

ALASKA LEGISLATURE COMMITTEE FILES 1985 - 1986 8672

4222.13 SRES CORRESPONDENCE (file 2)

199

Subsistence Update

Page 2

July 15, 1985

permits to Juneau residents for the Taku by early July, but no catch data was available. The department reported low interest for subsistence fishing in the Stikine with only about 10 permits issued.

ADF&G will open Fish Creek in Juneau to subsistence fishing for pink salmon later in July and is considering opening Montana Creek for subsistence fishing for cohos in August. Both rivers, which are on Juneau's road system, have been closed to subsistence net fishing for many years.

In response to a request by local residents, ADF&G closed sport fishing for sockeyes in Klawock on July 1 because of weak runs. Subsistence gillnet fishing in Klawock has been closed on the weekends to reduce pressure from non-local residents who travel to Prince of Wales Island from Ketchikan via state ferry to fish the river. Further restrictions may be imposed if the returns don't improve.

COPPER RIVER--High water and lagging escapements have produced poor fishing for dipnetters on the Copper River. ADF&G reports that 3,800 dipnetting permits had been issued and a catch of 22,000 sockeyes had been recorded by the end of the first week in July. Dipnetting had been opened seven days a week, but catches were poor at an average of two fish a day per fisherman.

Commercial fishing on the Copper River Flats was closed on July 8 until further notice because of the lagging escapements. A catch of 860,000 fish had been reported at that point, falling below the pre-season forecast of 1 million to 1.4 million fish.

Sonar counts of sockeye escapements into the Copper River were improving in early July, but department officials were unsure if the improved counts would bring the dipnet catch up to the goal of 60,000 fish or allow additional commercial fishing.

COOK INLET--The subsistence fishing issue in Cook Inlet has been relatively quiet, although there are some signs of impending problems. ADF&G reports no sudden increases in subsistence fishing activity. Interest by non-local residents in the Tyonek subsistence gillnet king salmon fishery was minimal, and the effort level in other open subsistence fisheries was relatively stable.

Sockeye catches in the personal use dipnet fishery in the Kasilof River were reported to be good and no surges in the

Subsistence Update

Page 3

July 15, 1985

number of participants have been observed. Catches in the personal use sockeye gillnet fishery near the Kasilof also was strong, with a reported catch of 10,000 fish.

The Board of Fisheries has approved a subsistence gillnet fishery on the East Side beaches on a late coho run. The board had identified up to 30,000 fish as available for harvest in the fishery. A harvest of that magnitude probably will result in sharp reductions of sport fishing on the late coho stocks, according to ADF&G.

ADF&G had turned down a request by Kenai resident Gene Madison, one of the primary litigants in the Madison lawsuit, for a gillnet fishery for king salmon on the East Side beaches. In early June, Madison had threatened a lawsuit to force the department to open the fishery, but nothing had been filed by early July.

Kenai resident Andy Johnson, another of the Madison litigants, also was threatening a lawsuit in early July unless ADF&G allowed subsistence gillnet fishing on the East Side beaches for sockeyes. As of July 12, Johnson had yet to submit a petition outlining his request to the department, but he was reported to be in the process of preparing a petition for submittal.

A Homer resident, Tom Brown, has filed a suit seeking to force ADF&G to include rod-and-reel fishing under its subsistence fishing definitions. State regulations currently classify rod-and-reels as sport fishing gear, which fails to include this type of fishing under the subsistence priority. The state had not responded to the Brown lawsuit as of July 12.



Official Business

Alaska State Legislature

Senate

ARLISS - THIS RESOLUTION
IS VERY INTERESTING TO
READ BUT I WOULD
RECOMMEND AGAINST
CO-SPONSORING. MCF

Senator Paul A. Fischer

Pouch V
State Capitol
Juneau, Alaska 99811

February 22, 1985

Subject: Resolution requesting U.S. government to reassert jurisdiction over five Alaskan islands and to pay the State of Alaska compensation for damages from their loss.

Dear Colleagues:

Next Thursday, February 28th, Senator Ferguson and myself will be introducing the attached joint resolution which we hope you will wish to join as a co-sponsor.

The resolution does the following:

1. Asserts and reasserts the claim of the State of Alaska to Wrangel, Herald, Henrietta, Jeannette and Bennett Islands and their surrounding valuable continental shelf as an integral part of Alaska.
2. Requests the federal government to do the same with regard to sovereignty.
3. Asks compensation and restitution to the State of Alaska and its people for loss of this territory resulting from the neglect of the United States to protect American lives, property and soil.
4. Urges the Governor to take legal action before the Foreign Claims Settlement Commission, the U.S. Court of Claims or other legal forums as may be appropriate.

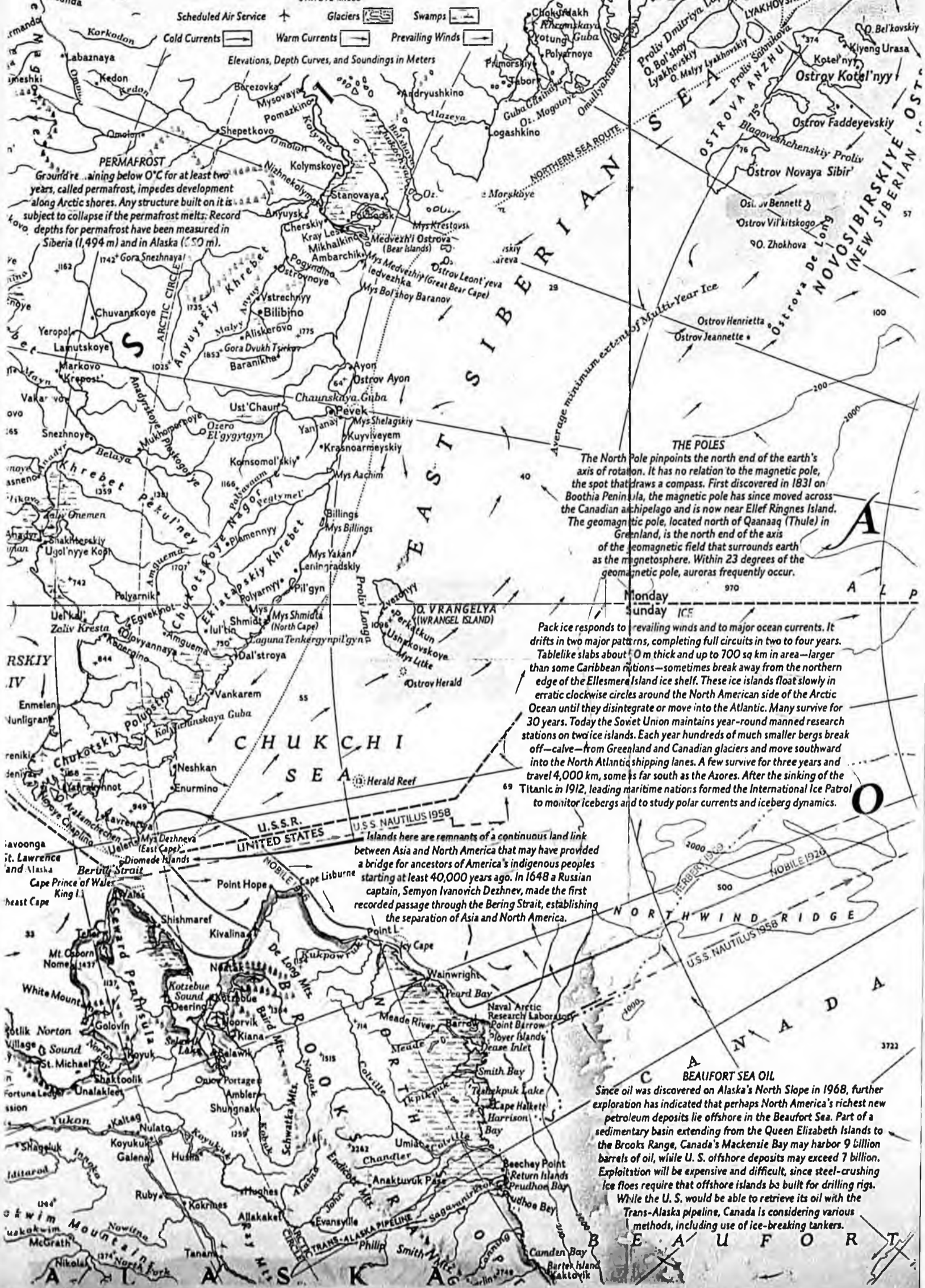
The legal basis and historical grounds supporting our claim to these islands is set forth throughout the whereas clauses of the resolution. Further material is available upon request from my office. I am also attaching a map locating the islands for your information.

Cordially,

A handwritten signature in cursive script that reads "Paul".

Paul A. Fischer

Azimuthal Equidistant Projection
SCALE 1:8,721,000
1 CENTIMETER = 87 KILOMETERS OR 1 INCH = 138 MILES



PERMAFROST
Ground remaining below 0°C for at least two years, called permafrost, impedes development along Arctic shores. Any structure built on it is subject to collapse if the permafrost melts. Record depths for permafrost have been measured in Siberia (1,494 m) and in Alaska (150 m).

THE POLES
The North Pole pinpoints the north end of the earth's axis of rotation. It has no relation to the magnetic pole, the spot that draws a compass. First discovered in 1831 on Boothia Peninsula, the magnetic pole has since moved across the Canadian archipelago and is now near Ellef Ringnes Island. The geomagnetic pole, located north of Qaanaaq (Thule) in Greenland, is the north end of the axis of the geomagnetic field that surrounds earth as the magnetosphere. Within 23 degrees of the geomagnetic pole, auroras frequently occur.

Monday Sunday ICE
Pack ice responds to prevailing winds and to major ocean currents. It drifts in two major patterns, completing full circuits in two to four years. Tablelike slabs about 10 m thick and up to 700 sq km in area—larger than some Caribbean nations—sometimes break away from the northern edge of the Ellesmere Island ice shelf. These ice islands float slowly in erratic clockwise circles around the North American side of the Arctic Ocean until they disintegrate or move into the Atlantic. Many survive for 30 years. Today the Soviet Union maintains year-round manned research stations on two ice islands. Each year hundreds of much smaller bergs break off—calve—from Greenland and Canadian glaciers and move southward into the North Atlantic shipping lanes. A few survive for three years and travel 4,000 km, some as far south as the Azores. After the sinking of the *Titanic* in 1912, leading maritime nations formed the International Ice Patrol to monitor icebergs and to study polar currents and iceberg dynamics.

Islands here are remnants of a continuous land link between Asia and North America that may have provided a bridge for ancestors of America's indigenous peoples starting at least 40,000 years ago. In 1648 a Russian captain, Semyon Ivanovich Dezhnev, made the first recorded passage through the Bering Strait, establishing the separation of Asia and North America.

BEAUFORT SEA OIL
Since oil was discovered on Alaska's North Slope in 1968, further exploration has indicated that perhaps North America's richest new petroleum deposits lie offshore in the Beaufort Sea. Part of a sedimentary basin extending from the Queen Elizabeth Islands to the Brooks Range, Canada's Mackenzie Bay may harbor 9 billion barrels of oil, while U. S. offshore deposits may exceed 7 billion. Exploitation will be expensive and difficult, since steel-crushing ice floes require that offshore islands be built for drilling rigs. While the U. S. would be able to retrieve its oil with the Trans-Alaska pipeline, Canada is considering various methods, including use of ice-breaking tankers.

1 IN THE SENATE

BY P.FISCHER AND FERGUSON

2 SENATE JOINT RESOLUTION NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 Requesting the Government of the United
6 States to reassert jurisdiction over
7 Wrangel Island, Herald Island, Henrietta
8 Island, Jeannette Island, and Bennett
9 Island together with the surrounding
10 outer continental shelf within the
11 American waters of the Chukchi Sea and
12 the East Siberian Seas and to pay the
13 State of Alaska compensation for damages
14 from their loss.

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

16 WHEREAS Alaskans and other Americans remain justifiably grateful for
17 the fortitude shown by Captain Thomas Long and the crew of the whaling bark
18 Nile from New London, Connecticut who, on August 14, 1867, were the first
19 to confirm the existence of a 1,740 square mile island in the Chukchi Sea;
20 and

21 WHEREAS Wrangel Island, named by Captain Long after the former gover-
22 nor of Russian Alaska Baron Ferdinand Petrovich von Wrangel, is located
23 some 270 miles northwest of Cape Lisburne, Alaska and is larger than the
24 State of Rhode Island; and

25 WHEREAS Captain Long was the first to sight and to describe Wrangel
26 Island, the first recorded landing on the island occurred August 12, 1881
27 when Captain Calvin L. Hooper, commander of the Bering Sea Patrol, a divi-
28 sion of the U.S. Treasury Department and as such, the de facto governor of
29 Alaska, landed at Clark River on the eastern coast of Wrangel Island and,

1 with his fellow officers and John Muir (who later founded the Sierra Club)
2 raised the American flag and took possession of the island in the name of
3 the United States; and

4 WHEREAS Captain Hooper was engaged in a Congressionally sponsored
5 effort to rescue the Jeannette, a vessel engaged in Arctic research that
6 was locked in ice floes and subsequently lost and therefore Captain Hooper
7 had the authority to claim Wrangel Island for the United States; and

8 WHEREAS Wrangel Island became a part of the United States by right of
9 confirmed discovery and first possession and, later, a permanent settle-
10 ment; and

11 WHEREAS Wrangel Island and its nearby satellite island Herald Island
12 were placed by the United States Coast and Geodetic Service within the
13 District and later Territory and State of Alaska in publications from 1900
14 through 1977; and

15 WHEREAS the De Long Islands of Henrietta, Jeannette, and Bennett were
16 first discovered in the East Siberian Sea, were claimed, and named by U.S.
17 Navy Commander George W. De Long during his 1879 - 1881 expedition into the
18 Arctic who, with his crew, died when their ship was crushed and sunk by ice
19 floes; and

20 WHEREAS the first permanent settlement on Wrangel Island occurred when
21 the American ship Silver Wave landed a party on the island on September 15,
22 1921, and raised the American flag over the island under the direction of
23 Captain Jack Hammer; and

24 WHEREAS the party from the Silver Wave landed with provisions for only
25 six months as they stated that they planned to sustain themselves by hunt-
26 ing; and

27 WHEREAS the relief vessel in 1922 was blocked by ice floes; and

28 WHEREAS when the relief vessel Donaldson arrived on August 23, 1923,
29 the only survivor of the 1921 expedition was an Eskimo seamstress named Ada

1 "Blackjack" Johnson, who died just a few years ago in Alaska; and

2 WHEREAS a new party led by Charles Wells of Uniontown, Pennsylvania
3 continued settlement on Wrangel Island; and

4 WHEREAS on May 13, 1924, Secretary of State Charles Evans Hughes
5 stated that the American Lomen Brothers were the proprietary owners of
6 Wrangel Island; and

7 WHEREAS on August 20, 1924, the Soviet gunboat Red October landed on
8 Wrangel Island, took Wells and the other Americans by force, and told them
9 that they were being returned to Alaska; and

10 WHEREAS notwithstanding their promises, they took the Americans to
11 Vladivostok and confiscated the pelts that the American trappers had accu-
12 mulated during the 12 bitter months on the island; and

13 WHEREAS the Americans who survived their ordeal in Vladivostok were
14 released following the intervention of the American consul at Harbin,
15 Manchuria but Charles Wells and two residents of Alaska died while detained
16 by the Soviet government; and

17 WHEREAS the residents of Alaska who survived their ordeal in Soviet
18 Siberia were all from Golovin Bay, Alaska and they survived notwithstanding
19 the severe physical and emotional trauma resulting from the assault, kid-
20 napping, false imprisonment, theft of property together with other vio-
21 lations of American and Alaska law by the agents of the Soviet regime; and

22 WHEREAS after seizing Wrangel Island, the Soviet government proceeded
23 to seize more American soil by occupying the nearby and defenseless Herald
24 Island; and

25 WHEREAS the Soviet government subsequently asserted a spurious claim
26 to the American De Long Islands of Henrietta, Jeannette, and Bennett; and

27 WHEREAS these illegal acts by the Soviet government interrupted 57
28 years of peaceful use of these islands by American seamen, herders, and
29 hunters; and

1 WHEREAS the Soviet occupation of what they refer to as Ostrova De Long
2 is an affront to all Americans, is an insult to the memory of their brave
3 discoverer, and a source of embarrassment to the United States Navy, which
4 memorializes his memory at the Naval Academy in Annapolis; and

