

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

5712 HOUSE JUDICIARY

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Tom Butler

Signature of Camera Operator

9/13/93

Date

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LIB.003

Subsistence

Alaska State Legislature



House of Representatives House Judiciary Committee

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

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Original sponsor(s): REP. JACKO, Goll, Foster, MacLean

1 IN THE HOUSE BY THE RESOURCES COMMITTEE
2 CS FOR HOUSE JOINT RESOLUTION NO. 74 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 Proposing an amendment to the Constitu-
6 tion of the State of Alaska relating to
7 retention of state management of fish
8 and wildlife and other wild renewable
9 natural resources; and providing for an
10 effective date for the amendment.

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

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

14 SECTION 19. RETENTION OF NATURAL RESOURCES MANAGEMENT BY THE
15 STATE. Nothing in this constitution prohibits the legislature from
16 enacting laws relating to subsistence uses of fish and wildlife and
17 other wild renewable natural resources that are consistent with valid
18 federal laws ^(where necessary) ~~in order~~ to retain management authority over those
19 resources by the State.)

20 * Sec. 2. The amendment proposed by this resolution shall be placed
21 before the voters of the state at the next general election in conformity
22 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
23 tion laws of the state.

24 * Sec. 3. The amendment proposed by this resolution is effective imme-
25 diately upon certification of the election returns by the lieutenant gover-
26 nor.

A PROPOSED AMENDMENT TO CSHJR 74 (RES)

CSHJR 74 (Res) speaks only of enacting laws which are consistent with federal laws. The Alaska Supreme Court has shown rather marked hostility to laws which establish a preference for some users of natural resources over others. This could lead the court to conclude that the proposed amendment only authorizes laws "which are consistent with, and which provide for the definition, preference and participation specified in, sections 803, 804, and 805" of ANILCA -- i.e., a preference for rural residents only on federal land. To authorize a statewide subsistence preference for rural residents, ~~CSHJR 74 (Res)~~ could be amended to include an intent to validate, ratify, and reinstate the provisions of the state's current subsistence laws (except for the definition of "rural area" which the ninth circuit in the Kenaitze case held was inconsistent with ANILCA). This also would make it unnecessary to reenact a subsistence law during the next legislative session, since ~~passage of the constitutional amendment and the intent language as a single ballot proposition would both amend the constitution and validate, ratify, and reinstate the provisions of the state's current subsistence laws~~ (except for the definition of rural area).

The following amendment to CSHJR 74 (Res) would accomplish the foregoing (deletions are in brackets; additions are underlined; the endnotes explain the changes).

OFFERED IN THE HOUSE

TO: CSHJR 74 (Res)

Page 1, lines 12 - 26

Delete all material and insert:

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

SECTION 19. RETENTION OF NATURAL RESOURCES MANAGEMENT BY THE STATE. Nothing in this constitution prohibits the legislature from enacting laws of general applicability¹ relating to subsistence uses of fish and wildlife and other wild renewable natural resources that are consistent with valid federal laws (in order to retain management authority

over those resources by the State.

* Sec. 2. In addition to authorizing the legislature to enact laws consistent with federal laws which may exist at this time or as may be enacted by the United States Congress in the future, the intent of the amendment proposed by this resolution is to validate, ratify, and reinstate the provisions of current state subsistence laws (including the provisions of ch. 52, SLA 1986) which are consistent with valid federal laws. ²

* Sec. [2] 3. The amendment proposed by this resolution, and the intent of the amendment as set out in this resolution, shall be placed before the voters of the state as one ballot proposition ³ at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

*Sec. [3] 4. This amendment proposed by this resolution is effective immediately upon certification of the election returns by the lieutenant governor.

ENDNOTES

1. This tracks the language of section 805(d) of ANILCA and bolsters the argument that, with the intent language added as section 2, the proposed amendment if enacted authorizes laws which are effective statewide, not just on federal lands.

2. This is the intent language necessary to validate, ratify, and reinstate the provisions of the state's current subsistence laws (except for the definition of "rural area").

