

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672  
2157 SCOMM 81: . . . SPECIAL SESSION (SUBSISTENCE), June 1992 / HB 601 175

Additional points may be gained for:

(5) Number of weeks when taking of fish and game was the principal work effort (max. 26 weeks);

(6) Number of households with which fish and game are shared (max 10 households);

(7) Whether taking was solely in subsistence use area.

Taking must be legal, non-commercial, "efficient and economical" (not defined). Allowance made for necessary non-participation, e.g., military, school. The Boards of Fish & Game are responsible for final decisions on points assigned to various criteria. Those people who are required to file an affidavit or application would have to do so annually.

The Boards must decide for what areas and communities subsistence is "a principle characteristic of the economy, culture, and way of life", based on a long list of economic, social, cultural, and fish and game use characteristics.

3. What fish and game resources are subject to subsistence uses?

(A) The Boards decide what stocks and populations have had a history of use and dependence for subsistence purposes, going back at least one generation. Some areas and some species or populations of species would not be included, e.g., immediate suburban/near urban areas, and dall sheep in much of their range.

(B) The Boards decide if resource abundance is adequate for all uses, for subsistence and some other uses, just for subsistence, or for only part of subsistence demand.

(C) The ADF&G is responsible for increasing resource abundance if it is too low to provide for subsistence and other uses.

(D) There is no guarantee of harvest for subsistence, but a reasonable opportunity must be provided based on several factors relating to resource abundance, management objectives, past use patterns (customary and traditional), competition, and other factors the Boards decides are important.

(E) The Boards establish subsistence use areas for stocks and populations. Usually, this will be one game management subunit (GMSU), plus those GMSU's adjacent to it. The Boards can change the shape/area if GMSU's don't make sense in terms of use patterns for stock or population.

#### 4. Other provisions/definitions:

(A) "Customary Trade" -- allows limited non-commercial sale of fish or game, but not to commercial buyers (e.g., fish buyers). Boards may restrict or prohibit sales. Fur and furbearers are an exception and may be sold as in the past.

(B) "Subsistence Fishing" -- would be done in a subsistence use area; rod and reel prohibited.

(C) "Subsistence" -- specifies taking in a subsistence use area for food, clothing, or transportation (dog food) and allows sharing, barter (no cash), customary trade, and use of non-edible parts for handicrafts. All subsistence uses subject to regulation, and consistent with sustained yield.

#### 5. Review

Operation of this law to be reviewed by Governor and a review group by June 1, 1994.

#### 6. Concerns

(A) Different procedures for applicants depending on place of residency: rural -- no paperwork; regional centers -- affidavit; urban -- application form. This was a major issue with native representatives. the trade-off was that no one was irrevocably classified as a qualified subsistence user. If it turns out they don't meet individual criteria, priority can be revoked.

(B) No mechanism in the bill to verify individual qualifications in rural areas and regional centers. The Department/Boards need to do this on an ongoing basis to be sure the law is defensible, and this need will be explained in the bill analysis.

(C) Low/moderate individual requirements for resource use and for commitment to subsistence work. Taken together, the

minimum requirements will put some real limits on who qualifies. Technical/legal limitations and compromises resulted in lower standards than we sought.

(D) Vague, undefined terms -- "comfort language" -- without objective criteria give poor direction to the Boards and public in several places and provide opening for legal mischief.

(E) No "neutrality statement" affirming that this bill will not add to or detract from legal arguments re: tribal authority over lands, i.e., "Indian Country."

W. J. ...  
AK Outdoor Council  
6/16/82

Ref: conamdmmt.mss

CONCERNS WITH A CONSTITUTIONAL AMENDMENT ON SUBSISTENCE

- EQUAL RIGHTS AND COMMON USE -- Equal rights and common use of fish and game protected by the constitution must NOT be compromised. There is no assurance that any proposed constitutional amendment will not compromise those protections.
- RETURN OF STATE MANAGEMENT -- Amending the state Constitution to comply with ANILCA does not return state management authority. It ratifies management by federal rules (ANILCA) enforced by federal courts. State management is not returned until state regulations are enforced through state court proceedings.
- "RURAL", "NATIVE", "NO NET LOSS/RURAL PLUS" priority options -- Any of these discriminatory criteria can be promoted as the basis for a priority if any constitutional amendment is proposed. All are unacceptable and inconsistent with the interests of the majority of Alaskans. Discrimination based on local or rural residency will lead to "Indian country" status--tribal governments in control of regulations and tribal members exempt from state/borough taxation.
- CONSTITUTIONALITY OF GOVERNOR'S SUBSISTENCE BILL -- A constitutional amendment is not needed to "legalize" SB 440/HB 552.
- SUBSISTENCE AND SOVEREIGNTY -- Consistent with their "no net loss" policy, AFN will undoubtedly oppose any ANILCA amendment that does not protect a "community/group based" priority and federal court oversight. Both points are related to their quest for "Indian country" status.
- ANILCA AMENDMENTS before CONSTITUTIONAL CHANGE: A LEVERAGE FOR ANILCA CHANGE -- A constitutional amendment acceptable to the majority of Alaskans will not be acceptable to AFN, nor will it persuade them to support ANILCA changes. A constitutional amendment opposed by AFN but acceptable to the majority of Alaskans MAY encourage our Congressional delegation to support amending ANILCA in spite of AFN objection. Do we have any commitment from them?
- COST/BENEFIT ANALYSIS -- With regard to any proposal that would link constitutional change to ANILCA change: A cost/benefit analysis balancing potential loss of constitutional protection against beneficial changes to ANILCA must be kept foremost in mind. Principles of individual rights and equal protection must never be

sacrificed. Group (community) rights must never supersede individual rights. Group rights and federal court intervention both argue for Indian country status and both must be eliminated through amendment to ANILCA.

- PUBLIC PARTICIPATION -- Unlike the Governor's bill, proposed constitutional amendments and ANILCA amendments circulated by the Governor's office were not developed through broad public participation.
- CHANGING ANILCA -- There is no guarantee that Congress will "fix" ANILCA if Alaska's Constitution is changed. It would be outrageous to compromise Constitutional protection of Alaskans' equal rights and common use of fish and game by amending the Constitution in a future hope of getting ANILCA changed. Nonetheless, ANILCA must be changed to remove the discriminatory rural priority, to remove its inherent arguments for "Indian country", to correct bad resource management provisions, and to eliminate unconstitutional judicial oversight.
- SUBSISTENCE IS NOT "...essentially a native issue" as stated by AFN. If subsistence has a priority over all other uses, then everyone who uses fish and game or their habitats is affected. When a "rural" priority leads to "Indian country", as the 9th Circuit made clear would be the case, then every current or future tax paying citizen is affected.

# **NORTH SLOPE BOROUGH**

OFFICE OF THE MAYOR

P.O. Box 69  
Barrow, Alaska 99723

Phone: 907-852-2611

Jeslie Kaleak, Sr., Mayor



POSITION STATEMENT OF THE NORTH SLOPE BOROUGH  
ON THE  
SUBSISTENCE ISSUE AND THE SPECIAL LEGISLATIVE SESSION ON SUBSISTENCE  
COMMENCING JUNE 15, 1992

SUBMITTED BY

JESLIE A KALEAK, SR., MAYOR,  
NORTH SLOPE BOROUGH

As the Mayor of the North Slope Borough, it is my responsibility to look after the interests of the people who elected me and whom I serve. The majority of the people who live on the North Slope continue to depend on the renewable resources, be they of the terrestrial, marine or avian species, for their sustenance and cultural well being. It is those people who will be impacted the most regardless of the outcome of this special legislative session to deal with the Governor's Subsistence Bill. Therefore, it is important that this position statement clearly reflects the wishes of the majority of the people who live on the North Slope.

The North Slope Borough consists of an area of approximately 90,000 square miles with a population of about 5,979 people scattered among the eight villages within the boundaries of the Borough with about 73% of the population being Inupiat. Since the creation of the Borough twenty years ago July 2, 1972, a lot of changes have been made on the lives of those people who call this part of the world their permanent home. The creation of the Borough have made things a little easier for the people who live here, but still a large majority of them still continue to hunt and fish for most of their food regardless of their financial situation. Those of us who can afford to buy boats, snowmachines, all terrain vehicles and other mechanical means of transport, take along those who can't afford them and then share the game that we harvest equally amongst ourselves.

June 10, 1992 via teleconference

THANK YOU MR. CHAIRMAN, MEMBERS OF THE COMMITTEE. MY NAME IS JESLIE KALEAK, SR., MAYOR OF THE NORTH SLOPE BOROUGH. I APPRECIATE THIS OPPORTUNITY TO TESTIFY BEFORE THE SPECIAL SESSION BEGINS NEXT WEEK AND PRESENT THE NORTH SLOPE BOROUGH'S POSITION ON THE SUBSISTENCE ISSUE. AS THE PUBLIC ANNOUNCEMENT FOR THIS HEARING INDICATED, THIS IS INDEED A VERY IMPORTANT SUBJECT ESPECIALLY FOR THOSE OF US WHO LIVE IN RURAL ALASKA.

I'M ALREADY ON PUBLIC RECORD OPPOSING GOVERNOR HICKEL'S PROPOSED SUBSISTENCE LEGISLATION. THE GOVERNOR'S PROPOSED BILL DOES NOT REFLECT THE CONSENSUS AS CLAIMED. IN FACT, THE JOINT AFN/RURAL CAP SUMMIT MEETING ON SUBSISTENCE IN MARCH CLEARLY INDICATED THE OVERWHELMING OPPOSITION TO THE GOVERNOR'S PROPOSED LEGISLATION.

THE WAY I SEE IT, A CONSTITUTIONAL AMENDMENT IS THE MOST LOGICAL AND EFFECTIVE WAY TO ASSURE SUBSISTENCE USE RECEIVES PRIORITY OVER ANY OTHER USES AS WAS CLEARLY INTENDED UNDER TITLE 8 OF ANILCA. A CONSTITUTIONAL AMENDMENT WOULD ALSO BE A PERMANENT SOLUTION TO FINALLY PUT AN END TO ANY LAW SUITS IN STATE AND FEDERAL COURTS, AS WELL AS ENDING THE DEBATE ON THIS ISSUE WHICH HAS DIVIDED RESIDENTS OF OUR STATE.

BY NOT TAKING ANY ACTION TO RESOLVE THIS ISSUE, THE STATE HAS PLACED ITSELF IN THE POSITION OF POSSIBLY PERMANENTLY LOSING ITS POWER TO REGULATE SUBSISTENCE HUNTING AND FISHING ON ALL FEDERAL LANDS IN ALASKA. PROVIDING FOR A CONSTITUTIONAL AMENDMENT WILL GIVE THE POWER TO MAKE THE FINAL DECISION ON THIS ISSUE TO YOUR CONSTITUENTS AND THE RESIDENTS OF ALASKA.

THE GOVERNOR'S PROPOSED LEGISLATION DOES NOT SUFFICIENTLY ADDRESS THE FEDERAL MANAGEMENT ISSUE. ONLY A CONSTITUTIONAL AMENDMENT DECLARING SUBSISTENCE AS A PRIORITY USE WILL SOLVE THE PROBLEM.

TITLE 8 OF ANILCA PROTECTS OUR SUBSISTENCE RIGHTS. THESE PROTECTIONS ARE THE BACKBONE OF OUR POSITION ON THIS ISSUE. THE STATE, THROUGH THE COURTS AND LEGISLATURE AND NOW THE ADMINISTRATION, HAS BEEN UNWILLING TO MEET THE PROTECTIONS PROVIDED US UNDER FEDERAL LAW. WE DON'T HAVE A POSITION TO BACK DOWN FROM, BUT ONE TO PROTECT.

ANILCA PROTECTS OUR CUSTOMARY AND TRADITIONAL USES OF OUR SUBSISTENCE RESOURCES. SUBSISTENCE IS A COMMUNITY ACTIVITY, A COMMUNITY WAY OF LIFE IN RURAL ALASKA. IT'S NOT AN INDIVIDUAL ACTIVITY. OUR TRADITIONAL SUBSISTENCE WHALING ACTIVITIES, FOR EXAMPLE, ARE SUPPORTED BY OUR ENTIRE COMMUNITY AND RESIDENTS IN ALL TRADITIONAL WHALING VILLAGES. THE ENTIRE COMMUNITY SHARES IN A SUCCESSFUL HARVEST.

SUBSISTENCE HAS BEEN OUR WAY OF LIFE FOR THOUSANDS OF YEARS. IT'S THE BASIS OF OUR CULTURE. IT'S DIFFICULT, IF NOT IMPOSSIBLE, TO UNDERSTAND THIS WAY OF LIFE IF YOU HAVEN'T LIVED IT. IT'S CLEAR TO ME THAT THOSE WHO DRAFTED THE GOVERNOR'S PROPOSED LEGISLATION REALLY DON'T UNDERSTAND SUBSISTENCE. THE LEGISLATION SEEKS TO RESTRICT OUR SUBSISTENCE PRACTICES AND DEFINE WHAT RESOURCES CAN BE CONSIDERED FOR SUBSISTENCE USE.

ANYONE WHO EVEN VAGUELY UNDERSTANDS SUBSISTENCE SHOULD KNOW THAT OUR TRADITIONAL PRACTICES AND USES ARE BASED UPON AND ARE ALREADY RESTRICTED BY NEED AND TIME OF YEAR. AND ANYONE WITH EVEN A GENERAL UNDERSTANDING OF WILDLIFE MANAGEMENT SHOULD KNOW THAT WILDLIFE CANNOT BE ALLOCATED LIKE FUNDS IN A CAPITAL OR OPERATING BUDGET.

I WANT TO MAKE IT CLEAR THAT THE NORTH SLOPE BOROUGH FULLY SUPPORTS AFN'S POSITION ON THE SUBSISTENCE ISSUE. AS A RESULT OF THE HISTORY OF CONFLICT WITH THE STATE BOARDS OF FISH AND GAME, AFN IS RECOMMENDING THE CREATION OF A SUBSISTENCE BOARD. AS I UNDERSTAND IT, THIS BOARD WOULD ENSURE THAT THE NEEDED PROTECTION FOR SUBSISTENCE USES RECEIVES PRIORITY OVER OTHER USES, INCLUDING SPORTS AND COMMERCIAL ACTIVITIES. THIS BOARD WOULD ALSO ALLOW FOR GREATER PARTICIPATION IN THE DECISION MAKING PROCESS BY THOSE MOST AFFECTED AND MOST KNOWLEDGEABLE ABOUT THE RESOURCES.

THE LITIGATION WHICH HAS SURROUNDED THE DECISIONS MADE BY THE BOARDS OF FISH AND GAME IS CLEAR EVIDENCE OF THEIR INABILITY TO STRIKE A BALANCE BETWEEN COMPETING INTERESTS. THE GOVERNOR'S PROPOSED LEGISLATION SIMPLY SIDE STEPS THIS ISSUE BY EXCLUDING SUBSISTENCE USE AS A PRIORITY OF THE RESOURCES IN POPULATED AREAS.

I STRONGLY URGE YOU TO SERIOUSLY CONSIDER THE SUBSISTENCE LEGISLATION DEVELOPED BY AFN AND THE BUSH CAUCUS. IT TREATS ALL ALASKANS FAIRLY AND PROVIDES FOR A CONSTITUTIONAL AMENDMENT. THIS PROPOSED LEGISLATION, COUPLED WITH A CONSTITUTIONAL AMENDMENT, WILL PROVIDE THE NEEDED PROTECTION OF SUBSISTENCE USE OF RESOURCES, ALLOW THE STATE TO COMPLY WITH FEDERAL LAW, AND UNIFY THE MANAGEMENT OF FISH AND GAME ON BOTH STATE AND FEDERAL LANDS.

