilderness wildlife refuges in Alaska to extract mineral resources which are not subject to the Mineral Leasing Laws.

Section 914(b). The entryman making the discovery must stake the area in such a way as to give all others notice and must file a description and survey in the appropriate land office. Copies of the description and survey must be forwarded to the Secretary and to the wildlife refuge manager.

Section 914(c). The claimant must apply for permission to enter the refuge for the purpose of extracting the mineral deposit claimed. The application shall include the following information:

- (1) Evidence which indicates the presence of a valuable mineral deposit as defined in Section 902(5) of this Act;
- (2) Plans of exploration and extraction which will minimize surface disturbance and disruption of the wildlife;
- (3) Reclamation plan which will leave the wildlife refuge in substantially the same condition that it was in prior to the mineral extraction entry; and
- (4) Any additional information which the Secretary finds is necessary.

Section 914(d). The United States reserves all right, title and interest to the surface and the surface resources of wildlife refuge units.

Section 914(e). The party desiring to extract the locatable mineral deposit may also lease a right-of-way from the Secretary in order to enter the refuge and to develop the mineral deposit claim.

Section 914(f). Entry into the wildlife refuge for the purpose of mineral exploration and extraction as provided for in this Act shall be subject to the provisions of section 916, (Reclamation) and Section 917, (Bonding).

Explanation:

This amendment creates a patent location claim system which is similar to the Ruppe Bill, H.R. 5831, amending the present hardrock mining law. Under the Steering Council proposal, anyone can file a claim on a mineral deposit he discovers but the claimant will only receive patent to the subsurface rights. Presently a mineral deposit claimholder takes patent to both the surface and subsurface rights. The Secretary will regulate entry into the wildlife refuge to extract minerals. The party entering the refuge is subject to reclamation and bonding provisions.

PROPOSED AMENDMENT NUMBER 9

to

TITLE IX OF H. R. 39

Preference Rights

Section 915(a). If the mineral exploration conducted in the wildlife refuge results in the discovery of potentially valuable mineral deposits of oil and gas or other leasable minerals in an area not previously designated as having mineral character, a private party may apply for a preference right lease under existing law.

Section 915(b). If a potentially commercial deposit of oil and gas or other leasable mineral is discovered in an area designated as having mineral character, then the mineral development lease will be let pursuant to competitive bidding.

Section 915(c). If mineral exploration indicates the presence of a valuable locatable mineral deposit, the claimholder or patentholder may have preference in obtaining the rights-of-way necessary to develop the locatable mineral deposit. Granting of such rights-of-way is subject to the Secretary's approval of the claimholder's or patentholder's application for entry under Section 914 of this Act.

Explanation:

This amendment retains the existing law for obtaining a mineral development lease. If the area is not determined beforehand as having high mineral potential, then the party making the discovery is entitled to a preference right lease. Whenever a leasable mineral deposit is discovered in a mineralized area, then competitive bidding will determine acquisition of the mineral lease.

The process is slightly different for hardrock minerals. The holder of a mineral claim or patent will be given preference for a right-of-way into the wildlife refuge in order to extract the hardrock minerals. The right-of-way will include the land area necessary to build temporary structures.

PROPOSED AMENDMENT NUMBER 10
to
TITLE IX OF H.R. 39

Reclamation and Environmental
Protection

Section 916(a). The Secretary shall promulgate regulations respecting entry into the wildlife refuges for purposes of mineral exploration, extraction of leasable minerals or extraction of locatable minerals. These regulations shall:

- (1) Insure compliance with applicable Federal, State and local laws and regulations relating to the protection of the environment;
- (2) Require use of all practical means and measures to prevent or control erosion and flooding; the release of toxic substances; accidental rock slides and subsidence of land; underground, outcrops, and refuse bank fires; damage to fish or wildlife and their habitat; damage to public or private property; waste; hazards to public health and safety; and other activities likely to cause significant disturbance to the environment;
- (3) Require that the permit or lease area be reclaimed in accordance with the methods and standards described in the plan of exploration or development which was approved by the Secretary;
- (4) Require the posting of a bond as provided in Section 917.

Section 916(b). The Secretary is further authorized to establish any other terms and conditions which will protect the wildlife of the wildlife refuge from undue disturbance.

Section 916(c). The Secretary may reasonably deny permission to enter the wildlife refuge for any purpose whenever it is determined that such entry is detrimental to the wildlife or contrary to the purposes for which the wildlife refuge was established.

Explanation:

This amendment gives the Secretary of the Interior authority to regulate entry into Wildlife Refuges for exploration and extraction and explicitly incorporates all existing environmental laws. Where proposed exploration or extraction in Wildlife Refuges will cause significant disturbance, the Secretary can deny entry or require the entryman to post a bond with the Secretary of Interior prior to the commencement of the proposed operation.

PROPOSED AMENDMENT NUMBER 11
to
TITLE IX OF H.R. 39

Reclamation Bond

Section 917(a). The Secretary of the Interior shall have the authority to require any party entering the wildlife refuge for purposes of mineral extraction of a leasable or locatable mineral resource, or exploration to post a bond prior to entry. The amount of this bond shall reasonably reflect the costs of repairing any damage to the land which might occur as a result of that entry.

Section 917(b). If the entryman fails to comply with entry regulations or fails to repair the land as required, and the surface is disturbed or the wildlife is harrassed, then the bond posted will be forfeited to pay for the cost of reclaiming the land or other damage. If the damage done is greater than the amount of the bond required, then the entryman may be held liable for any additional costs.

Explanation:

This amendment continues the existing practice of requiring the entryman to post a bond which will be forfeited if the entryman fails to reclaim the land as promised when permission to enter was granted. The entryman is also liable for any additional damage.

PROPOSED AMENDMENT NUMBER 12
to
TITLE IX OF H.R. 39

Confidentiality of Mineral
Information

Section 918. Any mineral information which is provided to the Secretary of Interior pursuant to any application made for entry into the wildlife refuge pursuant to a mineral lease, or to development of a locatable mineral claim, as provided in Section 195 shall not be considered a public record under the Freedom of Information Act, 5 U.S.C. §§552(b)(4) and (b)(5).

Explanation:

Mineral information is traditionally confidential and it is particularly critical to keep this information confidential until a mineral lease is signed or a mineral claim is recorded.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.

Steering Council For Alaska Lands

(d) (2)
memo

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MEMORANDUM

TO: ALL COUNCIL MEMBERS

FROM: SHARON LONG

DATE: March 2, 1978

Re: March 15, 1978 Council Meeting

ENCLOSED is a copy of Title VII (Subsistence) from Committee Print #3 and some background material. We will be taking up subsistence provisions at our next meeting along with the proposed co-operative management language originally delivered to you on February 17, 1978 and included in your February 28th meeting packet. Mr. Hawley has requested that Wilderness also be an agenda item at our March 15th meeting. We have established that the meeting will be held in the House Natural Resource Committee Room #118 at the Capitol Building, on the 15th day of March, 1978, at 1:30 p.m.

ENCLOSURES: TITLE VII
FSLUPC SUBSISTENCE REALITIES
COMMENTS BY ROBERT E. PRICE
WILDLIFE MANAGEMENT/HUNTING/SUBSISTENCE

WILDLIFE MANAGEMENT/HUNTING/SUBSISTENCE

1. Statement of Issue

What should be the Federal-State relationship with respect to the management of resident fish and game species in the 17(d)(2) areas?
Should hunting be permitted within units of the National Park System?
What provisions should be made for subsistence?