3. This and the preceding addition incorporate the intent of the amendment into the ballot proposition to be put before the voters.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240
November 7, 1986

Honorable Bill Sheffield
Governor of Alaska
Juneau, Alaska 99811

Dear Governor Sheffield:

Thank you for your letter of September 2, 1986, by which you confirmed the enactment of a new State law that brings the State's subsistence use and management program back into full compliance with sections 803, 804 and 805 of the Alaska National Interest Land Conservation Act (ANILCA). On September 23, 1985, I had notified you formally that the Department of the Interior had found Alaska's program to be out of compliance with ANILCA's requirements, based upon our interpretation of the Alaska Supreme Court decision in Madison v. Alaska Department of Fish and Game. The Office of the Solicitor has reviewed the materials submitted with your September 2, 1986, letter, and concluded that the new legislation cures the problems arising from the Madison decision. A copy of the October 17, 1985, memorandum on this subject from Gale A. Norton, Associate Solicitor for Conservation and Wildlife, is enclosed. I am therefore pleased to inform you that we have determined that the State's subsistence program is once again in full compliance with sections 803, 804 and 805 of ANILCA. The State as a result will continue in its traditional role in the regulation and management of subsistence uses of fish and wildlife on the public lands in Alaska.

We commend the State, in particular the State legislature, for the successful resolution of the difficult and unforeseen problems created by the Madison decision. We were pleased to be of some assistance during the legislative process leading to the passage of the subsistence bill and look forward to a continuation of State-Federal cooperation in the subsistence field.

Sincerely,

A handwritten signature in dark ink, appearing to read "William T. Horn".

Assistant Secretary for Fish and
Wildlife and Parks

Enclosure



United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

In Reply Refer To
FWS.CW.0311

Memorandum

To: William P. Horn, Assistant Secretary for Fish
and Wildlife and Parks

From: Gale A. Horton
Associate Solicitor
Conservation and Wildlife

Subject: Consistency of New State of Alaska Subsistence
Legislation with Requirements of Title VIII of the
Alaska National Interest Lands Conservation Act

In a letter dated September 23, 1985, you notified Governor Sheffield of the State of Alaska that the State subsistence program was no longer in compliance with the requirements of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 801-816. In a letter to you dated September 2, 1986, Governor Sheffield stated that the State has enacted new subsistence legislation and now seeks the Department's concurrence that the problems identified in your September 23, 1985 letter have been resolved. We conclude, based upon our review of the materials submitted with the September 2, 1986 letter, that ~~the State's~~ ~~Alaska subsistence program~~ ~~now complies with the requirements of~~ ~~ANILCA.~~

Background

In an opinion dated May 14, 1982, the Solicitor concluded that the State of Alaska had enacted and implemented a subsistence management and use program that met the requirements of Sections 803, 804 and 805 of ANILCA. A key issue considered in that opinion was whether the State's subsistence program limited the subsistence preference to rural residents, as required by Section 803 of ANILCA. Although the State subsistence statute did not expressly limit the preference to rural residents, the State had promulgated regulations that did. Moreover, the State Attorney General concluded that these regulations were promulgated within the authority of the State statute. The May 14, 1982 Solicitor's opinion accordingly concluded that the State subsistence preference was consistent with Section 803 of ANILCA.

In Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985), however, the Alaska Supreme Court invalidated a State Board of Fisheries regulation designed to determine eligibility for subsistence fishing in the Cook Inlet Region. The court ruled that the regulation was inconsistent with the State's subsistence statute, which the court interpreted as requiring the extension of the subsistence preference to both rural and urban subsistence users. This interpretation, which is contrary to that relied upon in the May 14, 1982 Solicitor's opinion, led to the conclusion that the State was no longer in full compliance with the requirements of Title VIII of ANILCA.

As the September 23, 1985 letter indicates, the state's non-compliance pertained to the residency eligibility criterion for the subsistence preference. If the State were to amend its subsistence statute to limit eligibility for the subsistence preference to rural Alaska residents, as does Section 803 of ANILCA, then the State would once again be in compliance with the requirements of Title VIII of ANILCA.

New State Subsistence Legislation

Enclosed with the September 2, 1986 letter from Governor Sheffield is a copy of a new State law, chapter 52, SLA 1986, that relates to the taking of fish and game for subsistence and personal use. Section 10 of the new law amends the definition of "subsistence uses" in the State subsistence statute, AS 16.05.940(23), to read, in pertinent part:

"subsistence uses" means the noncommercial, customary and traditional uses of wild, renewable resources by a resident domiciled in a rural area of the state

The counterpart portion of Section 803 of ANILCA states:

... "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources

If these two provisions are consistent, then the State's subsistence preference is consistent with that in ANILCA.

Section 11 of the new State law adds to the State subsistence statute a new paragraph AS 16.05.940(32) that defines "rural area" as follows:

"rural area" means a community or area of the State in which the noncommercial, customary, and traditional use of fish or game for personal or family consumption is a principal characteristic of the community or area.

