

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
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June 12, 1992
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The Alaska Supreme Court has not addressed a case -- such as that posed by subsection (h) -- where access to fish and game resources was burdened, but not closed, by a statute or regulation. If the court should ever address the issues raised by subsection (h), the outcome will depend on how the court balances the state and private interests involved, how much the court is willing to accept deviations from equal treatment of persons in regard to access to fish and game resources based on a person's place of residency in the state, and how close the relationship between the state's purpose and the means chosen to achieve the purpose must be. Given that the court may subject these issues to a higher degree of scrutiny than under standard equal protection, the risk that the subsection (h) will be found to be unconstitutional is greater than under the equal protection clause.

LIMITATIONS TO SUBSISTENCE USE AREAS

The Department of Law finds that the Alaska Supreme Court has never required that regulations be uniform for every fish and game species in the state and that the Alaska Constitution does not require that a particular use of fish or game be allowed throughout the state if it is allowed any where in the state. I agree with the Department of Law that there is no requirement of equal treatment of resources rather than resource users.

The Department of Law also finds that the constitution does not require that a person be eligible to engage in subsistence activities in one area merely because the person is qualified to engage in subsistence activities in an other area. I would agree with this statement for the most part.

What the constitution does require is that all similarly situated persons be entitled to participate in the same fish and game user groups (article VIII, sec. 17) and that the criteria for participation in a user group not create exclusive or special privileges (Owsichuk, 763 P.2d at 496). Limits on admission to user groups are subject to scrutiny under the article VIII equal access provisions (State v. Ostrosky, 667 P.2d 1184, 1189 (Alaska 1983); Owsichuk, 763 P.2d at 492), because the provisions of article VIII were intended to guarantee the broadest possible access to and use of fish and game (Owsichuk, 763 P.2d at 492 - 93) and to prohibit exclusive or special privileges to take fish and game (McDowell, 785 P.2d at 6). "The history of the common use clauses, . . . , reveals anti-monopoly intent to prevent 'exclusive grants' and 'special privilege[s],' wholly apart from the limits imposed by other constitutional provisions." Owsichuk, 763 P.2d at 496.

In McDowell, the Alaska Supreme Court struck down the rural residency requirement for subsistence because it amounted to an exclusive or special privilege prohibited by the open access provisions of the Alaska Constitution. McDowell, 785 P.2d at 9. Rural residency was determined to be an invalid criteria for determining who may participate in the subsistence user group, though the court did leave open the

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possibility that residency in some form may be used as a criteria for allocating scarce resources among members of the user group. In Owsichek, the Alaska Supreme Court struck down exclusive guide areas and joint use areas, because these areas were grants of monopolies or special privileges based on a guide's previous use, occupancy, and investment in the area. "To grant such a special privilege based on seniority runs counter to the notion of 'common use'." Owsichek, 763 P.2d at 496. The facts underlying the decision in Owsichek are closer to the situation addressed by SB 443/HB 552, because those bills use past use and harvests in a area as a measure of reliance or dependence on the resources of that area. According to the Owsichek decision, the proposed subsistence user groups based on past use and harvests of a particular area bestow unconstitutional exclusive or special privileges upon the members of the user group. The utilization of past use or activities in an area, as criteria for determining access to fish and game user groups was also rejected in Bozanich v. Noerenberg (Alaska Superior Court, First Judicial District, Juneau, Case No. 70-389, March 15, 1971). In Bozanich, the state attempted to limit access into a salmon net fishery by requiring prior experience in that fishery.

I do agree with the Department of Law that between a person who harvests all of his/her subsistence resources from a single subsistence use area and a person who does not rely as heavily on resources from the area, that the person with the greater dependence on the area should be preferred in the use of the resources of the area. However, I would qualify my agreement by saying that any preference accorded to the person with a greater dependence on the area would be generally limited to times when fish or game resources are not adequate to satisfy all members of the user group for that area.

I cannot say as a matter of constitutional law that in times of locally scarce resources the state may not prefer a person with a history of use of fish and game in a specific area over a person who has a true need to use fish or game in the area, but does not have an established history of use of fish and game in the area. It is within the discretion of the legislature to establish policies for allocations of fish and game resources in those situations, provided that the policies do not limit admission to a user group. State v. Hebert, 803 P.2d 863, 866 (Alaska 1990).

THE TWELVE MONTH QUALIFICATION PERIOD

The Department of Law found that the twelve month period used to determine eligibility to engage in subsistence activities does not create constitutional problems under the state or federal constitutions. I concur with the opinion of the Department of Law.

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TIER II CRITERIA

The Department of Law found that the "Tier II" criteria which considers the proximity of a person's domicile to subsistence resources in making allocations of those resources is probably constitutional. I concur with the opinion of the Department of Law.

If I may be of further assistance, please advise.

GU:lmb
92-130.lmb

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MEMORANDUM

March 25, 1992

SUBJECT: Constitutionality of the Governor's subsistence bill (SB 443)
TO: Senator Sam Cotten
FROM: George Utermohle
Legislative Counsel

You have asked for my professional opinion as to whether the Governor's subsistence bill (SB 443) is unconstitutional.

I have read the materials distributed by the Governor's Office and the Department of Law regarding the constitutionality of SB 443. The materials make reasonable arguments in favor of the constitutionality of SB 443, however on some issues I have reached different conclusions.

For the reasons expressed in my memorandum to Senator Lloyd Jones which was distributed to the Senate Resources Committee, I do believe that the mandatory criteria (SB 443; Sec. 2, Sec. 16.05.268(i)(2) - (4); page 7, lines 14 - 24) which tie eligibility for subsistence hunting and fishing to specific subsistence management areas create separate use areas available to narrowly defined user groups and that these user groups are closed classes prohibited by the open access provisions of the Alaska Constitution. In my opinion the creation of these closed user groups is unconstitutional under the Alaska Constitution.

Also for the reasons stated in my memorandum, I have concerns about whether the presumptions (SB 443; Sec. 2, Sec. 16.05.268(h); page 6, line 14 through page 7, line 2) which vary the burden of establishing eligibility for subsistence hunting and fishing according to where a person lives in the state is consistent with the open (and equal) access provisions of the Alaska Constitution. My inability to reach a firm conclusion on this issue in my own mind is due to the undeveloped state of constitutional law arising under the uniform application section (article VIII, sec. 17) of the Alaska Constitution. The only instances where this section has been construed by the Alaska Supreme Court involved closed classes of user groups or regulations which the court found to be allocations of resources rather than constraints on access to user groups.

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The court has not addressed a case -- such as that posed by the presumptions of eligibility in SB 443 -- where access to resources was burdened, but not closed, by a statute or regulation. If the court ever reaches the issue of the presumptions, the outcome will depend upon how the court balances the state and private interests involved and upon how much the court is willing to accept deviations from equal treatment of residents in regard to access to fish and game resources based on the person's place of residency in the state.

If I can provide you with further information on issues attendant to the Governor's subsistence bills or on other issues, please contact me.

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92-202.plm

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MEMORANDUM

March 16, 1992

SUBJECT: Constitutional issues raised by the Governor's Subsistence Bill.
(SB 443)

TO: Senator Lyman Hoffman

FROM: George Utermohle *GU*
Legislative Counsel

You have asked whether SB 443, the Governor's subsistence bill, is consistent with the Alaska Constitution?

SHORT ANSWER

One, SB 443 provides for the establishment of dozens of subsistence use areas. The mandatory minimum eligibility standards for subsistence proposed by SB 443 establish each subsistence use area as a separate use area and limit admission to the user group for that area to only those persons who have an extensive history of use in the area. The mandatory minimum eligibility standards pose a significant infringement on the open access values of the Alaska Constitution. There is a substantial risk that the mandatory minimum eligibility standards are unconstitutional.

Two, under SB 443, a person's place of residence in the state determines the degree of the burden that the person must overcome to establish eligibility to participate in subsistence activities. Because these varying burdens relate to eligibility for entry into fish and game user groups, they may inhibit equal and open access to fish and game resources and, thus, are at least constitutionally suspect under the open access provisions of the Alaska Constitution.

Three, the title of SB 443 fails to fully express the contents of the bill and should be amended accordingly.

DISCUSSION

This memorandum addresses the constitutional issues raised by SB 443.^{1/} SB 443 relates to the subsistence use and allocation of fish and game resources. The bill establishes an intricate system for controlling entry into subsistence user groups and distributing the activities of those user groups throughout the state. The bill provides that persons with a history of dependence on and use of fish and game resources will be able to continue their subsistence activities while leaving an opportunity for new persons to qualify for subsistence activities. Minimizing the administrative burden on the individual subsistence user and the Department of Fish and Game is also an important element of the bill.

The bill provides for subsistence use of fish and game resources under the legislature's authority to provide for the utilization, development, and conservation of natural resources.^{2/} Subsistence is not a constitutionally mandated or protected use of fish and game resources. As a statutorily created use of fish and game resources, any system for management of subsistence use and allocation of fish and game for subsistence use must be consistent with the Alaska Constitution. Of particular relevance to the subsistence use of fish and game are the "open access" provisions of the Alaska Constitution: common use section^{3/}, no exclusive right of fishery clause^{4/}, and uniform application section^{5/}. Although the ramifications of

^{1/} This memorandum does not address issues of statutory construction or legislative draftsmanship that do not implicate the Alaska Constitution. Those issues can be addressed later, if you wish.

^{2/} Article VIII, sec. 2:

General Authority. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

^{3/} Article VIII, sec. 3:

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

^{4/} Article VIII, sec. 15, in relevant part:

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

these provisions are varied, they share at least one meaning: exclusive or special privileges to take fish and game are prohibited. The no exclusive right of fishery clause states this explicitly with regard to fisheries. The proceedings of the Alaska Constitutional Convention show that this same meaning was intended with respect to fish and game under the common use section and the uniform application section. McDowell v. State, 785 P.2d 1 (Alaska 1989).

The bill avoids creating an obviously closed class of subsistence users like the rural resident preference that the Alaska Supreme Court struck down in McDowell. Instead, the bill establishes a system in which any person, ostensibly, may engage in subsistence use of fish and game provided that the person satisfies the prescribed eligibility criteria.

ELIGIBILITY CRITERIA FOR SUBSISTENCE

SB 443 proposes seven fundamental considerations for determining who is eligible to engage in subsistence hunting and fishing. SB 443, Sec. 2; Sec. 16.05.268(i); page 7, line 3 - page 8, line 1. The Board of Fisheries and the Board of Game are to jointly establish the actual criteria and a concomitant point system for determining eligibility based on the fundamental considerations. Though the boards jointly develop the actual eligibility criteria, four of the fundamental considerations in SB 443 are in fact specific mandatory minimum standards that a person must satisfy in order to qualify for subsistence hunting and fishing:

- (1) the quantity of fish and game consumed by the person in the preceding 12 months, with a mandatory minimum of 125 pounds consumed in that period;
- (2) the number of species and groups of species of fish and game from the subsistence [use] area consumed by the person in the preceding 12 months, with a mandatory minimum number of species, or groups of species, as determined jointly by the boards by regulation; the mandatory minimum number, and any grouping of species, may vary by geographical region of the state, based on the diversity of species in a region;
- (3) the number of days in the preceding 12 months that the person engaged in the taking of fish or game in the subsistence use

§ (...continued)

§ Article VIII, sec. 17:

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

area, or the processing of that fish or game, with a mandatory minimum of 30 days in that period;

(4) the number of months in the preceding 12 months in which the person engaged in the taking of fish or game in the subsistence use area, with a mandatory minimum of four months in that period;

SB 443, Sec. 2, Sec. 16.05.268(i)(1) - (4); page 7, lines 12 - 24.

Notably three of the four mandatory standards (Sec. 16.05.268(i)(2) - (4)) set specific minimum requirements on the number of species of fish and game consumed and the number of days and months engaged in hunting and fishing activities (at least a total of 30 days during any four months) and requires that each of the three standards be satisfied in a single subsistence use area during the preceding 12 months.^{6/} Once an applicant for subsistence privileges satisfies these mandatory minimum standards in a subsistence use area and the other criteria adopted by the boards, the applicant is then eligible to participate in subsistence hunting and fishing in that subsistence use area. If an applicant wants to engage in subsistence hunting and fishing in an additional subsistence use area or to move subsistence activities to a new subsistence use area, the applicant must then satisfy the three mandatory standards in the new area as well as the other criteria established by the boards. The applicant can satisfy the three mandatory standards in the new subsistence use area by engaging in sport or personal use fishing or sport hunting in the area, taking the prescribed number of species in the area, spending the required amount of time fishing and hunting in the area or processing fish and game taken in the area.

By combining standards for eligibility to engage in subsistence hunting and fishing with a requirement that the standards be satisfied in the subsistence use area in which the applicant wishes to use for subsistence hunting and fishing, the three mandatory standards establish each subsistence use area as a separate subsistence hunting and fishing area open only to certain persons and closed to all others. In fact the standards establish separate user groups for each subsistence use area and then limits admission to the user group to those persons who have a history of recent and extensive use in the area. An otherwise qualified subsistence user does not have the freedom to choose which subsistence use area the person will hunt or fish in. The

^{6/} A subsistence use area is the subunit of a game management unit together with the contiguous game management subunits, unless a board describes a different subsistence use area for a particular fish stock or game population. SB 443, Sec. 2, Sec. 16.05.268(d) and (e). There are currently 69 game management subunits in the state and thus a possible 69 different subsistence use areas. The actual number of subsistence use areas will probably be less because certain areas (urban areas) are closed to subsistence use of fish and game and subsistence use areas may not be established for those areas. See, SB 443, Sec. 2, Sec. 16.05.268(a).

person is confined to that subsistence use area in which he has established the requisite history of use.^{2/} All other persons are barred from using the area for subsistence hunting and fishing. Each subsistence use area becomes an exclusive use area open to use by only a few eligible persons and as such confers a "special privilege" to use the fish and game in the area on those persons.

A system for determining eligibility for engaging in subsistence hunting and fishing which opens participation for some and closes participation for others "will necessarily create tension with article VIII." McDowell, 785 P.2d at 9. Limits on admission to user groups are subject to scrutiny under the article VIII equal access provisions (State v. Ostrosky, 667 P.2d 1184, 1189 (Alaska 1983); Owsichuk v. State, 763 P.2d 488, 492 (Alaska 1988)), because the provisions of article VIII were intended to guarantee the broadest possible access to and use of fish and game (Owsichuk, 763 P.2d at 492 - 93) and to prohibit exclusive or special privileges to take fish and game (McDowell, 785 P.2d at 6). "The history of the common use clauses, . . . , reveals anti-monopoly intent to prevent 'exclusive grants' and 'special privilege[s],' wholly apart from the limits imposed by other constitutional provisions." Owsichuk, 763 P.2d at 496.