5 WHEREAS the soil of all five of these American islands and their
6 surrounding continental shelf has been held by military force in contra-
7 vention of international law and by conduct that is contrary to what is
8 recognized as proper by civilized nations; and

9 WHEREAS the Soviet government has typified its uncivilized conduct by
10 establishing forced labor camps on Wrangel Island as reported in testimony
11 before the U.S. Senate Judiciary Committee in January 1973; and

12 WHEREAS it has been reported that Wrangel Island was the last known
13 imprisonment of Raoul Wallenberg, the Swedish Consul in Budapest, Hungary
14 at the end of World War II who was arrested by Soviet forces and who was
15 responsible for saving the lives of thousands of European Jews from the
16 Nazi Holocaust; and

17 WHEREAS this conduct on American soil has continued in defiance of
18 American law as well as in defiance of the international rules of conduct
19 resulting from the Nuremberg war crime trials after World War II; and

20 WHEREAS the continuing trespass by the Soviet government deprives the
21 State of Alaska and its people of their fundamental right to use the
22 islands of Wrangel, Herald, Henrietta, Jeannette, and Bennett together with
23 the surrounding continental shelf and its valuable resources; and

24 WHEREAS unlike the governments of Canada and Great Britain, the United
25 States has never surrendered its claims of sovereignty over these islands;
26 and

27 WHEREAS the State of Alaska does not believe that agreements between
28 the United States and the Soviet Union, whether they be secret or other-
29 wise, can affect American claims to these islands until they have been

1 ratified by the United States Senate;

2 BE IT RESOLVED by the Alaska State Legislature that the Government of
3 the United States assert and reassert American sovereignty over Wrangel
4 Island, Herald Island, and the De Long Islands of Henrietta, Jeannette, and
5 Bennett, their resources, and their territorial shelf in behalf of the
6 American people; and be it

7 FURTHER RESOLVED that the Government of the United States make satis-
8 factory compensation and restitution to the State of Alaska and its people
9 for the loss of this territory resulting from the neglect of the United
10 States Government to protect American lives and property when the lands
11 were seized in 1924; and be it

12 FURTHER RESOLVED that the State of Alaska asserts and reasserts its
13 claim to Wrangel Island, Herald Island and the De Long Islands of
14 Henrietta, Jeannette, and Bennett and their surrounding continental shelf
15 as an integral part of the State of Alaska; and be it

16 FURTHER RESOLVED the Governor of the State of Alaska is requested to
17 initiate appropriate legal claims for relief before the U.S. Foreign Claims
18 Settlement Commission, the U.S. Court of Claims or other legal forums of
19 the United States as may be appropriate.

20 COPIES of this resolution shall be sent to the Honorable Ronald
21 Reagan, President of the United States; to the Honorable George P. Shultz,
22 Secretary of State; to the Honorable George Bush, Vice-President of the
23 United States and President of the U.S. Senate; the Honorable Thomas P.
24 O'Neill, Jr., Speaker of the U.S. House of Representatives; and to the
25 Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and
26 the Honorable Don Young, U.S. Representative, members of the Alaska delega-
27 tion in Congress.



United States Department of the Interior

NATIONAL PARK SERVICE

ALASKA REGIONAL OFFICE
2525 Gambell Street, Room 107
Anchorage, Alaska 99503-2892

IN REPLY REFER TO:
L7019 (ARO-ONR)

Kie
MAR 5 1986
12 FEB 1986

Honorable Arliss Sturgulewski
Chairman, Senate Resources Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Sturgulewski:

It is our understanding that the Senate State Affairs Committee recently amended and forwarded Bill No. 288 (State Subsistence Bill) to your Committee on Natural Resources. The National Park Service, as you might suspect, has a special interest in this legislation. It is our hope that a bill can be devised to put the state back in compliance with Alaska National Interest Lands Conservation Act (ANILCA) and, perhaps, resolve some other issues related to subsistence as well.

It is in this context that we offer to you and your committee the attached suggestions and comments. Please keep in mind that these suggestions and comments are coming from one federal agency, the National Park Service, and we are not attempting to speak for others.

The underlined phrases indicate suggested wording and the "Discussion" portions are intended to provide you with our rationale for the suggested wording. Additionally, we are attaching some of the Congressional Legislative History associated with Sections 803-804-805 of ANILCA which might be of particular interest and assistance to you and other committee members.

Your task is complicated and, as you know, there is a minimum amount of time in which to act. If the National Park Service can be of assistance to you during the legislative process, please do not hesitate to call upon us.

Sincerely,

Boyd Evison
Regional Director
Alaska Region

Enclosures

Proposed Wording (Amendments) to Bill No. 288
As Passed by Senate
State Affairs
Committee

Page 1: Sec. 3 AS 16.05.255(a)

(10) regulating sport hunts and subsistence hunts and commercial trapping and sport trapping and subsistence trapping as needed for the conservation, development and utilization of game, nongame and fur bearer species.

Discussion: The Bill should specifically address the different types of trapping as with fishing and hunting; i.e., subsistence hunting, sport hunting, commercial fishing, sport fishing, personal use fishing, subsistence fishing. Need to similarly address commercial trapping, sport or recreational trapping and subsistence trapping. Bill No. 288 does not currently.

Some wording in ANILCA's legislative history highlights the different forms of trapping (page 307, Senate Report No. 96-413).

"In allowing trapping to continue within preserves, it was not the intent of the Committee to allow exploitative forms of commercial trapping to occur. The intent of the Committee is to allow individual Alaskans to continue to operate their own trap lines within the preserves, even though those individuals might not qualify as subsistence users. The Committee clearly does not intend that the preserves would be a place where more extensive forms of commercial trapping would be allowed where, for example, the trapping itself becomes a business with employees paid to support the trapping operation. The Secretary, through the National Park Service is expected to monitor trapping operations within the preserves and the associated wildlife populations and issue appropriate regulations to insure that exploitive forms of trapping do not take place and that there is no substantial or permanent harm to the wildlife population."

Page 2: Sec. 4 AS 16.05.253

(b) Consistent with sustained yield, sound management, the maintenance of healthy fish stocks, game populations and furbearer populations and consistent with varying management objectives, policies and legal authorities of the different federal conservation system units, the boards shall determine:

Discussion: The various policies, authorities and directives of the various land managers may require different interpretations and application of the "healthy population" concept. See Discussion for Sec. 4 AS 16.05.258(i).

Page 2: Sec. 4 AS 16.05.258

(b) (1) whether the subsistence needs of an area can reasonably be met,
and,

(b) (2) whether adequate quantities of fish stocks and animal populations exist to allow for additional harvest by sport hunters/fishermen, commercial trappers.

Discussion: (1) and (2) would need to be reworded to discount use of word "surplus"...There is NO surplus in Parks, for example.

Page 2: Sec. 4 AS 16.05.258

(c) The boards shall adopt subsistence fishing, subsistence hunting and subsistence trapping regulations for each stock and population where subsistence needs of an area can be reasonably met under (b) (1) above. Subsistence uses shall be accorded a preference over other consumptive uses, and the regulation shall provide a reasonable opportunity to satisfy subsistence uses for the permanent rural residents domiciled in the rural area, and may provide opportunities to satisfy other consumptive uses based upon the health of the fish stock or animal population as defined consistent with the management objectives for the area's fish stock or animal population. (Management objectives as dictated by either the federal or state land managing agency.)

If it is necessary to restrict subsistence fishing, subsistence hunting, or subsistence trapping in order to assure sound management or protect subsistence fishing, subsistence hunting or subsistence trapping, then the preference shall be limited, and the boards, in conjunction with the recommendation of the regional council representing the affected area, shall distinguish among subsistence users, by applying the following criteria:

Discussion: The National Park Service feels that use of the term "surplus" in this section will prove to be misleading in the future and should, therefore, be stricken from usage in the law.

The Senate Committee Report No. 96-413, pages 268-270, provided some clarification of the Congressional intent for Section 803 and 804 of ANILCA. These discussions indicate that the Regional Councils are to provide recommendations to the State's rule-making authorities on issues concerning subsistence preference. Therefore, the National Park Service believes the above wording concerning the Regional Councils is appropriate in the state's subsistence law.

Page 2: Sec. 4 AS 16.05.258

(c) (2) Permanent, local, rural residency.

Discussion: should refer to local rural residency as being local to the hunt area or the particular herd or species area in question and be a Permanent, 12 month per year resident of the area. See Discussion for Sec. 9 AS 16.05.940(31).

3: Sec. 6 AS 16.05.258

(3) (b) availability of alternative, wild, subsistence resources.

Discussion: There have been lengthy discussions in the past (by the Board of Game and ADF&G), on whether or not Congress intended this to mean the availability of super markets. We believe it to mean wild resources and not the availability of a village grocery store! Clarification in the state statute at this time may save time and money later.

Page 3: Sec. 4 AS 16.05.258

(i) The boards, after consultation with the Alaska Department of Fish and Game, shall adopt regulations defining sound management principles, sustained yield, healthy populations of fish, game and fur bearers and customary and traditional. The boards shall adopt (for federal conservation system units) regulations defining sound management principles, healthy and natural, and healthy populations of fish, game and furbearers as provided by the Department of Interior.

Discussion: This portion of law needs to address the differences that exist between USEFWS, BLM, NPS, and the State in the definition of healthy populations. These differences must be reflected in the establishment of hunting, fishing and trapping seasons and bag limits.

"The Committee (pg. 233, Senate Report No. 96-413), recognizes that the management policies and legal authorities of the National Park System and the National Wildlife Refuge System may require different interpretation and application of the "healthy population" concept consistent with the management objectives of each system. Accordingly, the Committee recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and manipulation of the components of the ecosystem."

"...the Committee substituted language to clarify that nothing in the subsistence management and use title is intended to permit the level of subsistence uses of fish and wildlife within a conservation system unit to be inconsistent with "the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations of fish and wildlife. The reference to "natural and healthy population" with respect to national parks and monuments recognizes that the management policies of those units may entail methods of resource and habitat protection different from methods appropriate for other types of conservation units (pg. 235 Senate Report No. 96-413).

Page 5: Sec. 8 AS 16.05.940

Discussion: This section refers to the phrase "customary and traditional" but the bill fails to define the phrase. The National Park Service feels that the bill should incorporate the procedures for determination as outlined by the Joint Boards of Fisheries and Game, i.e., Part 8 - Subsistence Hunting, Fishing, and Trapping; Chapter 99 -

Subsistence Uses; Article 1 - General Provision; 5 AAC 99.010 (see attached).

Page 6: Sec. 9 AS 16.05.940 (31)

Discussion: The concept of "Local rural residency" is not a clear one. Residency itself is rather clear - it generally means the place where one lives and works as distinguished from a place of temporary sojourn. Local may be defined as meaning not general or widespread, having a definite spatial form or location, or relating to a specific place. Rural means relating to the country and implies a sharp contrast to urban. Taken together, the three words mean a place where someone resides permanently, living and working and carrying out the activities of life within a non-urban setting but within a limited or definite spatial location or geographical area.

The National Park Service suggests that the State Subsistence Law take a similar approach to defining "rural area" or "local rural resident" as ANILCA, i.e., identify those areas or communities that are not rural. Anchorage, Fairbanks, Juneau, or Ketchikan are not considered rural by ANILCA. The State Subsistence Law should identify these same areas and direct the Boards of Fisheries and Game to add areas or communities to the list as additional areas or communities become urbanized and thus, no longer rural. The residency issue appears to have been adequately dealt with on page 5, Section 9, AS 16.05.940(28), but "local" is not mentioned in the bill. The National Park Service is, for example, restricted by law to only allow subsistence use by local residents. The House Congressional Record, November 12, 1980 (H 10542) states: "ALL National Park System areas which allow subsistence are authorized to allow it for local residents only."

If the State's subsistence law, in providing subsistence preference during times of shortages, limits the subsistence harvest to "local rural residence", persons domiciled away from the immediate area or animal population would not be permitted to participate in that specific area or harvest. This appears to be necessary to comply with Section 804 of ANILCA.

Page 6: Sec. 9 AS 16.05.940 (32)

Discussion: This section defines "subsistence hunting". The National Park Service feels that "subsistence trapping" should similarly be defined.

The National Park Service believes that some of the legislative history associated with Sections 803 - 804 - 805 of ANILCA may provide helpful insights to the state legislation as deliberation continues on the state's subsistence bill. As such, we have attached a copy of the Senate Report No. 96-413 on those portions dealing with Section 803-805.

HOUSE

DRAFT HEIN 2/3/86

BY THE STATE AFFAIRS COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 288 (State Affairs)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the taking of fish and game for subsistence and personal use; and providing for an effective date."

B.F. - problem with U.F.

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

* Section 1. AS 16.05.251(a)(6) is amended to read:

(6) classifying as commercial fish, sport fish, personal use fish, subsistence fish, or predators or other categories essential for regulatory purposes;

* Sec. 2. AS 16.05.251(a) is amended by adding new paragraphs to read:

(12) designating and regulating special fishing areas, including personal use areas, trophy management areas, catch-and-release areas, and children's fishing areas, and designating stocks in those areas for which special management is appropriate;

(13) regulating commercial, sport, subsistence, and personal use fishing as needed for the conservation, development, and utilization of fisheries.

* Sec. 3. AS 16.05.255(a) is amended by adding a new paragraph to read:

(10) regulating sport hunts and subsistence hunts as needed for the conservation, development, and utilization of game (and nongame) species.

domestic animals as defined by law

* Sec. 4. AS 16.05 is amended by adding new sections to read:

Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION OF FISH AND GAME.

(a) The Board of Fisheries and the Board of Game shall identify the fish stocks and game populations, or portions of stocks and

1 populations, that are customarily and traditionally take
2 the subsistence economy and culture of the area in which
3 located.

4 (b) Consistent with sustained yield, sound management, and
5 maintenance of healthy fish stocks and game populations), the board,
6 shall determine

7 (1) whether there exists a harvestable surplus of the
8 stocks and populations identified under (a) of this section; and

9 (2) how much of the surplus is needed to provide a reason-
10 able opportunity to satisfy the subsistence uses of those stocks and
11 populations.

12 (c) The boards shall adopt subsistence fishing and subsistence
13 hunting) regulations for each stock and population for which a harvest-
14 able surplus is determined to exist under (b)(1) of this section. If
15 a surplus is not sufficient to accommodate all consumptive uses of the
16 surplus, but is sufficient to accommodate subsistence uses of the
17 surplus, then subsistence uses shall be accorded a preference over
18 other consumptive uses, and the regulations shall provide a reasonable
19 opportunity to satisfy subsistence uses of the surplus, and may pro-
20 vide opportunities to satisfy other consumptive uses of the surplus.
21 If it is necessary to restrict subsistence fishing or subsistence
22 hunting) in order to assure (sound management or protect) future subsis-
23 tance fishing or subsistence hunting, then the preference shall be
24 limited, and the boards shall distinguish among subsistence users, by
25 applying the following criteria:

26 (1) customary and direct dependence on the fish stock or
27 game population as the mainstay of livelihood;

28 (2) local residency; and

29 (3) availability of alternative resources.

(d) The boards may adopt regulations consistent with this section that authorize taking for nonsubsistence uses a stock or population identified under (a) of this section.

(e) Fish stocks and game populations, or portions of fish stocks and game populations, not identified under (a) of this section may be taken only under nonsubsistence regulations.

delete (f) In making allocation decisions the boards may apportion subsistence use among species, stocks, and populations that are similar and reasonably available.

(g) Takings authorized under this section are subject to reasonable regulation of seasons, catch or bag limits, and methods and means. Takings and uses of resources authorized under this section are subject to AS 16.05.831 and AS 16.30.

(h) Active duty military personnel, while stationed in the state for more than 30 days, are eligible to fish, hunt, or trap on military installations and facilities in the state under 10 U.S.C. 2671 to the same extent as other nonsubsistence users.

(i) The boards, after consulting with the department, shall adopt regulations defining "maintenance of healthy populations of fish and game," "sound management principles," "sustained yield," and "harvestable surplus."

Sec. 16.05.259. ADMINISTRATIVE APPEALS. (a) The Board of Fisheries and the Board of Game, acting jointly, may establish by regulation an appeal procedure for persons aggrieved by the adoption or repeal of a subsistence or personal use regulation.

(b) An aggrieved person must exhaust administrative remedies before bringing a legal action challenging the adoption or repeal of a subsistence or personal use regulation.

* Sec. 5. AS 16.05 is amended by adding a new section to read:

and the affected Federal Agencies

1 Sec. 16.05.261. NO SUBSISTENCE DEFENSE. In a pro,
2 the taking of fish or game in violation of a statute or regul,
3 is not a defense that the taking was done for subsistence uses.