2. Background

The existing Federal-State relationship concerning resident fish and wildlife management is extremely complex. The State has the responsibility for managing resident fish and wildlife except where preempted by Federal law (e.g. McKinley National Park and the Marine Mammal Protection Act). Recent executive orders, regulations, laws (e.g. the Endangered Species Act) and court rulings have thrust other agencies like the U.S. Fish and Wildlife Service into more active managerial and frequently overlap with State and other Federal roles. The Bureau of Land Management and the U.S. Forest Service have, on the other hand, adhered to a strict policy of retaining habitat management authority while recognizing the State as the exclusive resident species manager. Recent legislation, like the Sikes Act Extension (P.L. 93-452), have further clarified this cooperative relationship.

Saltwater fisheries and marine mammal management authority is intricately distributed under the Halibut Commission, the North Pacific Council, the U.S. Departments of Commerce and Interior and the State of Alaska. A few d-2 decisions will affect these management programs by controlling access to some fisheries, rehabilitation sites and to marine mammal populations.

The question is whether or not the proposed d-2 areas should automatically fall under existing Federal management frameworks or whether some attempt should be made to alter the fish and wildlife management systems by recognizing Alaska's unique fish and wildlife problems and values.

Despite the large size of the d-2 areas, they cannot be considered complete ecosystems. Migratory habits of many species such as anadromous fish, moose and caribou plus the large range requirements of others precludes sensible management on less than a population or herd basis. In most cases, statewide programs are essential for long-term maintenance of the species and the human lifestyles dependent on them. Fragmented management can be averted by providing for statewide coordinated resource management.

One of the most sensitive issues involves subsistence. The State of Alaska Constitution allows for preferential treatment of beneficial uses but not on an ethnic basis. The State has given priority to

subsistence uses through legislation, regulations and administrative policies. Many of the subsistence user demands, however, may exceed the limits of the Alaska Constitution.

There is no universally acceptable definition of subsistence, although there is a State law defining it and several Federal and State policies recognizing it. It is apparent that a rigid interpretation of Alaskan subsistence needs will only alienate many of the users and demonstrate the usual bureaucratic insensitivity. Certainly, there are noticeable human use differences geographically and between species.

There will be considerable pressures on Congress to provide for subsistence uses in the d-2 legislation. Although the Alaska Native Claims Settlement Act specifically extinguished all aboriginal titles, there seems to be some question concerning future Federal responsibilities to provide for Native subsistence uses. The legislative history of ANCSA takes cognizance of subsistence but shows some unwillingness by Congress to create preferential rights for Natives. The conference report implies that, pursuant to the Act, the Secretary of the Interior could promulgate regulations preferring subsistence uses by those who depend upon subsistence for their livelihood. Whether the Secretary could promulgate regulations preferring one ethnic group over another is open to conjecture.

For subsistence users, the questions of tenure, flexibility, access and local input are important. Each system should be examined for its adaptability and responsiveness to these points. Similarly, management for subsistence can be complicated and expensive. Demands by the various users, including subsistence users, are increasing, requiring substantially more effort in wildlife research programs, population assessments and enforcement. Subsistence may require more intense management such as predator control, population manipulation, enhancement, rehabilitation programs, and strict enforcement to minimize social impacts resulting from violent fish and wildlife population fluctuations. Further subdivisions of the land base coupled with exclusive use provisions will require even more precise management.

There are proposals to establish national parks with provisions for subsistence and/or recreational fishing, hunting, and trapping. Even with mandatory review procedures and innovative administrative mechanisms, the issue is expected to generate considerable controversy. The controversy will center on whether or not fishing, hunting, and trapping should be allowed in parks at all, if these uses are allowed under what constraints, whether only subsistence users should be allowed and whether or not many of the prime fish and wildlife areas should be under the Park System.

Regardless of what approach is taken in establishing the Federal-State fish and wildlife management relationship on Federal lands, the system to which the land is assigned and specific boundaries must be carefully selected. Mechanisms for time and area zoning could be considered.

3. Policy Alternatives

a. Wildlife Management

- (1) Each of the proposed systems could adopt the existing management frameworks peculiar to each agency. Under this option Congress would likely treat exceptions (i.e. hunting in parks, subsistence provisions, etc.) individually in the organic legislation.
- (2) Congress could develop some co-equal fish and wildlife management scheme between State and Federal agencies, especially for those systems where extensive or intensive management of the fish and wildlife or their habitat is warranted and desirable.
- (3) Congress could consolidate statewide resident species management under the State with guaranteed participation of Federal agencies. Continued trespass and habitat management authority would rest with the Federal land managing agency.
- (4) Congress could completely preempt the traditional management role of the State over all d-2 lands. This could also be considered individually for each system or area.

b. Subsistence

(1) Management

- (a) Leave subsistence under State authority to be treated through its normal administration, regulatory and legislative processes.
- (b) Provide for specific subsistence uses by area under each Federal agency's authority.
- (c) Provide for secretarial discretion by area or for all d-2 areas.
- (d) Provide policy direction by establishing relative priority of subsistence use.

(2) User

(a) Provide specific criteria for determining subsistence users by:

- economic
- residency
- past use
- race

(b) Leave user definition to administrative discretion of regulating agency.

c. Hunting in National Parks

- (1) Congress could choose to make no special use exceptions for parks.
- (2) Congress could make special case-by-case exceptions allowing any combination of hunting, fishing and trapping uses.
- (3) Congress could assign key parcels to the National Park System under special categories (i.e. National Preserves or National Recreation Areas) which traditionally allow for these types of uses under cooperative management programs.

Subsistence

COMMENTS ON PROPOSED LEGISLATION
DEALING WITH ALASKA NATIVE SUBSISTENCE
HUNTING AND FISHING RIGHTS

ROBERT E. PRICE

November, 1977

INTRODUCTION

The purpose of this memorandum is to discuss several of the questions raised by the proposed enactment by Congress of legislation relating to "d 2" lands insofar as they affect subsistence hunting and fishing by Alaska Natives. In the course of the preparation of this memorandum I have reviewed several papers on this subject. They are the following:

(1) The Alaska Natives and Their Subsistence Rights: A Discussion of the Constitutional Questions, by Stewart L. Udall, July, 1977. (2) Legal Issues in Federal Protection for Subsistence on the Proposed National Interest Lands, by Dennis D. Kelso, December, 1976. (3) Testimony of Donald C. Mitchell, Alaska Legal Services Corporation before the Subcommittee on General Oversight and Alaska Lands, Committee on Interior and Insular Affairs, U. S. House of Representatives, July, 1977.

I.

DO THE ALASKA NATIVES HAVE SUBSISTENCE HUNTING AND FISHING RIGHTS UNDER FEDERAL LAW SINCE THE ENACTMENT OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT?