In Owsichuk, the Alaska Supreme Court struck down exclusive guide areas and joint use areas, because these areas were grants of monopolies or special privileges based on a guides previous use, occupancy, and investment in the area. "To grant such a special privilege based on seniority runs counter to the notion of 'common use'." Owsichuk, 763 P.2d at 496. In McDowell, the Alaska Supreme Court struck down the rural residency requirement for subsistence because it amounted to an exclusive or special privilege prohibited by the open access provisions of the Alaska Constitution. McDowell, 785 P.2d at 9. In lieu of the rural residency requirement for determining eligibility for subsistence use of fish and game, SB 443 uses the three mandatory minimum requirements to require recent and extensive use in the subsistence use area as a precondition for eligibility. Just as the rural residency requirement precluded nonrural residents from engaging in subsistence activities, the

^{2/} For example, a subsistence user in Kotzebue who moves to Tok must continue to return to Kotzebue to engage in subsistence hunting and fishing, until the user establishes the prerequisite history of use in the Tok area. (This assumes that the state does not deny the person's right to continue to engage in subsistence hunting and fishing in the Kotzebue area, because travelling from Tok to Kotzebue no longer satisfies the economical and efficient requirement for subsistence activities.)

For example, if a tier I subsistence user is closed out of his/her area because of a resource shortage that user may not move his/her subsistence activities to another subsistence use area, even though the person has a continuing need to engage in subsistence hunting and fishing.

recent and substantial use requirement of SB 443 precludes all other persons who are similarly situated but who do not have a recent and substantial history of use in the area from engaging in subsistence hunting and fishing in the subsistence use area. The fact that any nonrural resident could move to a rural area and thus qualify for subsistence was ineffective in saving the former rural residency requirement from invalidity. McDowell, 785 P.2d at 7. Likewise the ability of an otherwise qualified person to establish a recent and substantial history of use, of a new or an additional subsistence use area does not prevent the requirement for such a history of use as a condition precedent to use of the new area, from being an excessive infringement on open access provisions of the Alaska Constitution.

Review of the three mandatory standards according to equal protection analysis under the uniform application section requires the following procedure. First, the three mandatory standards must have a legitimate purpose. The purposes of SB 443 that seem relevant to the mandatory standards are protection of healthy fish stocks and game populations and allowing participation in the subsistence taking of fish and game by those who actually and substantially depend on subsistence use of fish and game. SB 443, Section 1(b). These purposes are legitimate purposes. Owsichuk, 763 P.2d at 496 - 97; McDowell, 785 P.2d at 13 (concurring opinion). Second, the importance of the individual interest involved must be determined. The individual interest in equal access to fish and game is a highly important interest running to each person within the state. McDowell, 785 P.2d at 10; Owsichuk, 763 P.2d at 492 n. 10. Third, the importance of the state's purpose must be balanced against the individual interest involved. McDowell, 785 P.2d at 10. The state's purpose must be at least important to overcome the highly important individual interest at stake. Fourth, the means to further the important state purpose must be carefully drawn and designed for the "least possible infringement on article VIII's open access values." McDowell, 785 P.2d at 10.

Assuming that the state's purpose underlying the three mandatory standards is sufficiently important to countervail the highly important individual interest at stake, it would appear that the means chosen to achieve the state's purpose is not the least possible infringement on open access to fish and game resources. The three mandatory standards allow otherwise qualified individuals to engage in subsistence hunting and fishing in only those subsistence use areas where the individual has a recent and extensive history of use. The remaining dozens of subsistence use areas are closed to this individual.^{8/}

^{8/} This result is intentional. The Section-By-Section Description of the Governor's Subsistence Bill, dated February 21, 1992, states at page 11:

(continued...)

In my opinion, there is a substantial and unnecessary risk that the three mandatory standards contained in SB 443 are an impermissible infringement on open access to fish and game resources and thus would violate the open access provisions of the Alaska Constitution.

It is the creation of dozens of separate, albeit slightly overlapping, subsistence use areas that are each subject to distinct area specific criteria for access that infringes upon the open access provisions of article VIII. Those persons who ultimately qualify for subsistence hunting and fishing privileges in a subsistence use area receive a "special privilege" that is denied to all other persons. Those persons who are not qualified for subsistence hunting and fishing in the area are denied access to the user group for that subsistence use area because they have not established the requisite history of use.

The utilization of past use or activities in an area, as criteria for granting or denying access to fish and game resources has been rejected by the Alaska courts in Owsicki (guide exclusive use and joint use areas) and in Bozanich v. Noerenberg, (Alaska Superior Court, First Judicial District, Juneau, Case No. 70-389, March 15, 1971; state may not bar entry into a salmon net fishery by requiring prior experience in that fishery).

The primary shortcoming of the three mandatory standards is that they combine determinations on access to a user group with determinations on allocation of the fish and game resource. The Alaska Supreme Court is supportive of the state's power to allocate fish and game resources under the sustained yield section of the Alaska Constitution^{9/} (Gilbert v. State Department of Fish and Game, 803 P.2d 391 (Alaska 1990); Meier v. State, Board of Fisheries, 739 P.2d 172 (Alaska 1987)), provided that the allocations are not arbitrary and unreasonable and are consistent with and reasonably necessary to the conservation and development of fish and game resources (Gilbert, 803 P.2d at 399; Kenai Peninsula Fisherman's Cooperative Association, Inc.

^{8/}(...continued)

The statute does not provide for qualification on a statewide basis; hunting and fishing in one subsistence area will not qualify the user to subsistence hunt and fish in another area. While it may be technically possible for a person to qualify in more than one subsistence use area under this subsection [SB 443, Sec. 2, Sec. 16.05.268(i)], it is generally contemplated that the vast majority of users will qualify for only one area.

^{9/} Article VIII, sec. 4:

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

v. State, 628 P.2d 897, 903 (Alaska 1981)). However, the authority to make allocation decisions does not imply a power to limit admission to a user group. State v. Hebert, 803 P.2d 863, 866; (Alaska 1990) McDowell, 785 P.2d at 7 - 8;^{10/}

The two determinations could be separated by eliminating the requirement that the three mandatory standards be satisfied in a single subsistence use area. If the two determinations were separated a fundamental weakness of SB 443 would be avoided and SB 443 would better withstand challenges under article VIII of the Alaska Constitution. SB 443 can be amended to include criteria for determining where qualified subsistence users may engage in subsistence hunting and fishing or for establishing procedures for allocating fish and game resources among subsistence users. Prior use of a subsistence use area for the taking of fish and wildlife could be among the factors used to determine where a person may engage in subsistence fishing and hunting.

PROOF OF ELIGIBILITY

Though the criteria for establishing eligibility to engage in subsistence activities are relatively uniform, SB 443 provides that the proof necessary satisfy the criteria varies significantly depending on where a person lives.

A person who lives in a category 1 area^{11/} is presumed to satisfy all eligibility criteria without having to establish more than the person's place of residence. The person may engage in subsistence activities until it is proven by clear and convincing evidence that the person is not qualified to engage in subsistence. SB 443, Sec. 2, Sec. 16.05.268(h)(1); page 6, lines 17 - 22.

^{10/} The requirement that a person must engage in subsistence activities in a specific subsistence use area is somewhat analogous to the superexclusive fishing districts established by the Board of Fisheries for the Bering Sea herring sac roe fisheries. The board established two superexclusive herring sac roe fishing districts. If a fisherman chose to fish in either of these fisheries, the fisherman could not fish in any other herring sac roe fishing districts. The Alaska Supreme Court upheld the use of the superexclusive use fisheries for the purpose of allocating the harvest of herring between competing groups of commercial fisherman. State v. Hebert, 803 P.2d 863 (Alaska 1990). The court found that superexclusive fishing districts were consistent with the Alaska Constitution because it did not limit admission to a user group, because the fisherman was free to choose which fishing district to fish in. Hebert, 803 P.2d at 866.

^{11/} A category 1 area is an area where the human population of each community in the area is less than 2,500, is not part of an urban area, and where dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of the area. SB 443, Sec. 2, Sec. 16.05.268(f)(1); page 5, lines 9 - 11.

A person who resides in a category 2 area^{12/} is presumed to satisfy all eligibility criteria and need only sign a document affirming that the person does indeed qualify. SB 443, Sec. 2, Sec. 16.05.268(h)(2); page 6, lines 23 - 29. The person may engage in subsistence activities until it is proven by a preponderance of the evidence that the person is not qualified to engage in subsistence.^{13/}

A person who resides in a category 3 area^{14/} may engage in subsistence activities only after the person has convinced the commissioner of fish and game that the person satisfies the eligibility criteria adopted by the joint boards. SB 443, Sec. 2, Sec. 16.05.268(h)(3), page 6, line 30 through page 7, line 2.

Under SB 443, a person's place of residence in the state determines the degree of the burden that the person must overcome to establish eligibility to participate in subsistence activities. Because these varying burdens relate to eligibility for entry into the class of subsistence users, they may inhibit equal and open access to subsistence resources and, thus, are at least constitutionally suspect under the open access provisions of the Alaska Constitution.

The rural preference of the former subsistence law was struck down in part because it was an "extremely crude" method to provide for the need to engage in subsistence activities. McDowell, 785 P.2d at 10. The classification scheme inherent in the category 1, 2, and 3 areas is subject to similar criticism. Residents in category 1 areas are presumed to qualify for subsistence activities regardless of their individual characteristics. Even those unqualified residents of a category 1 area who engage in subsistence are not penalized or sanctioned for their activities. An unqualified resident of a category 2 area is at least potentially subject to criminal prosecution for falsely alleging their qualifications. It is only the residents of a category 3 area that

^{12/} A category 2 area is an area that consists of a single community that has a human population of 2,500 to 6,999, is not part of an urban area, and where dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of the community. SB 443, Sec. 2, Sec. 16.05.268(f)(2); page 5, lines 12 - 15.

^{13/} If it is proven that the person is not qualified for subsistence and that the person was aware of the lack of qualifications, the person is potentially subject to criminal prosecution for unsworn falsification under AS 11.56.210.

^{14/} A category 3 area is an area that is
(A) an urban area or a single community where the human population is 7,000 or greater; or
(B) an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area or community. SB 443, Sec. 2, Sec. 16.05.268(f)(3); page 5, lines 16 - 21.

are evaluated on their individual qualifications. The category 1, 2, and 3 area concept is not the "classification scheme employing individual characteristics" which the McDowell court proposed as being "less invasive of Article VIII open access values." McDowell, 785 P.2d at 11. The category 1, 2, and 3 area concept classifies persons as a group based on where they live in the state.

The purpose for this burden on equal access to fish and game resources under article VIII must be, at the minimum, an important purpose. McDowell, 785 P.2d at 10.

According to the Section-By-Section Description of the Governor's Subsistence Bill,^{15/} the primary purpose of the category 1, 2, and 3 areas is to simplify the task of determining who is eligible to engage in subsistence activities. This purpose amounts to promoting administrative convenience. Administrative convenience is generally accepted as legitimate purpose for legislation and regulations but is not necessarily an important purpose. See, Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255 (Alaska 1980); Deubelbeiss v. Commercial Fisheries Entry Commission, 689 P.2d 487, 489 (Alaska 1984). Administrative convenience may not be sufficient to justify the burdens imposed by the category 1, 2, and 3 area classification system.

Assuming that the court does find administrative convenience or some other purpose behind the category 1, 2, and 3 area classification system to be important, it is then necessary to establish that the classification system is "designed for the least possible infringement on article VIII's open access values." McDowell 785 P.2d at 10. Though the classification system may better than the rural-urban distinction made by the former law, it is not the system based on individual characteristics that the Alaska Supreme Court was looking for. In light of the purpose of the uniform application clause "to exclude an especially privileged status for any person in the use of natural resources subject to disposition by the state"^{16/} it is possible that the courts will require less disparity among residents of the state based on their place of residence than provided in SB 443.

A challenge to the category 1, 2, and 3 areas classification system on equal protection grounds under the uniform application section may result in an adverse decision from the courts because the system places different burdens on residents of the state based on where they live and not on their individual qualifications to engage in subsistence

^{15/} Page 10 - 11.

^{16/} Owsichuk, 763 P.2d at 498 n. 17; quoting 6 Proceedings of the Alaska Constitutional Convention, app. V, at 99 (Commentary); emphasis added by court.

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hunting and fishing. A system that required all residents to establish their eligibility to engage in subsistence in the same manner or that gave all residents the benefit of the same presumptions would provide fewer grounds for judicial challenge and be less susceptible to unanticipated judicial constructions.

TITLE OF SB 443

According to the title of SB 443, the bill relates "to the taking of fish and game for subsistence." However two provisions of the bill define the terms "game management unit" and "sustained yield". SB 443, Sec. 6, Sec. 16.05.940(38) and (39), page 10, lines 17 - 23. These newly defined terms are intended to apply to sport hunting and to commercial, sport, and personal use fishing. To the extent that these newly defined terms apply to more than subsistence, the terms are outside of the title of the bill. Article II, section 13 of the Alaska Constitution requires that the subject of each bill be expressed in its title. The purpose of this provision is to give the legislature and the people fair notice as to the contents of the bill. Without mentioning in the bill title that the bill is defining "sustained yield" and "game management unit", the legislature and the people are not aware that those terms are being defined for purposes not related to subsistence. It is unlikely that a court would declare the entire bill unconstitutional for the failure to express the entire contents of the bill in the title. A court is more likely to find the bill constitutional, but to limit the application of the terms "game management unit" and "sustained yield" to the subsistence context.

The title problem is easily corrected by adding the phrase "defining 'sustained yield' and 'game management unit;'" to the title.

If I may be of further assistance, please advise.

GU:pl
92-176.plm

CONSTITUTIONAL AMENDMENTS

CONSTITUTIONAL AMENDMENTS

BILL #	DATE	SPONSOR
SJR 57	(INFORMATIONAL)	SENATE FINANCE
CSHJR 86	(INFORMATIONAL)	LINCOLN
SJR 56	(INFORMATIONAL)	HOFFMAN
CSSJR 86 (Res) AM	(INFORMATIONAL)	RESOURCES
SJR 50	2/18/92	ADAMS
SJR 49	2/18/92	HOFFMAN
HJR 86	6/15/92	LINCOLN
HJR 79	2/18/92	LINCOLN
HJR 78	2/18/92	IVAN
HJR 77	2/18/92	MACCLEAN

SENATE JOINT RESOLUTION NO. ~~56~~ 57

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE SENATE FINANCE COMMITTEE

Introduced:

Referred:

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to
2 subsistence uses of fish and wildlife by Alaska residents; and providing for an
3 effective date for the amendment.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. Article VIII, Constitution of the State of Alaska, is amended by adding a new
6 section to read:

7 SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE. The
8 legislature may grant a preference to and among Alaska residents in the taking of fish
9 and wildlife, consistent with the sustained yield principle, for subsistence uses on the
10 basis of one or more of the following: community or area characteristics, geography,
11 customary and traditional use, direct dependence, local residence, or the availability
12 of alternative resources.