4 * Sec. 6. AS 16.05.330 is amended by adding new subsections to read:

5 (c) The Board of Fisheries and the Board of Game may adopt
6 regulations providing for the issuance and expiration of subsistence
7 permits for areas, villages, communities, groups, or individuals as
8 needed for authorizing, regulating and monitoring the subsistence
9 harvest of fish and game. The boards shall adopt these regulations
10 when the subsistence preference requires a reduction in the harvest of
11 a fish stock or game population by nonsubsistence users.

12 X (d) With the assistance of the department, the boards shall
13 provide reasonable public notice of the following information to users
14 of a group, community, village, or area subsistence permit:

15 (1) the terms of the permit;

16 (2) the fish stocks and game populations authorized to be
17 taken under the permit;

18 (3) the subsistence use areas covered by the permit.

19 X (e) The Board of Fisheries and the Board of Game may use village
20 and regional corporations formed under 43 U.S.C. 1601 - 1628 (Alaska
21 Native Claims Settlement Act) and community, postal, media, or other
22 services appropriate for providing notice under (d) of this section.

23 X (f) The commissioner shall administer subsistence permit pro-
24 grams that may be established. The commissioner may appoint state
25 employees or other persons to take applications and issue permits and
26 tags. A person appointed by the commissioner may administer oaths for
27 permit and tag applications. The commissioner or the appropriate
28 board may require a report from persons using a permit concerning the
29 time, manner, and place of taking fish and game, the kinds and

4 quantity taken, and other information helpful in administering the
5 fish and game resources of the state. Except for state employees, a
6 person appointed by the commissioner under this subsection is entitled
7 to compensation of \$50 per year or \$1 for each permit or tag issued,
8 whichever is greater.

9 * Sec. 7. AS 16.05.940(22) is amended to read:

10 (22) "subsistence fishing" means the taking of, fishing for,
11 or possession of fish, shellfish, or other fisheries resources by a
12 resident domiciled in a rural area of the state for subsistence uses
13 with gill net, seine, fish wheel, long line, or other means defined by
14 the Board of Fisheries;

15 * Sec. 8. AS 16.05.940(23) is amended to read:

16 (23) "subsistence uses" means the noncommercial, customary
17 and traditional uses [IN ALASKA] of wild, renewable resources by a
18 resident domiciled in a rural area of the state for direct personal or
19 family consumption as food, shelter, fuel, clothing, tools, or trans-
20 portation, for the making and selling of handicraft articles out of
21 nonedible by-products of fish and wildlife resources taken for per-
22 sonal or family consumption, and for the customary trade, barter, or
23 sharing for personal or family consumption; in [FOR THE PURPOSES OF]
24 this paragraph, "family" means [ALL] persons related by blood, mar-
25 riage, or adoption, and a [ANY] person living in [WITHIN] the house-
26 hold on a permanent basis;

27 * Sec. 9. AS 16.05.940 is amended by adding new paragraphs to read:

28 (28) "domicile" means the true and permanent home of a
29 person from which the person has no present intention of moving and to
which the person intends to return whenever the person is away; domi-
cile may be proved by presenting evidence of having had a permanent
home in a particular location for the preceding 12 consecutive months

1 or other evidence acceptable to the boards of fisheries and

2 (29) "fish stock" means a species, subspecies, a
3 grouping or other category of fish manageable as a unit;

4 (30) "game population" means a group of game animals of
5 single species or subgroup manageable as a unit;

6 (31) "rural area" means a community or area of the state in
7 which the noncommercial, customary, and traditional taking and use of
8 fish or game for personal or family consumption is a significant
9 characteristic of the economy of the community or area;

10 (32) "subsistence hunting" means the taking of, hunting for,
11 or possession of game animals by a resident domiciled in a rural area
12 of the state for subsistence uses by means defined by the Board of
13 Game.

14 * Sec. 10. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

15 * Sec. 11. This Act takes effect June 1, 1986.

16
17
18 ↘ R

**PART 8.
SUBSISTENCE HUNTING, FISHING, AND TRAPPING**

**CHAPTER 99.
SUBSISTENCE USES.**

**ARTICLE I.
GENERAL PROVISIONS**

5 AAC 99.010. JOINT BOARDS OF FISHERIES AND GAME SUBSISTENCE PRACTICES. (a) In applying a subsistence priority, the boards will provide for conservation and development of Alaska's fish and game resources according to the following procedures:

(1) Each board will assess the biological status of fish or game resources and determine whether a surplus may be harvested during a regulatory year consistent with the conservation and development of the resources on the sustained yield principle and compatible with the public interest;

(2) Each board will identify subsistence uses of fish or game resources, recognizing that subsistence uses are customary and traditional uses by rural Alaska residents for food, shelter, fuel, clothing, tools, transportation, making of handicrafts, customary trade, barter and sharing.

(b) Customary and traditional subsistence uses by rural Alaska residents will be identified by use of the following criteria:

(1) a long-term, consistent pattern of use, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions;

(2) a use pattern recurring in specific seasons of each year;

(3) a use pattern consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances;

(4) the consistent harvest and use of fish or game which is near or reasonably accessible from the user's residence;

(5) the means of handling, preparing, preserving and storing fish or game which has been traditionally used by past generations, but not excluding recent technological advances where appropriate;

(6) a use pattern which includes the handing down of knowledge of fishing or hunting skills, values and lore from generation to generation;

(7) a use pattern in which the hunting or fishing effort or the products of that effort are distributed or shared among others within a definable community of persons, including customary trade, barter, sharing and gift-giving, customary trade may include limited exchanges for cash, but does not include significant commercial enterprises; a community for purposes of subsistence uses may include specific villages or towns, with a historical preponderance of subsistence users, and in addition encompasses individuals, families, or groups who in fact meet the criteria described in this subsection; and

(8) a use pattern which includes reliance for subsistence purposes upon a wide diversity of the fish and game resources of an area, and which provides substantial economic, cultural, social and nutritional elements of the subsistence user's life.

(c) After identifying subsistence uses based upon the criteria set out in (b) of this section, each board will determine the approximate amount of fish or game necessary to provide fully for reasonable opportunities to engage in these customary and traditional uses.

(d) Each board will adopt regulations that provide an opportunity for subsistence taking of fish or game resources in amounts sufficient to provide the customary and traditional uses identified in (b) of this section, and consistent with sound conservation and management practices. In no instance may the subsistence taking jeopardize or interfere with the maintenance of a specific fish stock or game population on a sustained yield basis.

(e) Each board will, in its discretion adopt regulations that provide an opportunity for non-subsistence uses of the resource, to the extent that the non-subsistence uses do not jeopardize or interfere with the conservation and development of fish or game resources on a sustained yield basis, or with the opportunity for taking these resources for customary and traditional subsistence uses as provided in (d) of this section.

(f) When circumstances such as increased numbers of users, weather, predation, or loss of habitat may jeopardize the sustained yield of a fish stock or game population, each board will exercise all practical options for restricting nonsubsistence harvest before subsistence uses are restricted. If all available restrictions for nonsubsistence uses have been implemented and further restrictions are needed, each board will reduce the take for subsistence uses in a series of graduated steps, by giving maximum protection to subsistence users who:

(1) live closest to the resource;

(2) have the fewest available alternative resources; and

(3) have the greatest customary and direct dependence upon the resource.

(g) In no event, however, will a board allow uses which will jeopardize or interfere with the conservation and management of fish stocks or game populations on a sustained yield basis.

by Congress by the Alaska Native Claims Settlement Act to protect and provide for continued subsistence uses by Alaska Natives and other rural residents, and is based upon the constitutional authority of Congress over Native affairs and its authority under the Property Clause and the Commerce Clause. The committee also has determined that the protection of the subsistence way of life and the fish and wildlife populations upon which that lifestyle depends necessitates the establishment of an administrative structure which enables rural residents with personal knowledge of local conditions and requirements to have a meaningful role in the regulations and management of fish and wildlife and subsistence uses on the public lands.

Section 802: Policy

Based upon the findings in the preceding section, three basic policies have been established which shall guide the activities of the Federal government and the State on the public lands: that the utilization of the public lands is to cause the least adverse impact possible upon rural residents who depend upon subsistence uses for their economic and physical well-being and cultural vitality; the nonwasteful subsistence uses of fish, wildlife and other renewable resources, e.g., berries, timber, grasses, shall be the first priority consumptive use of such resources on the public lands, and when or where it is necessary to restrict the taking of such resources, taking for nonwasteful subsistence uses shall be given preference over other consumptive uses; and that the successful management of subsistence resources and activities requires long term cooperation between adjacent landowners and managers, including appropriate State and Federal agencies, Native corporations, and other nations.

Section 803: Definition

The committee has adopted a definition of "subsistence uses" based on the definition of that term set forth in section 15, ch. 151 SLA 1978 (A.S. 16.05.940) of the Alaska Statutes. In turn, the State definition was modeled on section 703 of the House bill. "Subsistence uses" are defined as the customary and traditional use in Alaska of fish, wildlife and other renewable resources for direct personal or family consumption, for the making and selling of handicraft articles from the non-edible by-products of fish and wildlife taken for direct personal or family consumption, and for customary trade, barter, or sharing for personal or family consumption. The definition of "family" recognizes extended family patterns common to all of Alaska's Native cultures. "Family" includes any person living in a household on a permanent basis as well as those persons living outside the household who are related by blood, marriage or adoption (legal or equitable). "Barter" means the exchange or trade of fish or wildlife, or their parts, for other fish or wildlife, or their parts, or for other food or nonedible items other than money if the exchange is of a limited and noncommercial nature. This definition of "barter" recognizes that in many rural villages the subsistence diet must be supplemented with other foods which may be available from the village store and other sources, and that the limited noncommercial barter of subsistence resources for nonedible items is an essential element of the rural subsistence lifestyle. The definition of "subsistence uses" is intended to include all

Alaska residents who utilize renewable resources for direct or family consumption.

However, the phrase "customary and traditional" is intended to place particular emphasis on the protection and continuation of taking of fish, wildlife, and other renewable resources in areas of, and by persons (both Native and non-Native) resident in, areas of Alaska in which such uses have played a long established and important role in the economy and culture of the community and in which such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation. The factors of local residency, economic dependence, and availability of alternative resources have been included in section 804 rather than in the definition. Although a truly comprehensive definition of "subsistence uses" must include a mix of those factors, the committee has determined that they should be incorporated through appropriate action by the State rulemaking authority in conjunction with the recommendations of the regional councils established pursuant to section 805 to implement the subsistence preference set forth in section 804. Sections 803-805 are intended to establish a dynamic process for the regulation of subsistence resources and uses which will enable rural people to participate in the decisionmaking process of the State rulemaking authority in the inclusion of the local residency, economic dependence, and availability of alternative resources factors into the definition of "subsistence uses" on a case-by-case basis to meet the needs of a particular management situation in a particular area.

Section 804: Preference for Subsistence Uses

This section requires both the State and the Federal government to accord nonwasteful subsistence uses a preference over the taking of such resources for other purposes on the public lands. Although the committee recognizes that only rarely will the failure to adequately provide for the preference result in the threat of literal starvation, in many instances the failure to obtain fish to dry for winter use or fresh meat to supplement other foods can engender considerable individual, community and cultural trauma and hardship. Consequently, this section envisions that governmental action affecting subsistence resources and uses shall be undertaken in a manner which adequately provides for the preference on an ongoing basis and not only when critical allocation decisions may be necessary because a particular subsistence resource may be threatened with depletion, so long as such action is conducted in a manner which is consistent with the protection of the continued viability of fish and wildlife populations which may be affected by such action. If a particular fish or wildlife population (e.g. salmon, moose or caribou) in a particular area is sufficient to sustain a harvest by all persons engaged in subsistence and other uses, the implementation of restrictions on taking set forth in this section need not be imposed by the State rulemaking authority. However, if the continued viability of a particular population or the ability of rural subsistence-dependent residents to satisfy their subsistence needs would be threatened by a harvest by all such persons, the State rulemaking authority, in conjunction with the recommendations of the regional council representing the affected area, is required by this section

to establish regulations which restrict the taking of such population to Alaska residents engaged in subsistence uses.

If "subsistence uses" must be further restricted to protect the continued viability of the population or to ensure the satisfaction of rural subsistence needs, the State rulemaking authority, in conjunction with the recommendations of the regional council, must limit such uses to local residents of the affected area, or, if necessary, only those local residents with the most customary and direct dependence on the population as the mainstay of livelihood and with the least access to alternative food supplies. In the latter situation, the committee believes that in making such difficult allocation decisions, the State rulemaking authority, in conjunction with the recommendations of the regional council, should endeavor to utilize the special knowledge of local conditions and requirements of the local advisory committees within the affected region. This section also requires the Secretary of the Interior and the Secretary of Agriculture to give subsistence uses preferential consideration in their management activities on the public lands which directly relate to the taking of fish and wildlife, and to take appropriate action to protect such uses and the continued viability of fish and wildlife populations upon which the continuation of such uses depend.

Section 805: Local and Regional Participation

The committee has determined that the opportunity for rural residents of Alaska with personal knowledge of local conditions and requirements to participate effectively in the management and regulation of subsistence resources on the public is important in order to assure both the continued viability of fish and wildlife populations of national importance and the ability of rural people engaged in a subsistence lifestyle to continue to do so. Although the State has indicated that it intends to provide greater support to its existing local advisory committees and establish a system of regional councils throughout the rural areas of the state which will have a major role in the State rulemaking authority's establishment of seasons, bag limits and the provision of the preference for subsistence uses in their respective areas, the State still is in the process of establishing such a system. Section 805 implements section 801(5) by requiring the Secretary of the Interior to establish a regional council, and if necessary a local committee, system on the public lands if within one year from the date of enactment of this Act the State has not yet established a system for local and regional participation which satisfies the requirement of this section.

The State system of local and regional participation shall be in compliance with the requirements of this section and the Secretary shall not establish local committees or regional councils if the State: (1) divides the public lands into at least six regions. The number and boundaries of the regions must be sufficient to assure that regional differences in subsistence uses are adequately accommodated.

However, it is the intent of the Committee that the number and boundaries of the regions be established in a manner which does not permit the large urban population centers to dominate the regional council system and exercise control over the regulation of subsistence resources in the rural areas; (2) strengthens the existing State local

fish and game advisory committee system by adequate committee activities, assigning appropriate staff and distributing support data to the committees, and encouraging the committees to work closely with the regional councils to develop a recon strategy for the management of subsistence resources within the region and recommendations concerning policies, standards, guidelines, and regulations to implement the strategy; (3) establishes a regional council within each region composed of residents of the region with duties and responsibilities analogous to those set forth in section 805(a)(3), and assigns staff and distributes available support data to the councils; and (4) provides by statute or regulation that recommendations made by the regional councils to the State rulemaking authority concerning the taking of fish and wildlife populations on the public lands within their respective regions for subsistence uses shall be considered by the authority during the course of its administrative proceedings.

The rulemaking authority may choose not to follow a recommendation if it determines that based on the evidence presented during the course of the administrative proceedings of the board the recommendation is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If the authority makes such a determination and chooses not to follow the recommendation it shall set forth the factual basis and the reasons for its decision.

So long as the State is in full compliance with the requirements of this section, the Secretary of the Interior shall reimburse the State for reasonable costs relating to the operation of the local committees and the establishment and operation of the regional councils. Such reimbursement may not exceed 50 per centum of such costs in any fiscal year, and total payments to the State shall not exceed the sum of \$5,000,000 in any one fiscal year.

If the Secretary determines, one year after the date of this Act and after notice and hearing, that the State is not in full compliance with the requirements of this section, he shall establish a regional council system, and if necessary a local committee system, on the public lands pursuant to the requirements of this section. In performing this monitoring responsibility pursuant to section 806 and in the exercise of his closure and other administrative authority over the public lands the Secretary of the Interior and the Secretary of Agriculture shall be guided by the annual report and advice of the regional councils established by the Secretary of the Interior pursuant to this section, and shall follow such advice unless he determines in writing that such evidence is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs.

Section 806: Federal Monitoring

This section requires the Secretary of the Interior to monitor the State's provision of the preference for subsistence uses on the public lands including, in consultation with the Secretary of Agriculture, units of the National Forest System. Such monitoring responsibilities should include ongoing communication and cooperation between Federal land and resources managers and Alaska Department of Fish and



APR 25 1986
From the desk of:
Senator Mitch Abood
Alaska State Legislature

Hi McKie,

Mitch thought

you would like

this.