The question has been raised whether or not there are Alaska Native subsistence hunting and fishing rights under Federal law since the enactment of ANSCA. I have not seen a legal analysis of the position that there are such rights, and, therefore, I must speculate on the precise nature of such an argument. The Udall memorandum assumes that such rights have been extinguished and, at page 8, proposes

"that there can be no subsistence program worth the paper it is written on unless the Congress uses its power under the U. S. Constitution and grants such rights to the Alaska Natives." (emphasis added). The Kelso memorandum, at page 9, takes the same position: "Second, I assume that ANCSA effectively extinguished Native rights to hunt, fish, or gather on lands not granted to regional or village corporations where such right is based on aboriginal use or occupancy." Footnote 23 to this conclusion refers to What Can be Done to Salvage Subsistence Hunting and Fishing in Rural Alaska After the Alaska Native Claims Settlement Act? by D. Getches, 1975, as suggesting an argument for federally recognized property rights in hunting and fishing that survived ANCSA's purported extinguishment of aboriginal rights. Kelso comments on the Getches position as follows: "No Court has adopted such a position, however, and both historical background and judicial decisions indicate that Congress could validly extinguish such rights."

The language of ANCSA is quite clear on the question of extinguishment of aboriginal hunting and fishing rights. Section 4 of ANCSA, 43 U.S.C. 1603(b) provides: "All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist,

are hereby extinguished." (emphasis added)

The legislative history of ANCSA also supports the clear extinguishment language. The Conference Committee Report, Report No. 92-746, at page 37, stated that "all Native interests in subsistence resource lands can and will be protected by the Secretary through the exercise of his existing withdrawal authority.... The Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives." (emphasis added) This congressional directive to the executive branch of government by the Conference Committee was made because section 4 had extinguished any aboriginal hunting and fishing rights and because the Conference Committee had not accepted the Senate provisions on subsistence resources. Section 21 of S.35, 92d Congress, 1st Session, directed the Secretary of the Interior to classify certain public lands for subsistence use by local residents. The Conference Committee Report did not discuss the question in terms of "rights" but instead used the language of "interests" and "needs". If the Conference Committee had accepted the Senate version on subsistence, there would have been "rights" created by statute but, even in that case, S. 35 dealt with "residents" and not "Alaska Natives".

United States of America v. Atlantic Richfield Company,
No. A 75-215 Civil, U. S. District Court, District of Alaska

(1977) held that ANCSA extinguished any trespass claims which Alaska Natives may have had against third parties. Although aboriginal hunting and fishing rights were not the question to be decided in that action, the court, at p. 43, stated: "The former, including claims of traditional fishing rights, were extinguished." One of the bases of the court's conclusion, which would be pertinent in a discussion of subsistence rights which might have survived ANCSA, is set out at p. 49, as follows: "Thus, Congress has expressly directed that the language of the Settlement Act be broadly construed to effectuate a comprehensive settlement of all Native claims based on aboriginal use and occupancy of land in Alaska and to bar any litigation based on such claims." (emphasis added) Accordingly, United States of America v. Atlantic Richfield Company supports the conclusion that subsistence hunting and fishing rights of the Alaska Natives were extinguished by ANCSA.

II.

MAY CONGRESS ESTABLISH PREFERENTIAL SUBSISTENCE HUNTING AND FISHING RIGHTS FOR ALASKA NATIVES?

I would like to emphasize at the outset of this discussion that there is no definitive holding of the U. S. Supreme Court based on hunting and fishing of American Indians that is squarely in point on this question. I emphasize this point because the proponents of the protection of the subsistence

rights for Alaska Natives have broadly construed the decisions of the U. S. Supreme Court to support their position. I do not mean that the U. S. Supreme Court might not uphold federal legislation establishing preferential subsistence hunting and fishing rights for Alaska Natives, but that the Supreme Court decisions are not wholly clear on the question. The recent decisions of the U. S. Supreme Court on American Indian decisions have been tightly worded decisions. "At the outset, we reject -- as did the state court -- the broad assertion that the Federal Government has exclusive jurisdiction over the Tribe for all purposes and that the State is therefore prohibited from enforcing its revenue laws against any tribal enterprise 'whether the enterprise is located on or off tribal land.' The conceptual clarity of Mr. Chief Justice Marshall's view in Worcester v. Georgia, 6 Pet 515, 556-561, 8 L Ed 483 (1832) has given way to more individualized treatment of particular treaties and specific federal statutes, including statehood enabling legislation, as they, taken together, affect the respective rights of States, Indians, and the Federal Government." Mescalero Apache Tribe v. Jones, 411 U.S. 145, 36 L Ed 2d 114, 119 (1973).

Morton v. Mancari, 417 U. S. 535, 41 L Ed 290 (1974) deals with the authority of the U. S. Congress to legislate on matters dealing with American Indians. In that case, the court upheld the Indian employment preference provisions within the Bureau of Indian Affairs contained in section 12

of the Indian Reorganization Act, 25 U.S.C. 472. It held that the preference was not racial discrimination in violation of the Due Process Clause of the Fifth Amendment. The court, at 552,301, noted that the authority of the Congress under Article I, sec. 8, cl. 3 of the Constitution to "regulate Commerce... with the Indian Tribes" "singles Indians out as a proper subject for separate legislation." The crux of the court decision is set out at 554-555, 302-303: "Contrary to the characterization made by appellees, this preference does not constitute 'racial discrimination': Indeed, it is not even a 'racial' preference.²⁴ (24. The preference is not directed towards a 'racial' group consisting of 'Indians'; instead, it applies only to members of 'federally recognized' tribes. This operates to exclude many individuals who are racially to be classified as 'Indians'. In this sense, the preference is political rather than racial in nature....) Rather, it is an employment criterion reasonably designed to further the cause of Indian self-government and to make the BIA more responsive to the needs of its constituent groups.... The preference, as applied, is granted to Indians not as a discrete racial group, but, rather as members of quasi-sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion.... The preference does not cover any other Government agency or activity, and we need not consider the obviously more difficult question that would be presented

by a blanket exemption for Indians from all civil service examinations.... As long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians, such legislative judgment will not be disturbed. Here, where the preference is reasonable and rationally designed to further Indian self-government, we cannot say that Congress' classification violates due process." (emphasis added) The Mancari decision stands for the following proposition. Congress may enact special legislation for Indians when this legislation deals with matters relating to Indian tribal self-government within the context of the Bureau of Indian Affairs. The Court wrote a very narrow opinion for the obvious reason that it was concerned with the question of racial discrimination. There is general language, of course, which may be cited to uphold such special legislation as federal subsistence rights for Alaska Native but the citation of such general language should be exercised with caution. The Court did not even suggest the outer parameters of "special treatment" which "can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians." United States v. Antelope, 45 L.W. 4361 (1977) upheld the constitutionality of the Major Crimes Act insofar as it applies to enrolled members of an Indian tribe on an Indian reservation. The court, at 4363, noted that it was not dealing with "tribal self-regulation" but with "federal regulation of criminal

conduct within Indian country implicating Indian interests." The Court also cited Mancari in support of its approach. The Court restricted its holding to enrolled tribal members and stated at 4363 that "respondents were not subjected to federal criminal jurisdiction because they are of the Indian race but because they were enrolled members of the Coeur d'Alene Tribe." Subsistence hunting and fishing is not directly related to self-government of the Alaska Natives, or to Indian country, and it will be necessary for the advocates of such legislation to argue from the general language of the Mancari decision rather than rely upon the specific holding itself.

Morton v. Ruiz, 415 U.S. 199, 39 L Ed2d 270 (1974) is another instance of the current tendency of the Supreme Court to write a narrow opinion on American Indian questions. The decision required the BIA to extend its general assistance benefits to Indians living not only on reservations but off, although near, reservations. The Court based its decision on a particular construction of federal legislation and declined to discuss the constitutional question. "We emphasize that our holding does not... make general assistance available to all Indians 'throughout the country'." At .237, .295.