13 * Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding a new
14 section to read:

15 SECTION 29. EFFECTIVE DATE OF SUBSISTENCE AMENDMENT.
16 Section 19 of Article VIII, regarding subsistence uses of fish and game, takes effect

1 immediately upon certification of the election returns by the lieutenant governor.

2 * Sec. 3. The amendment proposed by this resolution shall be placed before the voters of
3 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
4 State of Alaska, and the election laws of the state.

PROPOSED CONSTITUTIONAL AMENDMENT FOR
HOUSE RULES7-LS2405M ✓
Cook
6/18/92CS FOR HOUSE JOINT RESOLUTION NO. 86 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES LINCOLN, Mackie, MacLean, Jacko, Davidson, Ivan

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to
2 subsistence users of fish and wildlife by residents, and establishing an effective
3 date for the amendment.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. Article VIII, Constitution of the State of Alaska, is amended by adding a new
6 section to read:

7 SECTION 19. SUBSISTENCE USERS OF FISH AND WILDLIFE. The
8 legislature may by law grant a preference to and between residents in the taking of
9 fish and wildlife for subsistence uses based on criteria consistent with the equal
10 protection requirements of the Constitution of the United States and the sustained
11 yield principle.

12 * Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding a new
13 section to read:

14 SECTION 29. APPLICATION AND EFFECTIVE DATE OF SUBSISTENCE
15 AMENDMENT. (a) Section 19 of Article VIII, regarding subsistence users of fish
16 and wildlife, has precedence over any inconsistent provisions of Sections 3 (common

1 use), 15 (no exclusive right of fishery), and 17 (uniform application) of Article VIII
2 and Section 1 (equal protection) of Article I.

3 (b) Section 19 of Article VIII, regarding subsistence users of fish and wildlife,
4 takes effect immediately upon certification of the election returns by the lieutenant
5 governor.

6 * Sec. 3. The amendments proposed by this resolution shall be placed before the voters
7 of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of
8 the State of Alaska, and the election laws of the state.

SENATE JOINT RESOLUTION NO. 56

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY SENATORS HOFFMAN, Adams, Duncan, Zharoff

Introduced:

Referred:

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to
2 subsistence uses of fish and wildlife by residents, and establishing an effective
3 date for the amendment.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. Article VIII, Constitution of the State of Alaska, is amended by adding a new
6 section to read:

7 SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE. Consistent
8 with the sustained yield principle, the legislature shall grant a preference to and
9 among residents in the taking of fish and wildlife for subsistence uses on the basis of
10 one or more of the following: customary and traditional use, cultural tradition, direct
11 dependence, local residence, or the availability of alternative resources.

12 * Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding a new
13 section to read:

14 SECTION 29. EFFECTIVE DATE OF SUBSISTENCE AMENDMENT.
15 Section 19 of Article VIII, regarding subsistence uses of fish and wildlife, takes effect
16 immediately upon certification of the election returns by the lieutenant governor.

- 1 * Sec. 3. The amendments proposed by this resolution shall be placed before the voters
- 2 of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of
- 3 the State of Alaska, and the election laws of the state.

2nd Draft —

Proposed for House Rules

7-LS2405P

CS FOR HOUSE JOINT RESOLUTION NO. 86 (RULES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE HOUSE RULES COMMITTEE

Offered:

Referred:

Sponsor(s): **REPRESENTATIVES LINCOLN, Mackie, MacLean, Jacko, Davidson, Ivan, Foster**

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to
2 subsistence users of fish and wildlife by residents, and establishing an effective
3 date for the amendment.

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * Section 1. Article VIII, Constitution of the State of Alaska, is amended by adding a new
6 section to read:

7 **SECTION 19. SUBSISTENCE USERS OF FISH AND WILDLIFE.** The
8 legislature may by law grant a preference to and between residents in the taking of
9 fish and wildlife for subsistence uses based on criteria consistent with the equal
10 protection requirements of the Constitution of the United States and the sustained
11 yield principle.

12 * Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding a new
13 section to read:

14 **SECTION 29. APPLICATION AND EFFECTIVE DATE OF SUBSISTENCE**
15 **AMENDMENT.** (a) Section 19 of Article VIII, regarding subsistence users of fish
16 and wildlife, has precedence over any inconsistent provisions of Sections 3 (common

1 use), 15 (no exclusive right of fishery), and 17 (uniform application) of Article VIII
2 and Section 1 (equal protection) of Article I.

3 (b) Section 19 of Article VIII, regarding subsistence users of fish and wildlife,
4 takes effect immediately upon certification of the election returns by the lieutenant
5 governor.

6 * Sec. 3. The amendments proposed by this resolution shall be placed before the voters
7 of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of
8 the State of Alaska, and the election laws of the state.

Amended: 6/28/90
Offered: 6/26/90
Referred: Rules

go065srD

Passed Senate

Original sponsor(s): Rules/Governor

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 CS FOR SENATE JOINT RESOLUTION NO. 86 (Resources) am
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SPECIAL SESSION

5 Proposing amendments to the Constitution
6 of the State of Alaska relating to
7 subsistence uses of fish and wildlife by
8 Alaska residents in order to retain
9 management of those resources by the
10 State of Alaska; and providing for an
11 effective date.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

13 * Section 1. Article VIII, Constitution of the State of Alaska, is
14 amended by adding a new section to read:

15 SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE. Consistent
16 with the sustained yield principle, the legislature may grant a pref-
17 erence to and among Alaska residents in the taking of fish and game
18 for subsistence uses on the basis of community or area characteris-
19 tics, geography, customary and traditional use, direct dependence,
20 local residence, or the availability of alternative resources.

21 * Sec. 2. In addition to authorizing the legislature to enact laws
22 granting a preference for subsistence uses, the amendment proposed in
23 sec. 1 of this resolution (1) validates, ratifies, and reinstates state
24 subsistence laws, including the definitions and subsistence preference for
25 rural residents in ch. 52, SLA 1986, that are consistent with federal laws
26 relating to subsistence uses, and (2) enables the state to retain manage-
27 ment of fish and wildlife on federal land.

28 * Sec. 3. Article XV, Constitution of the State of Alaska, is amended
29 by adding a new section to read:

1 SECTION 29. EFFECTIVE DATE AND RECONSIDERATION OF SUBSISTENCE
2 AMENDMENT. (a) Section 19 of Article VIII, regarding subsistence
3 uses of fish and game, takes effect: immediately upon certification of
4 the election returns by the lieutenant governor.

5 (b) The lieutenant governor shall place the following propo-
6 sition on the ballot at the general election in 1992: "Shall Section
7 19 of Article VIII of the Alaska Constitution, regarding subsistence,
8 be retained?" If a majority of the votes is in the negative, that
9 section is repealed.

10 * Sec. 4. The amendments proposed in secs. 1 and 3 of this resolution,
11 and the effect of the amendment proposed in sec. 1 of this resolution, as
12 set out in sec. 2 of this resolution, shall be placed before the voters of
13 the state as one ballot proposition at the next general election in con-
14 formity with art. XIII, sec. 1, Constitution of the State of Alaska, and
15 the election laws of the state.

SENATE JOINT RESOLUTION NO. 50
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY SENATOR ADAMS

Introduced: 2/18/92
Referred: Resources, Judiciary, Finance

A RESOLUTION

1 **Proposing amendments to the Constitution of the State of Alaska relating to subsistence**
2 **use of fish and wildlife by residents and establishing an effective date for the amendment."**

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** Article VIII, Constitution of the State of Alaska, is amended by adding a new section
5 to read:

6 **SECTION 19. SUBSISTENCE USE OF FISH AND WILDLIFE.** Subsistence use shall
7 be the priority beneficial use of fish and wildlife resources belonging to the State. Consistent
8 with the sustained yield principle, the legislature may grant a preference to and among residents
9 in the taking of fish and wildlife for subsistence uses on the basis of rural residency, community
10 or area characteristics, geography, customary and traditional use, direct dependence, local
11 residence, or the availability of alternative resources.

12 *** Sec. 2.** Article XV, Constitution of the State of Alaska, is amended by adding a new section to
13 read:

14 **SECTION 29. EFFECTIVE DATE OF SUBSISTENCE AMENDMENT.** Section 19 of
15 Article VIII, regarding subsistence use of fish and wildlife, takes effect immediately upon
16 certification of the election returns by the lieutenant governor.

1 * Sec. 3. In addition to authorizing the legislature to enact laws granting a preference for subsistence
2 uses, the amendment proposed in sec. 1 of this resolution enables the state to regain management of fish
3 and wildlife on federal land and validates, ratifies, and reinstates state subsistence laws, including the
4 provisions of ch. 52, SLA 1986, that are consistent with federal laws relating to subsistence uses.

5 * Sec. 4. The amendments proposed in secs. 1 and 2 of this resolution, and the effect of the
6 amendment proposed in sec. 1 of this resolution, as set out in sec. 3 of this resolution, shall be placed
7 before the voters of the state as one ballot proposition at the next general election in conformity with
8 art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

SENATE JOINT RESOLUTION NO. 49
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY SENATOR HOFFMAN

Introduced: 2/18/92
Referred: Resources, Judiciary, Finance

A RESOLUTION

1 **Proposing amendments to the Constitution of the State of Alaska relating to subsistence**
2 **uses of fish and wildlife by residents, and establishing an effective date for the**
3 **amendment."**

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1.** Article VIII, Constitution of the State of Alaska, is amended by adding a new section
6 to read:

7 **SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE.** Consistent with the
8 sustained yield principle, the legislature shall grant a preference to and among residents in the
9 taking of fish and wildlife for subsistence uses on the basis of customary and traditional use,
10 cultural tradition, direct dependence, local residence, or the availability of alternative resources.

11 *** Sec. 2.** Article XV, Constitution of the State of Alaska, is amended by adding a new section to
12 read:

13 **SECTION 29. EFFECTIVE DATE OF SUBSISTENCE AMENDMENT.** Section 19 of
14 Article VIII, regarding subsistence uses of fish and wildlife, takes effect immediately upon
15 certification of the election returns by the lieutenant governor.

16 *** Sec. 3.** The amendments proposed by this resolution shall be placed before the voters of the state

- 1 at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and
- 2 the election laws of the state.

HOUSE JOINT RESOLUTION NO. 86**IN THE LEGISLATURE OF THE STATE OF ALASKA****SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION****BY REPRESENTATIVES LINCOLN, Mackie, MacLean, Jacko, Davidson**

Introduced: 6/15/92

Referred: State Affairs, Judiciary

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to
2 subsistence uses of fish and wildlife by residents, and establishing an effective
3 date for the amendment.

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * Section 1. Article VIII, Constitution of the State of Alaska, is amended by adding a new
6 section to read:

7 SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE. Consistent
8 with the sustained yield principle, the legislature shall grant a preference to and
9 among residents in the taking of fish and wildlife for subsistence uses on the basis of
10 one or more of the following: customary and traditional use, cultural tradition, direct
11 dependence, local residence, or the availability of alternative resources.

12 * Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding a new
13 section to read:

14 SECTION 29. EFFECTIVE DATE OF SUBSISTENCE AMENDMENT.
15 Section 19 of Article VIII, regarding subsistence uses of fish and wildlife, takes effect
16 immediately upon certification of the election returns by the lieutenant governor.

1 * Sec. 3. The amendments proposed by this resolution shall be placed before the voters
2 of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of
3 the State of Alaska, and the election laws of the state.

HOUSE JOINT RESOLUTION NO. 79
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE LINCOLN

Introduced: 2/18/92

Referred: Resources, Judiciary, Finance

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to subsistence
2 uses of fish and wildlife by residents, and establishing an effective date for the
3 amendment.

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** Article VIII, Constitution of the State of Alaska, is amended by adding a new section
6 to read:

7 **SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE.** Consistent with the
8 sustained yield principle, the legislature shall grant a preference to and among residents in the
9 taking of fish and wildlife for subsistence uses on the basis of customary and traditional use,
10 cultural tradition, direct dependence, local residence, or the availability of alternative resources.

11 * **Sec. 2.** Article XV, Constitution of the State of Alaska, is amended by adding a new section to
12 read:

13 **SECTION 29. EFFECTIVE DATE OF SUBSISTENCE AMENDMENT.** Section 19 of
14 Article VIII, regarding subsistence uses of fish and wildlife, takes effect immediately upon
15 certification of the election returns by the lieutenant governor.

16 * **Sec. 3.** The amendments proposed by this resolution shall be placed before the voters of the state

- 1 at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and
- 2 the election laws of the state.

HOUSE JOINT RESOLUTION NO. 78
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE IVAN

Introduced: 2/18/92

Referred: Resources, Judiciary, Finance

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to subsistence
2 uses of fish and wildlife by Alaska residents; and providing for an effective date."

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** Article VIII, Constitution of the State of Alaska, is amended by adding a new section
5 to read:

6 **SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE.** Consistent with the
7 sustained yield principle, the legislature may grant a preference to and among Alaska residents
8 in the taking of fish and wildlife for subsistence uses on the basis of community or area
9 characteristics, geography, customary and traditional use, direct dependence, local residence, or
10 the availability of alternative resources.

11 * **Sec. 2.** In addition to authorizing the legislature to enact laws granting a preference for subsistence
12 uses, the amendment proposed in sec. 1 of this resolution validates, ratifies, and reinstates state
13 subsistence laws, including the definitions and subsistence preference for rural residents in ch. 52, SLA
14 1986, that were struck down by or as the result of the decision of the Alaska Supreme Court in
15 McDowell v. State, 785 P.2d 1 (Alaska 1989), and that are consistent with federal laws relating to
16 subsistence uses.

1 * Sec. 3. Article XV, Constitution of the State of Alaska, is amended by adding a new section to
2 read:

3 SECTION 29. EFFECTIVE DATE OF SUBSISTENCE AMENDMENT. Section 19 of
4 Article VIII, regarding subsistence uses of fish and game, takes effect immediately upon
5 certification of the election returns by the lieutenant governor.

6 * Sec. 4. The amendments proposed in secs. 1 and 3 of this resolution, and the effect of the
7 amendment proposed in sec. 1 of this resolution, as set out in sec. 2 of this resolution, shall be placed
8 before the voters of the state as one ballot proposition at the next general election in conformity with
9 art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

HOUSE JOINT RESOLUTION NO. 77**IN THE LEGISLATURE OF THE STATE OF ALASKA****SEVENTEENTH LEGISLATURE - SECOND SESSION****BY REPRESENTATIVE MACLEAN**

Introduced: 2/18/92

Referred: Resources, Judiciary, Finance

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to subsistence
2 use of fish and wildlife by residents and establishing an effective date for the amendment."