Catherine

✓ get this to Sen Sturgeon Committee
Kai

RECEIVED
APR 1 1986

April 10, 1986

Hello Mitch:

Please find enclosed, copy of proposed amendment to ANSCA, memorandum dated August 22, 1985 from resource proclosure agents (attys), plus support data that clearly shows true intent of proposed amendments

I'm sure you are aware we have been working overtime to alert America and inform Alaskans to stop these amendments!!

Our efforts is starting to pay off, and before we are done our Congressional delegation will wish they had never introduced these proposed amendments. (Its going to really hit the fan)

Mitch, I request the Senate pass a resolution clearly spelling out they don't support Amendment Sec 7C and etc to assist our efforts

I realize this proposed resolution will cause some problems for Senate organizational structure however its so extremely important to have this Senate resolution the Senators should stand and be counted.

Your consideration will truly be appreciated.

Have a good day
Sara E. Mc Dowell
Concerned American
336 E. 23rd Ave
Anchorage Alaska
99503

PS: There is a meeting in Youngs Committee in Wash DC on April 17th and we are sending our atty and etc!

Oh # 907-272-6605

* See pages 2 + 3
Re: 7C proposed
Amendment.

MEMORANDUM

* Please read entire
memorandum.

DATE: August 22, 1985
TO: AVCP and Calista Corporations
FROM: Lare Aschenbrenner and Bob Anderson

RE: Draft legislation to implement A.F.N. Special Convention Resolution 35 and provide certain additional protections for Native land ownership, priority Subsistence rights and Tribal powers of self-government.

As you are aware the Draft legislation which is attached was developed in consultation with the 1991 Committees of the AVCP and Calista Corporation during this past summer. It originated, however at the conclusion of the AFN Convention last October when it became apparent that the eight AFN Resolutions, although necessary and appropriate, failed to cover a number of vital 1991 issues including protection of Native subsistence rights and tribal powers of self-government. In addition the AFN Resolutions failed to adequately protect Native land ownership in the case of Native Townsite, Municipal Corporation as well as IRA and Traditional Council lands. In early 1985 several attorneys familiar with the Alaska Native Claims Settlement Act and Indian Law issues formed a Working Group for the purpose of responding to widespread concerns voiced by the Native Community with respect to the gaps left by the eight AFN Resolutions. (This group was composed of private attorneys David Case and Lloyd Miller, Alaska Legal Services attorneys Robert Hickerson, Don Cooper, Jim Bamberger and Heather Grahame, and Bob Anderson and Lare Aschenbrenner of the Native American Rights Fund.)

The result of this effort (with certain omissions and modifications) became AFN Resolution 35 at the AFN Special Convention in March 1985. Although there is considerable disagreement as to what the convention intended, as you are aware Resolution 35 in its final written form was never formally adopted, but rather submitted "to the villages for their consideration and review" by AFN Resolution No. 8. AFN has since declined to draft legislation implementing Resolution 35 or apparently to give it any further consideration.

Our group of attorneys therefore proceeded to draft such legislation for the use of Native Village Councils and other organizations in their consideration of 1991 legislative options.

The initial draft was revised on a number of occasions, most recently following our meeting with your respective 1991 committees in Bethel. If further questions arise with respect to the meaning of the proposed legislation we will be pleased to respond.


Lare Aschenbrenner


Bob Anderson

Proposed Legislation - Discussion Draft - Revised 8/15/85

Congress finds and declares that --

- (a) The Alaska Native Claims Settlement Act, Pub. L. 92-203, was intended to achieve a fair and just settlement of all aboriginal land claims of Alaska Natives in conformity with the real economic and social needs of Alaska Natives and with maximum participation by Natives in decisions affecting their rights and property;
- (b) In 1971 Congress decided that the way to effectuate the settlement was through Alaska corporations that would receive land and money distributed under the settlement while providing for a transition period for the Alaska Natives;
- (c) Implementation of the settlement has required adaptation to corporate structures foreign to Native culture;
- (d) Implementation of the settlement, especially the land selection process for Native corporations, was considerably more complex, expensive and time consuming than originally anticipated by Congress in 1971, with the consequence that the value of that settlement to the Alaska Native people was substantially diminished;
- (e) The start-up costs for Native corporations formed under the settlement far exceeded Congress' estimate in 1971, further diminishing the value of that settlement to the Alaska Native people;
- (f) The continued value of the settlement as a source of permanent benefit to future generations of Alaska Natives should not be jeopardized through taxation or other forms of involuntary disposition;
- (g) The longstanding policy and moral obligation of the United States to the Native people of Alaska requires that those protections afforded to other Native Americans in the settlement of their just claims have equal application to the Native people in Alaska.
- (h) To further the Federal Policies of Indian self-determination and Tribal self-government it is essential to remove all impediments to cooperation and mutual assistance between State and Tribal governments;

- (i) The Alaska Native Claims Settlement Act was intended to settle Alaska Native Aboriginal Land Claims and was not intended to enlarge, diminish or in any way affect the scope of any governmental powers of Alaska Native Tribes;
- (j) The Federal Policy of Tribal-self-determination would be furthered by affording Alaska Native Tribes the option of removing their lands from the protective coverage of the Indian Non-Intercourse act and in lieu thereof providing similar protections for Tribal ownership without the paternalistic supervision of the Congress and the Department of the Interior which the Non-Intecourse Act presently entails;
- (k) Alaska Native Tribes should be afforded the same rights and privileges as Indian Tribes elsewhere in the United States;
- (l) In order to reduce or eliminate costly and protracted litigation, further the Federal policies of Tribal self-government and self-determination and protect the priority subsistence rights of Alaska Natives, it is necessary to define the territorial jurisdiction of Alaska Native Tribes.

SPECIAL AFN RESOLUTION 84-35, Paragraphs 1, 2 and 3 provides:

- 1. No provisions of ANCSA should be construed as enlarging, diminishing or any way affecting the scope of any governmental powers of Alaska Native Tribal governments.
- 2. All inherent governmental powers and all provisions of the 1934 Indian Reorganization Act, as amended, which as of the date of passage of ANSCA, applied to Alaska Native Tribes (including groups of Indians, Eskimos or Aleuts), shall continue in full force and effect thereafter notwithstanding Section 704(a) of the Act of October 21, 1976 (which repealed Secretarial authority to proclaim new reservations).
- 3. No provision of ANCSA shall be construed as abridging in any way the governmental powers of Alaska Native Tribes, either over their members or over any areas of Indian Country (as defined in 18 U.S.C. 1151) within their respective jurisdictions.

Explanation

State officials have long contended that the passage of ANSCA somehow terminated or at least greatly reduced the Governmental power of Alaska Native Tribes. The above three paragraphs would eliminate the State's contention. With the exception of the provision reinstating secretarial authority to proclaim new reservations of Paragraph 2, all three of these paragraphs reaffirm the status quo of Tribal government as it existed prior to the enactment of ANCSA. These provisions may be incorporated into ANCSA by adding a new paragraph following 43 U.S.C. 1601(c).

Proposed Legislation

Amend Section 1603 by adding the following subparagraph:

(h) No provision of this act shall be construed as enlarging, diminishing or in any way affecting the scope of any governmental powers of Alaska Native Tribal governments, including inherent governmental powers and powers exercised under the Indian Reorganization Act of 1934, as amended by the Act of May 1, 1936, nor as abridging in any way the governmental powers of Alaska Native Tribes either over their members or over any areas of Indian country as defined in 18 U.S.C. 151 within their respective jurisdictions.

SPECIAL AFN RESOLUTION 84-35, Paragraph 4 provides:

4. No provision of ANSCA or any law shall be construed as in any way impairing the authority of the Secretary of the Interior, at the request of a Native Tribe, community or individual, pursuant to Section 5 of the Indian Reorganization Act of 1934, 25 U.S.C. 465 as amended, to acquire any interest in lands in Alaska in the name of the United States in trust for the benefit of the Native Tribe, community or individual for which the land is acquired.

Explanation

The Department of the Interior has taken the position that ANSCA revoked the Secretary's Authority to accept Alaska Native Tribal land in trust. This paragraph reverses that interpretation and expressly reaffirms Secretarial authority to accept land in trust in Alaska. It also is related to the last clause of paragraph 2 of this resolution which would clarify the authority of the Secretary to establish new or add to existing Indian reservations in Alaska. These provisions may be incorporated into law by amending Sections 5 and 7 (25 U.S.C. 465 and 467) of the 1934 Indian Reorganization Act.

Proposed Statutory Language

Amend Section 465 by adding the following language after the word including and before the word "reservations" the following: "including" before the word "trust". As amended, the first paragraph of Section 465 would read as follows:

The Secretary of the Interior is hereby authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including any lands within any state and any trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

Amend Section 467 to replace the period following the word "reservations" in the final proviso with a colon and add the following language:

"PROVIDED FURTHER, that the provisions of this paragraph shall be fully applicable within any state notwithstanding the repeal of Section 2 of the Act of May 1, 1936 (49 Stat. 1250, in Section 74(a) of the act of October 21, 1976.

AFN SPECIAL RESOLUTION 84-26, Paragraph 4 provides:

4. As applied in Alaska, the term "dependent Indian community" as used in 18 U.S.C. 1151 shall include all areas within the traditional Tribal boundaries of those Alaska Native villages made eligible for certain benefits pursuant to Sections 11, 14(h)(2), 14(h)(3) of 16 of ANCSA and shall also include all other Alaska Native communities. Such communities shall include all lands within their boundaries regardless of land ownership, including but not limited to all townsite lands, allotments, village corporation lands, restricted townsite lots, core townships, municipal lands and private lands.

Explanation

This provision is intended to clarify the meaning of "dependent Indian community" in Alaska for purposes of determining the scope and extent of Native Tribal powers. In broadest terms, it ties a "dependent Indian community" to the "traditional Tribal boundaries" of all Alaska Native villages entitled to lands under various provisions of ANCSA. It also includes the traditional Tribal boundaries of "all other Alaska Native communities", thereby including such places as Wrangell

and Petersburg which were not defined as villages in ANCSA. In reciting the villages eligible for ANCSA benefits, however, it omits villages which elected to take lands under Section 19. Although these villages are also included within Section 11, in order to eliminate any doubt, Section 19 is specifically included in describing the lands of the villages which are to be considered Indian Country. An amendment to 18 U.S.C. 1151 is the most logical way to incorporate this provision into law.

Proposed Statutory Language

Amend 18 U.S.C. 1151 by adding after the comma following the word "state" in clause (b) the following: "including in Alaska all townsite lands, allotments, village corporation lands, restricted townsite lots, core townships, municipal lands and private lands within the traditional boundaries of those Alaska Native villages made eligible for certain benefits pursuant to Sections 11, 14(h)(2), 14(h)(3), 16 or 19 of the Alaska Native Claims Settlement Act (P.L. 92-203) and such lands within the traditional boundaries of all other Alaska Native communities". As amended, the revised statute would read as follows:

Except as otherwise provided in Sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means . . .(b) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, including in Alaska all lands within the traditional boundaries of those Alaska Native villages made eligible for certain benefits pursuant to sections 11, 14(h)(2), 14(h)(3), 16 or 19 of the Alaska Native Claims Settlement act (P.L. 92-203), and all lands within the traditional boundaries of all other Alaska Native communities including, without limitation in both categories, all townsite lands, allotments, village and regional corporation lands, restricted townsite lots, core townships, municipal lands and private lands, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

SPECIAL AFN RESOLUTION 84-35, Paragraph 5 provides:

5. In addition to any other provision for the protection of Native lands, Alaska Native Tribes shall have the option of retaining land in complete Tribal governmental ownership and control, to be held in trust for the benefit of Tribal members subject to such protections as the Tribe deems appropriate, including tax exemptions and freedom from execution for payment of debts.

Explanation

This paragraph contemplates something similar to the traditional trust protections without placing legal title in the United States. Instead, any protections and restrictions which may apply are selected by the Tribe, which holds fee simple title. The fact that land is owned in fee simple by a Tribe makes the Non-Intercourse Act, 25 U.S.C. section 177, applicable, so that conveyance may not occur without congressional approval. Accordingly, it is necessary to waive those protections and limitations for Tribes to have complete freedom to choose the terms under which their land is held. Governments wishing to hold land in fee with the substantial protections of that act, however, should not automatically lose such protections.

The IRA would be amended to include section 476a which will give Native governments the freedom to waive application of 25 U.S.C. section 177, and select, through general election, the terms under which its land is held. To further the idea that the Tribe holds land in trust for its members, alienation of Tribal lands would require approval by two-thirds of all members authorized to vote in Tribal elections.

Proposed Statutory Language

Add a new section to the Indian Reorganization Act 25 U.S.C. section 476a, as follows:

Lands acquired by Alaska Native Tribes in villages made eligible for certain benefits pursuant to Sections 11, 14(h)(2), 14(h)(3), 16 or 19 of the Alaska Native Claims Settlement Act (P.L. 92-203) may be removed from the protection of the Indian Non-Intercourse Act, 25 U.S.C. section 177, upon affirmative vote of two-thirds of those eligible to vote in tribal elections. The election shall be called and monitored by the Secretary of the Interior within 60 days of a request by the governing body of the Tribe or upon a petition signed by one-third of those eligible to vote in tribal elections. Upon certification by the Secretary of the Interior of the affirmative results of such election the Native Tribe shall hold such land in

fee simple. Land held in fee simple by the Tribe may not be alienated absent approval by two-thirds of those eligible to vote in Tribal elections. The ballot removing application of the non-intercourse act may include protections desired to preserve the land for the use and benefit of Tribal members. Such protections may include: (1) freedom from execution on any judgment rendered against the Tribe; (2) freedom from real property taxes by the State of Alaska, or any political subdivision of the State; and (3) immunity from adverse possession and similar claims based upon legal theories of estoppel or the passage of time.

SPECIAL AFN, Resolution 35, Paragraphs 6 and 7 provide:

6. All land conveyed to a village or urban corporation, group, or Native individual pursuant to the Alaska Native Claims Settlement Act shall be exempt from all forms of state or local taxation, from condemnation by State or local authorities, from any claims of adverse possession or other claims based upon the passage of time, and from any form of judgment execution.

7. All income earned, or dividends distributed from the income earned, either from the development of lands conveyed to a village or urban corporation, group, or Native individual pursuant to ANCSA, or from the investment of funds paid under ANCSA, shall be exempt from all forms of State or local taxation and all forms of State or local taxation [sic] and all forms of judgment execution.

Explanation

Both provisions relate to issues of tax immunity, and the core concept behind each provision is borrowed from the ordinary state of affairs involving Indian property in which neither the property nor income earned from such property may be taxed. ANCSA provides immunity from taxation for corporate lands for twenty years if the lands are not developed or leased to third parties.

ANCSA § 21(d), 43 U.S.C.A. § 1620(d) currently deals specifically with the taxation of real property interests conveyed under ANCSA, and also sets forth the 20-year exemption period for undeveloped lands. Since the provisions quoted above would in essence replace the limited property tax exemptions set forth in § 21(d), it would seem most appropriate to implement these provisions by repealing all of existing § 21(d) and placing in lieu thereof the following language.

Proposed Language

ANCSA Section 21(d), 43 U.S.C. 1620(d) is amended to read as follows:

- (1) All lands and interests therein conveyed, pursuant to this chapter, to a Native individual, Native tribe, Native Group, Village or Regional Corporation or corporation established pursuant to section 1613(h)(3) of this title shall be entitled from the date of conveyance to immunity from --
- (A) adverse possession and similar claims based upon legal theories of estoppel or the passage of time;
 - (B) real property taxes by the United States, the State of Alaska, or any political subdivision of the State;
 - (C) judgment resulting from any claim based upon the laws of bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally;
 - (D) judgment in any action at law or equity to recover sums owed or penalties incurred by any Native individual, Corporation or Native Group or any officer, director or stockholder of any such Corporation or Group; and
 - (E) condemnation by the United States, the State of Alaska, or any political subdivision of the State; Provided, That the immunities provided for in this paragraph shall be in addition to those immunities or other benefits to which such land or interest therein may be entitled under the Alaska National Interest Lands Conservation Act.
- (2) All land and interest therein conveyed, pursuant to this chapter, to a Native individual, Native Group, village or Regional Corporation or corporation established pursuant to section 1613(h)(3) of this title, and all income earned or dividends distributed from income derived from such real property interests (including all rents, royalties, profits and other revenues or proceeds derived from such property interest) shall be exempt from all forms of federal, state and local taxation until such time as such land and interests therein are no longer owned by Native individuals, Native Tribes, Native Groups or Native Corporations.