AGAIN, THANK YOU FOR GIVING ME THIS OPPORTUNITY TO TESTIFY.  
QYANAQPAK.

The shares that we each receive is then shared with extended family members or friends in the local community or to other members of the family outside of the community or outside of the boundaries of the Borough.

As stated earlier, several species of animals are abundant throughout the Borough, with some species available only in certain areas around the different communities of the Borough. For example, I have on occasion sent some walrus meat to my relatives or friends in Kaktovik, because the availability of walrus is rare and they do like to eat walrus when they can get it from someone in the other villages where walrus meat is much more available.

They in turn send me sheep or muskox meat which is not indigenous to the area around Barrow, and which by the way is very delicious and I like to eat it whenever I have the opportunity to. This practice of sharing is one which has gone on for generations and continues to thrive to this day. I can go on and on with other examples, but I have no doubt that you will hear it time and again during this special session of subsistence.

The people of the North Slope are adamantly opposed to anything that would disrupt this dependence on the renewable resources which they have practiced way before any State and Federal rules and regulations were imposed upon them. The people who depend on these resources follow traditional rules and regulations which were passed on from generation to generation in order to preserve the populations which they depend on for their very survival. Everyone who hunts and fishes up here knows that if they over harvest a population of animals, they will not have any animals to hunt. This is ingrained on everybody's mind from childhood and throughout their lives.

The position of the North Slope Borough is that we do not support the Governor's Bill on Subsistence, but do support the efforts of the Alaska Federation of Natives to amend the Constitution of the State of Alaska which would effectively bring back state management of Subsistence on Federal lands to the State of Alaska. Many comparisons have been made between the Governor's bill and the AFN backed Bill over the past several weeks which you no doubt are aware of or have access to that we won't get into the details here. Representatives from the North Slope and interested local citizens from the area will be there to help us get the message to you about the importance of this issue to our people here in the Slope.

I have made public statements in the past to various legislative committees and other forums on the need to "give this issue to the people of the State and let them make their own minds up." We who live in Alaska take pride in the fact that we are independent and make our own decisions rather than be dictated to by outside forces. Let's show that independence and see where it will lead us. I thank you for the opportunity to make our position known and please make an informed decision rather than an emotional one.



City of Golovin  
P.O. Box 620#9  
Golovin, Alaska  
99762  
Ph: (907) 779-3211  
or 779-3681

*Handwritten signature*

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.

*Ralph Willoya*  
\_\_\_\_\_  
Mayor Ralph Willoya

*Charlie Brown*  
\_\_\_\_\_  
Vice Mayor Charlie Brown

*Wayne Henry Sr.*  
\_\_\_\_\_  
Secretary/Treasurer Wayne Henry Sr

*Albert Jackson*  
\_\_\_\_\_  
Member Albert Jackson

*Charles Lewis*  
\_\_\_\_\_  
Member Charles Lewis

*R6y Segock*  
\_\_\_\_\_  
Member R6y Segock

*Florence Willoya*  
\_\_\_\_\_  
Member Florence Willoya

*Tununak IRA Council*

NATIVE VILLAGE OF TUNUNAK

P.O. Box 77

TUNUNAK, ALASKA 99881  
Facsimile Number (907) 652-6011  
(907) 652-6527

June 14, 1992

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


Honorable Legislatures:

The Tununak IRA Council understands the Governor is addressing the legislature on his subsistence bill. We have great concerns and opposition to his bill causing an impact and injustice to our people.

We believe the issue will not be resolved unless a constitutional amendment addressing the subsistence priority for the rural community becomes a reality.

We urge you to call for a constitutional amendment and reject the governor's bill.

Sincerely,  
TUNUNAK IRA COUNCIL

  
Joseph J. Post  
President

Sec. *(your copy)*  
Al Adams *write*

I HAVE SOMETHING TO SAY, TLINGIT KA NULGTH YU QU TO A SUK, KITCH COOES EESH, SHUNGUKADIE, MY NAME IS ROGER SHEAKLEY MEANING WING FOOT FATHER, I AM A BORN AND RASIED ALASKA NATIVE.

AS FOR ONE I CHALLENGE THE THE PRESIDENT BUSH OF THE UNITED STATES TO COME HERE IN PERSON TO BACK UP HIS LITERATURE ON SUBSISTANCE IF HE CAN'T COME THEN HE BE BETTER OFF LEAVING SUBSISTANCE ALONE.

AS FOR THE GOVERNOR HICKLE I DON'T PUT ANY FAVOR IN HIS LANGUAGE AT ALL FOR ONE WHEN HE FIRST CAME IN TO OFFICE HE (QUOTED) SOVERNIGN RIGHTS IS NOT EVEN AN ISSUE, THIS HAS SURFACED ONCE ALREADY, WHAT WE HAVE BEEN TALKING ABOUT FOR A LONG TIME IT HAS SURFACED UP IN ANCHORAGE WHEN AN UPIK ESKIMO HANDED THE GOVERNOR A PAPER WITH HIS OWN LANGUAGE ON SUBSISTANCE THE GOVERNOR STATED HE COULDN'T EVEN TOUCH IT BECAUSE HE COULDN'T EVEN UNDERSTAND IT, AGAIN IT IS SURFACEING AGAIN.

FISHING AND HUNTING, LIVING OFF THE LAND IS A SOVERNIGN ISSUE AND WILL ALWAYS WILL BE SUBSISTANCE IS JUST A LABEL, A LABEL YOU THE NON NATIVES CAN'T EVEN DEFINE, WE AS TRUE ALASKA NATIVES NEED TO DO AWAY WITH THE LABEL SUBSISTANCE AND GO BACK TO OUR ORIGINAL LIFE STYLE - SOVERNIGN RIGHTS, IF WE STICK TO THIS LABEL OUR YOUNGER GENERATION ARE GOING TO HAVE A HARD TIME TRYING TO (LIVE) BECAUSE OF THIS LABEL WHEN THEY ARE ADULTS AND ARE TRYING TO PUT FOOD ON THEIR TABLE -THEIR NEXT GENERATION, WILL BE FACED WITH ALL THIS RED TAPE, (SUBSISTANCE) WHAT EVER YOU WANT TO DEFINE THIS LABEL AS.

WE HAVE TO MANY NON-NATIVES COMING IN TO THE STATE OF ALASKA DECLARING THEIR SELVES AS A RESIDENT, IN-TURN APPLYING FOR (PFD'S) PERMANENT FUND DIVIDENDS, TAKING JOBS, AND MAKING LAWS TO SUIT THEIR NEEDS, WE NEED TO DECLARE THE STATE A SOVERNIGN NATION AND STOP ALL THIS (APPLYING).

WE NEED TO DEVELOPE A (STRONG COALITION) ALL ALASKAN NATIVES TLINGIT AND HAIDA AND TSIMPSIAN NATIONS, ALL NATIVE CORPORATIONS IN THE STATE OF ALASKA MAKE A FINAL STAND ON THIS ISSUE, LETS NOT LET THEM MAKE THIS DECISION, IT DOES NOT BELONG TO THEM, TO SAY SO.

*Quinalth Chesh*

*Roger Sheakley, president  
fisheries committee*

*(AUB) camp 70*

*& vice president*

City of St. Michael  
Box 70  
St. Michael, Alaska  
99659

*with*

June 15, 1992

The Honorable Al Adams  
Alaska State Senator  
District 23  
Juneau, Alaska 99801-1182

Dear Honorable Senator:

This letter is a request on demand on the very important issue pertaining to subsistence.

The community of St. Michael is a typical subsistence reliant community. We have a ratio of 75.09% low and moderate income level. The thought of the Federal government taking over our lifestyle is absurd.

The State of Alaska and its three branches of governance, judicial, legislative, and executive members were entrusted to their positions for the sole purpose of the people they represent. The lifestyle in rural Alaska is unique! We are not wealthy enough to bring higher education to our young people so we depend on subsistence to feed our families from season to season from which every type of food each season brings to us. We don't have the time or money to call upon the governor or anyone to bring food on our table each time we have a crisis. But there are times like these we address these issues to people many miles away from our homes so that our children will be able to hunt and fish each time there is a food crisis on the table. There are times we go on for weeks waiting for food stamps or other source of income. Every election year we are faced with issues relating to our lifestyle. We vote so that our needs be met especially our lifestyle, which means in this case SUBSISTENCE!!! I don't know what English version there is on subsistence but to me and the people I work for is our living standards. Our diet depends on it. The land and sea is our restaurant, we just don't run to the nearest restaurant to eat we have to hunt, fish and cook our own food. I don't know what and how we should compromise with sport fishermen, Sport fishermen are one thing and our lifestyle is another, Sport fishing is an option and our lifestyle is another. If the lawmakers don't like the idea of our lifestyle why are they wasting their time in Alaska? This is where we were found and this is our lifestyle and this is how we will live and no one from a law firm will change our amino acids we are built of native food if they want to change our lifestyle they better start restructuring our chromosomes in some scientific lab. We are made how we ~~are~~ fed.

*were*

Sincerely:

*Virginia*  
Virginia Washington  
City Clerk

Public Opinion for Subsistence

1-463-4867

Stebbins Community Association  
General Delivery  
Stebbins, Alaska 99671  
934-4461

*Marth*

June 11, 1992

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

The Stebbins Community Association, IRA Council hereby informs you that it is strongly opposed to the Governor's subsistence bill. Our Association represents both subsistence and commercial 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 Stebbins Community Association, IRA Council advocates and supports a "NO NET LOSS" position established by the recent subsistence summit in Anchorage.

The Governor's staff and the Commissioner of ADF&G are telling you that most commercial fishermen support the Governor's bill. They are also spreading rumors that unless the Governor's bill passes the commercial industry will be ruined. That is not true. We had subsistence priority for years in the State and the commercial industry thrived and will continue to thrive even after the existing administration is gone.

We, vehemently urge you to reject the Governor's bill.

Respectfully,  
*Fred Pete, Sr.*  
Fred Pete, Sr.  
President

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

*1/10/92*



# Toksook Bay Traditional Council

June 10, 1992

To: NOME L10

From: James Charlie  
Exec. Director

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

Dear Legislatures,

The Toksook Bay Traditional Council, on behalf of the Native Community of Toksook Bay of whom 98% heavily depends on subsistence way of life, wishes to inform you that we are strongly opposed to the current Governor Hickel's Subsistence Bill.

As you can see, we represent both the subsistence and commercial fishermen in our area.

The Governor Hickel's bill does nothing to resolve the problem of returning management control to the State of Alaska and does not adequately protect subsistence uses of resources which are the backbone of our way of life in the bush. The bill would also allow too much discretion to the Board of Fisheries in setting policies & regulations.

The Governor Hickel's staff and the Commissioner of Alaska Department of Fish & Game are telling you that most commercial fishermen supports the Governor's bill. They are also spreading rumors that unless the Governor's bill passes, the commercial industry will be ruined. This is strictly not a case. We had subsistence priorities for years in the State and the commercial fishing industry had thrived.

On behalf of the local subsistence and commercial fishermen, we urge you to completely reject the Governor's bill as the call of the legislatures to Juneau is a waste of money at this time.

Sincerely,  
TOKSOOK BAY TRADITIONAL COUNCIL

*Joseph Asuluk, Sr.*  
Joseph Asuluk, Sr.  
Chairman of the Council

cc: Alaska Federation of Natives  
Association of Village Council President  
United Villages, Inc.

*North*

June 9, 1992

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

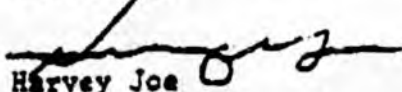
The Kokechik Fishermen's Association wishes to inform you that it is strongly opposed to the Governor's subsistence bill. Our Kokechik Fishermen's Association represents both subsistence and commercial fishermen.

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 commercial fisheries support the Governor's bill. They are also spreading rumors that unless the Governor's bill passes, the commercial industry will be ruined. That is not true. We had a subsistence priority for years in the State and the commercial industry thrived.

We urge you to reject the Governor's bill.

Sincerely,



Harvey Joe  
Kokechik Fishermen's Association

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

For Al Adams  
Sen.

6/13/95

memo

State's Subsistence Proposals  
"Stinks"

Alaska was supposed to be given their traditional use of fish and game before and after we became a state in 1959, which isn't being done. The Federal and State governments had to find a way to do away with "traditional use" of fish and game. They needed a "substitute" for those words.

Those sport fishermen's lawyers armed with a briefcase and pen and ink came up with the word "subsistence" which hadn't been invented yet. Brilliant, wasn't it? The sport fishing industry is breeding faster than rabbits.

The word subsistence is designed to do away with your God given rights to use fish and game wherever you are in Alaska.

The Outdoor Council, sport fishermen and the for hire sport fishermen groups are very powerful.

*Leo Q Land*  
By Leo Land, Sr.



# Resource Development Council for Alaska, Inc.

907 "G" Street, Suite 208, Anchorage, Alaska 99501-3440  
Box 100516, Anchorage, Alaska 99510-0516 907/276-0700 Fax 276-3887

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Becky L. Gay

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J.J. Cincotta  
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Dave Cuddy  
Ric Davidge  
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Larry Dinneen  
Rob Dragrich  
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Randy Goodrich  
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W. Ralph Hargrave  
Alan E. Hastings  
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Phil R. Holdsworth  
Dorothy A. Jones  
John T. Kelsey  
Janet M. Loberg  
Phillip L. Locker  
Can H. Marris  
Chris McAtee  
Len McLean  
John C. Miller  
C. "Rocky" Miller  
Lonnie O'Connor  
H.L. Paterson  
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Gail Phillips  
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Steve Soley  
Leighton H. Thetford  
Bery Thomson  
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Richard W. Tindall  
Paul M. Tweten  
Charles R. Webber  
William R. Whiteside  
William R. Wood  
George P. Wuerch

**EX-OFFICIO MEMBERS**  
Senator Earl Stevens  
Senator Frank Murkowski  
Congressman Don Young

June 21, 1990

The Honorable Steve Cowper, Governor  
Pouch A  
Juneau, Alaska 99811

Dear Gov. Cowper:

The Resource Development Council for Alaska, Inc., would like to express its support for legislative action to retain control of Alaska's fish and game resources.

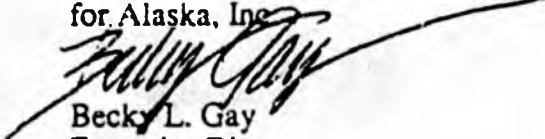
RDC's board and executive committee has had several meetings relating to the subsistence issue, including a recent session with presentations by the Alaska Federation of Natives and the National Rifle Association and Alaska Outdoor Council. The executive committee appreciates the input and literature provided by your staff, and has received information from the congressional delegation as well.

After a thorough review of the issues at hand, RDC's executive committee passed the following policy statement: "RDC endorses the position of keeping subsistence hunting and fishing under state control and if a constitutional amendment is required, then RDC supports the constitutional amendment."

The council will be sending a similar, more detailed letter to members of the Alaska Legislature conveying RDC's intent to work for a positive outcome to this dilemma that threatens not only a way of life, but Alaska's resource-based economy.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL  
for Alaska, Inc.