We conclude that this definition is consistent with ANILCA. The legislative history of ANILCA establishes that Congress intended to provide continuing protections for subsistence opportunities in areas of Alaska in which subsistence uses have long played a significant role. The report of the Senate Committee on Energy and Natural Resources states:

However, the phrase "customary and traditional" is intended to place particular emphasis on the protection and continuation of the 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.

S. Rep. No. 413, 96th Cong., 1st Sess. 269 (1979); see also H.R. Rep. No. 97, Part I, 96th Cong., 1st Sess. 279-280 (1979); S. Rep. No. 1300, 95th Cong., 2d Sess. 221 (1978) (emphasis added). We believe that the language underscored in the above quotation is reflected in the State's definition of "rural area" as a community or area one of whose principal characteristics is subsistence uses of fish and game.

The Senate Committee Report differentiated between cities whose residents are not eligible for the subsistence preference -- Ketchikan, Juneau, Anchorage and Fairbanks -- and areas of rural Alaska whose residents are eligible. S. Rep. No. 413, 96th Cong., 1st Sess. 233 (1979). Subsistence uses are not a principal characteristic of these cities and therefore their residents would not be eligible under the State's definition for the subsistence preference. Moreover, the Senate Committee Report indicates, id., that the rural nature of a community may change over time; the "rural area" definition, by laying on the significance of subsistence uses to each community, provides a means for assessing whether a community has evolved from rural to non-rural.

The community and area focus of the definition of "rural area" is also appropriate and is even compelled by ANILCA. ANILCA's legislative history demonstrates that subsistence uses are to be identified on a community or area basis and not on an individual basis. For instance, Representative Udall stated:

customary and traditional subsistence uses must be evaluated on a community or area basis, rather than an individual basis.

We therefore conclude that the amended definition of "subsistence-uses" in the State statute, as elaborated upon in the new definition of "rural area," limits eligibility for the subsistence preference to rural Alaska residents in a manner that is consistent with Section 803 of ANILCA.

Conclusion

We conclude that the new State of Alaska subsistence legislation, chapter 52, SLA 1986, corrects the subsistence eligibility problem created by the Madison decision by reinstating the rural residency limitation on subsistence preference eligibility. We recommend that you inform Governor Sheffield formally that the Department of the Interior considers the State once again to be in compliance with the requirements of Title VIII of ANILCA.

RESOLUTION OF THE ALASKA CONFERENCE OF MAYORS

RESOLUTION NO. 90-9

A RESOLUTION SUPPORTING THE ADOPTION OF AN AMENDMENT
TO THE ALASKA CONSTITUTION TO BRING ALASKA LAW IN COMPLIANCE
WITH FEDERAL LAW REGARDING SUBSISTENCE

WHEREAS, due to the McDowell decision, the State of Alaska must take immediate action to prevent federal intervention in fish and wildlife management on federal lands, and

WHEREAS, protection of subsistence is an achievable goal and the Alaska Conference of Mayors are confident that the citizens of Alaska are capable of understanding each other's needs and acting responsibly to meet those needs, and

WHEREAS, the citizens of Alaska demonstrated affirmatively in 1982 that they were capable of such understanding in a statewide vote retaining subsistence, and

WHEREAS, the Alaska Conference of Mayors recognize the special importance of subsistence activities in those geographic areas of the state removed from the centers of commerce, and that socioeconomic and cultural considerations are the basis for the special importance of subsistence to the people in these geographic areas;

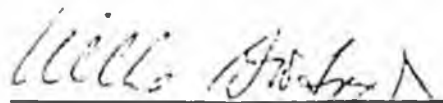
NOW, THEREFORE, BE IT RESOLVED, that the Alaska Conference of Mayors support amending Article VIII, Constitution of the State of Alaska, by adding a new section to read:

SECTION 19, USE OF FISH AND WILDLIFE RESOURCES FOR SUBSISTENCE. The legislature may grant a preference in the use of fish and wildlife resources for subsistence based upon geographic, socioeconomic, and cultural considerations;

BE IT FURTHER RESOLVED that the amendment proposed by this resolution be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state;

BE IT FURTHER RESOLVED that once such an amendment is adopted, the Alaska State Legislature provide, by statute, a preference in the use of local resources by local people in those geographic areas of Alaska where subsistence has special importance.

Adopted this 27th day of April 1990.



Mayor Willie Goodwin, President

ATTEST:

Mayor Ralph Gregory
Secretary/Treasurer

BY REP. JACKO, Goll

1 IN THE HOUSE

2

HOUSE JOINT RESOLUTION NO. 74

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

Proposing an amendment to the Constitu-
tion of the State of Alaska relating to
a preference for subsistence use of fish
and wildlife and state-owned renewable
natural resources.