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. Article VIII, Constitution of the State of Alaska, is amended by adding a new section
5 to read:

6 SECTION 19. SUBSISTENCE USE OF FISH AND WILDLIFE. Subsistence use shall
7 be the priority beneficial use of fish and wildlife resources belonging to the State. Consistent
8 with the sustained yield principle, the legislature may grant a preference to and among residents
9 in the taking of fish and wildlife for subsistence uses on the basis of rural residency, community
10 or area characteristics, geography, customary and traditional use, direct dependence, local
11 residence, or the availability of alternative resources.

12 * Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding a new section to
13 read:

14 SECTION 29. EFFECTIVE DATE OF SUBSISTENCE AMENDMENT. Section 19 of
15 Article VIII, regarding subsistence use of fish and wildlife, takes effect immediately upon
16 certification of the election returns by the lieutenant governor.

17 * Sec. 3. In addition to authorizing the legislature to enact laws granting a preference for subsistence

1 uses, the amendment proposed in sec. 1 of this resolution enables the state to regain management of fish
2 and wildlife on federal land and validates, ratifies, and reinstates state subsistence laws, including the
3 provisions of ch. 52, SLA 1986, that are consistent with federal laws relating to subsistence uses.

4 * Sec. 4. The amendments proposed in secs. 1 and 2 of this resolution, and the effect of the
5 amendment proposed in sec. 1 of this resolution, as set out in sec. 3 of this resolution, shall be placed
6 before the voters of the state as one ballot proposition at the next general election in conformity with
7 art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

(FROM
BLUE FOLDER)

TESTIMONY /

POSITION

PAPERS

*Authorized for distribution
by Senator Kesttala*

"The Indians, with their Aboriginal Rights, are a Federal Problem.

We have no control over it and we cannot dispose of it and we have nothing to say about it. Whatever happens to Alaska it will still be a Federal Problem."

HEARINGS ON ALASKA STATEHOOD, Committee on Interior and Insular Affairs,
U.S. Senate, 81st Congress, Second Session, April 24-29, 1950, p. 293."



"Subsistence fishing is about living and sharing of food with family and friends in rural Alaska. It is a lifestyle that has been with us for many untold centuries.

Please do not cut the lifeline of our people by not passing a constitutional ballot measure for compliance to ANILCA! We need your help!"

John Alexie of Kwethluk, Alaska

PAID FOR BY FISH & GAME FUND : Kwethluk Inc., Iqfijouaq Inc. of Eek, Emmonak Corp., Kokarmuit Corp. of Akiak, Nunapitchuk Limited, Qemirtalek Coast Corp. of Kongiganak, Azachorok Corp. of Mt. Village, Pilot Station Inc., Napaskiak Corporation, Qanirtuuq Inc. of Quinhagak, and Calista Corporation of Bethel., P.O. Box 100099, Anchorage, Alaska 99510-0099



"MY NAME IS JOHNNY GUY OF KWETHLUK, A VILLAGE IN WESTERN ALASKA. I AM A SIXTY SEVEN YEAR OLD WORLD WAR II VETERAN. I HAVE NO RUNNING WATER, OR SEWAGE SYSTEM AND NO INCOME TO SUPPORT ME. THE PICTURE YOU SEE IS INSIDE MY HOME TAKEN BY BURT NEIMEYER OF ANCHORAGE.

LIKE MANY FAMILIES IN RURAL ALASKA, MY RELATIVES GATHER FOOD FROM THE WATERS AND LAND FOR SURVIVAL. SUBSISTENCE IS ABOUT SURVIVAL OF OUR YUPIK PEOPLE.

I NEED YOUR HELP SO OUR PEOPLE WILL SURVIVE IN RURAL ALASKA! PLEASE PASS A SUBSISTENCE BILL THAT INCLUDES A CONSTITUTIONAL BALLOT MEASURE FOR COMPLIANCE TO ANILCA FOR ALL ALASKANS TO VOTE THIS FALL."

PAID FOR BY FISH & GAME FUND : Kwethluk Inc., Iqfijouaq Inc. of Eek, Emmonak Corp., Kokarmuit Corp. of Akiak, Nunapitchuk Limited, Qemirtalek Coast Corp. of Kongiganak, Azachorok Corp. of Mt. Village, Pilot Station Inc., Napaskiak Corporation, Qanirtuuq Inc. of Quinhagak, and Calista Corporation of Bethel., P.O. Box 100099, Anchorage, Alaska 99510-0099



"Subsistence is important to the future of my great-grandchildren I am holding in this picture by Burt Neimeyer. I am now living away from my relatives at Our Lady Of Compassion Care Center in Anchorage in a different world. Please do not take away subsistence away from us.

Please help the future generation of my people be self sufficient. Please support a subsistence bill which requires a constitutional amendment for all Alaskans to vote by ballot."

Elvira Cowack of Kwethluk, Alaska.

PAID FOR BY FISH & GAME FUND : Kwethluk Inc., Iqfijouaq Inc. of Eek, Emmonak Corp., Kokarmuit Corp. of Akiak, Nunapitchuk Limited, Qemirtalek Coast Corp. of Kongiganak, Azachorok Corp. of Mt. Village, Pilot Station Inc., Napaskiak Corporation, Qanirtuuq Inc. of Quinhagak, and Calista Corporation of Bethel., P.O. Box 100099, Anchorage, Alaska 99510-0099



"My Name is Evan Kopuk of Kwethluk, Alaska. I am 91 years old. I am cutting wood to heat my house. I have worked hard all my life to feed my family and relatives in my village. Subsistence is the only way of life that supported my family for many years.

Please do not cut the way of life, as I am cutting this log, on subsistence. Please support a subsistence bill to comply to Title VIII of ANILCA for all Alaskans to vote."

Evan Kopuk of Kwethluk, Alaska.

Photo by Burt Neimeyer

PAID FOR BY FISH & GAME FUND : Kwethluk Inc., Iqfijouaq Inc. of Eek, Emmonak Corp., Kokarmuit Corp. of Akiak, Nunapitchuk Limited, Qemirtalek Coast Corp. of Kongiganak, Azachorok Corp. of Mt. Village, Pilot Station Inc., Napaskiak Corporation, Qanirtuuq Inc. of Quinhagak, and Calista Corporation of Bethel., P.O. Box 100099, Anchorage, Alaska 99510-0099

My name is Rachel Legg, I am 9
years old. I think that the
Tlingits should be able
to hunt their food.

Because we are all different
and we have our ways, the
Tlingits and all other
Native people have special
ways, everybody has
different ways, we do to
its like we have a rule
between all of our people
that we have to find our
own food, in the wild
and there was a rule
that we can only ~~hunt~~ ^{hunt}
meat. They made a promise
to all these people

that they would hunt ~~the~~ ^{most}
of their food. Then we go
and make a rule that
we have to be a ~~special~~
special person - that is
commercial or something.
like that. That hurts
people makes them die.
I might be wrong about
some things in this but
this is what ~~we~~ ^{say} think, ~~that~~
this because we are all
people who are different
and God made it that
way. ~~Thank you~~ Thank you

Testimony provided by Rachel Legg of Juvenile
Substance, 9189 James Blvd, Juvenile, AL 36801

JUNE 17, 1992

MARIE NEAKOK
P. O. BOX 195
BARROW, ALASKA 99723

MY NAME IS MARIE NEAKOK AND I WAS RAISED IN BARROW AND WAS BORN ALONG THE COLVILLE RIVER. MY HUSBAND IS A SUBSISTENCE HUNTER, SO I PREPARE ALL THE FOOD HE CATCHES.

I JUST WANTED TO TELL YOU ABOUT THE PROBLEMS WE'VE HAD THAT HAS TO DO WITH OUR SUBSISTENCE WAY OF LIFE. ONE EXAMPLE IS THAT ONE TIME THEY GAVE US A SEASON TO HUNT DUCKS AND THAT WAS NOT EVEN THE SEASON THAT THE DUCKS CAME TO OUR VILLAGE. THAT SHOWS HOW IGNORANT THE OUTSIDERS ARE OF OUR LIFESTYLE.

ANOTHER EXAMPLE IS THAT WE HAVE TO ABIDE BY THE QUOTA ON THE WHALES. WE HAVE ABIDE BY IT EVEN THOUGH IT HURT OUR LIFESTYLE. WE HAVE TO DEPEND ON THE ICE CONDITIONS WHICH WAS NOT VERY GOOD THIS YEAR. ONE OF THE VILLAGE HAS NOT EVEN CATCH A WHALE THIS YEAR.

THESE ARE THE KINDS OF THINGS THAT HURT OUR LIFESTYLE. SUBSISTENCE WAY OF LIFE IS OUR LIFESTYLE. OUR SEA IS OUR GARDEN LIKE A FARM IS YOUR GARDEN.

OUR ANCESTERS HAVE TAUGHT US TO SHARE OUR HARVEST, NOT ONLY WITHIN OUR VILLAGE BUT WITH OTHER VILLAGES ALSO. WE INUPIAT PEOPLE ARE PEOPLE WHO SHARE, SHARE, SHARE. LIKE ANOTHER EXAMPLE, DURING THANKSGIVING, CHRISTMAS, AND BLANKET TOSS, ALL THE FOOD THAT IS CAUGHT DURING THE YEAR, ALONG WITH THE WHALE, IS

SHARED AMONG ALL THE PEOPLE, NATIVE AND NON-NATIVE
ALIKE. THAT IS OUR LIFESTYLE.

I APPRECIATE THE TIME TO TESTIFY. I SUPPORT THE BUSH
CAUCUS BILL UNANIMOUSLY AND OPPOSE THE GOVERNOR'S
BILL.

MOLLY PEDERSON
P.O. BOX 184
BARROW, ALASKA 99723

JUNE 17, 1992

MY NAME IS MOLLY PEDERSON. I WAS BORN AND RAISED IN BARROW, ALASKA AND MAKE MY LIVING THERE. I APPRECIATE THE OPPORTUNITY TO SPEAK ON THE SUBSISTANCE ISSUE. PLEASE UNDERSTAND THAT THIS ISSUE IS THE VERY LIVELIHOOD OF THE FIRST PEOPLES OF ALASKA. WE HAVE ALWAYS ACCOMMODATED THE VISITORS TO ALASKA AND IN SOME AREAS WE HAVE BEEN HURT.BECAUSE OF IT. FOR INSTANCE THE NATIVE LANGUAGES OF ALASKA WERE PUT ASIDE TO ACCOMMODATE THE ENGLISH LANGUAGE. IF THIS SUBSISTANCE ISSUE IS NOT PUT RIGHT OUR VERY LIVES AND THE WAY OF LIFE OF OUR CHILDREN AND GRANDCHILDREN WILL NOT EVEN BE DISTINGUISHABLE AS NATIVES OF OUR BEAUTIFUL LAND. IN CLOSING I WOULD LIKE TO STRESS HOW IMPORTANT IT IS FOR US, THE FIRST PEOPLES OF ALASKA, TO BE GIVEN THE CHANCE TO DECIDE OUR FATE BY VOTING ON THE CONSTITUTIONAL AMENDMENT. I SUPPORT THE BUSH CAUCUS VERSION OF THE SUBSISTANCE BILL WHICH HAS SUPPORT FROM ALL PARTS OF THE STATE. QUYANAQPAK.

SUBSISTENCE

My name is Albert Kookesh, Grand President of Alaska Native Brotherhood. I am also a commercial fisherman. The ANB speaks for 16,000 Nativtses that live in Southeast Alaska and also members in Anchorage. We appreciate this opportunity to speak on an issue that could mean the end of a way of life for the Alaska Native, if not handled properly.

The Department of Fish and Game provided us with the following figures. We asked for information on the total number of salmon caught in Southeast Alaska last summer, which is 1991. They indicated that their records show the following by user groups: **44,355 by subsistence users; 257,595 by Sports Fishermen; and 68,986,295 by Commercial Fisherman.**

Compared to the Commercial Fishing numbers, 44,355 seems hardly anything to worry about. It amazes us that the State of Alaska and the Federal Government would spent so much time and money to satisfy a few people who say that subsistence users depletes the salmon stock and that it is only for Native People. It also amazes us that some of the Commercial Fisherman organizations are opposing Subsistence.

In order for the State of Alaska to regain the Subsistence management, we feel that the State Legislature should do two things while they are in this special session. They are:

- (1) Adopt a resolution that would request the Secretary of Interior to hold off assuming the management of subsistence on a permanent basis.
- (2) Start the process for a Subsistence constitutional amendment vote in November, using the wording that is already being proposed to you.

Article VIII, Section 15, entitled, **No Exclusive Right of Fishery**, states "No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State."

As you can see precedence has already been set in this article. In the early 1970s, a proposal was advanced to limit the number of fishermen that could participate in a fishery, primarily as a way of increasing fishermen's incomes. This is the system of limited entry we have today, and because it creates a special "privilege of fishery," a constitutional amendment was necessary to allow its adoption. Our

guess at this time that more than half of these permits now belong to people who do not reside in Alaska. In addition, aquaculture is also mentioned in the amendment so private associations may possess the right to harvest the fish they produce.

[illegible]

SUBSISTENCE TESTIMONY

Mr. Chairman and Committee members, my name is Ron Williams, Executive Committee member for the Grand Camp of the Alaska Native Brotherhood. I appreciate the opportunity to say a few words on the subsistence issue.

During the territorial days of Alaska the salmon industry was very powerful in Washington, D.C. They had fish traps that fished 24 hours a day for seven days a week. In Icy Straits alone, there were 23 of these fish traps.

In 1921, the Alaska Native Brotherhood decided that these fish traps were damaging the salmon stock in Southeast Alaska, so they went to Washington, D.C. to see what can be done about eliminating these traps. They ran into a stone wall. Every after that until Statehood the ANB did everything possible to eliminate these traps. The only concession they got was to move the traps that were closest to the Salmon streams further away.

When the cry came to make Alaska a State, along came the word that we could eliminate those fish traps, so the Alaska Native Brotherhood supported that effort. We felt that it was in the best interest of the Citizens of Alaska to manage their own resources. Of course we know that the fish traps were finally eliminated, but not before the salmon stocks became very depressed.

Also, during the same period, the Federal Government offered a bounty on harbor seals. These seals are a main source of food for our people. Literally thousands of these seals were slaughtered.

To top everything off, the Federal Government put bounty on the Bald Eagle for \$2.00 a pair of claws. Also thousands of these birds were killed. The Bald Eagle as you are aware is our National Bird and appears on our national emblems.

The Alaska Native Brotherhood favors State Management. We do not want to go through another period like I just described. We urge you to start the process of the Constitutional amendment for subsistence.