  
Becky L. Gay  
Executive Director



# Resource Development Council for Alaska, Inc

307 "G" Street, Suite 200, Anchorage, Alaska 99561-3440  
Box 100516, Anchorage, Alaska 99510-0516 907/276-0700 Fax 276-3527

June 21, 1990

**EXECUTIVE DIRECTOR**

Becky L. Gay

**EXECUTIVE COMMITTEE**

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John Forcassie, Vice Pres  
Joseph E. Jiribelli, Jr. Vice Pres  
O.K. "Easy" Gibreth, Secretary  
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Robert W. Loeschner  
Stephen M. Rennberg  
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Richard W. Tindall  
Paul M. Twitten  
Charles R. Webber  
William R. Whiteside  
William R. Wood  
George P. Wuerch

**EX-OFFICIO MEMBERS**

Senator Ted Stevens  
Senator Frank Murkowski  
Congressman Don Young

Members of the Alaska House of Representatives  
Pouch V  
Juneau, Alaska 99811

Dear Representative:

The Resource Development Council for Alaska, Inc., would like to express its support for legislative action during the upcoming special session to retain state control over fish and wildlife management on federal lands.

The pending takeover is an unacceptable subrogation of a right that Alaska has enjoyed since statehood, and opens the door to a number of scenarios that could not only restrict subsistence uses, but stonewall resource and economic development.

RDC has had several meetings on this issue, with thorough presentations from the Alaska Federation of Natives, National Rifle Association and Alaska Outdoor Council. As a statewide, non-profit membership association, RDC is concerned about the far-reaching effect of federal management of fish and game resources.

Congressional leaders warn that the regulations being proposed would eliminate aircraft access into national parks and there is potential for a similar restriction in the future in the refuges, forests and other federal lands. In addition, the requirement that game be managed to maintain natural populations, as opposed to a sustained yield basis, could affect our ability to open the coastal plain of ANWR due to the impact it might have on caribou herds in that region.

After lengthy review, RDC's executive committee unanimously passed the following policy statement: "RDC endorses the position of keeping subsistence hunting and fishing under state control and if a

constitutional amendment is required, then RDC supports the constitutional amendment."

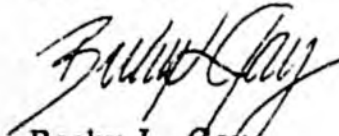
RDC has long been active in state and federal resource issues and believes the current threat of federal intervention could prove to be a major roadblock in Washington, D.C., if the Alaska Legislature does not take appropriate action.

RDC's primary interest is ensuring that Alaska has a thriving resource-based economy - a goal that would be even harder to attain if the subsistence issue is kicked back to the Interior Department and/or the U.S. Congress. Already, Alaska-based environmental groups and their national colleagues have embarked on campaigns to address the subsistence issue, with primary goals to designate more federal wilderness in Alaska and limit access on federal lands.

As you begin the special session on June 25 in Juneau, RDC urges you to pass legislation that corrects this situation, which threatens not only a way of life, but Alaska's resource-based economy.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL  
for Alaska, Inc.



Becky L. Gay  
Executive Director

POSITION STATEMENT ----- DOUGLAS INDIAN ASSOCIATION  
President Henry B. Peterson  
P.O. Box 240434  
Douglas, Alaska 99824

- (1.) SUBSISTENCE, is a Basic Right. "Subsistence is a BASIC RIGHT of Indigenous People. Alaska Native People are considered Indigenous People. A Basic Right is a right you're born with---it cannot be taken away.
- (2.) SUBSISTENCE, definition. Our definition is FOOD-GATHERING.
- (3.) We are for: NATIVE SUBSISTENCE as TRIBES, NOT JUST SUBSISTENCE. The documents for Native Subsistence are submitted here with our statement. The word "TRIBES" is a matter which is also Historically Documented. The word "TRIBES" is a Political---not a racial definition.
- (4.) The TRIBES in Alaska, will lose out if they are NOT considered in any bill. To pass a bill without the consultation or consent of the TRIBES in Alaska would NOT be right.
- (5.) THERE SHOULD BE: "Tribal Cards, issued by the Tribes, recognized by the Federal and State Governments for the purpose of SUBSISTENCE---maintained and monitered by the Tribes.

June 15, 1992

Mr. Chairman and Members of the Committee:

My name is Willie Goodwin, Jr. I am from Kotzebue and represent Kikiktagruk Inupiat Corporation--a Native village for profit corporation. This corporation represents 1,852 shareholders, most of whom are residents of Northwest Alaska.

I have three points I would like to impress upon the Committee. First, our Corporation considers subsistence its highest priority. Second, we do not desire continued federal management of fish and wildlife on state lands. Third, we view the means to achieve those goals through a constitutional amendment and not through the Governor's proposed legislation.

Our Corporation conducts itself with the understanding that the protection of subsistence is our first order of business. This may seem to conflict with the usual corporate directive of profit-making. But above all, the bottom line on our profit and loss statements means absolutely nothing to our shareholders if they are not allowed to continue the lifestyle that has held our people intact for thousands of years.

Kikiktagruk Inupiat Corporation, as a major landholder, has aligned its policies to support the taking of fish and wildlife for subsistence uses. It drove our original land selection process and it drives how we currently set policies for land use.

We have been an accommodating landlord, Mr. Chairman. Because of our cultural heritage of sharing resources, we have not enforced a policy to prohibit non-shareholders from hunting on our lands. However, there may come a day when the friendly landlord finds it necessary to say "the rent is overdue, it's time to move out". We consider the prohibition of land use by non-shareholders an

unfortunate measure. But if our state government cannot find a way to allow for the continuation of a rural preference for subsistence, we will be left with no other choice.

Although the federal government has been a friend to us in many respects, we do not see it in anyone's best interest for the federal government to manage federal lands. It's not good for us. It's not good for the State. It's not good for the feds.

In our view, the federal government is heavily influenced by interest groups whose ideals are diametrically opposed to ours. By this I mean the well intended, yet shortsighted, objectives of certain environmental groups. We see their fingerprints on how the federal government currently deals with the four national parks and two national wildlife refuge systems used in this area for subsistence.

If we are going to retain state management, it only makes sense to find a solution that truly gets us where we want to go. The Governor's bill does not satisfy ANILCA--your own attorneys have advised you of this. Worse yet, the Governor's Office has expressed it's own doubts.

Enough time has been wasted. Let the people of this state decide. Disregard the Governor's proposal, which gets us nowhere, and allow a constitutional amendment to come forward so that we can all solve this problem.

Thank you.

# ALEUTIANS EAST BOROUGH

SERVING THE COMMUNITIES OF

■ KING COVE ■ SAND POINT ■ AKUTAN ■ COLD BAY ■ FALSE PASS ■ NELSON LAGOON

June 9, 1992

Senator Fred Zharoff  
3111 C St. - Suite 520  
Anchorage, AK 99503-3957

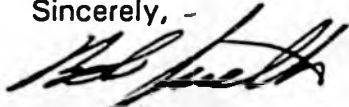
Dear Senator Zharoff:

The Aleutians East Borough Assembly instructed me to write you expressing its deep concern and adamant opposition to the AFN subsistence proposal. While the Assembly does not support Governor Hickel's subsistence bill because it is weak on subsistence, it cannot support the AFN proposal. The creation of a subsistence board, which has more power than the Boards of Fish and Game, the lack of definitions within the bill, especially of "customary" and "traditional" use and customary trade of subsistence will accomplish what the Board of Fish and the courts have failed to do -- abolish the June fishery within Area M. I am sure that I do not need to remind you that this issue went before the Board of Fish three times this year and we are now awaiting a court decision from Nome.

I was talking yesterday to Della Trumble, of King Cove. Expressing her frustration over the conflict between subsistence and commercial fishing between different areas of the State, she said something extremely simple and yet profound: "Subsistence should not be used by one group of Alaska Natives to annihilate another group of Alaska Natives." Adoption of HB 592 will destroy the economic and social fabric of our region and result in a negligible increase of subsistence and commercial salmon elsewhere in the State.

While it is true that our residents could fish for some groundfish species, it is the June red salmon season that provides significant income and employment for our residents. Any arguments to the contrary are false. If my letter sounds strident, I apologize. However, the passage of HB 592 is perceived by the AEB Assembly as sounding the death knell for our region.

Sincerely, -



Robert S. Juettner  
Borough Administrator

RSJ:emn

MARK PLANNER  
P.O. BOX 349  
SAND POINT, ALASKA 99661  
(907) 383-2699  
(907) 383-3496 FAX

BOROUGH ADMINISTRATOR  
1600 A STREET, SUITE 103  
ANCHORAGE, ALASKA 99501-5146  
(907) 274-7555  
(907) 276-7569 FAX

FINANCE DIRECTOR  
P.O. BOX 49  
KING COVE, ALASKA 99612  
(907) 497-2588  
(907) 497-2386 FAX



# UNITED FISHERMEN OF ALASKA

211 4th Street, Suit 112  
Juneau, AK 99801  
907-586-2820  
Fax# 907-463-2545

June 16, 1992

Dear Legislator:

## MEMBER ASSOCIATIONS

Alaska Crab Coalition  
Alaska Independent Fishermen's  
Marketing Association  
Alaska Longline Fisherman's  
Association  
Alaska Trollers Association  
Bering Sea Fishermen's Association  
Bristol Bay Driftnetters Association  
Concerned Area "M" Fishermen  
Cook Inlet Aquaculture Association  
Copper River Fishermen's Cooperative  
Cordova District Fishermen United  
Kenai Peninsula Fishermen's Association  
North Pacific Fisheries Association  
Northern Southeast Regional  
Aquaculture Association  
Peninsula Marketing Association  
Petersburg Vessel Owners Association  
Prince William Sound  
Aquaculture Association  
Prince William Sound Seiners Association  
Seafood Producers Cooperative  
Southeast Alaska Seiners  
Southern Southeast Regional  
Aquaculture Association  
United Cook Inlet Drift Association  
United Southeast Alaska Gillnetters  
Western Alaska Cooperative  
Marketing Association  
Area K Seiners Association

United Fishermen of Alaska (UFA) has a long standing interest in the subsistence law so far as the law impacts commercial fishing. UFA's involvement has been one of support for a subsistence priority while trying to protect and maintain a healthy commercial fishing industry. This position reflected the fact that many of our members participate in both commercial and subsistence fisheries. To accomplish this goal UFA focused on the need for consistent definitions in state and federal statutes. While the circumstances of the subsistence debate has changed over the years, the context for resolution has always remained the same.....defining key terms.

In the spring of 1989, Alaska learned that it's definition of rural was not valid in the federal courts. At that time, the State of Alaska sought a simple resolution. . . insert the State's definition of rural into ANILCA. As you can see by the enclosed letter (Attachment A) from Senator Stevens, such technical amendments to ANILCA were once viewed as possible. In fact, Congressional action on inserting the State's definition of rural was moving along until Native leaders objected.


Then came the McDowell decision and the emphasis switched to a "rural" constitutional amendment. In this context, UFA then re-examined the subsistence issue and found that a simple constitutional amendment for "rural" was not enough to address the other outstanding problems with inconsistent definitions in federal and state statutes. In February 1991, UFA developed a position paper outlining the need for a more comprehensive resolution of subsistence (Attachment B).

Instead of moving toward resolution, Alaska has moved further away from a fair and reasonable subsistence priority. At this time under current state law, we have a situation whereby all Alaskans are qualified as subsistence users and where all stocks are subject to subsistence use. UFA has always found this situation to be unfair to all users of the resource. As such, UFA's Subsistence Committee focused a great deal of attention on this issue, thereby allowing UFA's Board of Directors to act constructively on legislative proposals.

At UFA's last annual meeting (Feb. 92), all Board members present voted to support the Advisory Council's legislation. The primary reason for this strong show of support was that this legislation included a complete set of definitions. . . definitions given for and by Alaskans and not by federal courts.

We realize that subsistence is an extremely complex issue, and that the natural inclination of elected officials is to avoid such contentious issues. It can no longer be avoided and the Advisory Council's legislation is that essential first step in achieving a comprehensive solution for all Alaskans.

Very truly yours,

  
Greg Seider, Executive Director

Legislation: Special Session (6/92)

JUN 14 1989

## United States Senate

COMMITTEE ON APPROPRIATIONS  
WASHINGTON, DC 20510-8025

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 PHIL GRAMM, TEXAS

JAMES H. ENGLISH, STAFF DIRECTOR  
 J. KATH CENNETY, MINORITY STAFF DIRECTOR

June 2, 1989

Kate Graham  
 Executive Director  
 United Fishermen of Alaska  
 211 4th Street, Suite 106  
 Juneau, Alaska 99801

Dear Kate:

Thanks for your letter regarding the subsistence provision in the Alaska National Interest Lands Conservation Act.

Changes must be made in ANILCA to allow for better game management in Alaska. We are working with the Governor and his staff, particularly in view of recent court actions, to assure that federal and Alaska laws are compatible. The 1980 Act found the laws of Alaska in effect in 1980 were compatible. The State of Alaska has changed its laws and court opinions have clouded this issue.

I want to assure you that we are trying to get the 101st Congress to address this issue and I appreciate your writing to me so that I know your views.

With best wishes,

Cordially,

TED STEVENS

# UNITED FISHERMEN OF ALASKA



211 4th Street, Suite 106  
Juneau, AK 99801  
907-586-2820

## UNITED FISHERMEN OF ALASKA

### ISSUE PAPER ON SUBSISTENCE

UFA supports subsistence-based use of fish and game populations in Alaska, but believes that such uses must be bound at an historical level.

UFA recognizes the problems of conflicting federal and state laws relative to subsistence. UFA members and all other commercial fishermen in Alaska have a great deal at stake as subsistence law and practices are re-defined in the wake of recent legal decisions. We desire to work with the administration, legislature, Congress, and subsistence users in resolving this complex issue.

Any resolution must, to be acceptable to UFA, address the following points:

\* Problems resulting from multiple jurisdiction in fisheries management (i.e. Glacier Bay) need to be addressed immediately. If the federal government takes over, the state should attempt to reach an agreement that would limit jurisdiction over fish and game resources on state lands and waters. The question of how far beyond federal lands the jurisdiction extends for purposes of subsistence management must be answered to the state's satisfaction. Should the state pursue control of our fish and game resources to protect the conservation of the resources and economic stability of its residents?

\* Clear policy direction needs to be provided to the Boards of Fisheries and Game and other regulatory agencies creating subsistence regulations.

\* UFA members are concerned with an apparent pattern of increasing sales of subsistence harvests. The potential for major growth of subsistence catches sold under the "customary trade and barter" clause as evidenced in the *U.S. v. Tadamitsu Sakurai* decision needs to be examined.

# KONIAQ, INC.

• 4300 B Street, Suite 407, Anchorage, AK 99503

(907) 561-2668 • FAX (907) 562-5258 •

June 15, 1992

Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Ladies & Gentleman:

In April I sent a letter to each state legislator regarding the need to address the "subsistence issue" during the regular session. Unfortunately this did not occur thus necessitating the special session called by the governor.

Obviously not much has changed in the interim with the entire issue more volatile than ever before. Unless I am misreading the mood of the legislature,, the votes are not there to pass the much sought after constitutional amendment at this time. Nor, do I believe, is there much (if any) support for the substitute being offered by the A.F.N. This I believe, leaves the governor's bill as the only viable short term alternative. As I expressed in my April 9th letter, I firmly believe that the governor's bill, a compromise worked out by a commission comprised mostly of Alaska natives, is worthy of consideration.