Mescalero Apache Tribe v. Jones, 411 U.S. 145, 36 L 2d 114 (1973) is of special interest in an attempt to

conjecture the attitude of the Supreme Court in American Indian cases. The six justices represented by the majority opinion are still on the Court whereas one of the dissenters, Justice Douglas, has been replaced on the Court. The Court upheld the authority of New Mexico to collect a gross receipts tax on a ski resort operated by the Mescalero Apache Tribe off reservation lands but developed pursuant to the Indian Reorganization Act. The basis of the decision was that the Indian Reorganization Act did not extend tax immunity to "off reservation" activities. The dissent construed the Indian Reorganization Act favorably to the Indians and would have exempted the tribe from the tax. It refused to find the "off reservation" distinction of the majority significant. "There is no magic in the word 'reservation'." At p. 161, p. 127.

I believe that the recent decisions of the Supreme Court suggest that exclusively Alaska Native subsistence hunting and fishing legislation enacted by the Congress may encounter constitutional problems. The Court does not want to broaden the concept of distinctive American Indian rights beyond the traditional ones of tribal self-government, reservations and treaty rights. The Court has carefully looked for ways to avoid the constitutional question of racial discrimination through statutory construction, and, in the decisions which dealt with that question, it stated that it was not "racial discrimination"

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ALASKA DIVISION

that was being dealt with in the opinions. It may be that the Bakke decision may have language in it that will be of guidance in an evaluation of the subsistence question because the Court, even though it is dealing with the affairs of the American Indians under the Indian commerce clause of the Constitution, will not allow racial discrimination in the conduct of American Indian activities.

A possible distinguishing factor in proposed legislation dealing with Alaska Native subsistence hunting and fishing rights is its association with ANCSA. The constitutionality of the land grant provisions of ANCSA would be upheld as a reasonable classification permissible under the Fifth Amendment because of the extinguishment provisions contained in ANCSA. There was a quid pro quo. The aboriginal rights, or the claim of such rights, which were extinguished were held only by Alaska Natives. Therefore, the land grant provisions may be restricted to Alaska Natives. It would seem that other rights, such as preferential subsistence hunting and fishing rights, might also fall within the permissible classification since aboriginal hunting and fishing rights were also extinguished by ANCSA. Section 17(d) (2) of ANCSA is the provision which is the impetus for the present "d 2" legislation, part of which is to deal

with subsistence rights. A grant of Alaska Native subsistence rights which is closely tied to ANCSA, by legislative history and perhaps by phrasing such a grant as an amendment to ANCSA, would appear to stand a better chance of meeting constitutional objections.

There is one further question which relates to the federal grant of subsistence rights on federal lands which is not a Fifth Amendment question but which should perhaps be noted in a discussion of the subject. This is the authority of Congress to legislate on matters relating to resident fish and wildlife on federal lands within a state. The question was resolved in Kleppe v. New Mexico, 49 L Ed 2d 34 (1976), which upheld the authority of Congress to regulate and protect wildlife on federal lands under the Property Clause and the Supremacy Clause of the Constitution.

Federal-State
Land Use Planning Commission
For Alaska

PRELIMINARY
Subject to Correction

SUBSISTENCE REALITIES

Walter B. Parker
August 15, 1977

The discussion about subsistence in regard to the 17(d)(2) lands issue has unfortunately lost contact with the realities of subsistence use in Alaska. Due to the situation with the Arctic caribou herd, it has for much of the public been taken to be a problem in the management of big game and the rights of Alaska Natives to hunt and fish on Federal lands and has assumed a posture out of all context with the benefits that this would bring. The facts are that language, such as is presently contained in the ill famed H.R. 39 would affect only 5 percent of subsistence by Alaska's Native peoples and even if this were extended to all Federal lands in the State, it would affect only 20 percent of total subsistence use in the State. Thus, the answer to subsistence rights cannot be found in Federal control unless we are willing to overturn all existing fisheries and water control programs in the 17(d)(2) legislation in addition to designating new Federal land managers.

As Table A shows, 42 percent of subsistence use in Alaska is tied to salmon runs. These runs are managed by the State of Alaska in interior waters where subsistence salmon fishing is undertaken. Congress has just passed comprehensive joint management legislation in the Fisheries Management and Protection Act of 1976 which could be jeopardized by any actions in (d)(2) legislation that interjected another level of Federal control.

About 18.5 percent of subsistence use is in other fisheries, primarily, halibut, crab, tom cod, whitefish, and many other species. About 5 percent of this total subsistence take is on Federal lands with less than 1 percent on (d)(2) lands.

Marine mammals are under the Marine Mammals Act and the Federal government is returning control of many species to the State. This process would be severely impacted by language that was too far reaching in the (d)(2) legislation, and this already confused and complicated situation would become hopelessly tangled in a legal and bureaucratic morass.

Birds account for 7.5 percent of subsistence take and most of these are birds covered by Federal treaties or under Federal protection. Priority use granted in H.R. 39 would little affect the existing situation in which some promise may be forthcoming for greater use under newly negotiated treaties.

The (d)(2) question is, thus, primarily one of big game management. Big game accounts for about 23.6 percent of the total subsistence use. Of

this total, 8.8 percent will be taken on State and Native owned lands and about 14.8 percent on Federal lands. Only 4.5 percent of this big game would be taken on existing (d) (2) withdrawals.

In essence, the language in H.R. 39 would institute a permanent fission ~~on racial lines~~ in fish and game management in Alaska in exchange for only the most limited gains.

TABLE A

Subsistence Use by Alaska Natives

Region	Population	Percentage & Number of Units*				
		Salmon % Units	Other Fish % Units	Sea Mammal % Units	Big Game % Units	Birds % Units
Tlingit/Haida	11,000	6-66	3-33		1-11	
Eyak/Koniag	5,000	5-25	3-15		2-10	
Aleut	2,000	5-10	3-6	1-2		1-2
Bristol Bay	5,000	5-25	2-10		3-15	
Delta	14,000	5-70	1-14	1-14	1-14	2-28
Norton Sound	5,000	2-10	1-5	3-15	3-15	1-5
Kobuk	5,000	2-10	2-10	2-10	4-20	
Arctic Coast	3,000		2-6	3-9	4-12	1-3
Cook Inlet	2,000	5-10	2-4		3-6	
Lower Yukon	4,000	4-16	1-4		4-16	1-4
Upper Tanana/Yukon	3,000	2-6	1-3		6-18	1-3
Kuskokwim	1,000	4-4	1-1		5-5	
Total Units	60,000**	252	111	50	142	45
		42%	18.5%	8.4%	23.6%	7.5%

* Units are determined by measuring thousands of population times percentage of use times 10 or 11,000 X .6 X 10 = 66 units.

** Does not include urban based Alaska Natives not utilizing subsistence estimated at 5,000 in number.

TABLE B

State/Federal Relationships to Subsistence Resources

Region	Salmon		Other Fish		Sea Mammals		Big Game		Birds	
	State	Fed.	State	Fed.	State	Fed.	State	Fed.	State	Fed.
Tlingit/Haida	66		30	3				11		
Eyak/Koniag	25		13	2			2	8		
Aleut	10		6			2			1	1
Bristol Bay	25		8	2(1)			9	6(3)		
Delta	70		8	6(2)	9	5	8	6(3)	2	26
Norton Sound	10		3	2	8	7	6	9(3)	1	4
Kobuk	10		4	6(1)	3	7	6	14(8)		
Arctic Coast			2	4	2	7	3	9		3
Cook Inlet	10		3	1			3	3		
Lower Yukon	16		2	2			4	12(5)		4
Upper Tanana/Yukon	6		1	2			8	10(5)		3
Kuskokwim	4		1				4	1		
Total Units	252		81	30	22	28	53	89	4	41

() Units taken on (d) (2) lands.