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

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

13

SECTION 19. SUBSISTENCE USE OF RENEWABLE NATURAL RESOURCES. The

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legislature may grant a preference for subsistence use of fish and
wildlife and State-owned renewable natural resources. This constitu-
tion does not restrict the power of the legislature to allocate access
among residents to fish and wildlife and State-owned renewable natural
resources for subsistence uses on the basis of local residency, cus-
tomary or traditional use, or dependence on the resources for food and
other purposes.

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* Sec. 2. The amendment proposed by this resolution shall be placed

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before the voters of the state at the next general election in conformity

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with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-

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tion laws of the state.

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2

HOUSE JOINT RESOLUTION NO. 88

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

Proposing an amendment to the Consti-
tution of the State of Alaska relating
to subsistence uses of fish and wildlife
by rural residents.

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

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

12 SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE. Nothing in
13 this constitution prohibits the legislature from limiting the taking
14 of fish and wildlife for subsistence uses to rural residents, and from
15 providing for the allocation of that taking among rural residents on
16 the basis of local or community residence, availability of alternative
17 resources, and customary and direct dependence on a fish or wildlife
18 population as the mainstay of livelihood.

19 * Sec. 2. The intent of the amendment proposed by this resolution is to
20 validate, ratify, and reinstate any provisions of the new statutes and
21 amendments enacted by ch. 52, SLA 1986, and of any regulations adopted
22 under those statutes and amendments, which otherwise might have to be
23 declared invalid under the Alaska Supreme Court's decision in McDowell v.
24 State, 785 P.2d 1 (Alaska 1989), and to explicitly reverse the effect of
25 the McDowell decision as to those provisions and regulations.

26 * Sec. 3. The amendment proposed by this resolution, and the intent of
27 the amendment as set out in this resolution, shall be placed before the
28 voters of the state as one ballot proposition at the next general election
29 in conformity with art. XIII, sec. 1, Constitution of the State of Alaska,

1 and the election laws of the state.

BY THE TRANSPORTATION COMMITTEE

1 IN THE HOUSE

2

HOUSE JOINT RESOLUTION NO. 90

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

Proposing an amendment to the Consti-

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tution of the State of Alaska relating

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to subsistence uses of plants, fish, and

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wildlife by Alaska Native residents and

9

rural residents.

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

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

13 SECTION 19. SUBSISTENCE USES OF PLANTS, FISH, AND WILDLIFE.

14 Nothing in this constitution prohibits the legislature from limiting
15 the taking of plants, fish, and wildlife for subsistence uses to
16 Alaska Native residents and rural residents, and from providing for
17 the allocation of that taking among Alaska Native residents and rural
18 residents on the basis of local or community residence, availability
19 of alternative resources, cultural, traditional, and customary uses of
20 plants, fish, or wildlife, or dependence on plants or a fish or wild-
21 life population as the mainstay of livelihood.

22 * Sec. 2. The amendment proposed by this resolution shall be placed
23 before the voters of the state at the next general election in conformity
24 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
25 tion laws of the state.

HOUSE COMMITTEE REPORT

(9)

Date Referred: January 31, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: April 21, 1990

The RESOURCES Committee considered:

HJR 74

HOUSE JOINT RES. NO. 74

CONST. AMDT: SUBSISTENCE PREFERENCE

Proposing an amendment to the Constitution of the State of Alaska relating to a preference for subsistence use of fish and wildlife and state-owned renewable natural resources.

RECOMMENDATIONS:

- be replaced with CS HJR 74 the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:
(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____
- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not Pass No Rec Amend

<u>Cliff Davidson</u> DAVIDSON				
<u>Richard J. Foster</u> FOSTER	<u>Cliff Davidson</u> MEYER		X	
<u>Jack J. Jacko</u> JACKO	<u>Bill Hudson</u> HUDSON		✓	
	<u>John Sharp</u> SHARP		✓	

Cliff Davidson
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: 4/21/90
 Title: Constitutional Amendment:
Subsistence Preference
 Sponsor: Rep. Jacko
 Requestor: _____

Agency Affected: Fish and Game
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No FY 90 impact.