I would think and hope that the passage of this bill would put on temporary hold the permanent federal take-over of fish and game management on federal lands pending a legal review by D.O.I. and or Justice as to whether or not the measure fulfills the requirements of title 8 of ANILCA. I can't help but think that D.O.I. would be eager to avoid implementation of permanent federal take-over if there was even the slightest possibility that the governor's bill solves the problem.

Furthermore, does anyone really believe that the truly rural residents of Alaska are presently being denied the right to subsistence harvest of fish and game? I think not, contrary to what the most vociferous factions would have one believe. If I for one minute believed otherwise, I would not be supporting the administration's bill.

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**



# UNITED FISHERMEN OF ALASKA

211 4th Street, Suite 106  
Juneau, AK 99801  
907-586-2820

## UNITED FISHERMEN OF ALASKA

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\* UFA members are concerned with an apparent pattern of increasing sales of subsistence harvests. The potential for major growth of subsistence catches sold under the "customary trade and barter" clause as evidenced in the *U.S. v. Tadamitsu Sakurai* decision needs to be examined.

\* An enforceable and mutually protective definition for "priority" as it relates to competing fishery uses must be developed. There is a flurry of law suits, both filed and pending, that are using subsistence "priority" as a legal weapon against commercial fishermen.

\* The definition of subsistence "use" and subsistence "user" needs to be clarified for the public as it relates to the implementation of Title VIII, Section 804 of ANILCA which affords priority.

\* Alaska's population has grown over time and will continue to do so. As urban and rural areas become more heavily populated, it will not be possible to provide for the increasing subsistence demands for fisheries resources without displacing other users, including historical subsistence users and commercial fishermen. Subsistence conflict resolution must provide protection for existing commercial fisheries.

# KONIAQ, INC.

• 4300 B Street, Suite 407, Anchorage, AK 99503

(907) 561-2668 • FAX (907) 562-5258 •

June 15, 1992

Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Ladies & Gentleman:

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SEV BT 001100 100  
Alaska State Legislature  
June 15, 1992  
Page 2

If ultimately the legislation fails to meet the requirements of title 3 of ANILCA or the Alaska Constitution, then the administration and the legislature can re-group and address the issue of an amendment to the Alaska Constitution providing for a rural subsistence preference and do so in unison.

Again, I would suggest that many people worked hard to develop the governor's compromise legislation, why not at least give it a chance?

Sincerely,

KONLAG, INC.

  
Frank Pagano  
President

cc: Governor Walter Hickel  
Alaska Congressional Delegation

Attachment: Frank Pagano's letter of 4/9/92

**KONIAG, INC.**

• 4300 B Street, Suite 407, Anchorage, AK 99503

(907) 561-2000 • FAX (907) 562-5258 •

April 9, 1992

Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Ladies &amp; Gentlemen:

With the end of the current legislature session only a month away, it is important that the matter of "Subsistence" be addressed quickly.

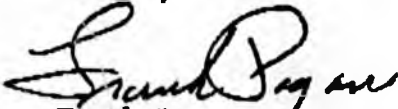
We recognize that this is a hotly debated and heavily contested issue but it must, nevertheless be resolved. The State of Alaska must do everything in its power to preclude permanent federal control of its fish and wildlife resources.

We believe that the Governor's Subsistence bill is a step in the right direction. Other groups complain that only a constitutional amendment will solve the problem. Although that may ultimately be the case, this approach is clearly premature. We would suggest that the Governor's bill takes us one step closer to a satisfactory resolution. Other steps may become necessary, but let's start somewhere and let's do it now.

Many people worked long and hard to develop the Governor's compromise proposal. Please give it a chance and support its quick passage.

Sincerely,

KONIAG, INC.

  
Frank Pagano  
President

FP/dl

cc: Governor Walter J. Hickel  
Alaska Delegation  
Koniag, Inc. Board of Directors  
Region Corporation Presidents

**Testimony of Carl Rosier  
Commissioner  
Alaska Department of Fish and Game**

**Before the Senate Select Committee on Indian Affairs  
May 23, 1992**

**Mr. Chairman and Members of the Select Committee:**

I want to thank you for the opportunity to appear before you today on behalf of the State of Alaska and the Alaska Department of Fish and Game. In my brief testimony, I will provide you with an overview of Department of Fish and Game programs pertaining to subsistence management, marine mammals, and migratory waterfowl. Each of these topics, as you are aware, is of vital concern to Native and non-Native residents of Alaska. Each of these topics also is an area in which the Department of Fish and Game plays a critical role.

**Subsistence**

Senators, I believe you are well aware that the issue of subsistence is one of the most controversial and important issues facing Alaskans today. Subsistence hunting and fishing provides a major portion of the food supply of Alaska's small communities, but the development of a universally accepted

subistence management program has proven elusive, to say the least. The state is currently in the midst of discussions with Native leaders, legislators, and other user groups over the details of a new state subsistence law.

This renewed effort to craft a state subsistence law has resulted from the gridlock caused by numerous conflicting court decisions, stemming from the lack of definitions in ANILCA and its conflict with Alaska's constitution. One result of these legal problems has been the federal government managing subsistence on federal land for "rural" residents, and the state managing subsistence for "all Alaskans" on state lands and waters. Also, we have seen the recent development of a duplicative and extremely costly federal bureaucracy, the gradual loss of federal support to our own subsistence program, the evolution of an extraordinarily complex regulatory structure, and an increasingly frustrated and confused public. Unless we can work together to find a subsistence solution, subsistence will be poorly protected at the same time that other uses are curtailed.

As I mentioned, the existing state law still provides that subsistence is the priority use of fish and game. Application of the subsistence priority is difficult, however, because the issue of identifying who qualifies for

subsistence is unresolved. This is a frustrating situation for the state Boards of Fisheries and Game, who feel they do not currently have the legal tools available to fully address the subsistence issue. Recently, the Boards have been deferring most of the subsistence proposals that are presented to them.

Rather than dwell on this very difficult and complex legal problem, I'd like to point out that the Governor is committed to forging a subsistence solution and the Department of Fish and Game is doing all it can to maintain an effective subsistence program. In the process, we are working with federal agencies to minimize the confusion to the public. By and large, current regulations are providing for subsistence hunting and fishing practices, although there are some troublesome spots near urban areas. ADF&G staff has earned international recognition for their work in documenting subsistence uses in Alaska, monitoring ongoing subsistence uses and needs, and managing fish and game resources to provide for subsistence uses. Overall, the department maintains good working relationships with Native groups throughout the state, despite the difficulties with the state subsistence law. Increasingly, we have found opportunities to work with these groups in various aspects of our subsistence research and management program.

I fully expect these mutually beneficial relationships to continue, regardless of the legal and political issues that surround subsistence.

Marine Mammals

One important aspect of subsistence is the use of marine mammals by Alaska Natives. This department's involvement in marine mammal management includes research on seals, sea lion, walrus, whale species, and sea otter. Of course, this involvement is closely integrated with that of the federal agencies with primary marine mammal management responsibilities. We are currently working with the National Marine Fisheries Service to gain a better understanding of interactions between marine mammals and commercial fisheries, and hope soon to be involved in harvest monitoring programs that will lead to better data on Native subsistence harvests. The Department of Fish and Game actively supports the Alaska Eskimo Walrus Commission, the Alaska Sea Otter Commission, the Beluga Whale Committee, and the Alaska Eskimo Whaling Commission. We also attend meetings and cooperate with the Indigenous Council on Marine Mammals.

## Waterfowl

In the case of migratory waterfowl, the Department of Fish and Game maintains an active research and management role. Our waterfowl programs are closely coordinated with the federal Fish and Wildlife Service. We recognize the importance of subsistence uses of waterfowl to many Alaskans. Furthermore, we recognize that the current regulatory framework for migratory waterfowl harvest does not adequately provide for subsistence uses in certain areas of the state. This is because in many parts of Alaska the birds arrive after March 10 and migrate south before the opening of hunting season on September 1, the dates of which are set under the terms of the Migratory Bird Treaty. As a result, most subsistence waterfowl harvest in Alaska is undocumented and, in much of the state, waterfowl hunting regulations are not enforced. Waterfowl conservation and management programs throughout the Pacific flyway suffer because of this situation.

Accordingly, we are working closely with the Fish and Wildlife Service and the affected user groups on an effort that we hope will result in successful negotiation of a protocol amendment to our migratory waterfowl treaty with Canada. Such an amendment would allow for the establishment and enforcement of appropriate subsistence hunting regulations in Alaska, to the

benefit of qualified subsistence hunters and waterfowl populations alike. According to a timetable set by the Fish and Wildlife Service and the State Department, detailed treaty negotiations are scheduled to begin in the fall of 1992. In the meantime, we are working on a comprehensive state position that will respond to concerns that have been expressed by various user groups.

#### Conclusion

In conclusion, Senators, I want to point out that our state constitution does not allow for a subsistence priority based on membership in an Alaska Native group. Furthermore, the state constitution does not allow us to apply the subsistence preference based on residency. The Governor is committed, though, to providing a clear preference and protection for subsistence and subsistence users throughout our state. The Department of Fish and Game is implementing resource management programs, as I have described here today, that attempt to provide opportunity for subsistence uses of fish and game for Alaskan residents. Alaska Natives derive significant benefits from these programs, and we are firmly committed to maintaining them, consistent

with our overall mandate of wise stewardship and sustained yield management of Alaska's fish and wildlife resources.

Once again, I'd like to thank you for the opportunity to testify before the select committee.

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802-2000  
PHONE: (907) 485-4100

June 9, 1992

Dear Limited Entry Permit Holder:

I am writing you because as Commissioner of Fish and Game, I am required by law to manage, protect, maintain, improve, and extend the fish, game and aquatic plant resources of the state in the interest of the economy and general well-being of the state. As a result of a series of court decisions on subsistence, my ability to perform these duties and the abilities of the Board of Fisheries to balance allocations has been severely restricted.

If this situation is not corrected, your ability to make a living by fishing is very much at risk. The media has characterized subsistence problems as conflicts between state and federal law, but because Alaska owns navigable waters, state laws govern most fishing.

At this time under current state law, we have a situation whereby subsistence has a priority over all uses, whereby all Alaskans are qualified as subsistence users, and virtually every fish stock is subject to subsistence allocation. This scenario becomes more critical with pending court cases which would restrict or shut down commercial fisheries even if only a small incidental catch of a subsistence stock is involved. With all 530,000 Alaskans being qualified for a subsistence preference, and almost no stocks being exempt, in many fisheries subsistence will have a legal priority on so much of the resource that the commercial and recreational uses of the fish stock may be severely diminished or shut down entirely.

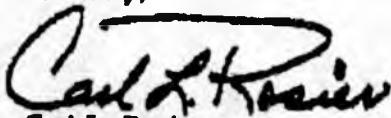
On June 15, the Alaska State Legislature will convene in special session to face this issue. Governor Hickel has introduced a consensus bill drafted by his Subsistence Advisory Council that solves the problem in state waters by protecting subsistence without damaging commercial or recreational use. The bill also corrects the problem recently brought about by federal court decisions that have sanctioned large commercial sales of fisheries resources under the guise of customary subsistence trade.

The board of directors of the United Fishermen of Alaska has endorsed the consensus bill. UFA has urged that the bill be enacted without amendment. Many other groups are becoming involved and support the bill as crafted by the Subsistence Council.

If the legislature does nothing or passes a subsistence bill that significantly departs from the consensus bill, Alaska's commercial fishing industry may be in jeopardy. Many legislators are involved in the effort to pass the Subsistence Advisory Council bill, but others are opposing it or proclaiming that their constituents don't care.

I know how busy you are at this time of the year, but if you don't take a few minutes to let the legislature know how important this is to you now, you could have much more free time in years to come.

Sincerely,



Carl L. Rosier  
Commissioner



THE SECRETARY OF THE INTERIOR  
WASHINGTON

June 15, 1992

Honorable Ben Grussendorf  
Speaker of the House  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Dear Speaker Grussendorf:

Thank you for your letter of June 5, 1992, regarding the Alaska State Legislature's special session to consider legislation regarding subsistence management.

I fully appreciate the gravity of the situation Alaska faces relative to subsistence management. As you correctly noted, the Federal government was left with no alternative in July, 1990 but to assume management of subsistence resources on Federal public lands. We did that utilizing temporary regulations which expire on June 30, 1992. Permanent regulations have been published in the Federal Register and will take effect on July 1, 1992.

Over the past four years we have worked closely with Alaska to assist, where we could, in resolving this problem. Since early 1991, Interior Department staff has discussed subsistence management and drafts of proposed legislation with State officials on numerous occasions. We have advised the State of our view of the remedy to enable Alaska to comply with Title VIII of ANILCA and thus resume management on Federal lands where we now administer the program. The Federal government's responsibility is clear - we are required to manage subsistence resources on Federal lands by providing to rural Alaska residents a preference in the taking of wild resources for subsistence purposes. The only exception to that mandate is if the State provides that same preference in lieu of the Federal government. To realize that exception the State must have statutes and regulations that provide the same preference to rural Alaska residents.

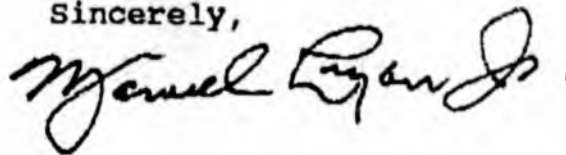
We have provided, and will continue to provide, all the assistance we can in what is now a critical decision for Alaskans to make. In addition, while I have no plans to send representatives to your special session, the Department is prepared to respond in a timely fashion to specific requests from the State government for comments on provisions of legislation which you are considering. After July 1, 1992, in accord with provisions in the Permanent Regulations, we

Honorable Ben Grussendorf  
June 15, 1992  
Page 2

will promptly respond to any petition from Alaska which properly requests review and recertification of a new State management program which complies with the rural preference requirement in ANILCA and thereby enables Alaska to resume management responsibility.

I remain committed to the principle of state management of fish and wildlife resources. I hope that the State will be able to devise a solution to these problems and thus resume management of the subsistence program consistent with the provisions of Title VIII of ANILCA.

Sincerely,

A handwritten signature in cursive script, appearing to read "Samuel Lyman Jr.", is written below the typed name "Samuel Lyman Jr.". The signature is fluid and somewhat stylized.

cc/ Governor Hickel

K  
J  
C

*Ketchikan Indian Corporation*

*(IRA Council)*

429 DEERMOUNT AVENUE  
KETCHIKAN, ALASKA 99901  
(907) 225-5158  
FAX (907) 247-0429

MAY 15, 1992

HONORABLE WALTER J. HICKEL  
GOVERNOR OF ALASKA  
P.O. BOX 110001  
JUNEAU, AK 99911-0001

DEAR GOVERNOR:

THE IRA COUNCIL OF THE KETCHIKAN INDIAN CORPORATION, WISHES TO APPLAUD YOU AND SAY THAT WE APPRECIATE YOUR CONCERN FOR SUBSISTENCE IN THE URBAN AREAS, SPECIFICALLY HERE IN KETCHIKAN. WE FIND IT HEARTENING THAT THERE IS RECOGNITION THAT KIC IS A VITAL PART OF THE COMMUNITY AND SHOULD BE INCLUDED IN ANY POLICY DECISIONS CONCERNING SUBSISTENCE. HOWEVER, WE FEEL THAT THE STANDARDS THAT WERE SET FOR THE GROUP 3, UNDER YOUR PROPOSED BILL, ARE TOO STRINGENT TO ALLOW US FREE ACCESS TO WHAT WE FEEL IS AN INTEGRAL PART OF OUR CULTURE AND SHOULD NOT BE A HINDERED BY ANY UNREASONABLE STANDARDS.