TITLE VII—SUBSISTENCE

FINDINGS

SEC. 701. The Congress finds and declares that—

(1) the continuation of subsistence uses by Natives of Alaska on the public lands and on their Native lands is essential to their physical, economic, and cultural existence.

(2) the continuation of subsistence uses by some other residents of the State of Alaska on the public lands is essential to their physical, economic, and traditional existence.

(3) 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 persons dependent on subsistence uses.

(4) continuation of 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, and by increased accessibility of remote areas containing subsistence resources.

(5) in order to fulfill the policies and purposes of

1 the Alaska Native Claims Settlement Act, and as a
2 matter of equity, it is necessary for the Congress to
3 invoke its constitutional authority over Native affairs
4 and over management of the public lands to protect and
5 continue subsistence uses on public lands by Alaska
6 Natives and other Alaska residents.

7 (6) the national interest in the proper regulation,
8 protection, and conservation of fish and wildlife on the
9 public lands in Alaska and the continuation of the op-
10 portunity for a subsistence way of life by the inhabitants
11 of Alaska require that an administrative structure be
12 established for the purpose of enabling people who have
13 personal knowledge of local conditions and require-
14 ments to have a meaningful role in the management of
15 fish and wildlife and of subsistence uses on the public
16 lands in Alaska.

17 POLICY

18 SEC. 702. It is hereby declared to be the policy of Con-
19 gress that—

20 (1) management policies on the public lands in
21 Alaska are to cause the least adverse impact possible on
22 rural people who traditionally and consistently depend
23 upon subsistence resources of such lands. Within the
24 constraints of sound biological management and the pur-
25 poses for which each conservation system unit is estab-

1 lished, designated, or expanded by or under this Act,
2 the purpose of this title is to provide the opportunity for
3 people engaged in a genuinely subsistence-oriented life-
4 style to continue to do so if they desire and to allow such
5 people to decide for themselves their own degree of
6 subsistence dependency and the rate at which accultura-
7 tion or adjustment to a nonsubsistence way of life may
8 take place.

9 (2) subsistence use of wildlife and other renewable
10 resources shall be the first priority consumptive use of
11 all such resources on the public lands of Alaska, and
12 where it is necessary to restrict taking in order to
13 assure the continued viability of a fish or wildlife re-
14 source or the continuation of subsistence uses of such
15 resource, the taking of such resource for subsistence
16 uses shall be given preference on the public lands over
17 recreational, sport, or other consumptive uses.

18 (3) except as otherwise provided by this Act or
19 other Federal laws, Federal land managing agencies, in
20 managing subsistence activities on the public lands and
21 in protecting the continued viability of all wild renew-
22 able resources in Alaska, shall cooperate with adjacent
23 landowners and land managers, including Native cor-
24 porations, appropriate State and Federal agencies, and
25 other nations.

DEFINITION

1
2 SEC. 703. As used in this Act, the term "subsistence
3 uses" means customary and traditional uses in Alaska of
4 wild, renewable resources for direct personal or family con-
5 sumption as food, shelter, fuel, clothing, tools, or transpor-
6 tation, for the making and selling of handicraft articles in-
7 cluding clothing, or for the customary trade or barter among
8 subsistence users for personal or family consumption.

STATE REGULATION

9
10 SEC. 704. (a) Except as otherwise provided by this
11 Act and other Federal laws, during an interim period of
12 eighteen months beginning on the date of the enactment of
13 this Act, the State of Alaska is authorized to regulate, in a
14 manner not inconsistent with the policies set forth in sec-
15 tion 702 and the definition set forth in section 703, the
16 taking of fish and wildlife for subsistence uses on the public
17 lands in Alaska. If the State fails to accept such authority,
18 the Secretary shall regulate such taking during the eighteen-
19 month interim period in a manner not inconsistent with such
20 policies and definition.

21 (b) At the end of the eighteen-month interim period,
22 the State of Alaska is authorized to regulate, in a manner con-
23 sistent with the provisions of this Act, the taking of fish and
24 wildlife for subsistence uses on the public lands in Alaska.
25 If the State fails to accept such authority, the Secretary shall

1 regulate such taking in a manner consistent with the pro-
2 visions of this Act, including applicable provisions of this
3 section concerning State regulation.

4 (c) If the State wishes to exercise the authority con-
5 ferred under subsection (b) of this section, then within
6 eighteen months after the date of the enactment of this Act,
7 the Governor of the State of Alaska shall submit to the
8 Secretary a State program which shall include at least the
9 following elements:

10 (1) A management plan which has as its central
11 elements (A) the maintenance of the continued viability
12 of the populations of fish and wildlife species on the
13 public lands, and (B) a system capable of monitoring
14 subsistence and other consumptive uses of such species
15 to insure that timely and appropriate State action will
16 be taken to carry out the purposes and policies of this
17 title.

18 (2) The establishment of not less than five or more
19 than twelve fish and game management regions which,
20 taken together, shall include all public lands where the
21 State is exercising regulatory authority under this title.
22 After consultation with the Secretary, the Native Corpora-
23 tions, rural residents, and other interested persons and
24 organizations, the State shall, from time to time, deter-
25 mine the number and boundaries of such regions taking

1 into account the exterior boundaries of Native Corpora-
2 tions, State fish and game management unit boundaries,
3 ecosystems, the migration and movement of fish and
4 wildlife utilized for subsistence purposes, the boundaries
5 of boroughs, cities, towns, and unincorporated municipal-
6 ities, and other relevant factors.

7 (3) A State law or regulation which—

8 (A) provides for the regulation of the
9 taking of fish and wildlife on the public lands by a
10 professionally staffed State agency which has an
11 administrative structure compatible with the pro-
12 visions of this section and which has adequate en-
13 forcement authority;

14 (B) provides priority for subsistence uses over
15 other consumptive uses of fish and wildlife on the
16 public lands; and

17 (C) provides that, whenever it is necessary to
18 restrict the taking or other consumptive uses of sub-
19 sistence resources in order to protect the continued
20 viability of such resources or the continuation of
21 subsistence uses of such resources, restrictions and
22 limitations on and priorities for such consumptive
23 uses shall be established on the basis of the following
24 criteria: (i) customary and direct dependence upon
25 the resource as the mainstay of one's livelihood,

1 (ii) local residency, and (iii) availability of alter-
2 native resources.

3 (4) A system of local and regional fish and game
4 councils within each management region referred to in
5 paragraph (3). Each such council shall be composed of
6 residents of the concerned region and shall have the fol-
7 lowing functions:

8 (A) Reviewing, developing, and evaluating
9 proposals for regulations, policies, management
10 plans, and other matters relating to the conservation
11 and utilization of fish and wildlife in such region.

12 (B) Providing a forum for the expression of
13 opinions and recommendations by persons interested
14 in any phase of fish and game conservation and
15 utilization.