Fish & Game Fund

P.O. Box 100099 * Anchorage, Alaska 99510-0099 * (907) 279-5516

Juneau Delegation

June 1992

Members

Azachorok, Inc.
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The Political Arm of the village corporations of western Alaska

Paid for by Fish & Game Fund, P.O. Box 100099, Anchorage, Alaska 99510-0099

Trustees: Moses Strauss, Chairman; Alexie Lewis, Vice Chairman; Felix Hess, Secretary; Matthew Nicolai, Treasurer; Johnny T. Hawk; George Gardner

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The Fish & Game Fund was established August, 1990 as a political action committee for southwest Alaska that encompasses 56 villages in the Calista/AVCP region.

Tribal and Traditional Governments within the Calista/AVCP region are restricted from campaign contributions and other political actions either because of their non-profit or tribal status. The private village corporations have thus had to pick up this responsibility.

There are five goals and objectives for which the Fish & Game Fund was organized:

1. **Protect subsistence rights of Natives.**
2. **Protect surface lands owned by the village corporations.**
3. **Aid membership with political lobbying.**
4. **Educate the general public of village lifestyles.**
5. **Encourage and sponsor new ideas that benefit Natives.**

Village corporations in the Calista/AVCP region represent a landmass larger than the states of Massachusetts and Delaware combined.

THE POLITICAL ARM OF THE VILLAGE CORPORATIONS OF WESTERN ALASKA

Paid for by Fish and Game Fund, P. O. Box 100099, Anchorage, Alaska 99510-0099
Trustees: Moses Strauss, Chairman; Alexie Lewis, Vice Chairman; Felix Hess, Secretary
Matthew Nicolai, Treasurer; Johnny T. Hawk; George B. Gardner

Fish & Game Fund on Subsistence

June 1992

The U.S. Congress understood during the write up of ANILCA it " expects both the Secretary of Interior and the State of Alaska to take any action necessary to protect the subsistence needs of the Natives."

Alaska National Interests Land Conservation Act (ANILCA) has been termed as "Indian Law" under federal courts. In the consideration of this issue, the federal government has a trust responsibility toward Alaska Natives.

The legal bases are clearly set out in section 801(4) of ANILCA as the basis of its authority to enact sections dealing with the Alaska Native subsistence uses:

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

The federal government is fulfilling its obligation to protect subsistence on behalf of Alaska Natives by developing a criteria to takeover management of federal lands on July 1, 1992.

Subsistence issue is not a republican or democratic issue. It is an Alaskan issue. Alaskans have been told by Congress ANILCA will not be amended without Alaska Natives involvement. Alaska Natives do not want to see ANILCA amended!

The Alaska Legislature has the power to re-write or amend language of Governor Hickel's Subsistence Bill for compliance to Title VIII of ANILCA for Alaskans to vote this fall. This will stop the federal governments process of takeover of management of public lands.

Please take the necessary step and pass a subsistence bill for compliance to Title VIII of ANILCA for ALL ALASKANS to vote this fall.

AFN TESTIMONY (JULIE KITKA): SENATE COMMITTEE OF THE WHOLE
(JUNE 15, 1992)

MISTER CHAIRMAN, MEMBERS OF THE ALASKA STATE SENATE, LADIES
AND GENTLEMEN:

FOR THE RECORD, MY NAME IS JULIE KITKA, AND I AM HONORED TO
TESTIFY HERE TODAY IN MY CAPACITY AS PRESIDENT OF THE ALASKA
FEDERATION OF NATIVES.

IN ORDER TO PUT THIS SPECIAL SESSION OF THE ALASKA
LEGISLATURE INTO PERSPECTIVE, PLEASE CONSIDER AN INTERESTING
EVENT WHICH OCCURRED LAST WEEK. DESPITE 18 MONTHS OF EFFORT
BY THE GOVERNOR'S OFFICE TO MOLD PUBLIC OPINION ON THE
SUBSISTENCE ISSUE, AND IN DIRECT RESPONSE TO GOVERNOR
HICKEL'S CALL FOR THIS SPECIAL SESSION THREE WEEKS AGO,
74.3% OF ALASKANS SAMPLED IN A STATEWIDE PUBLIC OPINION POLL
STATED THAT SUBSISTENCE SHOULD BE SOLVED BY A VOTE OF THE
PEOPLE, NOT BY LEGISLATIVE ACTION IN JUNEAU AND WASHINGTON,
D.C. THREE-QUARTERS OF THIS STATE'S ELECTORATE FEEL THAT
NONE OF US SHOULD HAVE BEEN REQUIRED TO BE HERE TODAY -- AND
THAT THEY OUGHT TO BE ALLOWED INTO THE PROCESS.
NONETHELESS, HERE WE ARE -- BECAUSE GOVERNOR HICKEL IS
DETERMINED NOT TO LISTEN TO THE PEOPLE.

AND THAT FACT, MR. CHAIRMAN, IS THE REAL REASON WHY
THOUSANDS OF ALASKA NATIVES HAVE RECENTLY BECOME SO
CONCERNED, AND SO PERSONALLY INVOLVED, IN THE QUESTION NOW
PENDING BEFORE THE LEGISLATURE. WE ARE CONVINCED THAT OUR
STATE, UNDER THE CURRENT ADMINISTRATION, IS ON THE WRONG
TRACK REGARDING SUBSISTENCE -- AND THAT THE GOVERNOR'S
PROPOSED "SOLUTION", IF ENACTED, WILL BE A TRAGIC ERROR.

WHY? BECAUSE OF THE PERVASIVE "REACH" OF THE ISSUE ITSELF -
- ITS FUNDAMENTAL EFFECT ON HUMAN ECONOMIES AND CULTURES
THROUGHOUT THE STATE. SUBSISTENCE IS NOT JUST A SUB-
CATEGORY OF "FISH AND GAME MANAGEMENT." IT IS NOT PRIMARILY

ABOUT ANIMALS, ABOUT THEIR HABITATS, OR ABOUT THE EFFICIENCY OF GOVERNMENTAL ACTIONS AFFECTING THEM. WHAT THE -- SUBSISTENCE ISSUE IS REALLY ABOUT IS PEOPLE -- THE POLITICAL ALLOCATION OF LIMITED RESOURCES AMONG COMPETING HUMAN USER GROUPS. SUBSISTENCE IS SOCIAL AND ECONOMIC POLICY ON A GRAND SCALE, AND IT TOUCHES EVERY PERSON, EVERY FAMILY. THUS, WE HAVE COME TO A WATERSHED IN THE HISTORY OF THIS STATE. HOW WE NOW DEAL WITH SUBSISTENCE WILL DETERMINE -- MORE POWERFULLY THAN ANY OTHER ISSUE OF PUBLIC POLICY -- THE HUMAN CHARACTER OF THE ALASKA WE BEQUEATH TO OUR CHILDREN AND GRANDCHILDREN.

MORE SPECIFICALLY, THE SURVIVAL OF VILLAGE ALASKA TURNS ON THE QUESTION OF SUBSISTENCE. DESPITE LARGE INFUSIONS OF PUBLIC CAPITAL DURING THE PAST TWO DECADES, THE ECONOMIES OF MOST RURAL VILLAGES REMAIN UNDERDEVELOPED, ARTIFICIAL DEPENDENCIES OF GOVERNMENT. THEY OFFER FEW INCOME-PRODUCING JOBS, PARTICULARLY FOR ALASKA NATIVES. MOST OF THE ESTIMATED 110,000 RESIDENTS OF THE BUSH SIMPLY CANNOT MAKE IT THROUGH EACH YEAR WITHOUT THE SUBSISTENCE PROTEIN BASE. IF IT IS TAKEN AWAY FROM THEM -- WHETHER BY NATURAL OR POLITICAL CATASTROPHE -- THEN MOST OF THE NATIVE VILLAGES OF THIS STATE ARE DOOMED; AND THE SOCIO-ECONOMIC COST OF THAT TO ALL ALASKANS WILL BE OVERWHELMING.

IF THAT IS THE HISTORICAL CONTEXT IN WHICH THE CURRENT SUBSISTENCE ISSUE ARISES, THEN WHAT IS THE REAL PROBLEM THAT HAS BROUGHT THE LEGISLATURE BACK TO JUNEAU IN THE MIDDLE OF THE SUMMER? IT IS THE CONFLICT BETWEEN THE ALASKA CONSTITUTION AND THE FEDERAL LAW THAT PROTECTS SUBSISTENCE. WHILE TITLE VIII OF THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT REQUIRES THAT A SUBSISTENCE PREFERENCE BE GRANTED TO RURAL RESIDENTS ON FEDERAL PUBLIC LANDS, A MAJORITY OF THE STATE SUPREME COURT HAS RULED THAT OUR STATUTE -- ADOPTED BY THE LEGISLATURE TO COMPLY WITH ANILCA

AND TO ENSURE UNITARY MANAGEMENT OF FISH AND GAME BY THE STATE -- WAS UNCONSTITUTIONAL. --

IT IS NOW ABSOLUTELY CLEAR, AFTER MORE THAN A YEAR OF DENIAL BY THE HICKEL ADMINISTRATION, THAT ANILCA AND THE STATE CONSTITUTION ARE IRRECONCILABLE. NOTHING WILL BE SOLVED SIMPLY BY THE PASSAGE OF A NEW STATE LAW. REPEATED FAILURE TO FACE THE REAL ISSUE -- THIS LEGAL IMPASSE -- HAS NOW PRODUCED A SITUATION IN WHICH OUR FISH AND GAME RESOURCES ARE UNDER DUAL MANAGEMENT BY THE FEDERAL AND STATE GOVERNMENTS. NOT ONLY IS THIS IRRATIONAL FROM THE POINT OF VIEW OF FISH AND GAME MANAGEMENT. IT IS ALSO ONE OF THE BASIC ISSUES WHICH LED TO ALASKA'S STATEHOOD: WE DO NOT WANT FEDERAL CONTROL OF OUR RESOURCES.

THE ONLY WAY TO RESOLVE THE IMPASSE AND TO GET BACK FISH AND GAME MANAGEMENT, WITHOUT DESTROYING THE VILLAGES, IS TO AMEND THE CONSTITUTION AND TO ADOPT A STATUTE WHICH COMPLIES WITH THE CRITICAL PROTECTIONS OF THE FEDERAL LAW. THE PEOPLE OF ALASKA, IF PRESENTED WITH A CONSTITUTIONAL AMENDMENT THAT PROTECTS VILLAGE SUBSISTENCE, WILL PASS IT. THE HICKEL ADMINISTRATION KNOWS THAT. BUT IT HAS DECIDED TO RESOLVE THE FEDERAL-STATE IMPASSE ONLY THROUGH A CONGRESSIONAL AMENDMENT TO ANILCA. THE ALASKA CONGRESSIONAL DELEGATION, AS WELL AS OTHER COMMITTEE LEADERS IN WASHINGTON, HAVE REPEATEDLY TOLD US THAT ANILCA CANNOT BE AMENDED BECAUSE THERE IS NO CONSENSUS ON IT IN ALASKA OR IN CONGRESS -- AND THAT OPENING UP ANY PART OF IT WOULD GIVE EXTREME INTEREST GROUPS THEIR LONG-AWAITED OPPORTUNITY TO LOCK UP EVEN MORE OF OUR LANDS AND RESOURCES. THE GOVERNOR'S STRATEGY WILL NOT SUCCEED. BUT IT WILL TAKE YEARS, DURING WHICH DUAL MANAGEMENT WILL CONTINUE. IT WILL COST MONEY. IT WILL FURTHER POISON OUR STATE'S POLITICS AND GROUP RELATIONS. AND, IN THE END, IT WILL FAIL -- LEAVING THE PEOPLE OF ALASKA RIGHT WHERE THEY ARE TODAY.

THEREFORE, AS YOU EXAMINE THE EFFECTIVENESS AND PROJECT THE CONSEQUENCES OF THE GOVERNOR'S BILL, PLEASE HOLD TO THE CORE ISSUE: IT DOES NOT COMPLY WITH THE FEDERAL LAW AND WILL NOT GET BACK FISH AND GAME MANAGEMENT. EVEN THOUGH INDIVIDUAL LEGISLATORS MIGHT INTEND OTHERWISE, A VOTE FOR THE GOVERNOR'S BILL WILL BE A VOTE FOR CONTINUED FEDERAL INTERVENTION IN ALASKA'S BUSINESS. THE PEOPLE DESERVE BETTER THAN THAT.

THE SECOND MAJOR CONCERN WITH THE GOVERNOR'S BILL IS ITS CONSTITUTIONALITY. IF ENACTED, IT WILL ALMOST CERTAINLY BE STRUCK DOWN BY THE COURTS -- FOR MANY OF THE SAME REASONS THAT UNDERLAY THE MCDOWELL CASE. THEN, WE WILL BE RIGHT BACK WHERE WE ARE NOW -- OPERATING IN A POLICY VACUUM WITH NO SUBSISTENCE STATUTE ON THE BOOKS. THE GOVERNOR AND HIS DEPARTMENT OF LAW WILL NOT ADMIT THIS PROBLEM. BUT ON MARCH 16 THE LEGISLATURE'S OWN COUNSEL, IN A LETTER TO SENATOR HOFFMAN, WARNED ABOUT THE HICKEL BILL'S CHANCES OF SURVIVING JUDICIAL REVIEW. GIVEN THIS, IT IS CRITICAL THAT THE LEGISLATURE DELVE INTO THE CONSTITUTIONALITY ISSUE WITH ALL AVAILABLE PROFESSIONAL RESOURCES. BECAUSE OF ITS COMPLEXITY, IT DESERVES ANALYSIS AND DETAILED TESTIMONY FROM LEGAL EXPERTS. TO DO OTHERWISE RISKS SUBJECTING THE STATE TO AN EXERCISE IN FUTILITY.

BEYOND THE ISSUES OF ANILCA COMPLIANCE, RETRIEVAL OF OUR MANAGEMENT AUTHORITY, AND CONSTITUTIONALITY, THERE IS THE SIMPLE QUESTION OF WHETHER THE GOVERNOR'S BILL CONSTITUTES GOOD PUBLIC POLICY FOR ALASKA. I SUBMIT TO YOU THAT IT DOES NOT. IT WILL NOT PROTECT THOSE ALASKANS -- NATIVE AND NON-NATIVE, URBAN AND RURAL -- WHO REALLY DEPEND ON FISH AND GAME TO FEED THEIR FAMILIES. IT WILL THREATEN THE ECONOMIC AND CULTURAL SURVIVAL OF OUR MOST TRADITIONAL VILLAGES. IT WILL UNFAIRLY DISCRIMINATE AGAINST LEGITIMATE URBAN SUBSISTENCE USERS. AND IT WILL BASE THE SUBSISTENCE ELIGIBILITY OF INDIVIDUAL ALASKANS ON BEHAVIORAL CRITERIA

WHICH CAN BE NEITHER MEASURED NOR PROVED -- THEREBY OPENING THE SYSTEM TO WHOLESALE ABUSE.