WE WOULD HOPE THAT YOU WOULD REVISIT THE STANDARDS AND REVISE THEM TO REFLECT THE TRUE NEEDS OF THE NATIVE COMMUNITY HERE IN KETCHIKAN.

AGAIN, THANK YOU, AND WE HOPE YOU WILL MOVE FORWARD WITH SUPPORTING SUBSISTENCE FOR THE URBAN POPULATION OF THE NATIVE PEOPLES OF ALASKA.

THANK YOU FOR YOUR TIME IN THIS MATTER.

SINCERELY,

*Paul W. Young*

PAUL W. YOUNG  
EXECUTIVE DIRECTOR

## COOK INLET COALITION

Resolution regarding the State of Alaska Subsistence Issue:

- 1) WHEREAS: Commercial and sport fisheries and tourism contribute significantly to the social and economic well-being of the State of Alaska in general and the Anchorage-Kenai Peninsula area in particular, and;
- 2) WHEREAS: The state's subsistence statute after the McDowell decision has been interpreted by the Department of Law to mean that virtually all non-commercial consumptive uses of our wild fish stock and game populations will be found to be subsistence uses, and;
- 3) WHEREAS: Subsistence uses have a priority over all other uses of our fish and wildlife resources, and;
- 4) WHEREAS: A priority subsistence fishery on any of the relatively small stocks of rainbow, steelhead, coho and chinook in the Anchorage-Kenai area would require the closure of/or severe restrictions on sport harvests of those stocks by residents and non-residents, and;
- 5) WHEREAS: A priority subsistence fishery on the relatively small stock of late run Kenai River chinook salmon would require the closure of/or severe restrictions on sport harvests of chinook salmon and commercial fisheries targeting sockeye salmon, and;
- 6) WHEREAS: A priority subsistence use on any fish or wildlife resource of small numbers requires restrictions on the use of that resource to a limited class of Alaskan residents in order that each user has a reasonable opportunity to satisfy his or her consumptive use of that resource, and;
- 7) WHEREAS: The cash economy is fully developed within the Anchorage-Kenai Peninsula area and there are practical alternative means available to replace the food supplies and other items gathered from fish and wildlife if any particular harvest effort is not successful, and;
- 8) WHEREAS: The Governor Hickel's Subsistence Advisory Council had representatives from all sides of the subsistence issue, and;

- 9) WHEREAS: Governor Hickel's charge to the Subsistence Advisory Council was to craft a solution aimed at long term stability "that the people of Alaska view as fair, that resolves outstanding court cases, avoids future legal uncertainty, and does not cause major reallocations", and;
- 10) WHEREAS: The Subsistence Advisory Council has drafted HB 552/SB 443 and Governor Hickel has submitted this legislation to the Alaska State Legislature;
- 11) WHEREAS: HB 552/SB 443 would retain the subsistence fisheries that existed in the area prior to the McDowell decision and will not cause major reallocations in the Anchorage-Kenai Peninsula area, and;
- 12) WHEREAS: The Cook Inlet Coalition is comprised of sport and commercial fishing organizations in the Anchorage-Kenai Peninsula area;

Therefore, be it resolved by the Cook inlet Coalition:

- Section 1: That the Governor's Subsistence Advisory Council has successfully drafted consensus legislation that provides for the subsistence taking of fish and game by those Alaskans who actually and substantially depend upon that subsistence taking in areas of the state where dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of the area.
- Section 2: That the Alaska State Legislature is requested to enact HB 552/SB 443 as soon as possible so that the Boards of Fisheries and Game will have the tools and direction they need to establish regulations that avoid future legal uncertainties and will not cause major reallocations.
- Section 3: That the Alaska State Legislature is requested to repeal the current state subsistence priority statute if HB 552/SB 443 is not enacted so that the Boards of Fisheries and Game can provide for subsistence uses on a non-priority basis that will not result in major reallocations and disruptions of use patterns that existed prior to the McDowell decision.
- Section 4: That copies of this resolution be sent to Governor Walter J. Hickel, Lt. Governor John B. (Jack) Coghill, The Alaska Department of Fish and Game Commissioner Carl L. Rosier, the Boards of Fisheries and Game, all members of the Alaska State Legislature, and members of the Alaska Congressional Delegation.

COOK INLET COALITION  
MEMBERSHIP

PAGE OF AGREEMENT

1. Kenai Peninsula Fishermens Association

*[Signature]* For Loren Flagg Date 6/4/92  
(Signature of Representative)

2. North Pacific Fisheries Association

*[Signature]* For Ken Costner Date 6/4/92  
(Signature of Representative)

3. Alaska Sportfishing Association

*[Signature]* For Phil Cutler Date 6/5/92  
(Signature of Representative)

4. Kenai River Sportfishing Association

*[Signature]* For Robert C. Penney Date 6/2/92  
(Signature of Representative)

5. Cook Inlet Professional Sportfishing Association

*[Signature]* For Roger Byerly Date 6/5/92  
(Signature of Representative)

6. Northern District Setnetters of Cook Inlet

*[Signature]* For Terry J. Jensen Date 6/4/92  
(Signature of Representative)

7. United Cook Inlet Drift Association

*[Signature]* For Theo Mathews Date 6/5/92  
(Signature of Representative)

# ALASKA NATIVE CLAIMS SETTLEMENT ACT

DECEMBER 14, 1971.— Ordered to be printed

Mr. BIBLE, from the committee of conference,  
submitted the following

## CONFERENCE REPORT

[To accompany H.R. 10367]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 10367) "to provide for the settlement of certain land claims of Alaska Natives, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill, and agree to the same with an amendment as follows:

In lieu of the matter inserted by the Senate amendment, insert the following:

*That this Act may be cited as the "Alaska Native Claims Settlement Act".*

### DECLARATION OF POLICY

*SEC. 2. Congress finds and declares that—*

*(a) there is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims;*

*(b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax*

...ative people and to report back to the Congress with his recommendations for the future management and operation of these programs within three years of the date of enactment of this Act

(d) no provision of this Act shall constitute a precedent for reopening, renegotiating, or legislating upon any past settlements involving land claims or other matters with any Native organizations, or any tribe, band, or identifiable group of American Indians;

(e) no provision of this Act shall effect a change or changes in the petroleum reserve policy reflected in sections 7421 through 7438 of title 10 of the United States Code except as specifically provided in this Act;

(f) no provision of this Act shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, nor to grant implied consent to Natives to sue the United States or any of its officers with respect to the claims extinguished by the operation of this Act; and

(g) no provision of this Act shall be construed to terminate or otherwise curtail the activities of the Economic Development Administration or other Federal agencies conducting loan or loan and grant programs in Alaska. For this purpose only, the terms "Indian reservation" and "trust or restricted Indian-owned land areas" in Public Law 89-136, the Public Works and Economic Development Act of 1965, as amended, shall be interpreted to include lands granted to Natives under this Act as long as such lands remain in the ownership of the Native villages or the Regional Corporations.

#### DEFINITIONS

SEC. 3. For the purposes of this Act, the term—

(a) "Secretary" means the Secretary of the Interior;

(b) "Native" means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community) Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group. Any decision of the Secretary regarding eligibility for enrollment shall be final;

(j) "Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 11 and 16 of this Act, or which meets the requirements of this Act, and which the Secretary determines was, on the 1970 census enumeration date (as shown on the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives;

(k) "Native group" means any tribe, band, clan, village, community or village association of Natives in Alaska composed of less than twenty-five Natives, who comprise a majority of the residents of the locality;

(l) "Public lands" means all Federal lands and interests thereon located in Alaska except: (1) the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installations, and (2) land selection of the State of Alaska which have been patented or tentatively approved under section 6 (g) of the Alaska Statehood Act, as amended (72 Stat. 341, 77 Stat. 223), or identified for selection by the State prior to January 17, 1969;

(m) "State" means the State of Alaska;

(n) "Regional Corporation" means an Alaska Native Regional Corporation established under the laws of the State of Alaska in accordance with the provisions of this Act;

(o) "Person" means any individual, firm, corporation, association, or partnership;

(p) "Municipal Corporation" means any general unit of municipal government under the laws of the State of Alaska;

(q) "Village Corporation" means an Alaska Native Village Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of a Native village in accordance with the terms of this Act.

(r) "Fund" means the Alaska Native Fund in the Treasury of the United States established by section 6; and

(s) "Planning Commission" means the Joint Federal-State Land Use Planning Commission established by section 17.

#### DECLARATION OF SETTLEMENT

SEC. 4. (a) All prior conveyances of public land and water areas in Alaska, or any interest therein, pursuant to Federal law, and all tentative approvals pursuant to section 6 (g) of the Alaska Statehood Act, shall be regarded as an extinguishment of the aboriginal title thereto, if any.

(b) All aboriginal title

surface estate in an equal amount of acreage outside these areas is provided for the Regional Corporations.

(h) *National forests*

Appropriate limitations are placed on the amount of lands which may be granted from National Forests to Native villages located in the National Forests.

C. OTHER ISSUES

1. In sections 7 and 8 of the conference report authorizing the creation of Regional and Village Corporations, the conference committee has adopted a policy of self-determination on the part of the Alaska Native people. The conference committee anticipates that there will be responsible action by the board members and officers of the corporations and that there will not be any abuses of the intent of this Act. The conference committee does not contemplate that the Regional and Village Corporations will allow unreasonable staff, officer, board member, consultant, attorney, or other salaries, expenses and fees. The conference committee also contemplates that the Regional and Village Corporations will not expend funds for purposes other than those reasonably necessary in the course of ordinary business operations.

2. The Senate amendment to the House bill provided for the protection of the Native peoples' interest in and use of subsistence resources on the public lands. The conference committee, after careful consideration, believes that all Native interests in subsistence resource lands can and will be protected by the Secretary through the exercise of his existing withdrawal authority. The Secretary could, for example, withdraw appropriate lands and classify them in a manner which would protect Native subsistence needs and requirements by closing appropriate lands to entry by non-residents when the subsistence resources of these lands are in short supply or otherwise threatened. The Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives.

3. Villages located on the Pribilof Islands present a special problem because the fur seals which frequent the islands are the subject of an International Treaty. It is the conference committee's recommendation that the Secretary, after consultation with the Secretary of Commerce, the State and the Planning Commission, reserve the appropriate rights and interests in land to insure the fulfillment of the United States' obligations under the Treaty.

## SEPARABILITY

*SEC. 27. If any provision of this Act or the applicability thereof is held invalid the remainder of this Act shall not be affected thereby. And the Senate agree to the same.*

HENRY M. JACKSON,  
ALAN BIBLE,  
FRANK CHURCH,  
LEE METCALF,  
MIKE GRAVEL,  
GORDON ALLOTT,  
TED STEVENS,

*Managers on the Part of the Senate.*

WAYNE N. ASPINALL,  
JAMES A. HALEY,  
ED EDMONDSON,  
MORRIS K. UDALL,  
LLOYD MEEDS,  
NICK BEGICH,  
JOHN KYL,  
SAM STEIGER,

JOHN N. HAPPY CAMP,  
*Managers on the Part of the House.*

## JOINT STATEMENT OF THE COMMITTEE OF CONFERENCE

The Managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the Bill (H.R. 10367) "to provide for the settlement of certain land claims of Alaska Natives, and for other purposes," submit this joint statement in explanation of the effect of the language agreed upon by the managers and recommended in the accompanying conference report.

### I. GENERAL

#### A. INTRODUCTION

The language agreed upon by the managers is the result of long and careful consideration of the House passed bill and the Senate's amendment in the nature of a substitute to the House passed bill. The House bill and the Senate amendment were in major respects substantially different and the conference report—the compromise between the two measures—is in some respects different from the measures passed by the House and the Senate. The conference report is the final product of nine days of meetings by the conference committee since November 30, 1971.

The conference committee concurs on the relevant history and on the main facts at issue; there is general agreement on the principles of law involved and on the limits within which the formulation of public policies must be conducted; there is general consensus on the structural elements which constitute the settlement; and there is a common recognition that the institutions and machinery of settlement are in large measure dictated by the nature of the problem and the

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Among individual conferees, and among individual members of the House and the Senate, there are, of course, wide differences of opinions on specific issues: on amounts of money and land; on elements of the settlement; on some of the institutions established; and on emphasis and on detail. The specific resolutions proposed to each of these differences by the conference committee represents a compromise. These compromises were, however, recognized as being essential to the development of a conference report which will do justice to the Native people, insure a viable and economically healthy State government, and allow the fulfillment of the reasonable expectations and legitimate interests of all Alaskans and all Americans.

The conference report reflects a willingness on the part of the individual conferees after careful study of the issues involved to concur in the clear necessity for adoption of a *settlement package*, while reserving the right of all Members of Congress to debate further, at another time and in connection with other legislation, their individual views on some of the specific policies which are of necessity incorporated in this complex omnibus settlement.

bered 4 or in the National Wildlife Refuges, but an in lieu selection to subsurface estate in an equal amount of acreage outside these areas is provided for the Regional Corporations.

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② The Senate amendment to the House bill provided for the protection of the Native peoples' interest in and use of subsistence resources on the public lands. The conference committee, after careful consideration, believes that all Native interests in subsistence resource lands can and will be protected by the Secretary through the exercise of his existing withdrawal authority. The Secretary could, for example, withdraw appropriate lands and classify them in a manner which would protect Native subsistence needs and requirements by closing appropriate lands to entry by non-residents when the subsistence resources of these lands are in short supply or otherwise threatened.

The Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives.

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*Section 25. Publication*

The conference committee adopted the House language as section 25 of its report, which is almost identical to the Senate language, and is of similar intent.

*Section 26. Saving clause*

The conference committee adopted the House language as section 26 of its report. The Senate provision contained the statement: "Except as specifically provided for in this Act, nothing in this Act shall be construed as repealing any other provision of Federal law applicable to Alaska." That sentence was eliminated as being unnecessary.

*Section 27. Separability*

The provisions of the House and Senate bills concerning separability were identical, and are included in the conference report as section 21.

HENRY M. JACKSON,  
ALAN BIBLE,  
FRANK CHURCH,  
LEE METCALF,  
MIKE GRAVEL,  
GORDON ALLOTT,  
TED STEVENS,

*Managers on the Part of the Senate.*

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JOHN N. HAPPY CAMP,

*Managers on the Part of the House.*

Alaska Natives, of course, do not have "treaty" subsistence rights and are therefore subject to State regulation in common with other citizens of the State unless State regulation is pre-empted or at least modified by Federal law. See *Kake v. Egan*, 369 U. S. 60, 76.

The regulation, however, has been predictably insensitive to Native subsistence needs. The recent Recommended Decision Concerning Resumption of State Management over Nine Species of Marine Mammals. (MMPA Docket No. WASH 76-1, June 30, 1977) (Hereafter "Marine Mammal Decision") noted as to Native participation in formulation of State regulatory policy:

Persuasive testimony received from Native areas mandates that the State take steps to make participation more meaningful to those areas. *Id.* at 74.