- (3) All income earned or dividends distributed from income earned on funds distributed to a Native individual, Native Tribes, Native Group, Village or Regional Corporation or corporation established pursuant to section 1613(h)(3) of this chapter shall be exempt from all forms of federal, state and local taxation.
- (4) "Native Tribe" means all Alaska Native Villages made eligible for certain benefits pursuant to Section 11, 14(h)(2), 14(h)(3), 16 or 19 of the Alaska Native Claims Settlement Act (P.L. 92.203).

SPECIAL AFN, Resolution No. 35, Paragraph 8 provides:

8. All dividends distributed by an ANCSA corporation to a Native shareholder, and all other forms of compensation or benefits received by a Native under ANCSA, shall be disregarded in determining the eligibility of that shareholder or the shareholder's household for assistance under the Food Stamp Program, the Social Security Act, or other state, federal, or federally-assisted programs.

Explanation

Subsection (b) of section 29, 43 U.S.C. 1626(b), sets forth the specific rule regarding the Food Stamp program, directing that "any compensation, remuneration, revenue or other benefit received by any member of such household under this chapter shall be disregarded" in determining that household's eligibility to participate in the Food Stamp Program. Although this language is unobjectionable, the language of Clause 8 of Resolution No. 35 suggests that this subsection should be enlarged specifically to refer to other governmental programs as well. Accordingly, it is recommended that ANCSA-S 29, 43 U.S.C. 1626, be amended.

Proposed Legislations

ANCSA Section 29(b) 43 U.S.C. 1626(b) is amended to read as follows:

- (b) In determining the eligibility of any household or individual Native to participate in the Food Stamp Program, assistance under the Social Security Act, or financial assistance or other benefits available under any other Federal or federally assisted program otherwise available to the Native people of Alaska as citizens of the United States and of the State of Alaska, any compensation, remuneration, revenue, dividend, stock, land, or other benefit received by

any household or any member of such household under this chapter, including any dividend or land received from such individual's Native Corporation or Native Group organized under this chapter, shall be disregarded and shall not be considered as a resource or otherwise utilized as a basis for making such determinations.

(Note that the Distribution of Judgment Funds Act, 25 U.S.C. 1401 et. seq. as amended in 1983, provides a similar exemption: "Interests of individual Indians in trust or restricted lands shall not be considered a resource in determining eligibility for assistance under the Social Security Act or any other federal or federally-assisted program". 25 U.S.C. 1408.)

SPECIAL AFN RESOLUTION 84-35, Paragraph 9 provides:

9. Alaska Native Tribes shall retain complete jurisdiction to regulate hunting and fishing by all persons within those areas traditionally used by Tribal members for subsistence hunting and fishing. The State of Alaska shall only have jurisdiction over rural Native subsistence hunting and fishing in so far as necessary to conserve species of fish and wildlife.

Explanation

This paragraph is designed to clarify the authority of Alaskan Tribal governments to regulate subsistence hunting and fishing. Since the authority of Tribal governments in this regard is unclear at this time, this amendment may actually expand those powers.

Placing the amendment is somewhat difficult. An amendment could be made to either ANCSA or Title VIII of ANILCA. Although a reasonable argument could be made that the amendment should be placed in Title VIII, the better view is that it should be placed in ANCSA. The amendment relates to retained sovereignty over those hunting and fishing rights extinguished by ANCSA. Title VIII of ANILCA is concerned with a transfer of fish and wildlife management from the federal government to the state government and a user preference for "rural residents". That title mentions neither Native sovereignty, village or regional corporation land, nor Native hunting and fishing rights. Since ANCSA at least deals with Native hunting and fishing rights as well as village and regional corporation land, the amendment is better placed in ANCSA.

The best resting place for the amendment appears to be ANCSA's "Miscellaneous Provisions" section. 43 U.S.C. § 1621. Placed here, the amendment can be read as recognizing that Tribal governments have exclusive jurisdiction to regulate hunting and fishing in areas used by their Tribal members for those lands transferred under ANCSA to village and regional corporations.

REVISION OF 43 U.S.C. § 1621

Proposed Legislation

Amend § 1621 of the Alaska Native Claims Settlement Act by adding the following language:

(m) Notwithstanding any provision of this Act or any other law, Alaska Native Tribes shall retain exclusive jurisdiction to regulate hunting, fishing and trapping in Indian Country, including lands transferred to Village or Regional Corporations pursuant to this Act. Provided: that the State or the Federal Government may assume jurisdiction over such hunting, fishing, and trapping if necessary to conserve, in a given geographic area, a species of fish or wildlife which is endangered or is in imminent danger of becoming endangered. Rules and regulations promulgated pursuant to this authority shall be limited to those necessary to ensure that the species does not become extinct or endangered.

SPECIAL AFN, Resolution No. 35, Paragraph 10

10. The secretary of [the] Interior shall be directed to undertake a comprehensive audit to determine the extent to which funds distributed to the Alaska native Fund were expended by ANCSA Corporations in the form of costs of litigation relating to the implementation of ANCSA and start-up costs, including the cost of organizing ANCSA Corporations and implementing the provisions of ANCSA. Congress shall thereafter appropriate funds, together with interest, sufficient to reimburse such corporations for such costs.

Explanation:

This provision of Resolution No. 35 seeks to restore to Alaska Natives the full value of the settlement negotiated in 1971. The clause reflects a widely-held perception that due to the complexity of the Settlement Act, the ambiguities in the Act

left unresolved by Congress, and the particularly severe "start-up" costs incurred by the ANCSA corporations in adapting a rural subsistence based Native culture to corporate forms, substantial portions of the settlement were lost. The clause also reflects an understanding that Congress never anticipated that these costs would be paid out of the Alaska Native Fund (or income generated from ANCSA land), and had not intended for the value of the settlement to be burdened by such costs.

In order to implement this provision of Resolution No. 35 it will be necessary to add a new section to ANCSA.

Proposed Legislation

Add a new section to 43 U.S.C. 1601 et seq. as follows:
The Secretary of the Interior shall, within two years from the date hereof and in consultation with each Native group or corporation organized pursuant to this Act, complete a comprehensive audit of all funds distributed pursuant to this Act to Native groups, Village or Regional corporations, or corporations organized pursuant to section 14(h)(3) of this Act, solely for the purpose of identifying what portion of such funds were expended by each such group or corporation (1) in establishing its entitlement to receive land under this Act, (2) in making (or seeking to make) its selection and securing (or seeking to secure) conveyance of lands under this Act, and (3) in securing (or seeking to secure) its entitlement to revenues under this Act, expressly including, but not limited to revenues under sections 7(i) or 7(j) of this Act. Within two years from the date hereof the Secretary shall submit to the congress a report setting forth the results of his audit and, for each Native group or corporation referred to herein, specifying the sums, if any, identified pursuant to this subsection. These sums shall then be paid, together with interest payable on such sums from the date of expenditure by the corporation or group to the date of payment to the corporation or group, Provided, That interest shall be paid on the basis of a semi-annual computation from the date of receipt of the proceeds by the United States to the date of payment with simple interest at the rate determined by the Secretary of the Treasury to be the rate payable on short-term obligations of the United States prevailing at the time of payment, And provided further, That moneys for such payments have been appropriated by Congress. There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

In large part the language in the second half of this section is borrowed from language already used by Congress in an earlier provision of ANSCA dealing with the escrow of revenues generated from ANSCA lands prior to conveyance. See Act of January 2, 1976, §2, 89 Stat. 1146, as amended, 43 U.S.C. 1613 note.

SPECIAL AFN RESOLUTION 84-35, Paragraph 11 provides:

11. Lands subject to reconveyance under ANSCA 14(c)(3) shall be available for reconveyance to Alaska Native Tribal entities. Townsite trustee lands shall also be reconveyed to the appropriate Alaska Native Tribal entity.

Explanation

In order to make 14(c)(3) lands available for reconveyance to Alaska Native Tribes, we propose an amendment to 43 U.S.C. § 1613(c)(3). The amendment, in effect, creates something like a right of first refusal in favor of village Tribal governments. We also include here an amendment to 43 U.S.C. § 1613(c)(4) which provides a similar scheme for airports and adjacent lands.

When Tribal governments receive these lands it will be important that the Tribes have a voice in resource development questions. To accommodate this need, we propose an amendment to 43 U.S.C. § 1613(f) which will require Tribal consent for subsurface development by Regional Corporations.

REVISION OF 43 U.S.C. § 1613(c)(3)

Proposed Legislation

Amend 43 U.S.C. 1613(c)(3) as follows: (3) the Village Corporation shall then convey to any Municipal Corporation in the Native village or to the State in trust for any Municipal Corporation established in the Native village in the future, title to the remaining surface estate of the improved land on which the Native village is located and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs: Provided That upon request of the local Native Tribe, the Village Corporation shall convey to the Native Tribe or to the United States in trust for the Native Tribe title to the surface estate in those lands that would, by operation of this section, otherwise be transferred to the Municipal Corporation or to the State in trust for any Municipal Corporation established in the Native

village in the future; Provided further, That the amount of lands to be transferred to the Municipal Corporation or in trust, or directly to the Native Tribe shall be no less than 1,280 acres unless the Village Corporation, [and] the Municipal Corporation or, the State in trust, or the Native Tribe, or the United States in trust for the Native Tribe, can agree in writing on an amount which is less than one thousand two hundred and eighty acres: Provided further, That any net revenues derived from the sale of surface resources harvested or extracted from lands reconveyed pursuant to this subsection shall be paid to the Village Corporation by the Municipal Corporation or the State in trust: Provided, however, That the word "sale", as used in the preceding sentence, shall not include the utilization of surface resources for governmental purposes by the Municipal Corporation or the State in trust, nor shall it include the issuance of free use permits or other authorizations for such purposes, and: Provided further, that where the land is transferred to the Secretary in trust for a Native Tribe, or directly to the Native Tribe the requirement that revenues derived from the sale of surface resources harvested or extracted from lands be paid to the Village Corporation shall not apply.

(4) the Village Corporation shall convey to the Federal Government, State, [or to the appropriate] Municipal Corporation, or, upon request of the local Native Tribe, to the United States in trust for that Native Tribe, or directly to the Native Tribe, title to the surface estate for existing airport sites, airway beacons, and other navigation aids, together with such additional acreage and/or easements as are necessary to provide related services and to insure safe approaches to airport runways;

REVISION OF 43 U.S.C. § 1613(f)

Proposed Legislation

Amend 43 U.S.C. 1613(f)(3) as follows: (f) PATENTS TO VILLAGE CORPORATIONS FOR SURFACE ESTATES AND TO REGIONAL CORPORATIONS FOR SUBSURFACE ESTATES; EXCEPTED LANDS: MINERAL RIGHTS, CONSENT OF NATIVE TRIBE AND VILLAGE CORPORATIONS. When the Secretary issues a patent to a Village Corporation for the surface estate in land pursuant to subsections (a) and (b), he shall issue to the Regional Corporation for the region in which the lands are located a patent to the subsurface estate in such lands, except lands located in the

National Wildlife Refuge System and lands withdrawn or reserved for national defense purposes, including Naval Petroleum Reserve Numbered 4, for which in lieu rights are provided for in subsection 12(a)(1): Provided, that the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native Village shall be subject to the consent of the [Village Corporation] local Native Tribe where that Native Tribe is the owner of said lands. As to all other lands in the Native village, consent of the Village Corporation shall be required.

TOWNSITE LANDS

Explanation

Under present law, Native townsite lands which were unoccupied as of October 21, 1976 (the date on which the Townsite Acts were repealed) whether subdivided (Klawock v. Gustafson) or not (Aleknagik Natives Ltd. v. Hodel), are to be transferred to the municipal government for the village in which the townsite lands are located. Paragraph 11 of Special AFN Resolution 84-35 directs that these lands are to be transferred to "the appropriate Native Tribal entity". The proposed new section 739 of Title 43 accomplishes this purpose. First, for those communities for which no municipal corporation exists (e.g., Port Graham) or is not presently functioning (Akiachak), the local Tribal governments may have that land transferred to the United States in trust for them, or obtain it in fee. Second, for those villages which have functioning municipal governments, this section allows those governments to decline the transfer of townsite lands from the townsite trustee. In such a case, the local Tribal government will be allowed to have the land transferred to the United States in trust for it, or to the Tribe in fee.

Proposed Legislation

Add a new section 43 U.S.C. § 739 entitled: Transfer of Unoccupied Townsite Lands in Unincorporated Villages.

Notwithstanding section 703(a) of the Act of October 21, 1976, Pub. L. 94-579, 90 Stat. 2789, lands remaining unoccupied as of October 21, 1976 in a townsite established pursuant to section 3 of the Act of May 25, 1926, Ch. 379, 44 Stat. 629 (formerly codified at 43 U.S.C. § 735), whether subdivided or not, shall, at the request of the local Native Tribe for the village in which such townsite lands are located, be transferred to the United States in trust

for said Native Tribe or to said Native Tribe in fee, provided that no Municipal Corporation organized under the laws of the State of Alaska has been established or is presently functioning in the village in which such townsite lands are located: Provided further, that where a Municipal Corporation organized under the laws of the State of Alaska has been established and is presently functioning in the village in which the unoccupied townsite lands are located, and where said Municipal Corporation declines to accept transfer of the unoccupied townsite lands, such lands shall, at the request of the local Native Tribe for the village in which the townsite lands are located, be transferred to the United States in trust for said Native Tribe or to such Tribe in fee.

SPECIAL AFN RESOLUTION '84-35, Paragraph 12 provides:

12. Notwithstanding any provision of the State of Alaska's constitution or laws, the State of Alaska may negotiate and enter into intergovernmental compacts with Alaskan Tribes for any lawful purpose and may enact legislation specially directed to Alaskan Tribes and their members.

Explanation

The State of Alaska contends that it would violate the Equal protection, Public purpose and Local Government provisions of the Alaska Constitution for the State to deal with Native Tribal Governments on a Government to Government basis or single out Tribes or their members for special treatment. The Proposed legislation would eliminate the grounds upon which this contention is based. The legislation would expressly authorize the special treatment of Alaskan Natives and therefore, under the Supremacy clause of the federal constitution would over ride the State's contrary position.

Proposed Legislation

25 U.S.C. § 476 is amended by the addition of the following subparagraph:

(i) Notwithstanding any provision of the constitution of the State of Alaska, the State may negotiate and enter into intergovernmental Agreements with Alaska Native Tribes and single out such Tribes or their members for special treatment for any lawful purpose. The term 'Alaska Native Tribe' includes all Alaska Native Villages made eligible for certain benefits pursuant to Sections 11, 14(n)(2), 14(h)(3), 16 or 19 of the Alaska Native Claims Settlement Act (P.L. 92-203).



Public Law 92-203
 92nd Congress, H. R. 10367
 December 18, 1971
 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 privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska;

(b) All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.

(c) All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska, or that are based on any statute or treaty of the United States relating to Native use and occupancy, or that are based on the laws of any other nation, including any such claims that are pending before any Federal or state court or the Indian Claims Commission, are hereby extinguished.

The Act Says

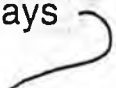


Void This

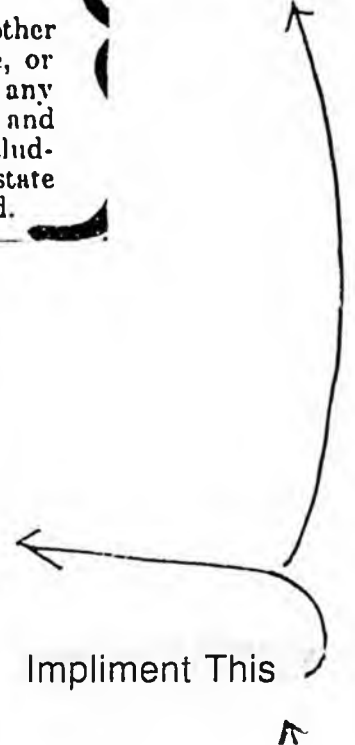
There is a short paragraph in *Village Journey* by Judge Tom Berger (page 163) which carries great potential for change in the way fish, game and other resources have been managed in Alaska. The words are not fancy; however, their meaning has prompted an outcry among people who oppose a greater degree of self-determination for Alaska Natives:

“Simply put, the members of Alaska Native tribes ought to have exclusive hunting and fishing rights and jurisdiction over Native lands and waters, and shared rights and jurisdiction over state and federal

Berger Says



Impliment This



____ CONGRESS

____ SESSION

H.R. 4162
S 2065

* *Don Young*
(Original signature of Member)

Insert
title
here
☞

To amend the Alaska Native Claims Settlement Act to provide Alaska Natives with certain options for the continued ownership of lands and corporate share received pursuant to the Act and for other purposes.