LET US LOOK CLOSELY AT FOUR BASIC WEAKNESSES OF THE GOVERNOR'S BILL:

FIRST, IT FAILS TO PROVIDE AN ADEQUATE GUARANTEE OF SUBSISTENCE ELIGIBILITY FOR PEOPLE WHO LIVE IN ALASKA'S SMALL VILLAGES. AS ORIGINALLY CONSIDERED BY THE GOVERNOR'S SUBSISTENCE ADVISORY COUNCIL, THE BILL WOULD HAVE AFFORDED SUCH INDIVIDUALS AN IRREBUTTABLE PRESUMPTION OF ELIGIBILITY FOR THE PREFERENCE. BUT LATE IN THE PROCESS, THE ATTORNEY GENERAL URGED THAT "IRREBUTTABLE" BE REMOVED, ON THE THEORY THAT THIS WOULD SOMEHOW STRENGTHEN THE BILL'S SHAKY CONSTITUTIONALITY. THE ONLY CERTAIN RESULT, HOWEVER, IS THE WEAKENING OF STATUTORY PROTECTIONS FOR PRECISELY THOSE COMMUNITIES MOST DEPENDENT ON FISH AND GAME.

SECOND, THE GOVERNOR'S BILL IS NOT CONTENT TO DEAL WITH THE REAL POST-MCDOWELL PROBLEM OF THE FEDERAL-STATE IMPASSE. IT GOES FAR BEYOND THAT, IN ITS EFFORT TO CURTAIL SUBSISTENCE PRACTISES, BY EXCLUDING WHOLE FISH STOCKS AND GAME POPULATIONS - HUGE AREAS OF THE STATE - FROM SUBSISTENCE USES, REGARDLESS OF THE INDIVIDUAL SUBSISTENCE ELIGIBILITIES OF THE PEOPLE WHO LIVE THERE. IT IS NOW CLEAR THAT POLICY DECISIONS WERE MADE BY THE GOVERNOR'S OFFICE TO EXCLUDE SUBSISTENCE FROM CERTAIN AREAS BECAUSE OF INTENSE USER-GROUP COMPETITION. BUT, IF WE ARE GOING TO DEFINE SUBSISTENCE ELIGIBILITY BY LIFESTYLE, THEN ALL ALASKANS WHO LIVE THAT WAY MUST BE TREATED EQUALLY, NO MATTER HOW DIFFICULT THAT MAKES IT FOR THE FISH AND GAME BOARDS. TO DO OTHERWISE IS NOT ONLY UNFAIR, BUT UNCONSTITUTIONAL. MOREOVER, IT IS NOT NECESSARY.

THIRD, IF STATE LAW IS GOING TO DEFINE SUBSISTENCE BY LIFESTYLE, RATHER THAN BY RESIDENCY, IT MUST SET WORKABLE STANDARDS OF INDIVIDUAL ELIGIBILITY. PEOPLE MUST BE ABLE TO

USE, AND TO BELIEVE IN, THE CRITERIA BY WHICH WE DECIDE WHO IS A SUBSISTENCE USER AND WHO IS NOT. UNDER THE GOVERNOR'S BILL, IF ANY ALASKAN IS REQUIRED TO PROVE HIS OR HER ELIGIBILITY, SEVEN BEHAVIORAL STANDARDS ARE RATED ON A POINT SYSTEM. THE LEGISLATURE SHOULD EXAMINE THESE CRITERIA AND ASK WHETHER THEY ARE MEASURABLE AND ENFORCEABLE. WE CANNOT MANAGE AN EMOTIONALLY CHARGED ISSUE ON THE "HONOR SYSTEM." FROM PAST EXPERIENCE, WE KNOW THAT SELF-ENFORCEMENT WILL PRODUCE A TANGLE OF BUREAUCRACY, INVESTIGATION, COST AND LITIGATION.

FINALLY, THE GOVERNOR'S BILL ACCORDS TOO MUCH REGULATORY DISCRETION TO THE BOARDS OF FISH AND GAME. HISTORY SHOWS THAT CLEAR POLICY DIRECTION MUST BE GIVEN BY THE LEGISLATURE IN ORDER TO PREVENT EVEN THE BEST STATUTE FROM BEING EFFECTIVELY REPEALED IN THE REGULATORY PROCESS BY POWERFUL FORCES DETERMINED TO REDUCE OR ELIMINATE SUBSISTENCE PROTECTIONS.

I SUBMIT TO YOU, MR. CHAIRMAN, THAT EVEN IF THE GOVERNOR'S BILL WERE CONSTITUTIONAL, AND EVEN IF THERE WERE NOT AN ISSUE OF COMPLYING WITH FEDERAL LAW, THE POLICIES THEMSELVES WOULD BE WRONG FOR THE FUTURE OF THIS STATE. AMONG ALL THE OTHER CONSEQUENCES, THEY WOULD OPEN A WHOLE NEW ERA OF LAWSUITS AND JUDICIAL INTERVENTION, AS THE BOARDS OF FISHERIES AND GAME TRY TO IMPLEMENT THIS CONFUSING AND ILL-CONSIDERED SYSTEM. IF WE THINK THE PRESENT SYSTEM HAS PROBLEMS, WE HAVE SEEN NOTHING YET.

IF THE HICKEL ADMINISTRATION'S BILL IS FATALLY FLAWED, IS THERE AN ANSWER TO OUR PREDICAMENT, OR ARE WE DESTINED TO CONTINUE UNDER THIS RIDICULOUS SYSTEM OF DUAL MANAGEMENT? THE ONLY FAIR AND EFFECTIVE WAY TO RESOLVE THE SUBSISTENCE PROBLEM HAS THREE COMPONENTS:

- o ALASKA MUST HAVE A SUBSISTENCE STATUTE WHICH COMPLIES WITH THE FEDERAL LAW AND RETURNS

MANAGEMENT OF FISH AND GAME TO THE STATE
GOVERNMENT.

- o THAT STATUTE MUST PROTECT LEGITIMATE SUBSISTENCE
USERS, WHILE TREATING ALASKANS FAIRLY IN THE
DISTRIBUTION OF HUNTING AND FISHING OPPORTUNITIES.
- o IN ORDER TO HAVE SUCH A BALANCED STATUTE, THE
LEGISLATURE MUST ALLOW THE PEOPLE OF ALASKA TO
AMEND THE CONSTITUTION.

TODAY, YOU ARE CONSIDERING S.B. 485, A BUSH CAUCUS
ALTERNATIVE TO THE GOVERNOR'S BILL.

HERE IS WHAT IT DOES:

- o IT COMPLIES WITH THE FEDERAL LAW, BY RETAINING THE
ANILCA SUBSISTENCE PREFERENCE FOR RESIDENTS OF
RURAL COMMUNITIES.
- o IT THEN ADDS A SECOND-TIER SUBSISTENCE PREFERENCE
FOR ELIGIBLE URBAN SUBSISTENCE USERS.
- o IT TREATS ELIGIBLE URBAN SUBSISTENCE USERS FAIRLY.
- o IT CREATES A NEW SUBSISTENCE BOARD, TO WORK IN
COOPERATION WITH THE BOARDS OF FISH AND GAME, IN
ORDER TO INSURE MORE ATTENTION TO SUBSISTENCE
SPECIES AND PRACTICES.
- o IT GIVES CLEAR STATUTORY DIRECTION TO THE BOARDS
OF FISH AND GAME REGARDING MANAGEMENT STANDARDS
AND THE PROTECTION OF ELIGIBLE SUBSISTENCE USERS
IN BOTH URBAN AND RURAL AREAS.
- o IT PROVIDES ORDINARY CITIZENS WITH A GREATER
DEGREE OF PARTICIPATION IN THE REGULAR PROCESS
THROUGH AN IMPROVED SYSTEM OF ADVISORY COMMITTEES
AND REGIONAL COUNCILS.

THE BUSH CAUCUS ALTERNATIVE IS BALANCED AND WORKABLE. IT SOLVES THE LEGAL CONFLICT. IT GETS BACK FISH AND GAME MANAGEMENT. AND IT DOES SO BY BEING FAIR TO PEOPLE.

THE BUSH CAUCUS BILL, LIKE ANY STATUTE THAT WILL REALLY SOLVE THE SUBSISTENCE PROBLEM, WILL REQUIRE A CONSTITUTIONAL AMENDMENT. WHY? BECAUSE THE LEGISLATURE DOES NOT NOW HAVE THE AUTHORITY TO DEFINE SUBSISTENCE USERS IN CONFORMITY WITH THE FEDERAL LAW, AND ONLY THE PEOPLE, SPEAKING THROUGH THEIR CONSTITUTION, CAN BESTOW THAT POWER. NONE OF US -- INCLUDING THE GOVERNOR -- WILL HELP OUR STATE ONE BIT BY CONTINUING TO DENY THIS REALITY.

IN CLOSING, MR. CHAIRMAN, LET ME RETURN TO THE WAY THE PEOPLE OF ALASKA BELIEVE THAT THE SUBSISTENCE ISSUE SHOULD BE RESOLVED. FULLY THREE QUARTERS OF OUR FELLOW CITIZENS WOULD PREFER TO VOTE ON IT IN THE FORM OF A CONSTITUTIONAL AMENDMENT. THEY DO NOT THINK IT SHOULD BE DEALT WITH ONLY AS LEGISLATION IN JUNEAU AND WASHINGTON, D.C. THE AVERAGE CITIZEN KNOWS THAT SUBSISTENCE IS ONE OF THOSE FUNDAMENTAL QUESTIONS OF HISTORY THAT REQUIRE, ABOVE ALL ELSE, LEGITIMACY -- THE KIND OF AUTHENTICITY WHICH, IN DEMOCRATIC SYSTEMS, COMES ONLY FROM THE VOTING BOOTH. IF THEY ARE ASKED, THE PEOPLE WILL KNOW WHAT TO DO. THEY WILL CUT THROUGH THIS LONG, WEARISOME DEADLOCK IN A SINGLE DAY, AND THEY WILL TAKE HEALTHY VILLAGE ECONOMIES AND CULTURES WITH THEM INTO THE 21ST CENTURY.

Southeast Alaska Tribal Council
313 Carlanna
Ketchikan, Alaska 99901

Governor Walter J. Hickel
P.O. Box A
Juneau, Alaska 99811-0101

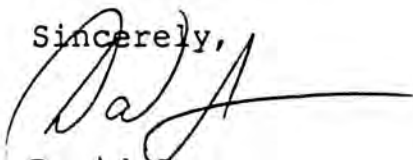
Honorable Governor Walter J. Hickel:

If laws and regulations don't provide for traditional and customary uses of our resources, the native people of southeast Alaska will not be able to comply.

Our heritage, customs, and traditions are tied to our land, foods and other resources.

If subsistence regulations are written that respect the inherent rights of Alaska's indigenous people, we are bound by our own traditional law to comply and protect those resources.

Sincerely,



David Jensen
President, Southeast Alaska Tribal Council

cc: Alaska State Senate
Alaska House of Representatives
Southeast Alaska Tribal Councils
U.S. Secretary of Interior-Manual Lujan
Federal Subsistence Commission
Regional Subsistence Council
Alaska Fish & Game
Alaska Intertribal Council
Southeast Native Subsistence Commission
Niles Ceasar Area Director, BIA
Ketchikan Daily News
Anchorage Daily News
Juneau Empire
ANB Grand Camp

Teller Traditional Council
P.O. Box 590
Teller, Alaska 99778
Phone (907) 642-3381

June 11, 1992

Members of the Alaska Legislature
State Capitol
P.O. Box V
Juneau, AK 99801

The Teller Traditional Council wishes to inform you that we strongly oppose the governor's subsistence bill. Our council represents subsistence users in the Native village of Teller. The council feels that the governor's bill does nothing to solve the problem of returning the management control to the State of Alaska and does not adequately protect subsistence uses which are the backbone of our way of life. The governor's bill will also give too much discretion to the Board of Fisheries in setting policies and regulation for subsistence users in the State of Alaska. The governor's administration is telling everyone to support his bill. The governor contends that unless his bill passes, the commercial industry will be ruined. We disagree with that. The State of Alaska had a subsistence priority for years and the commercial industry thrived. Our area has been hurt drastically the last several years enabling the closure of some of the salmon streams and rivers early as a result of over fishing in areas down south like the False Pass fisheries area. We urge every legislative member to reject the governor's bill. The governor's bill does not comply with the Federal law, is unconstitutional, does not resolve the fish and game management problem and will do damage to economies and cultures in the villages. Instead, we strongly urge the legislature to support and adopt HB592, the Bush caucus alternative legislation to the governor's bill.

Sincerely,

Dale H. Okpealuk

Dale H. Okpealuk
President

CITY OF KOYUK.

June 15, 1992

Members of the Alaska Legislature
State Capitol
P.O. Box V
Juneau, Ak 99801

The CITY OF KOYUK wishes to inform you that it is strongly opposed to the Governor's subsistence bill. Our village represents both subsistence and commerical fishermen.

The Governor's bill does nothing to solve the problem of returning management control to the State of Alaska and does not adequately protect subsistence uses which are the backbone of our way of life. The bill would also give too much discretion to the Board of Fisheries in setting policy and regulations.

The Governor's staff and the Commissioner of ADF&G are telling you that most commerical fishermen support the Governor's bill. They are also spreading rumors that unless the Governor's bill passes, the commerical industry will be ruined. That is not true. We had a subsistence priority for years in the State and the commerical industry thrived.

We urge you to reject the Governor's bill.

Sincerely,

M. Charles

Maryann Charles
City clerk

cc. Alaska Federation of Natives
Senator Lyman Hoffman
Senator Al Adams



City of Golovin
P.O. Box 62059
Golovin, Alaska
99762
Ph: (907) 779-3211
or 779-3681

June 11, 1992

To: Governor Hickel
Senator Al Adams
Representative Richard Foster
ADF&G Commissioner Carl Rosier
AFN President
Kawerak Inc President Loretta Bullard

Reference: Subsistence Lifestyle

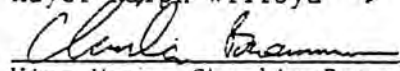
Our subsistence use is being threatened. They are trying to dictate our use and take our fish at False Pass. This will restrict our dependence of fresh foods that have no freight cost. To live off the land and water is part of our culture ever since time began.

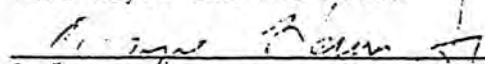
Wildlife protection is needed at False Pass to enforce a limit of their catch, so that fishing can continue in the Northern Region. They are cutting off the Norton Sound salmon catch in False Pass. It is not fair to us economically, because our commercial catch limit is already low, and many of the areas are closed for subsistence due to escapement requirements.

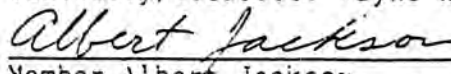
Our cultural lifestyle of hunting and fishing is the traditional way we feed our families to subsidize the high cost of store bought food. There is no need to make us innocent rural community residents into lawbreakers. If they say that we can't live off the land, then they will have to feed us in jail or other government institutions, or provide more public financial assistance.