16 (C) Maximizing local and regional participa-
17 tion in the fish and wildlife decisionmaking process.

18 (D) Preparing a subsistence management plan
19 for such region. The plan shall be updated annually
20 and shall contain (i) an identification of current
21 and anticipated subsistence uses of fish and wild-
22 life in such region, (ii) an evaluation of current
23 and anticipated subsistence needs for fish and wild-
24 life in such region, (iii) a subsistence management
25 strategy for fish and wildlife resources of such

1 region, and (iv) proposals for policies, standards,
2 guidelines, and regulations necessary to implement
3 the plan.

4 (5) The assignment of adequate and necessary staff
5 to the regional councils and the distribution of all avail-
6 able, relevant technical and scientific support data to
7 the local and regional councils.

8 (6) A requirement that the State agency referred
9 to in paragraph (3) (A) or any other State rulemaking
10 authority shall adopt recommendations of the regional
11 councils concerning the taking of fish and wildlife within
12 their respective regions unless any such recommendation
13 is not supported by substantial evidence, is violative of
14 recognized principles of sound fish and wildlife man-
15 agement, or would be detrimental to the satisfaction of
16 rural subsistence needs.

17 (7) A requirement that if a recommendation of a
18 regional council is rejected by the State agency referred
19 to in paragraph (3) (A) or any other State rulemaking
20 authority, such agency or authority shall make findings
21 of fact detailing the basis for its failure to adopt the
22 recommendation.

23 (d) The Secretary shall issue a certificate of approval
24 for the State program and publish such program in the
25 Federal Register if he finds that such program complies with

1 the provisions of this section and is well adapted to achieve
2 the purposes and policies of this title. If the Secretary is
3 unable to make such finding, he shall so notify the State
4 and shall afford the State an opportunity to modify its pro-
5 gram under a procedure similar to the procedure set forth
6 in section 705. If the State fails to submit a State program
7 within the eighteen-month period established in section 704
8 (b), the State shall be deemed to have failed to accept the
9 authority to regulate the taking of fish and wildlife on public
10 lands in Alaska granted by this section.

11 ENFORCEMENT DUTIES OF SECRETARY OF THE INTERIOR

12 SEC. 705. (a) After issuance of a certificate of approval
13 under section 704 (d) of this title, the Secretary of the In-
14 terior shall monitor the implementation of the State program.
15 If the Secretary determines that the program or its imple-
16 mentation is not in compliance with the requirements, pur-
17 poses, or policies of this title, he shall so notify the State
18 and shall indicate changes in its program or its implementa-
19 tion which he considers necessary to bring the State into
20 compliance.

21 (b) If a local or regional council referred to in section
22 704 (c) (4) determines that the State is not in compliance,
23 in whole or in part, with the State program or with the re-
24 quirements, purposes, or policies of this title, and so notifies
25 the Secretary of the Interior in writing, the Secretary shall

1 investigate and report publicly on the results of his investi-
2 gation. If, after notice and hearing, the Secretary deter-
3 mines upon the record taken as a whole that the State is
4 not in compliance with the State program or with the re-
5 quirements, purposes, or policies of this title, he shall notify
6 the State of the changes in its program or its implementation
7 which he considers necessary to bring the State into com-
8 pliance.

9 (c) If, after a reasonable opportunity, the State fails to
10 make the changes in its program or its implementation as
11 indicated by the Secretary of the Interior under subsection
12 (a) or (b) of this section, the Secretary may issue an in-
13 terim suspension of the certificate of approval, in whole or
14 in part, issued under section 704 (d). Following any such
15 interim suspension, the Secretary shall afford the State an
16 opportunity to appeal such interim suspension. Within thirty
17 days after receipt of notice of such appeal, the Secretary
18 shall afford the State a hearing pursuant to section 554 of
19 title 5 of the United States Code and, within thirty days
20 after such hearing, shall make his final decision on such ap-
21 peal. If the Secretary finds the State is in compliance with
22 the State program and the requirements, purposes, and poli-
23 cies of this title, he shall revoke the interim suspension. If
24 the Secretary finds the State is not in such compliance, he
25 may issue a final suspension of the certificate, in whole or

1 in part. Whenever the Secretary of the Interior issues an
2 interim or final suspension of the certificate under this sub-
3 section, he (or, as to lands under his jurisdiction, the Secre-
4 tary of Agriculture) shall assume, in accordance with the
5 requirements, purposes, and policies of this title (including
6 applicable provisions of section 704 pertaining to State
7 regulation), responsibility for regulating the taking of fish
8 and wildlife on the public lands to which such suspension
9 applies, until such time as the Secretary of the Interior
10 revokes the interim suspension or, with respect to the final
11 suspension, certifies that the State is in compliance with
12 the State program and the requirements, purposes, and
13 policies of this title.

14 (d) Notwithstanding any other provision of law, the
15 Secretary, after adequate notice and public hearing, may
16 temporarily close any of the public lands in Alaska (includ-
17 ing those within a conservation system unit) or any portion
18 thereof to subsistence or other uses when necessary for
19 reasons of public safety or to assure the continued viability
20 of one or more fish or wildlife species.

21 COOPERATIVE ARRANGEMENTS

22 SEC. 706. The Secretary is authorized to enter into
23 cooperative agreements or otherwise cooperate with other
24 Federal agencies, the State of Alaska, Native Corporations,
25 and other appropriate persons and organizations (including,

1 through coordination with the Secretary of State, other na-
2 tions) to effectuate the purposes and policies of this title.

3 SUBSISTENCE AND LAND USE DECISIONS

4 SEC. 707. In determining whether to withdraw, reserve,
5 lease, or otherwise permit the use, occupancy, or disposition
6 of public lands under any provision of law authorizing such
7 actions, the head of the Federal agency having primary
8 jurisdiction over such lands or his designee shall evaluate
9 the subsistence needs of the persons who would be affected,
10 the availability of other lands for the purposes sought to be
11 achieved, and other alternatives which would reduce or elim-
12 inate the use, occupancy, or disposition of public lands
13 needed for subsistence purposes. No such withdrawal, reser-
14 vation, lease, permit, or other use, occupancy, or disposition
15 of such lands which would significantly restrict subsistence
16 uses shall be effected until the head of such Federal agency—

17 (1) gives notice to the appropriate local and re-
18 gional councils described in section 704 (c) (4) if such
19 councils have been established,

20 (2) gives notice of, and holds, a hearing in the
21 vicinity of the area involved, and

22 (3) determines that such significant restriction of
23 subsistence uses is necessary and unavoidable.

24 ACCESS

25 SEC. 708. The Secretary shall ensure that persons en-
26 gaged in traditional or customary subsistence activities shall

1 have appropriate access to subsistence resources on the
2 public lands.

3 SNOWMOBILES AND MOTORBOATS

4 SEC. 709. Notwithstanding any other provision of this
5 Act or other law, the Secretary shall permit on the public
6 lands appropriate use for subsistence purposes of snow-
7 mobiles, motorboats, and other means of surface transpor-
8 tation traditionally employed for such purposes, subject
9 only to such reasonable regulations as are necessary to pre-
10 vent abuse, waste, or damage to terrain or other natural
11 values.