See Sec #10, page # 28
See Sec 7, page # 26

IN THE HOUSE OF REPRESENTATIVES

_____, 19____

Insert
sponsor's
names
here
☞

Mr. Don Young (for himself), and Mr. Udall

A BILL

1 *Be it enacted by the Senate and House of Representatives of the United*
2 *States of America in Congress assembled,*

(e) Providing Alaska Natives maximum participation in decisions affecting their rights and property further necessitates that the Alaska Native Claims Settlement Act be amended to continue restrictions on the transfer of stock of Native corporations until such time as the shareholders of a corporation may vote to terminate such restrictions;

(f) Both the Alaska Native Claims Settlement Act, as amended, and this Act are Indian legislation enacted by Congress pursuant to its plenary authority under the Commerce Clause to regulate Indian affairs.

Sec. 2. Section 3 of ANCSA [43 U.S.C. §1602] is hereby amended by the addition of the following additional subsections:

(n) "Native common stock" means the stock of a Native Corporation issued pursuant to subsections 7(g)(1) and (3) of this Act which carries or initially carried with it the rights and restrictions provided for in section 7(h).

(o) "Descendant of a Native" means a lineal descendant of a Native or of an individual who would have been a Native if he or she were alive on December 18, 1971, or an adoptee of a Native or descendant of a Native whose adoption is recognized at law or in equity.

Sec. 3. Section 7(g) of ANCSA [43 U.S.C. §1606(g)] is hereby amended by (i) numbering the existing subsection paragraph (1)

CORRECTION


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

____ CONGRESS

____ SESSION

H.R. 4162
S 2065

* Don Young
(Original signature of Member)

Insert
title
here


To amend the Alaska Native Claims Settlement Act to provide Alaska Natives with certain options for the continued ownership of lands and corporate shares received pursuant to the Act and for other purposes.

See Sec #10, page # 28
See Sec 7, page # 26

IN THE HOUSE OF REPRESENTATIVES

_____, 19____

Insert
sponsor's
names
here


Mr. Don Young (for himself), and Mr. Udall

A BILL

1 *Be it enacted by the Senate and House of Representatives of the United*
2 *States of America in Congress assembled,*

Sec. 1. Congress finds and declares that --

(a) The Alaska Native Claims Settlement Act, was enacted to achieve a fair and just settlement of all claims by Natives and Native groups based on aboriginal land claims in a manner consistent with the real economic and social needs of Alaska Natives, including maximum participation by Native people in decisions which affect their rights and property;

(b) The corporate model adopted by the Alaska Native Claims Settlement Act is frequently ill-adapted to the reality of life in many Alaskan native villages and to traditional native cultural values.

(c) Although the Congress mandated that the settlement be implemented rapidly and without litigation, the complexity of the land conveyance process and frequent and costly litigation has delayed the implementation of the settlement and significantly diminished its value;

(d) Providing Alaska Natives maximum participation in decisions affecting their rights and property necessitates that the Alaska Native Claims Settlement Act be amended to provide the shareholders of each Native corporation an opportunity to implement the settlement in the manner which they determine is best suited to their particular circumstances and needs, including, but not limited to, an opportunity to decide the manner in which Alaska Natives born after December 18, 1971, should participate in the settlement and whether the business corporation is the most appropriate entity to hold legal title to lands conveyed in partial settlement of aboriginal claims;

(e) Providing Alaska Natives maximum participation in decisions affecting their rights and property further necessitates that the Alaska Native Claims Settlement Act be amended to continue restrictions on the transfer of stock of Native corporations until such time as the shareholders of a corporation may vote to terminate such restrictions;

(f) Both the Alaska Native Claims Settlement Act, as amended, and this Act are Indian legislation enacted by Congress pursuant to its plenary authority under the Commerce Clause to regulate Indian affairs.

Sec. 2. Section 3 of ANCSA [43 U.S.C. §1602] is hereby amended by the addition of the following additional subsections:

(n) "Native common stock" means the stock of a Native Corporation issued pursuant to subsections 7(g)(1) and (3) of this Act which carries or initially carried with it the rights and restrictions provided for in section 7(h).

(o) "Descendant of a Native" means a lineal descendant of a Native or of an individual who would have been a Native if he or she were alive on December 18, 1971, or an adoptee of a Native or descendant of a Native whose adoption is recognized at law or in equity.

Sec. 3. Section 7(q) of ANCSA [43 U.S.C. §1606(g)] is hereby amended by (i) numbering the existing subsection paragraph (1)

and adding the word "Native" after the words "number of shares of" and before the words "common stock" and adding the words "Native common" after the words "one hundred shares of" and before the word "stock" and (ii) adding the following paragraphs:

(2)(A) Notwithstanding any other provision of this Act in addition to any other existing authority, if authorized by amendment to its articles of incorporation after the effective date of this act, any Regional Corporation may issue such shares of stock divided into such classes and series within classes, with such preferences, limitations and relative rights, including, without limitation, dividend rights, voting rights, liquidation preferences, and rights to share in distributions made to stockholders under subsections (j) and (m) of this section, as may be provided in its articles of incorporation or an amendment thereto. Notwithstanding any provision of state or other federal law, such shares may be subject to inalienability restrictions not in excess of the restrictions provided for in paragraph (l) of section 7(h), as provided in the articles of incorporation or an amendment thereto. Notwithstanding any provision of state or other federal law, issuance of one or more classes of such stock may be restricted to (i) Natives who have reached the age of sixty-five or (ii) any other identifiable group of Natives, provided, that such group is defined in terms of general applicability, and is not in any way defined by reference to a place of residence, family or position as an

officer, director, employee of a Native Corporation or shareholder of a Native Corporation other than the issuing Corporation. Any such shares of stock may be issued to holders of Native common stock or others for such consideration as may be permitted by law.

(B) Any amendment to the articles of incorporation of a Regional Corporation which permits the issuance of classes and series of stock other than Native common stock shall specify the maximum number of shares that may be issued in any such class or series, and the maximum number of votes that may be held by shares of such class or series. During any period in which the restrictions on alienation of Native common stock are in effect no stock may be issued under this section to a group of individuals composed only of employees, officers and/or directors of the Native Corporation. If such amendment permits the issuance of classes or series of stock which, when issued, singly or in combination, may cause the outstanding shares of Native common stock bearing the restrictions on alienation provided for in paragraph (1) of section 7(h) to represent less than a majority of the voting power of all stock in the Native Corporation, the stockholders of such corporation shall be expressly so advised in the proxy statement or other informational material distributed in advance of their vote upon the amendment. In no event may shares of stock other than Native common stock be issued more than thirteen months after the date of stockholder vote

authorizing the issuance of such stock if, upon the issuance of such stock and as a result of such issuance, the outstanding shares of Native common stock bearing the restrictions on alienation provided for in paragraph (1) of section 7(h) will represent less than a majority of the voting power of all stock in the Regional corporation: Provided, That the restriction set forth in this sentence shall be of no further force or effect if shares of stock have been lawfully issued pursuant to this paragraph which have caused the shares of Native common stock bearing the restrictions on alienation provided for in paragraph (1) of section 7(h) to represent less than a majority of the voting power of all stock in the Regional Corporation or if the restrictions upon alienation of Native common stock provided for in paragraph (1) of section 7(h) have expired or been terminated by vote of the stockholders.

(C) Notwithstanding the issuance of additional shares of stock or a new class of stock pursuant to this paragraph, the Regional Corporation shall continue to apply the ratio last computed under subsection (m) before the effective date of this Act for purposes of distributing funds under subsection (j) and (m). If shares of different classes or series have been issued pursuant to this paragraph to the class of stockholders who, prior to the effective date of this Act were the class of stockholders holding non-village stock ("non-village stockholders"), distributions payable under subsections (j) and

(m) shall be made with respect to such classes or series in accordance with the rights, if any, of each class or series to share in such distributions as provided in the articles of incorporation or any amendment thereto and, if so provided in the articles of incorporation or an amendment thereto, the right to share in such distributions may be established as a right or security separate from any other shares issued to such non-village stockholders. Common stock issued pursuant to this subsection which carries the same rights and restrictions provided for in Section 7(h) or which is issued in substitution for Native common stock shall be deemed to be Native common stock as long as all such rights and reservations are in effect with respect thereto.

(3) Notwithstanding any provision of federal or state law to the contrary and in addition to any other existing authority, if authorized by an amendment to the articles of incorporation, a Regional Corporation may issue up to one hundred shares of additional Native common stock to:

- (A) Natives born after December 18, 1971;
- (B) Natives who have attained the age of sixty-five; and
- (C) Natives who were eligible for enrollment pursuant to section 5 but who were not so enrolled.

for no consideration or for such consideration and upon such terms and conditions as may be specified in the amendment to the articles of incorporation or in the resolution or resolutions

providing for the issuance of such stock adopted by the board of directors pursuant to authority expressly vested in it by the articles of incorporation: Provided, That the issuance of additional shares of Native common stock or other stock pursuant to this subsection shall have no effect on the division and distribution of revenues pursuant to subsection (i) of this section.

Sec. 4. Section 7(h) of ANCSA [43 U.S.C. §1606(h)] is further amended to read as follows:

(1) Except as otherwise provided in paragraphs (3) and (4) of this subsection, Native common stock of a Regional Corporation issued pursuant to subsections (g)(1) and (3) of this section shall carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to stockholders, shall permit the holder to receive dividends or other distributions from the Regional Corporation, and shall vest in the holder all rights of a stockholder in a business corporation organized under the laws of the State of Alaska, except that until the termination of the restrictions by the shareholders under paragraph (2) of this subsection such Native common stock, inchoate rights thereto, and any dividends paid or distributions made with respect thereto, may not be sold, pledged, subjected to a lien or judgment execution, assigned in present or future, treated as an asset in a bankruptcy estate, or

otherwise alienated, whether such Native common stock is held by Natives or descendants of Natives or by persons who are neither Natives nor descendants of Natives: Provided, That such limitation shall not apply to transfers of Native common stock if and to the extent that any such transfers are made to Natives or to descendants of Natives pursuant to a court decree of separation, divorce or child support or by a stockholder who is a member of a professional organization, association, or board which limits the availability of that stockholder to practice his profession because of holding stock issued under this chapter.

(2) The restrictions on the alienation of Native common stock described in paragraph (1) shall continue indefinitely until such time as the shareholders of a Regional Corporation vote to terminate such restrictions. Except with respect to Bristol Bay Native Corporation and any village corporation in the Bristol Bay region, which may by resolution of its board of directors adopted within one year after the effective date of this act elect to follow the procedures set forth in section 7b, a vote on the question of whether to terminate restrictions on the alienation of Native common stock, including a vote by any such corporation if it does not solely elect, shall be conducted pursuant to the following procedure:

(A) On or before December 18, 1991, or at any time thereafter, the shareholders of a Regional Corporation may vote whether to terminate the restrictions on alienation described in

paragraph (1). In conducting the vote, the board of directors of the Regional Corporation shall have the option of seeking shareholder approval either of a resolution determining that such restrictions be continued or of a resolution that such restrictions shall be terminated. Continuation of the restrictions on alienation for such period of time as the shareholders may approve is hereby authorized.

(B) If the shareholders reject a resolution that the restrictions on alienation be continued, such restrictions shall be terminated in the manner described in subparagraph (D). In the event that the shareholders reject a resolution that the restrictions be terminated, such restrictions shall be extended for an indefinite period, subject to the provisions of subparagraph (C).

(C) A resolution adopted pursuant to this paragraph shall be considered to be an amendment to the Articles of Incorporation of the Regional Corporation for purposes of paragraph (6) of this subsection. Adoption of a resolution to continue the restrictions on alienation or rejection of a resolution to terminate such restrictions shall not preclude the shareholders of the Regional Corporation from later approving a resolution to terminate the restrictions.

(D) A resolution to terminate restrictions on the alienation of Native common stock shall state the date or describe the specific events upon which the restrictions will

terminate if the resolution is approved. If a resolution to continue such restrictions is defeated, the shareholders may also adopt a resolution which establishes the date or describes the specific events upon which the restrictions shall terminate. If a resolution which establishes the date or describes the specific events upon which the restrictions shall terminate is not adopted, the restrictions shall terminate one year from the date of the vote disapproving the resolution to continue such restrictions. On the date of termination all Native common stock previously issued shall be deemed cancelled, and shares of stock of the appropriate class shall be issued to each stockholder share for share, subject only to such restrictions as may be provided by the articles of incorporation of the corporation, or in agreements between the corporation and individual shareholders.

(3) Upon the death of any holder of Native common stock, ownership of such stock shall be transferred in accordance with his last will and testament or under the applicable laws of intestacy; Provided, That in the event that stock is transferred to a person not a Native or a descendent of a Native, the Regional Corporation shall have an option to purchase such stock, Provided further, That this paragraph shall not restrict the devise or intestate disposition of any shares of Native common stock of a Regional Corporation whose shareholders have amended the articles of incorporation to remove the limitation on

alienation of such stock otherwise imposed by paragraph (1) of this subsection.

(4) Notwithstanding any other provision of this section, the Regional Corporation may, if authorized by an amendment to its articles of incorporation, purchase, and for that purpose its shareholders may sell, any or all shares of its Native common stock then issued and outstanding with payment out of unreserved or unrestricted earned surplus of the corporation, or, if there is no earned surplus, out of its net profits for the fiscal year in which the purchase is being made and the preceding fiscal year except when the corporation is unable to pay its debts as they become due in the usual course of business; in determining such net profits, the net profits derived from the exploration or liquidation of timber resources and subsurface estate may be determined without consideration of depletion of those assets resulting from lapse of time, consumption, liquidation or exploration of those assets. Shares of stock purchased pursuant to this paragraph shall become nonvoting treasury stock, or may be cancelled by the Regional Corporation in accordance with law.

(5) The lapse of the right to vote in the holder of Native common stock upon a transfer to him by inheritance or otherwise prior to the effective date of this Act may be restored by the adoption of an amendment to the articles of incorporation to such effect: Provided, That such voting rights may be restored only

with respect to shares of Native common stock held by a Native or a descendant of a Native.

(6) Notwithstanding any provision of Alaska law, other than those provision which relate to proxy statements and proxy solicitations and except as otherwise provided in section 7b --

(A)(i) Any amendment to the articles of incorporation of a Regional Corporation authorized by this subsection or subsection (g) of this section, a transfer of assets made pursuant to section 7a, and a resolution described in paragraph 2(C) of this subsection or subparagraph (B) of this paragraph shall be approved in the following manner:

(a) The board of directors shall adopt a resolution setting forth the proposal and directing that it be submitted to a vote at the annual or a special meeting of shareholders;

(b) A written or printed notice setting forth the proposal or a summary of the changes to be effected, or the proxy statement if one is required under subclause (a) of this clause shall be given to each shareholder of record entitled to vote not less than fifty (50) nor more than sixty (60) days before the date of the meeting, either personally or by mail;

(c) At the meeting a vote of the shareholders entitled to vote shall be taken on the proposal and it shall be approved if it receives the affirmative votes required under clause (ii).

(d) A number of proposals may be submitted to the shareholder sand voted upon at one meeting.

(e) With respect to any amendment of the articles of incorporation of a Regional Corporation authorized by this subsection or subsections (g)(1) and (g)(3) of this section, the effect of which would be to end the restrictions on alienation for all classes of stock in the corporation, if the holders of at least one third of the outstanding shares of Native common stock entitled to be voted petition the board of directors to adopt and submit to a vote of the shareholders a resolution to make that amendment to the articles of incorporation, the board of directors shall adopt the resolution and submit it to a vote of the shareholders as provided for in subclauses (a)-(d) of this clause: Provided, that a person or group seeking to obtain signature on such a petition shall, no less than ten (10) days before starting to obtain such signatures, file a written statement with the board of directors and the state agency having jurisdiction over proxy statements and solicitations, which statement shall contain no materially false or misleading statement or omission with respect to the proposed amendment, shall disclose the identity or identities of the person or persons organizing the effort to obtain signatures on the petition, and shall also fairly and fully disclose the nature and efforts of the proposed amendment if it is adopted; Provided, further, that if, after ten (10) days from such filing of the statement, there is no judicial or administrative order than in effect which directs that corrections be made to the statement or

enjoins the solicitation of shareholders' signatures on the petition, then shareholders may begin to be solicited to sign the petition, and a copy of the statement shall be given to each shareholder before that shareholder is solicited to sign the petition.