Signed by the Golovin City Council.

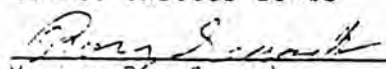

Mayor Ralph Willoya

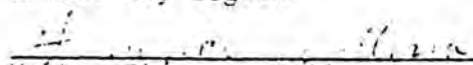

Vice Mayor Charlie Brown


Secretary/Treasurer Wayne Henry Sr


Member Albert Jackson


Member Charles Lewis


Member R6y Segock


Member Florence Willoya



ALASKA CHRISTIAN CONFERENCE

3031 La Touche St. Anchorage, AK 99508

(907) 272-0615

To: Governor Walter J. Hickel
Members of the Senate and the House of Representatives

From: The Executive Board of the Alaska Christian Conference in session June 9, 1992

As you meet to attempt to resolve the subsistence issue, we urge careful consideration of the emotional and spiritual dimensions of subsistence in the lives of Alaska Natives.

Their pain was expressed when the Native Concerns Task Force met at the Alaska Christian Conference Biennial Assembly, February 22, 1991 in Fairbanks. They asked the Executive Board to speak in their support.

From the Native perspective, subsistence is:

- * "Who we are and what we do as Native Alaskans."
- * "Our connection to the land, its resources and its seasons."
- * "Essential for our physical, emotional and spiritual well-being."

As early as 1899, Chief Johnson, a Tlingit of Taku lineage, appeared in Washington D. C. before the Senate Committee on Indian Affairs and expressed that his people were not asking anything unreasonable of the U. S. government, but rather that they desired help in the following manner:

"That the fishing and hunting grounds of their fathers be reserved for them and their children. (They have been) crowded or driven from (these grounds as well as from) the places where their fathers and grandfathers have lived and been buried.

(To have the committee understand that their) chief method of support is by fishing and hunting and that is the only way that most of them can live, as only a small number are educated sufficiently to go out in the towns of the land and compete with the whites."

Almost one hundred years later, we can look back and see that the Native people of Alaska have been trying for a long time to be heard and understood. The struggle is still present. We are called to justice, co-creation and equality in treating our fellow human beings with dignity as we look to the future. We must acknowledge that this is a matter not only of the head and the heart, but that there is a spiritual dimension that takes it to the very depths of the soul of the Native People.

We are asking the Governor, the Senate and the House of Representatives of Alaska to seek a fresh, creative approach to the whole subsistence puzzle, and most of all to be open to really listening to the Native peoples and their needs. We pray for you as you proceed.

David K. Fison

Rev. David K. Fison, Secretary

Mary E. Kron

Mary E. Kron, Treasurer

Robert J. Palmer

Rev. Robert J. Palmer

E Wesley Veatch

Rev. Wesley Veatch, President

James N. Hunter, II

Rev. James N. Hunter, II

Jeanine R. Masciola

Jeanine R. Masciola

Betty J. Taylor

Betty J. Taylor, Vice President

Kokechik Fishermen's Association, Inc.

P.O. Box 180
Chevak, Alaska 99563
(907) 858-7828

June 15, 1992

Members of the Alaska Legislature
State Capitol
P.O. Box V
Juneau, Alaska 99801

The Kokechik Fishermen's Association from the villages of Chevak, Hooper Bay, and Scammon Bay are adamantly opposed to Governor Hickel's proposed subsistence bill. Our Association represents both the subsistence and commercial fishermen from the aforementioned villages.

The Association believes that the governor's proposed bill does not in any way solve the problem of returning the management control to the State of Alaska and it does not adequately protect the subsistence uses; which are our way of traditional lifestyle. We also believe that the bill would give too much discretion(s) to the Board of Fisheries in setting their policies and regulations.

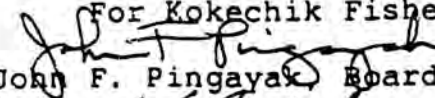
The governor's staff and the commissioner of the Alaska Department of Fish and Game may be telling your office that most commercial fishermen support this proposed bill, which is highly unlikely. They are also saying that unless this bill passes the commercial fishing industry will be ruined; and this is also highly unlikely and untrue.

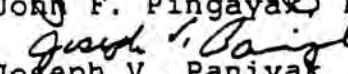
We have had a subsistence priority in previous years in this state and the commercial fishing industry was not detrimentally affected. Instead the industry was thriving.

The governor's proposed bill was drafted by a few policy makers, which we believe would benefit only the few and not for the whole State of Alaska. The type of letters that you will and have received and who have expressed this kind of concern are fighting for their lifestyle and for their children and their children's children for years to come.

We strongly urge you and your fellow legislators to vote and reject the Governor's proposed bill.

For Kokechik Fishermen's,


John F. Pingayak, Board Chairman


Joseph V. Paniyak, Vice-Chairman

cc: Kokechik Files, Alaska Federation of Natives, Senator Lyman Hoffman, Senator Al Adams, Bethel Legislative Information Office, Nome Legislative Information Office

cpc/JFP

Eric Forreth

In the beginning was the land. Then came the fish, the game, and the intricate biosphere. Then came the aboriginal inhabitants, who have been in Alaska so long that their tribal memories do not record their arrival. Then from the West came Russians, from the East, Europeans. Then came technologies which broke the age old relationship between human population and locally available energy and prey species and then, with rising population, came the social pressures with which we are wrestling today. There are steps on this path that stand out in recent history:

One of these steps was the Alaska Native Claims Settlement Act of 1971. The act contains a statement of one of the tradeoffs which was made by native peoples in structuring this Settlement: "All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, . . . and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished."

Another step was the Alaska National Interest Lands Conservation Act of 1980. In Title VIII the act dealt with the Federal Government's 'special relationship' with aboriginal peoples. It fell short of a native preference for subsistence rights, but came as close as possible by using the code word 'rural'. Section 804 states: ". . . the taking on public lands of fish and wildlife for non-wasteful subsistence uses shall be accorded priority over . . . other uses." In the Act subsistence uses are defined as uses by rural residents. One of three criteria for establishing who may qualify for the subsistence harvest is local residency, and the term 'local rural residents' is used in title IX.

Alaska's Fish and Game department structured its regulations using the word rural in order to respond to the federal legislation and comply with it. Sam McDowell, an urban resident of the state, filed a suit which was taken to the State Supreme Court. In what has become widely known as the McDowell Decision, the Alaska Supreme court said that it was unconstitutional to use rural residence as a criteria for awarding individuals the right to harvest under subsistence rules, while denying urban residents that right. The court felt that the term rural was too arbitrary and not sufficiently or fairly focused for granting or denying a government benefit.

The term rural was stricken from Fish and Game regulation, and the Federal Government declared the state to be out of compliance with the terms of ANILCA. Native leadership clung fiercely to ANILCA as their only line of defense against the erosion of an historic native activity. Among their proposed solutions was an amendment to enshrine the term rural in the state constitution.

Without the limiting term rural, all citizens of the state became eligible for a use category that has priority over all other uses. Commercial fishermen saw their livelihoods threatened by the vision of a mass of urban residents, all wielding subsistence permits, descending on fish stocks that could not stand the strain.

Sports users, already at odds with commercial users, saw a threat to their seasons and bag limits, and they made arguments based on equal access.

This thumb nail sketch sets the stage for the Alaska subsistence controversy. Many of you have played a part in this over the

years, and I ask you to bear with me as I cover ~~what may be~~

~~for the first time~~ a few of the aspects of this issue.

One of the reasons that subsistence is so controversial is that federal law, and proposed state constitutional amendments governing eligibility for subsistence rights, depend upon definitions and criteria that divide the people of the state by raising the specter of special rights. Lurking beneath the surface of the phrase 'special rights' are contentious issues including race and money. The fiduciary interest is the interest of many, as considerable sums motivate the sports service industries, the guiding business, and the commercial fisheries.

^{CNE}
A second reason for controversy is the practical problem of allocation. Who gets to harvest and who doesn't is the business of regulation, and this must be worked out because the state constitution requires management of renewable resources for sustained yield. The available harvest levels of fish and game in the state are not close to the quantities that would be necessary to feed the population in the pre-contact sense of one hundred percent dependency upon the land. Available harvest levels cannot support even the native population alone. It is a squeeze between the available harvest of wild stocks and an increasing human population that heats up the controversy. Attempts to structure the regulation of fish and game lead directly to the thorny tangle of defining groups who might be awarded or denied special rights. One is then lead further to the definition of the beneficial uses themselves, to definitions for many terms used in the history of subsistence management, and to a definition for subsistence. There are few clear, uncontested definitions in this entire enterprise, although some are less troubled than others.

In order to understand the subsistence issue it is helpful to take a look at the uses of fish and game, as the arguments made by competitors for the resources tend to be classified along the lines of the type of use in which they participate. Individuals of course most often participate in more than one type of use, and not infrequently in all types.

There are four generally recognized camps, or groups in contention over the human use of other species. Three of these are known by the names by which they are regulated and they are commercial, sport, and subsistence. These three are called 'beneficial uses,' from a term that occurs in the Alaska State Constitution. The fourth group is the general public, or national interest.

The national interest is a surreal conglomerate which includes all three beneficial uses as well as preservationists, conservationists, developers, and others. Consequently in terms of a definition it is a shifting target, as different and even contradictory values are proposed to be in the national interest.

The inability to know or predict what sensibilities will be in the ascendancy of this camp called national interest makes spokesmen for the three beneficial uses in Alaska uneasy about federal regulation. Different arms of the federal government show no tendency toward mutually consistent policy. For instance, Alaska is faced with Federal take-over of fish and game management on nearly half the state in order to protect the subsistence rights of rural residents. However federal law also prevents the taking of fish or game in the national parks. Thus one of the first consequences of federal protection of subsistence rights is the prevention of subsistence and commercial harvest in Glacier Bay.

Because of the growing strength of preservationist philosophy, I am among those who fear that the parks prohibition may eventually be expanded to include all federal land. Thus what starts as a protection for subsistence may become a blanket prohibition.

The federal government is understood to have a special relationship with indigenous peoples. Time and again native peoples have gone to the federal level for protection on issues of land, water, and game rights. Federal forces were in the field for decades in order to control and suppress those same peoples, and it is with bitterness and shame that any American must look back on the history of race relations in North America. Actually I look with horror at the history of race relations world wide, for extermination, slavery and conflict have everywhere occurred along tribal and racial lines. We struggle with this background legacy of universal human conflict, and in contrast Article I, Section I of the Alaska State Constitution marks a high note of achievement of the human spirit. McDowell vs. the State was argued on the basis of equal rights and equal access to public resources, and I agree that we should not be dragged back from this constitutional position, for only this position will enable us to make progress toward equality.

~~However this~~
This argument does not imply that there is currently a level playing field. A source of frustration for native subsistence users and others is that arguments for the equality of all are used without regard to the current state of spiritual annihilation and deep inequality that presently exists between the dominant culture of European origin, and American aboriginal inhabitants. One culture's defining activities, in effect a religious structure, are another culture's avocation and the gulf between these two meanings for the same term is at the core of the difficulty. If those who make the most shrill arguments for equality in the subsistence debate were ever heard to make the same arguments when it was not directly in their interest to do so, a considerable distance between the protagonists might be closed.

On the other hand, I believe that it does native leaders no honor to argue for special rights based on racial groupings, and that it does the native population no favor to grant such rights in law. Special rights are inconsistent with the ideal of equality and they are a source of trouble because they set the enabled group aside and encourage harassment, noncooperation, and alienation between peoples who must ultimately go down the same road. I do believe that it is possible to establish regulation within which native cultures can practice those cyclic rituals of harvest that defined their lives in the past and which we know as subsistence use. This must be regulation under which all users can operate, without resorting to overt and clumsy reliance on racial or residence criteria, and I believe that the governor's proposed legislation satisfies these conditions.

Although it was quite unpopular and has resulted in turmoil for fish and game management for the interim, I think that the McDowell decision making rural residence criteria unconstitutional was a correct decision. The term rural is and will remain beyond the reach of a usable definition. That stage of development to which it refers in the contiguous 48 states is nearly nonexistent in Alaska. Urban and rural are not the only two possible alternatives on the path of development. In Alaska there is also wilderness. Villages set in the middle of wilderness are not rural. This is made clear when it turns out that those communities known as the regional hubs, many of whose inhabitants are people with deep ties to the bush and to subsistence, do not fall within the federal definition of rural. Residents of Bethel, for instance, would probably be denied subsistence rights under the language and definitions of ANILCA. Conversely, a resident of a smaller town who could be anybody from a highline fisherman to a bank president would be eligible for subsistence rights. Native citizens of the largest native community in the state, namely Anchorage, would not be eligible; school superintendents and air taxi operators based in villages would be. Reliance on the concept of rural vs. urban is hopelessly flawed and this understanding helps clarify the problem the state faces in any attempt to comply with the letter of the law of ANILCA and simultaneously provide a regulatory scheme that is a fair one.

Despite this difficulty, native practitioners of subsistence and native leaders have clung to the protection they believe ANILCA affords. This position is their only alternative, as they certainly cannot relinquish their only protection without having another firmly in hand. Village residents' hearts provide them with a working definition of the term rural, and that is the definition that they understand ANILCA to support. Consequently the split between those using the language of ANILCA as a bastion and those who would remove the term rural from the law is irreconcilable, even if the parties had the same goals for the protection of subsistence use. This of course is not necessarily the case and both camps probe and question their counterpart's motivation.

Mr. McDowell is an urban sportsman, and the McDowell decision is associated with the beneficial use called sport. Sport is a troubled designation. The spectrum of use and behavior to be found under the umbrella of field sports ranges from the barbaric to the uplifting. Possibly because of the barbaric end of the scale, sportsman's groups tend toward a defensive tone when making arguments in their own behalf in public.

On the face of it they have a difficult argument to make in defending sport (read entertainment), against subsistence (read livelihood and food for the family). The image of the sportsman challenging subsistence criteria is that of a fully engaged, middle or upper class caucasian residing in an urban center throwing his (definitely his), weight against less advantaged, native citizens. It is equal treatment under the law upon which legal challenge has been based, and the image of the powerful making this argument against peoples suffering considerable cultural stress is the reason that the call for equal treatment has been so poorly received.

The popularity of sport uses and the reason so many are drawn to them is that they make an elemental connection to the land and are a building block of a sense of identity for participants. At one end of the scale, as the activity of sport use has become further removed from its direct connection to a food source, the motivations and forms for sport activities have become confused. The lore of urban sportsmen is no longer connected, in the main, to the realities of the field. If their publications are to be believed they entertain themselves with all sorts of sensationalism and promote and trade in equipment and weapons of all sorts in order to protect themselves should they ever get to the wilderness. Meanwhile, out in that same wilderness all kinds of activities occur, including the activities of older native ladies who move about unarmed in the pursuit of berries, grasses, and fish.