12 RESEARCH

13 SEC. 710. The Secretary of the Interior and the Sec-
14 retary of Agriculture shall each undertake research on fish
15 and wildlife and subsistence activities on the public lands
16 in Alaska under their respective jurisdiction, seek data there-
17 on from subsistence users, consult such users frequently, and
18 make findings concerning such research available to the State
19 of Alaska, the local and regional councils described in section
20 704 (c) (4), subsistence users, and other appropriate per-
21 sons and organizations.

22 PERIODIC REPORTS

23 SEC. 711. Within five years after the date of the enact-
24 ment of this Act and every two years thereafter, the Secre-
25 tary of the Interior, in consultation with the Secretary of

1 Agriculture, shall prepare and submit a report to the Presi-
2 dent of the Senate and the Speaker of the House of Repre-
3 sentatives on the current status of fish and wildlife and sub-
4 sistence and other uses of those resources on the public lands.

5 The report shall include at least the following:

6 (1) An evaluation of the performance of the State
7 of Alaska, if the State is then regulating the management
8 and taking of fish and wildlife under this title.

9 (2) The status of fish and wildlife populations on the
10 public lands.

11 (3) The number of persons engaged in subsistence
12 uses and in other uses of fish and wildlife on the public
13 lands.

14 (4) The status of subsistence uses in the economy
15 and culture of rural Alaska.

16 (5) Comments, if any, on the report made by the
17 State of Alaska, the local and regional councils described
18 in section 704 (c) (4), and other appropriate persons
19 and organizations.

20 (6) A description of those actions taken, or which
21 may need to be taken in the future, to permit the con-
22 tinuation of subsistence activities on the public lands,
23 as well as recommendations for any legislation the Secre-
24 tary deems desirable.

25 The report shall be published in the Federal Register and
26 made available to the public.

REGULATIONS

1
2 SEC. 712. The Secretary of the Interior and the Secre-
3 tary of Agriculture shall each prescribe such regulations as
4 are necessary and appropriate to carry out their respective
5 responsibilities under this title.

OTHER LAWS

6
7 SEC. 713. Nothing in this title shall be deemed to mod-
8 ify or repeal the provisions of the Fur Seal Act of 1966 (80
9 Stat. 1091; 16 U.S.C. 1151-1187), the Endangered Species
10 Act of 1973 (87 Stat. 884; 16 U.S.C. 1531-1543), the
11 Marine Mammal Protection Act of 1972 (86 Stat. 1027;
12 16 U.S.C. 1361 and following), the Act entitled "An Act
13 for the protection of the bald eagle", approved June 8, 1940
14 (54 Stat. 250; 16 U.S.C. 667-668d), the Fish and Wild-
15 life Act of 1956 (70 Stat. 1119; 16 U.S.C. 742a-754), the
16 Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703
17 and following), and the Migratory Bird Conservation Act
18 (45 Stat. 1222; 16 U.S.C. 715 and following).

LIMITATIONS

19
20 SEC. 714. (a) Nothing in this title shall be construed
21 as granting any property right in any fish, wildlife, or other
22 resource of the public lands in Alaska.

23 (b) Nothing in this title shall be construed as permit-
24 ting any subsistence use of the resources of any portion of
25 the public lands (including any unit of the National Park

1 System) where any such use was not permitted on the date
2 of the enactment of this Act.

3 REIMBURSEMENT TO THE STATE

4 SEC. 715. (a) Upon the issuance of a certificate of ap-
5 proval described in section 704(d) of this title, the Secre-
6 tary of the Interior is authorized to reimburse the State
7 agency described in section 704(c) (3) (A), from funds
8 appropriated for the Department of the Interior, for costs
9 relating to the implementation of the State program. Sums
10 paid under this section shall be in addition to any grants,
11 payments, or other sums to which the State is entitled under
12 existing law. The purpose of such reimbursements shall be
13 to assist the State in developing and implementing the State
14 program described in section 704. During any fiscal year,
15 such reimbursements shall not exceed 50 per centum of the
16 costs of the program's development and implementation
17 during such fiscal year. Such costs shall be verified in a
18 statement which the Secretary of the Interior determines
19 to be an adequate, accurate account.

20 (b) No reimbursements shall be paid under this section
21 for costs incurred by the State during any period of suspen-
22 sion of part or all of the State program under section 705.

23 (c) Total payments to the State under this section shall
24 not exceed the sum of \$5,000,000 in any one fiscal year.

25 (d) The Secretary shall periodically review the finan-

1 cial aspects of implementing the State program and shall
 2 advise the Congress at least once in every ten years as to
 3 whether or not the maximum amount of payments specified
 4 in subsection (c) is adequate for proper implementation of
 5 the State program.

6 (e) With respect to any fiscal year in which insufficient
 7 funds are appropriated—

8 (1) to reimburse 50 per centum of the costs re-
 9 ferred to in subsection (a), or

10 (2) to meet the maximum amount of payments
 11 specified in subsection (c),

12 whichever is less, the Secretary shall consult the State, and
 13 shall hold a public hearing, for the purpose of determining
 14 the most economical manner in which the State can, con-
 15 sistent with the provisions of this title, carry out its program
 16 during such fiscal year.

17 TITLE VIII—IMPLEMENTATION OF ALASKA
 18 NATIVE CLAIMS SETTLEMENT ACT AND
 19 ALASKA STATEHOOD ACT

20 CONVEYANCE OF CORE TOWNSHIP LANDS

21 SEC. 801. (a) (1) Except to the extent that conveyance
 22 of a surface estate would be inconsistent with section 22 (1)
 23 of the Alaska Native Claims Settlement Act, there is hereby
 24 conveyed to and vested in each Village Corporation for a

: PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.

(d)(2)

Steering Council For Alaska Lands

REP. STEVE COWPER
CHAIRMAN
REP. ALVIN OSTERBACK
REP. JOE L. HAYES
SEN. CHANCY CROFT
SEN. M KE COLLETTA
SEN. JOE ORSINI
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MEMORANDUM

TO: ALL COUNCIL MEMBERS
FROM: SHARON LONG
Re: ALASKA OPINION RESEARCH
DATE: February 21, 1978

ENCLOSED is the Data Narrative from the Rowan Group Survey.
A more lengthy report with analysis and description on methodology will
be distributed at our next meeting.

PRELIMINARY FINDINGS

Data Narrative Report

-of all questions as asked, and all
responses by percentage, as recorded-

on

Rowan Group Survey
for the
Steering Council for Alaska Lands

February 1978

01. Are you a resident of Alaska?

99.8% Yes
0.2 No

02. How long have you lived in Alaska?

17.6% Lifetime (born in Alaska)
11.6 25 years or more
26.8 10 - 25 years
35.0 2 - 10 years
9.0 Less than 2 years

03. (If "NOT BORN IN ALASKA") Why did you come to Alaska?

17.8% Not applicable
35.6 Job/work opportunities (transferred; in service;
husband's job)
17.6 Moved with family (came up with parents, relatives)
8.4 Lure of Alaska lifestyle (wilderness; adventure;
the outdoors; scenery; hunting and fishing; the
last frontier, etc.)
4.7 To get away from Lower 48 (away from rat race, steel
and concrete, big cities, pollution; better
quality of life here, etc.)
3.4 Visited Alaska--decided to move
4.7 Always wanted to/just wanted to
6.0 Other
1.7 No opinion

Other comments in numbers; not percents: Health
reasons; Own property; It was first point North
on the money I had; Just like it here (2); To
investigate the country; Immigrated from Denmark;
Immigrated from Europe; To go to school; Because
of religious beliefs (2); Born here, decided to
come back; Was getting a divorce; Good schools.