The opinion quotes Linda Ellana's testimony at the Nome Marine Mammal Hearings as typical of allegations made by Native representatives:

In the villages that I visited people have not read copies of proposed regulations, and I think that it is very important that if the State or Federal Government is to control something as critical to these people as their livelihood, which I feel sea mammal hunting is, that they be informed; if they cannot read these regulations or proposed regulations that there should be a definite effort made on the part of the State and the Federal Government to go into the villages and talk at length with the people about these regulations. They are confused and they have not seen any proposed new regulations. . . . *Id.* at 74-75.

Unfortunately, in spite of the "mandate," the decision does not require that the State implement a program to assure Native participation prior to assumption of marine mammal jurisdiction. *Id.* at 135.

generally Chapter I, Part 2, "Reserves and Reservations" *supra*.

E.g., *Kake v. Egan*, 369 U. S. at 75.

(E)ven on reservations State laws may be applied to Indians unless such application would interfere with reservation self-government or impart a right granted or reserved by Federal law.

*Metlakatla v. Egan*, 369 U. S. 552.

26 Stat. 1095, 1101.

*Metlakatla* at 54 & 59

The size of the Arctic-Venetie reserve was based specifically on the "use and occupancy" of the reserve for subsistence purposes. See letter of Interior Secretary Krug in opposition to S.J.R. 162, S. Rpt. No. 1366, 80 C:2s (1948) at 20. Terlln was established for "vocational education" but the "vocations" were hunting and trapping, etc.

21a. See e.g. 1971 USCAAN at 2195  
Note: D-2 land selections (ANCSA 17(d)(2)) and easements across regional or village corporation lands (ANCSA 17(b)) are also a part of the subsistence land use question. Village land selections alone are not sufficient for subsistence needs; therefore, subsistence users require use of Federal d-2 and other public lands as well as access to such lands across private (corporate) property. The Secretary, in response to the recent decision of the Alaska District Court (*Calista Corp. v. Andrus*, Slip Op. A77-16 Civil (July 7, 1977)) on the easement issue, has issued a policy memorandum purporting to resolve the easement question. (Memorandum, "Alaska Native Claims Settlement Act Implementation and Policy Review" (March 3, 1978).)

22. S. Rpt. 92-581, 92C:13, December 14, 1971 at 37. ACCS  
5043  
C.I.

22a. See Udall, Stewart L., "The Alaska Natives and Their Subsistence Rights: A Discussion of the Constitutional Questions," Unpublished Memorandum, July 1977 at 6-8 (Hereafter "Udall").

23. Art. VI, cl. 2 U. S. Const.

24. *Missouri v. Holland*, 252 U. S. 416 (1920) Holding that the Migratory Bird Treaty of 1916 and the Federal laws enacted to implement it pre-empted Missouri's game laws.

25. Act of July 3, 1918, c. 128, 40 Stat. 755 as amended.

26. Fur Seal Act of November 1966, P.L. 89-207, 80 Stat. 1091.

27. Whaling Convention Act of August 9, 1950, c. 653, 64 Stat. 421 as amended.

28. Treaty of December 8, 1961, Art. II. See also 54 I.D. 517 holding that the Treaty prohibited Native hunting on the Swinomish Indian Reserve in Washington State.

29. Treaty of March 15, Art. II(c) & (d).

30. Treaty of March 4, 1972, Art. III(1)(e).

31. 16 USCA 703.

31a. 50 CFR 20.102 (1976).

32. Convention of October 14, 1957, Art. VII.

32a. Dunnigan, John H. "Alaskan Natives and Marine Mammals, Law and Policy Affecting Life Style," Unpublished Paper, Indian Legal Problems Seminar, University of Washington School of Law (1974) at 18. (Hereafter "Dunnigan").

33. *Id.* at 19.

34. *Id.* at 21.

35. Convention on the Regulation of Whaling, December 2, 1946. See also 3 Amer. Ind. L. J. No. 12 at 23 (December 1977) "Case of the Bowhead Whale."

36. Washington Post, October 8, 1977 at A-8 referring to June 1977 meeting of the International Whaling Commission (IWC) at which the decision to ban bowhead whale hunting was made by unanimous vote with the United States abstaining.

37. Washington Post, October 8, 1977, at A8.

38. *Id.*



# Ukpeagvik Inupiat Corporation

## RESOLUTION 91-19

**A RESOLUTION IN OPPOSITION TO GOVERNOR WALTER J. HICKEL'S DRAFT SUBSISTENCE PLAN AND PROPOSED LEGISLATION AND FOR OTHER PURPOSES.**

WHEREAS, Governor Walter J. Hickel established the Governor's Subsistence Advisory Council in 1990 to attempt to develop a statewide consensus position on subsistence policy.

WHEREAS, Native people participated in trust and good faith in the work of the Subsistence Advisory Council;

WHEREAS, the Subsistence Advisory Council developed 16 points of consensus to be included in any subsistence plan;

WHEREAS, the draft subsistence plan recently announced by the governor appears to totally ignore the 16 points of consensus unanimously agreed to by the full Advisory Council.

WHEREAS, the plan is accompanied by draft legislation to implement the governor's new proposed policy;

WHEREAS, the draft legislation would impose new qualifications for subsistence hunting and fishing based on lifestyle rather than rural residency and otherwise reflects an anti-subsistence posture.

WHEREAS, the governor's plan and his proposed implementing legislation appear to be a fundamental violation of the trust and faith that Native people placed in the Subsistence Advisory Council effort.

NOW THEREFORE BE IT RESOLVED AS FOLLOWS:

1. Ukpeagvik Inupiat Corporation opposes to governor's draft subsistence plan and the proposed legislation to implement it.

2. Ukpeagvik Inupiat Corporation supports a plan that would preserve the subsistence rights of rural residents more consistent with the original provisions of the Alaska National Interest Lands Conservation Act.

3. UIC urges Governor Hickel to again take personal charge of the effort to resolve the subsistence issue.

ADOPTED at Barrow, Alaska this 9th day of October, 1991.



*[Handwritten signature]*  
Chairman

ATTEST:

*[Handwritten signature]*  
Corporate Secretary

THANK YOU, MR. CHAIRMAN, MEMBERS OF THE COMMITTEE,  
FOR THE RECORD, MY NAME IS RONALD H. BROWER SR. I AM  
HERE TODAY TO TESTIFY IN MY CAPACITY AS THE  
REPRESENTATIVE OF THE ARCTIC SLOPE VILLAGES FOR AFN  
AND ON SUBSISTENCE ISSUES.

THE ARCTIC SLOPE AREA CONTAINS OVER 88,000 SQUARE  
MILES OF LAND AND HAS EIGHT VILLAGES CONSISTING OF 73%

INUPIAT ESKIMO. OUR VILLAGES CONTAIN A MINORITY  
POPULATION OF TRANSCIENT NON-NATIVE PEOPLE MOST OF  
WHOM ARE GOVERNMENT EMPLOYEES AND ARE CASH  
ORIENTED. THE INUPIAT ESKIMO ARE PRIMARILY A  
HUNTING SOCIETY AND SUBSISTENCE OFF THE LAND AND SEAS  
IS A WAY OF LIFE IN THE ARCTIC. SUBSISTENCE HUNTING AND  
FISHING ARE CRITICAL TO THE FUTURE SURVIVAL OF THE  
ARCTIC SLOPE VILLAGES BEING SO REMOTE IN RURAL  
ALASKA.

WE HAVE WORKED WITH BOTH FEDERAL AND STATE  
GOVERNMENTS, AND ESPECIALLY WITH THEIR LAWS TO  
PROVIDE FOR OURSELVES AN EFFECTIVE LONG TERM  
PROTECTION OF OUR TRADITIONAL SUBSISTENCE LIFESTYLE

AND PRACTICES. THE MOST PROMINENT EXAMPLE IS THE WORK OF THE ALASKA ESKIMO WHALING COMMISSION. ANOTHER IS THE EXAMPLE OF THE NORTH SLOPE BOROUGH WITH REGARD TO MIGRATORY FISH AND GAME. THE RESULTS HAVE BEEN POSITIVE ASSETS IN THE MANAGEMENT OF FISH AND WILDLIFE IN THE ARCTIC

THE HICKEL ADMINISTRATION HAS INTRODUCED THE GOVERNORS BILL, WHICH WOULD IMPOSE NEW QUALIFICATIONS FOR SUBSISTENCE HUNTING AND FISHING BASED ON LIFE STYLE RATHER THAN RURAL RESIDENCY AND, OTHERWISE REFLECTS AN ANTI-SUBSISTENCE POSTURE.

IT DOES NOT COMPLY WITH ANILCA AND FEDERAL CONGRESSIONAL INTENT.

INSTEAD IT ATTACKS FEDERAL LAW AND PROPOSES TO CHANGE ANILCA. IF ADOPTED BY THE STATE LEGISLATURE IT WILL ENSURE THAT DUAL MANAGEMENT CONTINUES AND WILL DIMINISH MORE DRAMATICALLY THE STATE'S MANAGEMENT ROLE OVER FISH AND WILDLIFE IN ALASKA. THE GOVERNORS PLAN IN HIS PROPOSED IMPLEMENTING LEGISLATION APPEAR TO BE A FUNDAMENTAL VIOLATION OF THE TRUST AND FAITH THAT ALASKANS, AND

MORE PARTICULARLY, NATIVE PEOPLE PLACED IN THE STATE  
IN MANAGING FISH AND WILDLIFE

WE THEREFORE OPPOSE THE GOVERNOR'S DRAFT SUBSISTENCE  
PLAN AND THE PROPOSED LEGISLATION TO IMPLEMENT IT.

THE ARCTIC SLOPE VILLAGES INSTEAD SUPPORT THE EFFORTS  
OF AFN TO AMEND THE CONSTITUTION OF THE STATE OF  
ALASKA AND BRING BACK STATE MANAGEMENT OF FISH AND  
WILDLIFE ON FEDERAL LAND TO THE STATE OF ALASKA.

THE ARCTIC SLOPE VILLAGES FEEL THAT ANILCA PROVIDES  
PROTECTION FOR SUBSISTENCE USES IN RURAL ALASKA AND  
DO NOT WANT TO SEE CHANGES TO THE FEDERAL LAW. THE

GOVERNOR'S SOLUTION TO RESOLVE THE FEDERAL STATE  
IMPASS IS TO GET CONGRESS TO AMEND ANILCA. THIS  
PROCESS WILL ONLY DELAY THE STATE FROM GAINING  
MANAGEMENT TO FISH AND WILDLIFE AND, MORE CRITICAL  
TAKE OUR STATE MANAGEMENT PROBLEM INTO A NATIONAL  
ARENA. THIS IS A STATE IN HOUSE PROBLEM AND, SHOULD  
NOT BE OPENED TO THE FEDERAL DECISION MAKING PROCESS.  
WE SUPPORT A CONSTITUTION AMENDMENT WHICH WOULD

ALLOW ALL ALASKANS TO VOTE ON THE ISSUE. WE SUPPORT A CONSTITUTIONAL AMENDMENT SUCH AS THE ONE PROPOSED BY AFN WHICH WOULD COMPLY WITH FEDERAL LAW AND ALLOW THE STATE TO REGAIN STATE MANAGEMENT BY RETAINING ANILCA'S RURAL PREFERNCE FOR ALL RESIDENTS OF BUSH ALASKA.

ALL WE ASK IS THAT THE STATE OBEY FEDERAL LAW AND TRUST IT'S OWN PEOPLE ON A CONSTITUTIONAL AMENDMENT THAT IS FAIR TO ALL.

AFTER LISTENING TO THE STATEMENT OF THE ATTORNEY GENERAL DURING YESTERDAY'S SENATE COMMITTEE OF WHOLE, WHERE HE COMMENTED ON THE ISSUE OF " TO LET ALASKA BLEED A COUPLE YEARS BEFORE RESOLVING THE MANAGEMENT PROBLEM" SENDS A CHILLINGLY THREATENING MESSAGE TO RURAL, PREDOMINANTLY ALASKA NATIVE COMMUNITY. IT REMINDS US OF THE HAMMOND ADMINISTRATION WHO PROPOSED TO SHOOT DOWN AN AIRPLANE FULL OF ANGRY URBAN RESIDENTS DETERMINED TO SHOOT AND WIPE OUT THE NATIVE RESIDENTS OF BARROW.

THIS TYPE OF ADAMANT ATTITUDE DOES NOT ALLOW THE  
STATE LEGISLATURE TO CONSIDER A REAL CONSTITUTIONAL  
AMENDMENT WHICH WOULD END DUAL MANAGEMENT OVER  
FISH AND WILDLIFE IN ALASKA.

WE DO NOT ASK FOR CONCESSIONS ON SUBSISTENCE, ALL WE  
ASK IS THAT THE ADMINISTRATION AND THE LEGISLATURE  
OBEY FEDERAL LAW AND BE FAIR WITH IT'S OWN PEOPLE BY  
ALLOWING THEM TO VOTE ON THE CONSTITUTIONAL  
AMENDMENT THAT WOULD END THE DUAL MANAGEMENT  
PROBLEM.

THANK YOU

# UNITED FISHERMEN OF ALASKA



211 4th Street, Suit 112  
Juneau, AK 99801  
907-586-2820  
Fax# 907-463-2545

June 18, 1992

**MEMBER ASSOCIATIONS**

- Alaska Crab Coalition
- Alaska Independent Fishermen's Marketing Association
- Alaska Longline Fisherman's Association
- Alaska Trollers Association
- Bering Sea Fishermen's Association
- Bristol Bay Driftnetters Association
- Concerned Area "M" Fishermen
- Cook Inlet Aquaculture Association
- Copper River Fishermen's Cooperative
- Cordova District Fishermen United
- Kenai Peninsula Fishermen's Association
- North Pacific Fisheries Association
- Northern Southeast Regional Aquaculture Association
- Peninsula Marketing Association
- Petersburg Vessel Owners Association
- Prince William Sound Aquaculture Association
- Prince William Sound Seiners Association
- Seafood Producers Cooperative
- Southeast Alaska Seiners
- Southern Southeast Regional Aquaculture Association
- United Cook Inlet Drift Association
- United Southeast Alaska Gillnetters
- Western Alaska Cooperative Marketing Association
- Area K Seiners Association

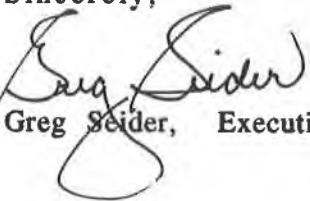
Senator Sam Cotten  
Representative Mike Navarre

We would like to propose a path to consensus and finality on all aspects of the subsistence issue now before you. We'd appreciate your consideration of this proposal and ask that you advance it as a viable package to solve the problems and inconsistencies we are dealing with under present subsistence law. This proposal responds to the agreement among all parties to restore a subsistence priority for all legitimate subsistence users and regain state management on all fish and game populations. Finality on this issue means a constitutional amendment to limit participation in subsistence taking of fish and wildlife and technical amendments to ANILCA in the best interest of the state. As we indicated in our testimony, UFA does not object to a properly worded constitutional amendment that protects the interests of those dependent on subsistence uses and that does not systematically jeopardize other uses of our resources.

The path to finality on this issue begins with the Advisory Council's legislation, SB 484. SB 484 may need some modifications. In informal discussions with one of AFN's lawyers, we believe that some modifications can be easily made. If this fails, the governor's bill must pass alone.

The next step involves a constitutional amendment linked to amending ANILCA. Attached you will find the wording for a constitutional amendment based on the wording for limited entry.