At the other end of the scale there are many individuals who have never killed anything for sport, yet hold sport licenses. Philosophically and spiritually they are essentially subsistence users, and if they do their harvesting under the designation of sport it is a matter of circumstance, sport licensing being the only regulatory form provided. This essential connection between subsistence and sport is one of the arguments made against the regulatory elimination of sport use in order to continue to allow a subsistence harvest on diminishing resources. It is a good argument and illustrates the difficulty of thinking and regulating in the absence of clarifying definitions.

The connection between sport use and sustenance, or protein for the home freezer, is a nearly universal one for resident Alaskans. But Alaskans who harvest under any rules are up against a growing strength of numbers of people opposed to hunting and fishing on moral and ecological grounds. Numbers of bird watchers are beginning to challenge the tradition of bird hunters. I think that sportsmen, subsistence users, and game management personnel nearly

all agree that bird hunting is more directly connected to bird conservation than is bird watching. There is an apparent irony here and this is a difficult argument to make against urban residents who have no cultural or personal knowledge of the act of harvesting protein for their own dinner.

There are a few clues about the kind of thinking that is beginning to be in the majority and will have increasing influence on national policy in any number of arenas. One such clue is a question that is occasionally asked by tourists of the park service personnel at Denali National Park. The question is "What do you do with the animals in the winter time?" A startling number of bird watchers and their ecologically sensitive urban brethren of all stripes are in fact entirely removed from substantive knowledge about fish and game. That this question is not atypical is a reflection that federal policy is driven at least in part by citizens who have lost all real connections to the land. The notion that the world is some sort of zoo and that unnamed government agencies 'do something' with all the animals out there in the winter time is so far removed from reality that it is quite frightening to realize that this thinking is driving the creation of federal management policy.

I will now have a look at the third camp, or the beneficial use called commercial.

While subsistence use came first in some sense, commercial use followed immediately as part and parcel of human contact. Commerce between individuals and groups is as old as man's tread upon the continent. When Soviets and Europeans eventually showed up in Alaska, they came as commercial users in the sea mammal and fur trades. An argument is made by subsistence users that customary barter and trade, a recognized part of subsistence practice, shades imperceptibly into commercial use. This argument is used to defend the practice of selling parts of subsistence-caught fish and game. This may include non edible parts such as bone and fur used in crafts, and edibles such as salmon roe.

The whole picture of commercial fishing in Alaska is complex and has nationwide and world wide aspects. Commercial fisheries issues and manipulation by outside interests were one of the main considerations in the fight for statehood. Overcapitalization; off-shore draggers with company headquarters in Louisiana; factory trawlers harvesting tens of millions of pounds; the king crab fleet presiding over a decimated species; heavy foreign investment--this is alienation within the very ranks of commercial use. But these monster fisheries have not run afoul of conflict with subsistence regulation. It is the locally based skiff and small boat fisheries, harvests by Alaskans, that are threatened by the state's inability to find a mechanism for the management of subsistence use. For village residents, commercial fishing in their local rivers is a major or sole source for cash income, and the subsistence priority of which they are the beneficiaries works against their own interests in the economy. This situation has

resulted in native groups being pitted against each other in allocation fights and once again we are drawn back to the pressure of population levels in a finite world.

In spite of the complexities, commercial fisheries help provide local populations all over the state with their sense of identity, their economic base, and indeed, their sustenance. This last begins to sound like a description of subsistence use, to which I am finally drawn.

In 1963 and 1964 it was my privilege to be the only caucasian fishing commercially on the Lower Yukon River. I was able to succeed because two Eskimo fisherman acted as my guardians and made it their business to see me through to the end of the seasons. They and their contemporaries taught me about fishing and about the big river. This way of life close to the water and the country provided me with a spiritual framework from which I have drawn strength ever since. I call this framework a sense of place, and on various occasions I have argued for the importance of a sense of place to the health of individuals and the strength and diversity of the national spirit.

It is the erosion of the physical relationships of a place and the dilution and loss of knowledge about methods of sustaining life that constitute the main ingredients of culture shock. Certainly for that generation of native subsistence users who show up at public meetings in order to testify, as they do with forthright eloquence, subsistence is not something in which they engage occasionally, nor is it a structure to be found within state fish and game regulations. Subsistence is who and what they were for all the generations of the past, and the power of subsistence over the identity of practitioners is the power of symbolism. That the physical realities of twentieth century life and the structure of the symbol of subsistence do not coincide is a symptom of the relentless tide of technologies and events that sweeps down upon us all.

I come to this argument from the roots of my youth and I am forced to a bitter conclusion. Already for some years, and as far into the future as we can see, subsistence as it exists in the memories of those eloquent elders is no more. For subsistence to work an elementary and ruthless biological balance is necessary and there is no such balance. In biology this is known as a feedback loop. When a prey species is so reduced as to be unable to support a predator species, the predators have three alternatives. They can move, they can seek other prey, or they can starve to the point that their own numbers can be supported by the diminished prey.

Now, and for many years past, there is a fourth alternative. This is the delivery of alternative energy by modern transport. This has already changed the form of life for all the former subsistence cultures from a nomadic existence balanced on a knife edge of available resources, to a network of permanent villages, which are recipients of imported energies from cash to pilot crackers. World

wide, nation wide, and statewide the powers of science and civilization have eliminated balance in human development. At the top of this complex situation is human population, and by numbers alone, the Alaskan land and wild species cannot sustain the native population, much less the total population. In spite of devastation by introduced diseases in the last century, modern medicine and outside food supplies have enabled populations to survive lean times, then to double and to double again. Even special privileges will not solve the problem of excessive pressure on hunted species. The starving time has been eliminated from the cycle of subsistence. A hunter carrying a weapon made of tool steel, wearing rubber boots made overseas, driving an outboard powered plywood skiff, and wearing prescription sun glasses, may well be a subsistence hunter in spirit, but his effectiveness is that of a technological man and his responsibility to regulate himself must reflect this reality.

In the beginning was the land. . . . At the very core of the subsistence issue, at the core of the beneficial uses when all else is stripped away, is the question of the meaning of life: life in terms of food, in terms of connections, in terms of an activity involving time and knowledge about other forms of life. One of the mental tools for wrestling with this essentially unknowable mystery is a sense of place. For myself and others, a crucial part of this sense is involvement with sport, commercial and subsistence use on grounds we know well. Alaskan fishermen return year after year to their customary grounds and the reason they do is not to be found in harvest poundage or mindless habit. If you doubt this, look at the emotional response of the fishermen in Prince William Sound to the loss of their grounds after the big oil spill. Rock hard toughies were seen sobbing on national television, and it is my opinion that the depth of their emotion was a surprise even to themselves. Their tears did not fall because of lost money. It was the loss of their own identities, and the loss of the possibility of that identity for their children. Loosing rights to commercial harvest inside national parks or on Federal lands, loosing subsistence rights to 'national interest' sensibilities--these are steps down the road of alienation. In years to come when sociologists are standing around scratching their heads about high alcohol consumption and social violence, we will be lucky indeed if they even remember those activities that used to provide a spiritual framework, but which have ceased to exist.

In order to survive we must evolve mentally, or nature will impose upon us the fate of evolving physically. It follows that compromise and adaption to our technologies and population levels is necessary. This is a painful process, and so challenging that far more species than currently exist have failed this ultimate test of a face off with changing conditions. Rapidly changing conditions are what subsistence users and everybody else are up against so the subsistence controversy is far more than an allocation battle or a clarification of constitutional principles. It is in fact a struggle about paths which the human race may take, and it is part of the centuries old search for the meaning of life.

Mr. Chairman, of all the purposes, pursuits, and issues contained within the subsistence controversy, there is one overriding item at the top of the list and that is the loss of the state's right to manage the harvest. The activities associated with the beneficial uses are part and parcel of our identity and we have the right and the responsibility to be our own managers. The idea that there is a lasting federal commitment to protect subsistence rights is a chimera. The feds managed the fur seal harvest, and there is no more harvest. The feds offer to protect subsistence, and this protection includes a blanket prohibition against all harvest in Glacier Bay, including harvest activities on the outside coast. Federal policy is smoke and mirrors. The Governor's legislation that is before you was crafted at a table at which all major pieces of the puzzle were ably represented. To the surprise of the members of the commission, they left the process with a new understanding and respect for the sides of the question against which they were historically aligned. We worked on this legislation word by word. It has a good sense of balance and fairness, and it protects the beneficial use called subsistence. I urge you to adopt the governor's proposal. It is a substantial piece of the structure needed to rescue dearly held rights to fish and game use. The governor's legislation is fair and workable, and it will stand us in good stead as the future brings changing conditions to us all.

Thank you very much for your patience in hearing me out.



ALASKA OUTDOOR COUNCIL, INC.

P.O. Box 34097
Juneau, Alaska 99803

May 3, 1992

Senator Al Adams
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Senator Adams,

I wish to take this opportunity to inform you that the Alaska Outdoor Council voted this week to support Governor Hickel's subsistence legislation, Senate Bill 443 and House Bill 552.

The Council remains opposed to a constitutional amendment on subsistence, because it exposes the equal rights and common use protection clauses to erosion, and is unnecessary.

I would be happy to discuss in greater detail the reasons for our position.

Sincerely,

Richard H. Bishop
Legislative Affairs

cc: all legislators



ALASKA OUTDOOR COUNCIL, INC

P O Box 34097
Juneau, AK 99803
463-3830

March 20, 1992

Representative Donley
State Capitol
Juneau, AK 99801-1182

Dear Representative Donley:

As you may know, the Alaska Outdoor Council voted to take no position on the Governor's subsistence bill (SB 443/HB 552) when it was introduced.

Our position reflected concerns about: (1) the constitutionality of differences in individual qualifying procedures related to residence; (2) the lack of a mandate to verify individuals' qualifications in outlying areas; (3) the potential influence on Indian country arguments; (4) modest criteria to qualify for subsistence; (5) the need to make clear that both subsistence and other uses should be provided for when resources have recovered from a low level; and (6) the need for a definition of "urban". We also oppose related constitutional amendments which are unnecessary to make the bill workable and would invite backsliding in terms of equal protection and common use of the fish and game resources. To comply with ANILCA by amending our Constitution does not "return State management". It simply locks in Federal judicial oversight on the State's execution of ANILCA subsistence mandates.

However, the Governor's bill does address many of our concerns and we applaud this progress. Specifically, it establishes individual criteria based on resource dependency, regardless of where a person lives, as the means to qualify for a priority. It clearly limits "customary trade" ^{Fed.} _{Que.} to non-commercial activities. It makes clear that subsistence uses will be regulated. It mandates increasing fish and game numbers when populations are low. It greatly strengthens resource protection and management.

The Alaska Outdoor Council is participating in your consideration of the legislation. We have recognized the importance of working for a good solution rather than against poor solutions. Recent Council policies and action demonstrate this.

For example:

- 1) We have formally recognized the important of non-commercial use

"Subsistence is the most important use of wildlife resources."
"An Act to amend the Alaska Constitution."

of fish and game for food to support people's lifestyles;

2) We helped develop the concept of a priority based on a resource dependent subsistence lifestyle;

3) We worked constructively with the Governor's Subsistence Advisory Council on this legislation;

4) We have sought agreement with Native groups and others regarding resource and habitat enhancement and other management issues;

5) We have fought for continued subsistence uses in National Parks as authorized by ANILCA;

6) We initiated action to have Alaska represented at the Convention on International Trade in Endangered Species to protect Alaska Natives' subsistence uses of walrus;

7) We are supporting HB 446, the wildlife conservation viewing tag bill, that will benefit non-consumptive uses of fish and game; and

8) We participated on the public Wolf Management Planning Team in a constructive, good faith effort.

The point is, we are working to resolve subsistence and other fish and game issues in ways that enhance everyone's opportunities to responsibly use fish and game resources.

Our goals with regard to the subsistence legislation are to help pass a bill that:

1) ensures sound resource perpetuation and management;

2) maintains the equal rights, equal protection and common use provisions of our state constitution;

3) provides for a subsistence priority for fish and game and for other uses within the bounds of the constitution;

4) does not influence Indian country legal arguments; and

5) allows people to enjoy the physical and philosophical satisfaction of sustaining their Alaskan lifestyles through the responsible uses of fish and wildlife.

We believe these goals can be met. We believe that in meeting them, other people's goals can also be met. Further, we believe that such a fair and equitable solution will have inherent stability and permanence that cannot be achieved in any other way, not even by constitutional amendment.

We look forward to helping you complete this work that the Governor has started.

Sincerely,



Richard H. Bishop
Legislative Affairs

CC: Governor Hickel
Commissioner Rosier

TO: AOC Board of Directors
FROM: Dick Bishop
DATE: February 19, 1992
SUBJECT: Summary of Comments on Governor Hickel's Subsistence
Advisory Council Draft Legislation

OPTIONS

Several options for addressing subsistence priority use have been raised by various parties, some requiring a constitutional amendment, others no. They are:

<u>Constitutional Amend.</u>	<u>No Const. Amend.</u>
*1. "Rural" (not defined) priority.	1. No priority. Repeal state law.
*2. "Subsistence" (not defined) priority.	*2. Current state law.
3. Native priority.	*3. Priority based on individual criteria related to resource dependency. (Adv. Council draft.)

* Indicates politically viable alternative, i.e., could conceivably be passed by legislature (or current law could be left in place).

AOC POLICY

AOC policy has been that a subsistence priority law is unnecessary to accommodate subsistence uses, but if a priority is established, it should be based on individual criteria related to resource dependency (i.e., subsistence lifestyle) and must be constitutional.

ADVISORY COUNCIL BILL

1. Why have it?

(A) Because as a matter of policy of practical politics, the Governor has chosen to recognize and accommodate "subsistence", and to find a fair, workable way to do so.

(B) Secondly, in doing so it may provide a way to regain state management authority from the federal government without compromising Alaska's Constitution.

2. Who gets the priority, and how?

(A) Individuals who meet the individual criteria by

(1) being "presumed" to meet them (bush areas, small towns),

(2) signing an affidavit saying he/she meets the criteria (towns of 2500-7000), or

(3) filing an application which documents how he/she meets criteria (urban dwellers). These people presumed to meet criteria may lose the priority if it turns out that they do not.

(B) Minimum individual criteria must have been met in the preceding 12 months; evaluated by point system:

(1) Consume 125 lbs. of non-commercial wild fish and game;

(2) 6 species or groups of species used from a subsistence area;

(3) Parts of 30 days engaged in taking fish or game in a subsistence use area ("taking" can be under sport regs);

(4) Parts of 4 months spent taking fish or game in a subsistence use area.

Additional points gained for doing more than minimum; just meeting minimum use levels will not qualify a person, and all minimums must be met. An applicant could qualify by using more resources and committing more time to subsistence work.