(ii) In order for an amendment to the articles of incorporation, land transfer or resolution to be approved pursuant to this paragraph, the proposal must be voted upon by at least 51 per centum of the outstanding shares of Native common stock entitled to be voted and must receive the affirmative vote at least 50 per centum of the outstanding shares of Native common stock entitled to be voted or an affirmative vote greater than 50 per centum of the shares voted, or both to approve any such proposal;

(iii) Any other amendment to the articles of incorporation not specified in clause (i) of this subparagraph shall be approved in accordance with the articles of incorporation, by-laws or applicable law.

(B) If the results of a shareholder vote under paragraph (2) of this subsection is the extension of restrictions against alienation, a stockholder who voted against the extension or in favor of the termination of restrictions, as the case may be, may demand and receive payment from the corporation for all of his or her shares but only if contemporaneously with the vote the shareholders of the Regional Corporation adopt a resolution

expressly providing for such right. Except as otherwise provided in subparagraph (D), the procedure established by Alaska law for the exercise of the right of a dissenting stockholder to demand and receive payment for his or her shares in certain cases shall be followed if such right is made available pursuant to this paragraph.

(C) The stockholders of a Regional Corporation who adopt a resolution pursuant to subparagraph (B) of this paragraph may also provide in such resolution that the Native common stock restrictions for the same period then applicable to the stock) or that the value of the land or any interest therein received by the Regional Corporation pursuant to this chapter, which is committed by the corporation to Native traditional or cultural uses or is of speculative or unknown value on the date such resolution is adopted, shall be excluded by the dissenting stockholder, the Regional Corporation and any court in the determination of the fair value of the shares of Native common stock to be purchased from such stockholder by the Regional Corporation.

(D) The stockholder of a Regional Corporation who adopt a resolution pursuant to subparagraph (B) of this paragraph may also provide in such resolution that payment to a dissenting shareholder shall be made by the corporation through issuance to such shareholder of a non-negotiable debenture in the principal amount of the payment due, which debenture shall be secured

either by a payment bond issued by an insurance company or financial institution, by the deposit in escrow of securities or property having a fair market value equal to at least 125% of the face amount of the debenture, or by a lien upon the real property interests of the corporation other than lands or any interest therein which are committed by the corporation to Native traditional or cultural uses and, in the case of Regional Corporation, its timber resources and subsurface estate. The debenture shall bear interest, payable semiannually, beginning as of the date of the corporation elected to extend stock restrictions at the rate applicable on such date to obligations of the United States having a comparable maturity. The principal amount of the debenture and any undistributed interest shall be payable at any time at the option of the corporation or, if not so called, shall be paid to the former shareholder, or his heirs, on December 18, 1991, or, if the stock restrictions otherwise would have expired on a later date, then on such date or five (5) years after the date of the election, whichever first occurs.

(7) If the results of a shareholder vote under paragraph (2) of this section or subsection (a) of section 7b is the removal of restrictions on alienation otherwise imposed by paragraph (1) of this subsection, the Regional Corporation may nevertheless, prior to the termination of such restrictions, impose any restrictions upon Native common stock permitted under applicable law as well as --

(A) the denial of voting rights to any holder of Native common stock who is not a Native or a descendant of a Native, and

(B) the granting to the corporation, or to the corporation and a stockholder's immediate family, on reasonable terms, the first right to purchase a stockholder's Native common stock (whether issued before or after the adoption of the restriction) prior to the sale or transfer of such stock (other than a transfer by inheritance) to any other party, including a transfer in satisfaction of a lien, writ or attachment, judgment execution, pledge or other encumbrance.

Sec. 5. ANCSA is further amended by adding a new section to read as follows:

SEC. 7a. (a)(1) A Native corporation may convey some or all of its assets, including title to the surface and/or subsurface estate of land, or any interest therein, to a qualified transferee entity for no consideration or for such consideration as its shareholders may approve.

(2) A qualified transferee entity is an entity organized pursuant to or recognized by state or federal law which --

(A) has a membership composed of persons whose interest in the entity is not transferable;

(B) provides membership in the entity for every person who holds Native common stock in the Native Corporation making the

transfer of assets on the day before the date of such transfer, which membership shall terminate at such stockholder's death; and

(C) In addition to the persons described in paragraph (B) of this subsection, accepts as new members only Natives and descendants of Natives.

(3) in addition to the authority and powers vested in such entity by state or federal law, a qualified transferee entity is authorized to --

(A) limit its membership to Natives and descendants of Natives, except as provided in subsection (2)(B) of this subsection,

(B) distribute cash or other assets to its members, except that such entity shall not convey fee title to land, or any interest therein, except to the extent authorized or required by sections 14(c) and 21(j) of this Act, and

(C) exchanges and/or interests therein pursuant to the provisions section 22(f) of this Act and Section 1302 (h) of the Alaska National Interest Lands Act.

(b) A conveyance of assets pursuant to this section must be approved by a prior vote of the shareholders and shall be subject to such terms and conditions as the shareholders may approve.

(c) Section 21(d) of this Act shall continue to apply to land, or any interest therein, conveyed by a Native Corporation to a qualified transferee entity pursuant to this section.

(d)(1) An asset subject to section 7(i) of this Act conveyed pursuant to this section shall remain subject to section 7(i) to the same extent such asset would have been subject if the conveyance had not occurred.

(2) A Regional Corporation shall not convey assets subject to section 7(i) of this Act pursuant to this section to more than one qualified transferee entity. Prior to receiving a conveyance of an asset subject to section 7(i), a qualified transferee entity shall agree in writing to be bound by the provisions of the agreement date June 29, 1982, among and between the parties to the Aleut Corp., et al. v. Arctic Slope Regional Corp. et al., (Civ. Act. A75-53 D. Ak.) and to waive its sovereign immunity, if any, with respect to any claims arising under section 7(i) or this subsection. The Regional Corporation, or in the case of its dissolution another single entity designated by its shareholders or the United States District Court, as appropriate, shall be responsible for administering the provisions of both section 7(i) and the aforementioned agreement dated June 29, 1982, with respect to all assets subject to section 7(i) conveyed by such corporation pursuant to this section.

(3) Subsequent to the conveyance of an asset subject to section 7(i) by a Regional Corporation, such asset shall continue as security for the payment by such Corporation, or its successor entity, of all revenues which the Corporation is obligated to

distribute to other Regional Corporations pursuant to section 7(i).

(e)(1) If a shareholder vote described in subsection (b) approves a conveyance by a Native Corporation of an asset pursuant to this section, a stockholder who voted against the conveyance, may demand and receive payment from the corporation for all of his or her shares but only if contemporaneously with the vote the shareholder of the Native corporation adopt a resolution expressly providing for such right. The procedure established by Alaska law for the exercise of the right of a dissenting stockholder to demand and receive payment for his or her shares in certain cases shall be followed if such right is made available pursuant to this paragraph.

(2) A resolution described in paragraph (1) of this subsection may also provide that the Native common stock of such Native Corporation shall be valued only as restricted stock (having the same restrictions for the same period then applicable to the stock) or that the value of the land, or any interest therein, received by the Regional Corporation pursuant to this Act, which is committed by the corporation to Native traditional or cultural uses or is of speculative or unknown value on the date such resolution is adopted, shall be excluded by the dissenting stockholder, the Regional Corporation and any court in the determination of the fair value of the shares of Native

common stock to be purchased from such stockholder by the Regional Corporation.

Sec. 6. ANCSA is further amended by adding a new section to read as follows:

Sec. 7b. (a) If the Bristol Bay Native Corporation or any village corporation located in the Bristol Bay region so elects pursuant to section 7(h)(2), a vote on the question of whether to continue restrictions on the alienation of Native common stock shall be conducted pursuant to the following procedures:

(1) On or before December 18, 1991, the shareholders of the corporation shall vote on whether to extend the restrictions on alienation of Native common stock described in section 7(h)(1) for such period, not less than twenty (20) years nor more than fifty (50) years, as the Native common stockholders may approve by the adoption of an amendment to the articles of incorporation to that effect. In the event restrictions upon stock alienation are extended pursuant to this paragraph, the corporation may elect before the expiration of such extension period, or any successor extension period, further to extend the restrictions for such additional period, not less than twenty (20) years nor more than fifty (50) years, as the Native common stockholders shall approve in like manner.

(2) If the corporation does not conduct a vote pursuant to paragraph (1) or if the shareholders defeat a resolution that the

restrictions on alienation be continued, the shareholders SHALL adopt a resolution which establishes the date or describes the specific events upon which the restrictions shall terminate. If a resolution which establishes the date or describes the specific events upon which the restrictions shall terminate is not voted upon or approved, the restrictions shall terminate one year from the date of the vote disapproving the resolution to extend such restrictions or on December 18, 1991, whichever later occurs. On the date of termination all Native common stock previously issued shall be deemed cancelled, and shares of stock of the appropriate class shall be issued to each stockholder share for share, subject only to such restrictions as may be provided by the articles of incorporation of the corporation, or in agreements between the corporation and individual shareholders.

(3) Notwithstanding any provision of Alaska law, other than those provisions which relate to shareholder rights of petition and to proxy statements and proxy solicitations --

(A) Any amendment to the articles of incorporation of the corporation authorized by this section, section 7(g) and section 7(h)(4) and (5), a transfer of assets made pursuant to section 7a, and a resolution described in paragraph (2) of this subsection of paragraph (2) of subsection (b) shall be approved in the following manner:

(i) The board of directors shall adopt a resolution setting forth the proposal and directing that it be submitted to a vote at the annual or a special meeting of shareholders;

(ii) A written or printed notice setting forth the proposal or a summary of the changes to be effected shall be given to each shareholder of record entitled to vote not less than fifty (50) nor more than sixty (60) days before the date of the meeting, either personally or by mail;

(iii) At the meeting a vote of the shareholders entitled to vote shall be taken on the proposal and it receives the affirmative votes required under subparagraph (B).

(iv) A number of proposals may be submitted to the shareholders and voted upon at one meeting.

(B) In order for an amendment to the articles of incorporation, land transfer or resolution to be approved pursuant to this paragraph, the proposal must be voted upon by at least 51 per centum of the outstanding shares of Native common stock entitled to be voted and must receive the affirmative vote of at least 50 per centum plus one of the shares voted:

Provided, That the stockholders may require a minimum vote of more than 51 per centum of the outstanding shares of Native common stock entitled to be voted or an affirmative vote greater than 50 per centum of the share voted, or both, to approve any such proposal.

(C) Any other amendment to the articles of incorporation not specified in subparagraph (B) of this paragraph shall be approved in accordance with the articles of incorporation, bylaws or applicable law.

(b)(1) If the result of a shareholder vote under subsection (a) of this section is the extension of restrictions against alienation, a stockholder who voted against the extension may demand and receive payment from the corporation for the fair value of all of his or her shares. Unless longer periods of time are authorized in the by-laws of the corporation the procedure established by Alaska law for the exercise of the right of a dissenting stockholder to demand and receive payment for his or her shares in certain cases shall be followed to the extent such right is made available pursuant to this subsection.

(2) The stockholders of a corporation may adopt a resolution, concurrent with the vote authorized under subsection (a), which provides that, in the event dissenters' rights are exercised, the Native common stock shall be valued only as restricted stock (having the same restrictions for the same period made applicable to the stock by the vote) or that the value of the land or any interest therein received by the corporation pursuant to this Act, as amended, which is committed by the corporation to Native traditional or cultural uses or is of speculative or unknown value on the date such resolution is adopted, shall be excluded by the dissenting stockholder, the

corporation and any court in the determination of the fair value of the shares of Native common stock to be purchased from such stockholder by the corporation.

(3) The stockholders of a corporation who adopt a resolution pursuant to paragraph (2) of this subsection may also provide in such resolution that payment to a dissenting shareholder shall be made by the corporation through issuance to such shareholder of a non-negotiable debenture in the principal amount of the payment due, which debenture shall be secured either by a payment bond issued by an insurance company or financial institution, by the deposit in escrow of securities or property having a fair market value equal to at least 125% of the face amount of the debenture, or by a lien upon the real property interests of the corporation other than lands or any interest therein which are committed by the corporation to Native traditional or cultural uses and, in the case of Bristol Bay Native Corporation, its timber resources and subsurface estate. The debenture shall bear interest, payable semi-annually, beginning as of the date of the corporation elected to extend stock restrictions at the rate applicable on such date to obligations of the United States having a comparable maturity. The principal amount of the debenture and any undistributed interest shall be payable at any time at the option of the corporation or, if not so called, shall be paid to the former shareholder, or his heirs, on December 18, 1991, or, if the stock

restrictions otherwise would have expired on a later date, then on such date or five (5) years after the date of the election, whichever first occurs.

Sec. 7. ANCSA is further amended by adding a new section to read as follows:

Sec. 7c. Nothing in this Act shall be construed as enlarging or diminishing or in any way affecting the scope of any governmental authority of a federally recognized tribe, traditional Native council or Native council organized pursuant to the Indian Reorganization Act, as amended, or any right, privilege or immunity of Alaska Natives as Native Americans in their relationship with the Government of the United States.

Sec. 8. Section 8(c) of ANCSA [43 U.S.C. §1607(c)] is amended to read as follows:

(1) The provisions of sections 7(g), (h) and (o) and section 7b of this Act relating to Regional Corporations shall apply in all respects to Village Corporations, Urban Corporations and Native Groups; except that (A) audits need not be transmitted to the Committee on Interior and Insular Affairs of the House of Representatives or to the Committee on Energy and Natural Resources of the Senate; and (B) subject to the provisions of paragraph (2) of this subsection, restrictions on the alienation of Native common stock of such corporations, inchoate rights

thereto and any dividends paid or distributions made with respect thereto shall continue after December 18, 1991.

(2) The restrictions on alienation of Native common stock of Village Corporations, Urban Corporations and incorporated Native groups may be removed by the adoption of an amendment to the articles of incorporation to such effect:

Provided, That a shareholder vote on an amendment calling for the removal of such restrictions may be held once before December 18, 1991, and, if such amendment shall not be adopted, subsequent votes on a like amendment may be held not more frequently than at annual intervals after December 18, 1991: Provided further, That stockholder votes to amend the articles of incorporation of a Native corporation pursuant to this paragraph shall be held in accordance with the provisions of subsections 7(h)(2) and (6) or section 7b, as the case may be, except that the form of a resolution concerning restrictions on alienation must be a resolution to terminate such restrictions and a village corporation may decide, in accordance with the provisions of subsection 7(h)(6)(B) to grant dissenting rights to shareholders who vote in favor of such a resolution which does not pass.

Sec. 9. Section 14 of ANCSA [43 U.S.C. §1613] is amended to add the following new paragraph:

(i) Authorization for conveyance of subsurface to village entities.

(1) A Regional Corporation may convey any subsurface estate owned by such corporation to a village entity which acquired and still owns the surface estate pursuant to this Act.

(2) Notwithstanding any conveyance under this paragraph the Regional Corporation shall receive the 30% of the revenues from the development of the subsurface estate it would have retained had there been no such conveyance.

(3) Any conveyance under this paragraph shall be subject to the provisions of subsections 7a(b)-(e) as if the village entity were a qualified transferee entity. The document or documents effecting such conveyance shall be recorded by the Regional Corporation, together with copies of subsections 7a(b)-(e) and this subsection, in the land records of the appropriate recording district.

(4) The village entity to which any subsurface estate is conveyed pursuant to this subsection may not convey or otherwise transfer all or any part of such subsurface estate to any other entity without the express consent of the transferor Regional Corporation.

sec. 10. Section 21(d)(1) of ANCSA [43 U.S.C. §1620(d)(1)] is amended to read as follows:

All land and interests therein conveyed, pursuant to this Act, to a Native individual, Native Group, Village or Regional Corporation or corporation established pursuant to section

14(h)(3) of this Act shall, so long as such land and interests therein are not developed or leases to third parties or are used solely for the purposes of exploration, be entitled from the date of their conveyance to immunity from --

(A) adverse possession and similar claims based upon legal theories of estoppel;

(B) real property taxes by any governmental entity, including federal, state or local;

(C) judgment resulting from any claim based upon the laws of bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally; and

(D) judgment in any action at law or equity to recover sums owed or penalties incurred by any Native Corporation or Native Group or any officer, director or stockholder of any such Corporation or Group:

Land to which this paragraph applies shall not be considered developed solely as a result of the construction, installation or placement upon such land of any structure, fixture, device or other improvement intended to enable, assist or otherwise further the subsistence or other customary or traditional uses of such land: Provided further, That the immunities provided for in this paragraph shall be in addition to those immunities or other benefits to which such land or interests therein may be entitled under the Alaska National Interest Land Conservation Act: and Provided further, That the immunities provided for in this

paragraph shall not apply to any judgment in any action at law or equity or to any arbitration award arising out of any claim regarding revenue sharing under section 7(i); and Provided Further, That land to which this paragraph applies and land which is conveyed pursuant to section 7a of this Act as amended shall be subject to condemnation for public purposes in accordance with the provisions of applicable State law.