As we stated in our testimony, finality can only be achieved if there are consistent definitions between state and federal statutes. Otherwise, the legislature will be back at this when the next term gets defined awry by a federal court. Amending ANILCA is an essential step that can no longer be avoided. Also attached is proposed wording for amending ANILCA. This wording just merely requires the federal government to accept Alaska law.

Sincerely,  
  
Greg Seider, Executive Director

WE THE UNDERSIGNED SUPPORT A CONSTITUTIONAL AMENDMENT AND PETITION THE GOVERNOR TO PLACE THE RURAL PREFERENCE QUESTION ON THE BALLOT IN THE NEXT STATEWIDE ELECTION.

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WE THE UNDERSIGNED SUPPORT A CONSTITUTIONAL AMENDMENT AND PETITION THE GOVERNOR TO PLACE THE RURAL PREFERENCE QUESTION ON THE BALLOT IN THE NEXT STATEWIDE ELECTION.

NAME

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WE THE UNDERSIGNED SUPPORT A CONSTITUTIONAL AMENDMENT AND PETITION THE GOVERNOR TO PLACE THE RURAL PREFERENCE QUESTION ON THE BALLOT IN THE NEXT STATEWIDE ELECTION.

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Larry Freeman Box 664 Glennallen AK 99588

Connie J. Powell Box 224 Glennallen 99588

Christine Smith Box 587 Glennallen, AK 99588

Walter Strong " " " "

Thompson Box 381 Glennallen AK 99588

DALE ENZELBERG Box 322 COPPER CENTER

Each part of the animal or fish is cut and prepared for future use.

In addition to the language that surrounds us in subsistence, we learn basic manners and skills which is our protocol in our Athabasca culture. We learn to share with others especially elders who are unable to hunt and fish and with people who are in need.

One other significant role that subsistence play is that it instills self-esteem, pride and integrity, especially for the men. It creates a challenge and a sense of accomplishment when they hunt and fish - they become the role models for our young generation as they carry on the traditions and language and culture.

Patsy Cronin

The subsistence issue for us, the  
Native People of Alaska ~~area~~ means  
more ~~to~~ to us than preserving fish  
and game. It is the blood line that  
links us to our very existence as  
Alaskan natives.

As a subsistence user, I grew up  
in Copper Center Village learning "our  
way of life" by observing my parents  
and others hunt and fish. Our whole  
culture and language is essential during  
that time.

Subsistence is the greatest tool for  
Native Education for us. By observe  
and participating in hunting and fish  
we learn the Athabaskan words for  
the animals, fish, parts of the animals  
the area in which we hunt and fish,  
and every detail that surrounds the  
area.

~~Preparing~~ Preparation for hunting  
and fishing and the act itself  
is an automatic summon for the  
use of our language and culture.

The ~~very~~ act of the kill is often  
followed by a prayer of thanksgiving  
to our creator for providing us with  
the food followed by a careful  
procedure of care for the food.

- (FROM  
PINK FOLDER)

SUPREME

- COURT

DECISION



Before: Matthews, Chief Justice, Rabinowitz,  
Burke, Compton, and Moore, Justices.

MATTHEWS, Chief Justice.  
COMPTON, Justice, concurring.  
MOORE, Justice, concurring.  
RABINOWITZ, Justice, dissenting.

#### INTRODUCTION

This case challenges chapter 52 SLA 1986 which grants a preference to rural residents to take fish and game for subsistence purposes. The only requirement to be met by a subsistence fisherman or hunter is residency in a rural area of the state.

The rural preference is challenged under several provisions of the Alaska Constitution: the common use clause, article VIII, section 3; the no exclusive right of fishery clause, article VIII, section 15; the uniform application clause, article VIII, section 17; the equal rights clause, article I, section 1; and the due process clause, article I, section 7. In addition, violation of the equal protection and due process clauses of the United States Constitution is claimed. For the reasons that follow, we hold that the rural preference violates article VIII, sections 3, 15 and 17 of the Alaska Constitution.

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FACTUAL AND PROCEDURAL SETTING

The 1986 act<sup>1</sup> defines subsistence fishing and hunting as activities which can be undertaken only "by a resident domiciled in a rural area of the state . . . ." Subsistence uses are also defined in terms of residency in rural areas:

"Subsistence uses" means the noncommercial, customary and traditional uses of wild, renewable resources by a resident domiciled in a rural area of the state for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of non-edible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption.

AS 16.05.940(30). A "rural area" is defined as "a community or area of the state in which the noncommercial, customary, and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy of the community or area." AS 16.05.940(25).

Appellants are Alaska residents who have engaged in subsistence hunting and fishing in the past and wish to continue to do so. Under the 1986 act, they are disqualified as subsistence users because they reside in areas classified as non-rural by the joint Boards of Fisheries and Game. Appellants McDowell and Mahle reside in Anchorage, Bondurant resides in

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1. For ease of reference, citations to chapter 52 SLA 1986 in this opinion will be to the appropriate section of the Alaska Statutes where that act is codified.

Cooper Landing, and Eastwood resides in the community of McKinley Park.

The 1986 act requires the Board of Fisheries and the Board of Game to decide what portion of each fish stock and game population can be harvested consistent with the principle of sustained yield. Next the Boards must determine how much of the harvestable portion is needed to satisfy subsistence needs. If the harvestable portion of any stock or population is not sufficient to accommodate all consumptive uses -- sport, personal use, and commercial -- then subsistence uses

shall be accorded a preference over other consumptive uses, and the regulations shall provide a reasonable opportunity to satisfy the subsistence uses. If the harvestable portion is sufficient to accommodate the subsistence uses of the stock or population, then the Boards may provide for other consumptive uses of the remainder of the harvestable portion.

AS 16.05.258(c). If the harvestable portion of a stock or population is insufficient to satisfy all subsistence needs, all non-subsistence uses are barred, and the Boards are required to distinguish among subsistence users by applying three criteria: "(1) customary and direct dependence on the fish stock or game population as the mainstay of livelihood; (2) local residency; and (3) availability of alternative resources." Id.

This case was brought in 1983 as a challenge to the 1978 subsistence statute, chapter 151, section 4 SLA 1978. The 1978 statute established that subsistence hunting and fishing had priority over other uses of fish and game stocks. Like the 1986

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statute, it provided for two tiers of subsistence users. In the first tier were those who could take fish or game for subsistence purposes when populations were adequate to satisfy all subsistence needs. The second tier was limited to those who could take fish and game for subsistence purposes when populations were inadequate to supply all subsistence needs. The 1978 statute distinguished the second tier of subsistence users from the first tier on the basis of the same three factors utilized in the 1986 statute, namely, customary and direct dependence, local residency, and availability of alternative resources. Id. However, unlike the 1986 statute, the 1978 statute did not impose a rural residency requirement as a condition to becoming a first-tier subsistence user.

The appellants' initial complaint challenged the second-tier subsistence priority of the 1978 statute. The complaint was amended several times to expand on the original theory and add challenges to various regulations. All parties submitted motions for summary judgment. The superior court granted some of these motions and deferred others on October 24, 1984. Before the deferred motions could be ruled on, this court decided Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985), which struck down, as inconsistent with the 1978 statute, subsistence fishing regulations which imposed a rural residency requirement on first-tier subsistence users. Id. at 178.

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The next event of significance was the passage in 1986 of chapter 52 SLA 1986, which, as noted, provides that only rural residents can be first- or second-tier subsistence users. Following passage of this act, the appellants again amended their complaint, challenging the rural preference on constitutional grounds. Both the appellants and the state moved for summary judgment. The superior court granted the motion of the state and denied the motion of the appellants. Judgment was entered on the basis of this ruling.

The setting of this case would not be complete without mention of the Alaska National Interest Lands Conservation Act (ANILCA), enacted by Congress in 1980.<sup>2</sup> Section 3114 of this act requires that on federal public lands in Alaska, subsistence uses are to be given priority over the taking of fish and wildlife for other purposes. Under ANILCA, only rural Alaska residents are entitled to a subsistence priority.<sup>3</sup> ANILCA requires federal

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2. 16 U.S.C.A. §§ 3101-3233 (West 1985).

3. ANILCA § 804, 16 U.S.C.A. § 3114, states:

Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be

(Footnote Continued)

management of public lands in Alaska in order to ensure the subsistence priority.<sup>4</sup> However, federal management may be supplanted by the state so long as the state enacts and implements subsistence laws "which are consistent with, and which provide for the definition, preference, and participation specified in" ANILCA.<sup>5</sup>

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(Footnote Continued)

implemented through appropriate limitations based on the application of the following criteria:

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

(2) local residency; and

(3) the availability of alternative resources.

(Emphasis added).

ANILCA § 803, 16 U.S.C.A. § 3113, defines the term "subsistence uses" as used in ANILCA to mean

the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.

(Emphasis added.)

4. 16 U.S.C.A. § 3115(c).

5. 16 U.S.C.A. § 3115(d).

After this court's Madison decision, the Secretary of the Interior notified the state that state law was no longer consistent with ANILCA and that federal management would begin unless consistency was achieved by June 1, 1986. Kenaitze Indian Tribe v. State of Alaska, 860 F.2d 312, 314 (9th Cir. 1988), cert. denied, 105 L. Ed. 2d 695 (1989). With the passage of the 1986 act, the Interior Department has stated that Alaska is once again in compliance with ANILCA. Id.

After final judgment was entered by the superior court, the 9th Circuit Court of Appeals ruled that the definition of "rural" in the 1986 act does not comply with § 3113 of ANILCA. Id. at 318. "Rural," in ANILCA, according to the court, refers to "sparsely populated" areas; "rural is the antonym of urban and includes all areas in between cities and towns of a particular size." Id. at 316-17. The court referred to Census Bureau standards under which "the urban population consists of people living in communities of 2,500 or more, while the rural population comprises everyone else." Id. at 317. Thus, the 1986 act's subsistence-oriented definition was held inconsistent with ANILCA.

Bondurant and Eastwood both reside in rural areas as Kenaitze has interpreted ANILCA's use of that term. They are thus probably entitled to injunctive relief under ANILCA, 16

U.S.C.A. § 3117(a).<sup>6</sup> However, the Kenaitze decision does not change the issues presented in this appeal because the 1986 statute remains fully applicable to all non-federal lands.

Background and Purpose of the 1986 Statute

Prior to 1978, urban residents could engage in subsistence hunting and fishing. However, there was no statutory preference given to subsistence over sport or commercial fishing or sport hunting. With the enactment of chapter 151 SLA 1978, subsistence hunting and fishing was given such a priority. Madison, 696 P.2d at 174 n.12. The 1978 statute did not bar urban residents from eligibility as first-tier subsistence users. Madison, 696 P.2d at 176. However, a regulation adopted by the Board of Fish and Game did exclude urban residents. 5 AAC 01.597. Madison held that this regulation violated the 1978 statute. Id.

In 1985 the Alaska House of Representatives adopted a letter of intent which accompanied the bill that became the 1986 subsistence act. 1985 House Journal 1246. The letter explained the rural preference of the 1986 act as follows:

This limitation of the definition of "subsistence uses" recognizes that Alaska is unique, and unlike any of the other forty-nine states, the economy of many rural communities in rural areas in Alaska is significantly dependent upon participation by the residents of these communities in the

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6. Such relief has not been requested in this case, and the question whether the § 3117(a) remedy is available only in federal courts has not been briefed.

taking of fish stocks and game populations for personal and family consumption. Further, the legislature finds that the general health and welfare of these citizens is significantly tied to their participation in these activities.

Id. at 1229-30. In making this determination, the legislature sounded a theme that was also expressed by Congress in enacting ANILCA. The House Committee on Interior and Insular Affairs determined that:

After consideration of the testimony at the subcommittee's hearings and town meetings throughout Alaska and review of studies done by a variety of federal, state, academic, and other agencies and groups, the Committee has no doubt about the importance of subsistence uses to the rural people of Alaska. Reliable evidence was given to the Committee demonstrating that fifty percent of the food for three-quarters of the Native families in Alaska's small and medium villages is acquired through subsistence uses, and 40 percent of such families spend an average of 6 to 7 months of the year in subsistence activities . . . .

H.R. Rep. No. 1045, 95th Cong., 2d Sess., at 181 (1978). The intervenors in this appeal similarly expressed the purpose of the rural preference as follows:

If village access to fish and game is overwhelmed by competition from the tens of thousands of sportsmen who Alaska's fortuitous oil wealth has drawn to the urban centers, the effect on the rural village economy would be adverse, and the effect on the health and welfare of rural residents would be even more so.

An additional purpose of the 1986 subsistence law is to retain state management of fish and game on federal lands by meeting the requirements of ANILCA.<sup>7</sup>

Urban-Rural Subsistence Patterns

Appellants' basic objection to the 1986 act is that by excluding from eligibility as subsistence users all urban dwellers and by including all rural dwellers, the act unfairly excludes some urban residents who have lived a subsistence lifestyle and desire to continue to do so, while needlessly including numerous rural residents who have not engaged in subsistence hunting and fishing. Appellants claim, in other words, that the urban/rural criterion is both unfairly under-inclusive, because it excludes deserving urban residents, and over-inclusive, because it includes undeserving rural residents. Appellants instead suggest that the right to subsistence should depend upon individual needs and traditions, not on one's place of residence.

The record supports the appellants' claim that there are substantial numbers of urban subsistence users. A state

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7. Senator Fisher, a member of the Senate Resource Committee, noted in the Senate floor debate: "[T]his legislation will provide the boards the tools to solve the problems in harvest disruption that followed Madison, and will assure the state will retain management of fish and game throughout Alaska by meeting the requirements of the federal subsistence law."

study of subsistence use patterns<sup>8</sup> found that of some 255 holders of subsistence salmon permits for the 1980 Tanana River fishery, approximately 20% exhibited the attributes commonly associated with a traditional subsistence lifestyle, even though they all resided in the urban Fairbanks area. The report states:

Despite their residence in or near populated areas of the Fairbanks North Star Borough, these households generally participated in the wage economy on a seasonal basis and had longer histories of participation in the fishery, lower cash incomes, and somewhat larger household sizes than the majority of users. Some of these households have long-standing cultural ties to the subsistence fishery. For these more intensive users, fishing in sub-district Y-6C was less a recreational outing than an integral component of their way of life in Interior Alaska. Their residence in an area which is currently defined by regulation as urban, coupled with escalating demands upon the resource base, however, raise questions about whether these more intensive uses can continue in the future.

Study at 12. Similarly, in the city of Homer, an urban area under the regulations,<sup>9</sup> the study reports that 38.2% of the city residents obtained at least one-half of their meat and fish supply from personal hunting and fishing activities. Id. at 162.

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8. R.J. Wolfe and L.J. Ellanna Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities, Technical Paper Number 61, Alaska Department of Fish and Game, Division of Subsistence, Juneau, March, 1983 (hereinafter "Study").

9. 5 AAC 99.014.

Likewise, the study documents the fact that numerous Alaskans who live in areas classified by the regulations as rural do not engage in subsistence activities. For example, in the City of Sitka, which is classified as rural, although it has a population of 7,803, some 26% of the households sampled did no hunting and 7% did no fishing. Id. at 235. Similarly, in the City of Nome, population 3,249, which is also rural under the regulations, id. at 93, some 5% of all households use no locally taken fish or game. Id. at 111.