04. What do you like about Alaska -- in other words -- why do you live here rather than someplace else?

- 11.0% Natural surroundings (scenery; wilderness; beauty; the land; geography; ruggedness; openness)
 - 9.7 Outdoor life (hunting; fishing; camping; opportunity to enjoy the land)
 - 4.1 Climate
 - 5.4 Work/job
 - 6.0 More opportunities (business; economic; job)
 - 4.9 Good wages/money
 - 8.8 Less crowded (Not so many people)
 - 9.5 Quality of life (casual; slower; no pressure; not as developed; less congested; quieter; lack of social problems; allure of the last frontier)
 - 5.2 The freedom
 - 7.7 The people
 - 11.6 It's home (have roots here; born/raised here; been nowhere else)
 - 5.2 Everything; just like it
 - 1.9 Family reasons (husband/wife likes it; married someone from here, etc.)
 - 6.0 Other
 - 3.0 No opinion
- Other comments in numbers; not percents: The Lord wants us here; Don't like it--we're moving out of state (2); God has put me here. It is the geographical will of God that I stay here; No snakes or insects; I like anywhere the Lord sends me; Don't got money enough to get out of here; Have some input in the government; Still going to school; Health reasons (2).

05. In Alaska there are about 20 communities of a few thousand people or more. Of these major places, how many have you visited?

- 15.5% All or almost all
- 14.8 Three-fourths
- 20.8 About half
- 20.2 About one-fourth
- 28.1 Only a few
- 0.6 No opinion

06. In Alaska there are also about 300 communities of a few hundred people each, or less. Of these places, how many have you visited?

1.5% All or almost all
2.6 Three-fourths
9.7 About half
17.6 About one-fourth
44.2 Only a few
23.8 Virtually none
0.6 No opinion

07. Do Alaska's 300 small communities desire to be part of the state's surface transportation system?

32.4% Yes
35.4 No
28.5 No opinion/don't know
3.6 Some do, some don't

08. Do you feel that existing access to Alaska's 300 small communities is adequate to meet their community needs?

39.3% Yes
28.2 No
20.8 No opinion/don't know
1.7 In some cases

09. Do Alaska's 300 small communities desire visits by large numbers of recreationists and sightseers?

14.6 Yes
61.6 No
18.0 No opinion/don't know
5.8 Some do, some don't

10. In all, there are 365 million acres of land in Alaska, most of it accessible only by plane, boat, or off-road vehicle, and some by road. Of it all, what would you estimate as the amount you have been able to experience?

1.1% All or almost all
6.0 Three-fourths
8.6 About half
17.4 About one-fourth
13.7 Less than one-fourth
50.4 A few percent or less
2.8 No opinion

11. Have you ever taken a one week trip inside Alaska for recreation purposes?

71.7% Yes
28.3 No

12. (If "YES") The last time you did that, how far did you go? (Estimate in miles).

27.8% Not applicable
20.7 250 miles or less
15.3 251 - 500 miles
7.1 501 - 750 miles
12.3 751 - 1000 miles
3.0 1001 - 1250 miles
4.3 1251 - 1500 miles
0.9 1501 - 1750 miles
3.9 1751 - 2000 miles
0.2 2001 - 2250 miles
0.6 2251 - 2500 miles
0.2 2501 - 2750 miles
1.1 2751 - 3000 miles
1.5 Over 3000 miles
1.1 No answer

13. (For those who answered Question 12) ...And how did you travel?

9.7% Air
6.0 Water
35.6 Surface/road/railroad
27.7 Combinations in numbers; not percents:
 Air-surface (17); Air-water (13); Surface-water 51);
 All (13).
Not applicable

14. Do you feel satisfied with how much of Alaska you have so far actually seen and experienced, or are you interested in experiencing much more of it?

12.2% Feels satisfied
65.5 Satisfied, but wants to experience more
22.3 Wants to experience more, is unsatisfied

15. What would be your favored means of traveling to remote areas of Alaska in the future?

28.4% Air
6.9 Water
21.9 Surface/road/railroad
42.8 Combinations in numbers; not percents:
 Air-surface (36); Air-water (52); Surface-water (36);
 All (66)

16. Do you feel certain public lands in Alaska deserve receiving permanent protection as national parks or wildlife refuges even though you may not be able to visit all of them?

61.0% Yes, deserve permanent protection
 20.8 No
 7.7 No opinion/unsure
 10.5 Yes, though not in amounts reported

Here are a number of National Park lands either existing or proposed in Alaska, and this is where they are. Tell me in each case if you have already been to each park, and if so, if you intend to go back sometime, and if not, if you ever intend to go.

		<u>Intend to return</u>	<u>Won't return</u>	<u>Intend to go</u>	<u>Won't go</u>	<u>No Opinion</u>
17.	Denali National Park (Mt. McKinley)	59.3%	4.9%	28.3%	4.3%	3.2%
18.	Glacier Bay National Park	22.3%	3.2%	49.7%	18.8%	6.0%
19.	Kobuk Valley National Park	5.4%	1.7%	53.7%	29.1%	10.1%
20.	Lake Clark National Park	12.2%	0.9%	53.1%	21.6%	12.2%
21.	Gates of the Arctic National Park	7.1%	1.7%	54.0%	28.3%	9.0%
22.	Katmai National Park	12.4%	1.7%	63.0%	14.6%	8.4%
23.	Wrangell-St. Elias National Park	17.1%	3.4%	54.0%	16.3%	9.2%
24.	Do you believe roads, railroads or some other form of surface transportation should be built to these parks to provide asy access to large numbers of people?					
	30.5% Yes, to all parks					
	47.9 Yes, to some parks					
	20.6 No parks					
	1.1 Depends (on which parks, etc)					

25. Tell me the name of any national wildlife refuge you visited for recreational purposes since you have lived in Alaska?

41.5% None
25.8 Mt. McKinley (Denali National Park)
14.8 Kenai Moose Range (or named Kenai, Kenai area, etc)
1.9 Potter Marsh/Flats
3.7 Glacier Bay
1.9 Chugach area
0.9 Katmai
1.3 Mendenhall Peninsula/Flats
8.2 Other

Other comments in numbers; not percents:

66 Mile Steese (2); St. Lazurus Bird Refuge (3); Kodiak (3); Admiralty Island (2); Wrangells; Afognak (3); Katchemak Bay; Fonreslerr Island; Portage; Prince William Sound; Aleutions; Arctic Wildlife Refuge (2); Eklutna; Copper River Water Foul Refuge (2); St. Paul's; Susitna Flats; Chukchi (2); Tongass (2); Sheep Mountain (2); Kualinie Wildlife Refuge; By Tustimeena Lake; Tanana Flats; Kobuk area; Minto Flats.

26. (If a wildlife refuge is named) What was your main reason for visiting the refuge?

42.8% Not applicable
16.1 Recreation/vacation (to get away; fun; something to do; an outing)
15.7 Sightseeing (scenery; taking visitors; to visit; see what was there; to check it out)
6.9 Fishing and/or hunting
4.5 Camping
6.9 To see wildlife (animals; birds; flora and fauna; nature)
2.6 Passing through area
1.7 Other specific sport (backpacking, hiking, canoeing, etc)
1.7 Other
1.1 No response

Other comments in numbers; not percents: Closest and most convenient (2); On the job information (3).