Sec. 11. Subsection 21(f) of ANCSA [43 U.S.C. §1620(f)] is amended by deleting "Until January 1, 1982," and replacing such language with "Until such time as the limitation upon alienation of Native common stock has been removed pursuant to section 7(h)(2) and section 7b of this Act."

Sec. 12. Section 28 of ANCSA [43 U.S.C. §1625] is amended by replacing the final clause of the first sentence, "through December 31, 1991," with the following:

...through the earlier of the day after (1) the date on which the corporation (1) issues (other than by descent or devise) any shares of stock which will not be issued solely to Natives or descendants of Natives or to entities established for the sole benefit of Natives or descendants of Natives or (ii) the date on which the corporation removes the limitation on alienation of Native common stock as provided for in section 7(h)(2) and section 7b of this Act.

After the next sentence, add the following:

For the purpose of determining the applicability of the registration requirements after such date of the Securities Exchange Act of 1934 (48 Stat. 74), as amended, holders of Native common stock shall be excluded from the calculation of the number of shareholders or record pursuant to section 12(g) thereof. The provisions of the Investment Company Act of 1940 shall not, in any event, apply to any corporation organized pursuant to this chapter until January 1, 2001, at the earliest.

Sec. 13. Section 10 of ANCSA [43 U.S.C. §1611] is amended by adding the following new subsection:

(c) The United States District Court for the District of Alaska is hereby vested with exclusive original jurisdiction over any action challenging the constitutionality of sections 7a, 7(g), 7(h), 8(c) and 8(i) of this Act. Such action shall be heard and determined by court of three judges as provided in 28 U.S.C. §2284 with a direct appeal from any final judgment to the United States Supreme Court. If the United States District Court should determine that any of the aforementioned sections violate the Fifth Amendment to the United States Constitution, in fashioning appropriate relief, the Court shall not enter a money judgment against the United States, it being the express intention and direction of Congress that in no circumstances

shall the enactment of this Act result in any liability on the United States.

Sec. 14. Section 30(b) of ANCSA [43 U.S.C. §1627 (b)] is amended to delete the phrase "prior to December 19,1991" and insert in lieu thereof the phrase "while the Native common stock of all corporations subject to such merger or consolidation remains subject to restraints on alienation."

Sec. 15. Section 27 of ANCSA [43 U.S.C. §1628] is amended to read as follows:

The provisions of this Act, as amended are severable. If any provision of the Act is determined by a Court of competent jurisdiction to be invalid, such invalidity shall not affect any other provision.

Sec. 16. Section 29 of ANCSA [43 U.S.C. §1626] is amended to insert the phrase "II", including any stock issued under Section 7(9)(2) or (3) to Natives who have attained the age of sixty-five and any dividends thereon," after the phrase "under this chapter" in subsections (a) and (b).

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

2065. A bill to amend the Alaska Native Claims Settlement Act to provide Alaska Natives with certain options for the continued ownership of lands and corporate shares received pursuant to the act, and for other purposes; in the Committee on Energy and Natural Resources.

ALASKA NATIVE LAND CLAIMS SETTLEMENT
AMENDMENTS

Mr. MURKOWSKI. Mr. President, today, I am cosponsoring with Senator STEVENS, legislation to amend the Alaska Native Claims Settlement Act of 1971, which for purposes of brevity, I shall call ANCSA.

For many in this Congress, the date 1991 looms because it is the target date for a balanced budget mandated by Gramm-Rudman-Hollings. For Alaska's Natives, the date 1991 presents an additional challenge: continued Native land ownership.

The importance of land to Alaska's Natives should not be understated. They inhabit many of the most remote parts of Alaska, parts that are only accessible by air or by water. Most still live a subsistence existence owing to their traditional lifestyles and cultural values, their isolation, and high food costs in rural Alaska.

Since the Treaty of Cession and prior to adoption of ANCSA in 1971, the Federal Government has recognized the rights of Alaska's Natives to land. In the late 1960's and early 1970's, due to increased development and population pressures, Congress and the Natives began negotiations and hearings on how to resolve Alaska Native land claims.

The result was passage of landmark legislation of how Congress deals with Native Americans. Congress and the Natives rejected establishing new reservations in Alaska. The course selected was Native equity ownership in Native corporations.

Under the act, Alaska Natives were established in 12 regional corporations and over 200 village corporations. These corporations received through a complex land conveyance formula, portions of a 44 million acre land entitlement and of a cash settlement of \$982.5 million as compensation for extinguished land claims.

Individual Natives enrolled in regional and/or village corporations and

received 100 shares of stock as their individual share of the settlement—their share of the land. This stock is restricted, or not saleable, until 1991, 20 years after passage of the act. The purpose of the restrictions was to enable the Native corporations time to form and become economically self sufficient in order that they may distribute dividends and other benefits to their Native shareholders.

Yet, as 1991 looms ahead, many Native corporations still have not received ANCSA land entitlements. Many corporations continue to struggle and have not realized the benefits of ANCSA. Implementation of the act has been fraught with litigation and delays. Moreover, adjustment to the corporate structure from a traditional subsistence life style is a major one for the corporate entity is frequently ill-adapted to the traditional Native life styles. Concern within the Native community is that the Natives will lose control of their land through corporate failure and through the sale of stock in 1991.

In response to this concern, for over 2 years, the Alaska Federation of Natives (AFN), the largest statewide Native organization, has held village workshops, town meetings, and conventions to discuss the issues raised by 1991 and to establish solutions. This process culminated in a special convention held in Anchorage in March of 1985. The choice made was to amend ANCSA to reflect the individual needs for the various villages and regions. At this convention, eight resolutions were adopted and enjoyed broad and often unanimous support by the AFN delegates. These resolutions are significant, for they represent a consensus of the Native community statewide on how to address the 1991 issues. These resolutions are the basis for the legislation we have before us today.

This legislation is in the spirit of 1971, the spirit of self-determination. It reflects the diversity of the Alaska Natives, for it is a package of options from which each Native corporation can select to determine land and stock ownership. For the record, I will briefly outline the major 1991 issues and how this bill addresses them:

STOCK RESTRICTIONS

Under current law, in 1971, Native stock would automatically be canceled and new stock would be issued to existing shareholders that is saleable on the open market. This legislation,

automatically continues the stock restrictions in 1971 and allows for each corporation to vote to continue or discontinue stock restrictions. It also allows that the Bristol Bay Native Corporation and villages in its region require its corporation to take a mandatory vote on the question of stock alienation.

TRANSFER OF ASSETS TO A NEW ENTITY

If Natives determine the corporate structure does not fit their needs, this legislation gives the option for a village or a regional corporation to transfer their assets to a qualified new entity.

DISSIDENTS RIGHTS

This deals with the question of how to deal with those shareholders who vote against the majority in motions to continue stock restrictions and to transfer corporate assets to a qualified transferee entity. The legislation gives the corporations the option of allowing dissenters rights.

NEW STOCK FOR ELDERS AND NATIVES BORN AFTER 1971

Natives born before 1971 were eligible to enroll in Native corporations, with the assumption that Native stock will be passed down to descendants. However, some corporations would like to issue additional stock to Natives born after 1971 and to elders. This legislation gives corporations that option.

AUTOMATIC LAND BANK PROTECTION

The Alaska National Interest Land Conservation Act authorized a land bank into which corporations could deposit undeveloped lands to protect them from adverse possession and taxation. Excessive administrative delays has slowed the implementation of the land bank. This bill addresses the bureaucratic delay problem by granting automatic land bank protection for undeveloped lands.

Mr. President this legislation does not try to reinvent the wheel with respect to Alaska Native land claims. This legislation "fine tunes" ANCSA so that it gives Natives options as to how they can continue to manage their ANCSA assets. It does not establish any new relationship between the Federal Government and Alaska's Natives nor does it or should it attempt to resolve the questions relating to sovereignty or Indian country Alaska. The legislation does not and should not address subsistence game management and use in Alaska. It has been drafted with the cooperation of

the Alaska Federation of Natives and the State of Alaska. The Department of the Interior has been fully briefed on these issues and has been repeatedly asked for its comments.

Mr. President, the Alaska Native community has presented to the Alaska delegation solutions backed by a consensus of the Alaska Native. To ensure maximum participation by Alaskans in the development of this legislation, I plan to hold a series of workshops in rural Alaska villages to discuss this bill. In addition, I have received confirmation that the Senate Energy and Natural Resources Committee, Subcommittee on Public Lands will hold hearings in Alaska on this bill.

Mr. President, in 1971 Congress passed the Alaska Native Claims Settlement Act. While I and many of my colleagues in the U.S. Senate were not here at that time, I believe we need to work for the success of the settlement. This legislation is designed to meet this goal, and I look forward to working with Alaskans and my colleagues toward successful passage of this legislation.

Mr. STEVENS, Mr. President, I am happy to join Senator Murkowski in introducing a package of amendments to the Alaska Native Claims Settlement Act (ANCSA) of 1971. As my colleague points out in his opening statement, many Native corporations have been plagued with problems that Congress did not foresee at the time of ANCSA's enactment. In large part, these problems are attributable to the Federal Government's slowness in implementing ANCSA.

I believe that as a matter of basic fairness, Congress must respond to the concerns that Alaska Natives have expressed about the future of their land settlement in connection with the 1991 provisions of ANCSA. We must make sure that the Government keeps the promises made to the Natives in 1971.

The Alaska Federation of Natives (AFN), which has played a key role in protecting the interests of Alaska Natives for many years, has worked long and hard to develop a package of amendments to ANCSA that deals with the problems posed by 1991. I commend AFN for its dedication and perseverance.

ALASKA NATIVE CLAIMS
SETTLEMENT ACT

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 6, 1988

Mr. YOUNG of Alaska. Mr. Speaker, I am introducing legislation today to provide for necessary amendments to the Alaska Native Claims Settlement Act which will clarify future land and stock ownership rights under the act. I am pleased that the distinguished chairman of the Committee on Interior and Insular Affairs has joined as cosponsor of this legislation.

Under the terms of ANCSA, corporate shares in Alaska Native corporations become fully alienable at the conclusion of a 20-year period following enactment. As this deadline draws near, there has been a great deal of concern in Alaska Native communities that the unfettered sale of stock could well result in the loss of lands used by Native people of Alaska for hundreds if not thousands of years.

To address this concern, this legislation would provide for the continuation of restrictions contained in ANCSA, as amended, unless an individual Native corporation takes certain specified actions to eliminate or modify the sale restrictions. Dissenter's rights are provided where the corporation elects to continue stock restrictions. In addition to clarification of corporate share ownership rights, the bill provides for land ownership protections.

Mr. Speaker, many individuals and groups in Alaska have spent a great deal of time and effort over the past 2 years in developing the basis for this legislation. Through a series of village meetings, workshops, and special conventions, Alaska Natives have deliberated long and hard and made many difficult decisions which resulted in proposals to Congress. The Alaska Federation of Natives is to be commended for their efforts to develop a consensus among many individuals, villages, and groups in a difficult and complex area of the law.

I believe the consensus in the Alaska Native community provides us with a good starting point and will serve as a focus of attention on necessary changes in ANCSA. There will be hearings in Alaska and Washington, DC on this legislation. It is my hope that we will be able to enact needed amendments to ANCSA during the current session of Congress.

For these reasons, I urge my colleagues to support this legislation.

The bill we are introducing today parallels, in most respects, the recommendations that AFN has made. I want to emphasize, however, that this bill is the starting point of the legislative process, not the end product. We plan to subject the bill to extremely close scrutiny in the hearing and markup process. We intend to listen closely to the comments of all individuals whose interests would be affected by the bill.

Mr. President, resolving the problems of 1991 and ensuring the success of the 1971 Alaska Native land claims settlement is in the best interest of all Alaskans and all Americans. I hope that we will be able to move expeditiously on this bill this session.

Request Public Hearings
Help — Stop
Stevens Murkowski Young
Proposed Amendments to ANSCA
H.R. 4162 S 2065

- A Terms of Settlement act.
- B Resolution # 35, and Youngs comment.
- C Judge Berger comment and suggestions.
- D Proposed additional amendments.
- E A.F.N. support for tribal control of alaska resources, and etc.
- F Proof, congressman Young allowed Governor Sheffield and Native representatives to be the only ones allowed to testify at August 9th Anchorage meeting! (Youngs close door policy)
- G Re: Financial status of some Native corporations.
- H Additional data re: proposed sovereignty and etc.
- * Cover sheet shows what will happen to alaska resource management if TC Amendment passes!



Public Law 92-203
92nd Congress, H. R. 10367
December 18, 1971

A

An Act

85 STAT. 688

To provide for the settlement of certain land claims of Alaska Natives, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Alaska Native Claims Settlement Act".

Alaska Native
Claims Settle-
ment 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 privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska;

(c) no provision of this Act shall replace or diminish any right, privilege, or obligation of Natives as citizens of the United States or of Alaska, or relieve, replace, or diminish any obligation of the United States or of the State or Alaska to protect and promote the rights or welfare of Natives as citizens of the United States or of Alaska; the Secretary is authorized and directed, together with other appropriate agencies of the United States Government, to make a study of all Federal programs primarily designed to benefit Native 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 settlement 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;

70A Stat. 457;
76 Stat. 904.

(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.

79 Stat. 552.
42 USC 3121
note.

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 Metlakta 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;
- (c) "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 by 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;
- (d) "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;
- (e) "Public lands" means all Federal lands and interests therein 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 installation, and (2) land selections 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;
- (f) "State" means the State of Alaska;
- (g) "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;
- (h) "Person" means any individual, firm, corporation, association, or partnership;
- (i) "Municipal Corporation" means any general unit of municipal government under the laws of the State of Alaska;
- (j) "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.
- (k) "Fund" means the Alaska Native Fund in the Treasury of the United States established by section 6; and
- (l) "Planning Commission" means the Joint Federal-State Land Use Planning Commission established by section 17.

4d USC
 prec. 21 note.

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.

Prior land conveyances, aboriginal titles and claims, extinguishment.

(b) All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.

(c) All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska, or that are based on any statute or treaty of the United States relating to Native use and occupancy, or that are based on the laws of any other nation, including any such claims that are pending before any Federal or state court or the Indian Claims Commission, are hereby extinguished.

ENROLLMENT

Sec. 5. (a) The Secretary shall prepare within two years from the date of enactment of this Act a roll of all Natives who were born on or before, and who are living on, the date of enactment of this Act. Any decision of the Secretary regarding eligibility for enrollment shall be final.

(b) The roll prepared by the Secretary shall show for each Native, among other things, the region and the village or other place in which he resided on the date of the 1970 census enumeration, and he shall be enrolled according to such residence. Except as provided in subsection (c), a Native eligible for enrollment who is not, when the roll is prepared, a permanent resident of one of the twelve regions established pursuant to subsection 7(a) shall be enrolled by the Secretary in one of the twelve regions, giving priority in the following order to—

- (1) the region where the Native resided on the 1970 census date if he had resided there without substantial interruption for two or more years;
- (2) the region where the Native previously resided for an aggregate of ten years or more;
- (3) the region where the Native was born; and
- (4) the region from which an ancestor of the Native came:

The Secretary may enroll a Native in a different region when necessary to avoid enrolling members of the same family in different regions or otherwise avoid hardship.

(c) A Native eligible for enrollment who is eighteen years of age or older and is not a permanent resident of one of the twelve regions may, on the date he files an application for enrollment, elect to be enrolled in a thirteenth region for Natives who are non-residents of Alaska, if such region is established pursuant to subsection 7(c). If such region is not established, he shall be enrolled as provided in subsection (b). His election shall apply to all dependent members of his household who are less than eighteen years of age, but shall not affect the enrollment of anyone else.

ALASKA NATIVE FUND

Sec. 6. (a) There is hereby established in the United States Treasury an Alaska Native Fund into which the following moneys shall be deposited:

- (1) \$162,500,000 from the general fund of the Treasury, which are authorized to be appropriated according to the following schedule:

(A) \$12,500,000 during the fiscal year in which this Act becomes effective;

(B) \$50,000,000 during the second fiscal year;