The study also amply supports the critical importance of subsistence hunting and fishing to residents of the numerous small and remote villages of our state. For example, in the Wade Hampton census area of Western Alaska, the average annual per capita cash income was only \$2,737 (1979),<sup>10</sup> id. at 30, and the average household harvested 4,597, dressed weight, pounds of fish and game each year. Id. at 42.

### The Article VIII Clauses - History and Analysis

#### A.

Section 15 of article VIII of the Alaska Constitution provides:

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

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10. The 1979 statewide average was \$11,152. Study at 30.

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limit entry into any fishery for the 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.

Section 3 of article VIII provides:

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

Section 17 of article VIII provides:

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.

Although the ramifications of these clauses are varied, they share at least one meaning: exclusive or special privileges to take fish and wildlife are prohibited. Section 15 states this explicitly with respect to fisheries. The proceedings of our Constitutional Convention show that the same meaning was intended with respect to sections 3 and 17.

A memorandum of the Constitutional Convention Committee on Resources expresses the view that the common use clause has as one of its purposes a prohibition on exclusive grants or special privileges. The memorandum states: "The expression 'for common use' implies that these resources are not to be subject to exclusive grants or special privileges as was so frequently the case in ancient royal tradition." Alaska Constitutional Convention Papers, Folder 210, Papers Drafted by Committee on Resources, entitled "Terms."

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The Committee on Resources commentary with respect to the uniform application clause states:

This section is intended to exclude any especially privileged status for any person in the use of natural resources subject to the disposition of the state.

6 Proceedings of the Alaska Constitutional Convention 84 (Dec. 16, 1955).

In Owsichek v. State, 763 P.2d 488 (Alaska 1988), we observed that the article VIII provisions were designed to ensure to the public the broadest possible access to wildlife. We noted that "the common use clause impose[s] upon the state a trust duty to manage the fish, wildlife and water resources of the state for the benefit of all the people." Id. at 495 (emphasis added). "[A] minimum requirement of this duty is a prohibition against any . . . special privileges." Id. at 496. In State v. Ostrosky, 667 P.2d 1184, 1191 (Alaska 1983), we observed that the common use and no exclusive right of fishery clauses reflected "anti-exclusionist values."

Appellants contend that the rural residency requirement amounts to an exclusive or special privilege prohibited explicitly by section 15 and implicitly by sections 3 and 17. They focus on Hynes v. Grimes Packing Co., 337 U.S. 86 (1949), a case which interpreted section 1 of the White Act, former 48 U.S.C. §§ 220-224 (1941), under which Alaska fisheries were regulated before statehood. In Hynes, the Supreme Court held that the White Act prohibited granting a preferential right to fish to Native residents of the Karluk Reservation. Id. at 123.

This case is of precedential importance, they contend, because section 15 was based on section 1 of the White Act.

In response, the state agrees that the first sentence of section 15 is based on section 1 of the White Act. However, the state distinguishes Hynes on the grounds that the exclusive right to fish there was available to "a closed class." In contrast, it argues there is no closed class here because "people may become eligible to participate in subsistence uses by establishing their domicile in a rural area." Further, the state relies on Kenai Peninsula Fishermen's Cooperative Association v. State, 628 P.2d 897, 904 (Alaska 1981) which held that section 15 does not bar differential treatment between commercial, sport, and subsistence fishermen. The intervenors' argument in response relies exclusively on this case.

The parties correctly agree that the no exclusive right of fishery clause is based on section 1 of the White Act. The commentary concerning the exclusive right of fishery clause prepared by the Committee on Resources of the Constitutional Convention states:

This section is intended to serve as a substitute for the provision prohibiting the several right of fisheries in the White Act. Instead of using the terminology of that Act the purposes sought by it are given expression in a prohibition of exclusive right or special privileges of any person to the fisheries of the state.

6 Proceedings of the Alaska Constitutional Convention Proceedings at 87 (Alaska Legislative Council).

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The language of the White Act, for which the no exclusive right clause is meant to be a substitute, is as follows:

Provided, that every such regulation made by the Secretary of the Commerce shall be of general application within the particular area to which it applies, and that no exclusive or several right of fishery shall be granted therein, nor shall any citizen of the United States be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of the Commerce.

Act of June 6, 1924, ch. 272, § 1, 43 stat. 464.

The appellants' reliance on Hynes as an explanation of the meaning of the bar on exclusive rights and special privileges is apt. At issue in Hynes was a regulation of the Secretary of the Interior<sup>11</sup> prohibiting commercial salmon fishing in all waters within 3,000 feet of the shores of the Karluk Reservation. 337 U.S. at 92. The Secretarial Order made an exception which allowed Natives residing on the Reservation and their licensees to fish in these waters. Id. The Supreme Court held that this exception in favor of the Native residents and their licensees violated section 1 of the White Act. The court stated:

[W]e think it clear that its proviso, "that no exclusive or several right of fishery shall be granted therein," applies to commercial fishing by Natives equally with

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11. Regulatory jurisdiction over the administration of the White Act was transferred from the Department of Commerce to the Department of the Interior, effective July 1, 1939; Hynes, 337 U.S. at 92 n.4.

fishing companies, nonresidents of Alaska or other American citizens and so applies whether those Natives are or are not residents on a reservation. We find nothing in the White Act that authorizes the Secretary of the Interior to grant reservation occupants the privilege of exclusive commercial fishing rights. . . . "Exclusive," as used in Section 1 of the White Act, forbids not only a grant to a single person or corporation but to any special group or number of people. The legislative history set out above shows this. The offending regulations which brought about the enactment of the proviso in § 1 of the White Act were administered so as to limit fishing to those who had been using the fisheries before the regulations.

337 U.S. at 122.<sup>12</sup>

As noted above, the state seeks to distinguish Hynes on the ground that Hynes involved a closed class of recipients of a special privilege, whereas the 1986 subsistence law does not because anyone who wants to hunt and fish for subsistence purposes can move to a rural area. We find this argument unpersuasive. If it were valid, virtually any discrimination based on residence would be justified - the residents of the disfavored area could simply move. Such a rationale is inconsistent with the prevailing approach in territorial

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12. We do not agree with Justice Rabinowitz's statement in dissent that the limitation struck down in Hynes was predicated solely on the fact that the users were Indians. Infra at 50. Both ethnic status and local residency were required as the regulation in question applied to "natives in possession of [the Kariuk] reservation." 337 U.S. at 92. In any case, the quote in the text makes it clear that if the exception had been based solely on residence, rather than on residence and race, it would also have been struck down.

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discrimination cases, which is to subject territorial classifications to scrutiny under the equal protection clause. Gilman v. Martin, 662 P.2d 120, 125 (Alaska 1983); Neuman, Territorial Discrimination, Equal Protection, and Self-Determination, 135 U. Pa. L. Rev. 261, 274-75 (1987).

The state's and the intervenors' reliance on Kenai Peninsula is also off the mark. That case merely affirmed what article VIII, section 4<sup>13</sup> says explicitly - that preferences among beneficial uses of fish and game may be legislatively or administratively established. We stated in Kenai Peninsula:

While section 15 does prohibit granting monopoly fishing rights, that section was not meant to prohibit differential treatment of such diverse user groups as commercial, sport, and subsistence fishermen. To conclude that, because a certain species is made available for sport fishing in a given area, commercial fishing of the same species must also be allowed, would be to go far beyond the purpose of the section.

628 P.2d at 904 (footnote omitted). The state may, indeed must, make allocation decisions between sport, commercial, and

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13. Article VIII, section 4 of the Alaska Constitution provides:

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.

subsistence users. That authority, however, does not imply a power to limit admission to a user group.<sup>14</sup>

Section 1 of the White Act guaranteed equal access to fisheries regardless of residence. The language of the Act and Hynes make this clear.<sup>15</sup> Alaska's constitutional framers were

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14. The foregoing also answers Justice Rabinowitz's contention that our interpretation of the equal access clauses of article VIII is in conflict with article VIII section 4. We have consistently taken the position that limits on admission to user groups are subject to scrutiny under the article VIII equal access clauses. See State v. Ostrosky, 667 P.2d 1184, 1189 (Alaska 1983); Owsichuk v. State, 763 P.2d 488, 492 (Alaska 1988).

15. The legislative history of the White Act is in accord. Congressional debate at the time the White Act was proposed demonstrated concern that Alaska residents and non-residents alike were being excluded from Alaska fisheries. The debate also demonstrated Congress' desire that Alaska fisheries be equally accessible to everyone:

Mr. Robinson. The Secretary of Commerce sought to give exclusive right to fish in certain Alaskan water, and out of this attempt to give exclusive rights to fish, thus depriving a large number of the people the right to pursue their usual vocation, great complaint arose. This bill, however, denies to the Secretary of Commerce any power to grant an exclusive right to fish and requires him to give everyone equal rights within the areas where fishing is permitted.

. . . .

Mr. Jones of Washington. The bill removes the principal cause of complaint with reference to the exercise of power by the Secretary of Commerce. . . . Within the two reservations [of restricted fishing areas] that were created by Executive Order a year or two ago the Secretary of Commerce has seen

(Footnote Continued)

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(Footnote Continued)

fit to make regulations under which outsiders might not go in order to fish. In other words, those who are already located there, if [the Secretary] thought they took all the fish that should be taken, were given the full rights, and nobody else could go in there and take fish.

Mr. King: They were given exclusive rights.

Mr. Jones of Washington. They may be called exclusive rights, but I want to say this in justice to the Secretary of Commerce:

When I came back this fall, and came down here, and we were considering matters of this kind, the Delegate from Alaska and I talked over the matter with reference to those exclusive rights, and I saw the Secretary of Commerce, and the Secretary of Commerce himself said that he would be glad to have that discretion taken away, that certainly he was not in favor of that policy, but those who were on the ground and who had been dealing with the matter especially and who might be considered to be experts had recommended and urged that that policy be pursued. I will say, in justice to him, that he said frankly that he would prefer not to have that absolute power, so I can say for him that he is glad that this provision is put in the bill prohibiting him from granting exclusive rights within the fishing areas up there.

. . . .

Mr. Robinson. I have been unable to find any authority for [the Secretary] to grant exclusive rights of fishery. It was about that alleged abuse of authority that most of the complaints arose; namely, that the Secretary in some instances had created reservations, and in others had granted in certain waters the exclusive right to fish, usually to large corporations or packing concerns, which deprived the fishermen of the

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aware of Hynes.<sup>16</sup> As noted, section 15 of article VIII was meant to be a substitute for section 1 of the White Act and to further

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(Footnote Continued)

opportunity to pursue their occupations; and they desired very much the provision that is in this bill, which secures to every citizen of the United States the right to fish in Alaskan waters upon equal terms and without discrimination. The bill deprives the Secretary of any power . . . to grant exclusive rights to fish in Alaskan waters.

65 Cong. Rec. 9520-21 1924) (emphasis added).

Based in part upon the Congressional debate identified above, Hynes concluded that

[T]he legislative history of the White Act only emphasizes what the statute clearly says, that is, no special privileges in Alaskan fishing preserves.

Hynes, 337 U.S. at 120 (footnote omitted).

16. A memo of the Committee on Resources defining terms states the following under "White Act Provisions 48 U.S.C.A. 222:"

That every such regulation made by the Secretary shall be of general application within the particular area to which it applies, and that no exclusive or general right of fishery shall be granted therein, nor shall any citizen of the U.S. be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary. . . . The word "exclusive" forbids not only a grant to a single person or corporation, but to any special group or number of people. (Hynes-Grimes Karluk Reservation)

Alaska Constitutional Convention Papers, Folder 210.

its purposes.<sup>17</sup> It follows that section 15 likewise was meant to ensure an equal right to participate in fisheries, regardless of where one resides.

Although section 15 pertains only to fisheries, the prevention of grants of exclusive or special privileges with respect to fish and game is also one purpose of the common use and the uniform application clauses.<sup>18</sup> It follows that the grant of special privileges with respect to game based on one's residence is also prohibited.

We therefore conclude that the requirement contained in the 1986 subsistence statute, that one must reside in a rural area in order to participate in subsistence hunting and fishing, violates sections 3, 15, and 17 of article VIII of the Alaska Constitution.<sup>19</sup>

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17. Commentary on Article on State Lands and Natural Resources, 6 Proceedings of the Alaska Constitutional Convention at 87.

18. See supra pages 14 and 15.

19. Justice Rabinowitz states in his dissenting opinion that he does not interpret the statute to mean that "eligibility to participate in subsistence uses is determined solely with reference to where an individual lives." Infra at 47. That, however, clearly is the case with respect to first-tier subsistence users. Urban resident may not be subsistence users because subsistence uses are by definition limited to rural residents. AS 16.05.940(30), quoted supra at pp.2-3. Yet all rural residents may be first-tier subsistence users without regard to their individual characteristics. The regulation on which Justice Rabinowitz relies, 5 AAC 99.010(b), defines customary and traditional uses but does not state that first-tier subsistence rights can be limited to customary and

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B.

The conclusion we have reached does not mean that everyone can engage in subsistence hunting or fishing. We do not imply that the constitution bars all methods of exclusion where exclusion is required for species protection reasons. We hold only that the residency criterion used in the 1986 act which conclusively excludes all urban residents from subsistence hunting and fishing regardless of their individual characteristics is unconstitutional.

We are not called upon in this case to rule on what selection criteria might be constitutional. It seems appropriate, however, to note that any system which closes participation to some, but not all, applicants will necessarily create a tension with article VIII. In such cases, assuming that the exclusionary criterion is not per se impermissible, our decisions suggest that demanding scrutiny is appropriate.

We alluded to this in State v. Ostrosky, 667 P.2d 1184 (Alaska 1983) in discussing the interplay between the constitutionally allowed limited entry system, which was permitted by

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traditional users. As we stated in Madison "the phrase 'customary and traditional' modifies the word 'users' . . . it does not refer to users." 696 P.2d at 174. The state acknowledges that only in the second-tier subsistence context may individual characteristics separate those rural residents who be second-tier subsistence users from those who are ineligible. Brief of Appellees, p. 8. The state also notes that the need for a second-tier limitation has, to date, not arisen. Id.

amendment to article VIII, section 15, and the common use and no exclusive right of fisheries clauses. We stated:

[S]ince the common use clause of section 3 and the no exclusive right of fishery clause of section 15 remain in the constitution, the premise of the argument is that whatever system of limited entry is imposed must be one which, consistent with a feasible limited entry system, entails the least possible impingement on the common use reservation and on the no exclusive right of fishery clause. The argument concludes that free transferability does not entail the least possible impingement on the anti-exclusionist values which these provisions reflect.

. . . [T]he premise of this argument is logical.

Id. at 1191. We expressed the same theme in Johns v. Commercial Fisheries Entry Commission, 752 P.2d 1256 (Alaska 1988) concerning the obligation of the Commercial Fisheries Entry Commission to establish an optimum number of entry permits. We stated in Johns:

In [Ostrosky], we noted that there is a tension between the limited entry clause of the state constitution and the clauses of the constitution which guarantee open fisheries. We suggested that to be constitutional, a limited entry system should impinge as little as possible on the open fishery clauses consistent with the constitutional purposes of limited entry, namely, prevention of economic distress to fishermen and resource conservation. Ostrosky . . . . The optimum number provision of the Limited Entry Act is the mechanism by which limited entry is meant to be restricted to its constitutional purposes. Without this mechanism, limited entry has the potential to be a system which has the effect of creating an exclusive fishery to ensure the wealth of permit holders and permit values, while exceeding the constitutional purposes of limited entry. Because this risk of unconstitutionality