Prepared by: Molly McCammon Phone: 465-4100
 Division: Commissioner's Office Date: 4/21/90
 Approved by Commissioner: *William H. Dalton* Date: 4/23/90
 Agency: Fish and Game

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

STATE OF ALASKA



LYMAN F. HOFFMAN
CO-CHAIRMAN
HOUSE FINANCE COMMITTEE

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3706

HOUSE OF REPRESENTATIVES

DISTRICT 25

AKJACHAK
AKJAK
ATMAUTLUAK
BETHEL
CHEFORNAK
EEK
GOODNEWS BAY
KASIGLUK
KIPNUK
KONGIGANAK
KWETHLUK
KWIGILLINGOK
MEKORYUK
NAPAKJAK
NAPASKJAK
NEWTOK
NIGHTMUTE
NUNAPITCHUK
OSCARVILLE
PLATINUM
QUINHAGAK
TOKSOOK BAY
TUNTUTULJAK
TUNUNAK

April 21, 1990

THANK YOU MR. CHAIRMAN AND
COMMITTEE MEMBERS.

FOR THE RECORD MY NAME IS MIKE SMITH,
LEGISLATIVE ASSISTANT TO CHAIRMAN
HOFFMAN.

MR. HOFFMAN RESPECTFULLY OFFERS THIS
AMENDMENT TO HJR 74, AND WITH THE
CHAIRMAN'S PERMISSION, I WILL BRIEFLY
OUTLINE THE PROPOSED AMENDMENT.

CHAIRMAN HOFFMAN'S PRIMARY
INTENTION WITH THIS AMENDMENT IS FOR
THE STATE OF ALASKA TO RETAIN
MANAGEMENT AUTHORITY OVER ITS FISH
AND GAME RESOURCES.

THIS AMENDMENT WOULD NOT COMPEL THE
LEGISLATURE TO PASS ANY SPECIFIC LAW.
HOWEVER, THIS AMENDMENT WOULD
ALLOW THE LEGISLATURE TO CONSIDER
FEDERAL LAWS AND THEIR VARIOUS
MANDATES AND, IF THEY CHOOSE TO,
ENACT STATE LAWS ACCORDINGLY.

THIS IS A IMPORTANT ASPECT OF THIS AMENDMENT BECAUSE THIS WOULD ALLOW THE LEGISLATURE TO CHANGE STATE STATUTES WHEN CHANGES TO 'ANILCA' OCCUR.

IF THE COURTS FIND 'ANILCA' INVALID, THEN AGAIN, WITH THIS PROPOSED AMENDMENT, THE ALASKA LEGISLATURE WOULD BE AUTHORIZED BY THE CONSTITUTION TO CHANGE THE LAWS ACCORDINGLY.

IN CONCLUSION, MR. CHAIRMAN, THIS AMENDMENT WOULD ALLOW ALASKA TO CHANGE ITS LAWS, REGARDLESS OF WHAT CONGRESS OR THE FEDERAL COURTS DO, IN ORDER TO RETAIN ALASKAN MANAGEMENT AUTHORITY OVER ALL WILD RENEWABLE NATURAL RESOURCES.

THANK YOU MR. CHAIRMAN,
I AM AVAILABLE FOR QUESTIONS IF THE COMMITTEE SO DESIRES.

CORRECTION

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

STATE OF ALASKA



LYMAN F. HOFFMAN
CO-CHAIRMAN
HOUSE FINANCE COMMITTEE

P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3706

HOUSE OF REPRESENTATIVES

DISTRICT 28

ANJACHAK
AKJAK
ATMAUTLUK
BETHEL
CHEFORNAK
FEK
GOODNEWS BAY
KASIGLUK
KIPNUK
KONGIGANAK
KWETHLUK
KWIGILLINGOK
MEKORYUK
NAPAKJAK
NAPASKJAK
NEWTOK
NIGHTMUTE
NUNAPITCHUK
OSCARVILLE
PLATINUM
QUINHAGAK
TOKSOOK BAY
TUNTUTULIAK
TUNUNAK

April 21, 1990

THANK YOU MR. CHAIRMAN AND
COMMITTEE MEMBERS.

FOR THE RECORD MY NAME IS MIKE SMITH,
LEGISLATIVE ASSISTANT TO CHAIRMAN
HOFFMAN.

MR. HOFFMAN RESPECTFULLY OFFERS THIS
AMENDMENT TO HJR 74, AND WITH THE
CHAIRMAN'S PERMISSION, I WILL BRIEFLY
OUTLINE THE PROPOSED AMENDMENT.

CHAIRMAN HOFFMAN'S PRIMARY
INTENTION WITH THIS AMENDMENT IS FOR
THE STATE OF ALASKA TO RETAIN
MANAGEMENT AUTHORITY OVER ITS FISH
AND GAME RESOURCES.

THIS AMENDMENT WOULD NOT COMPEL THE
LEGISLATURE TO PASS ANY SPECIFIC LAW.
HOWEVER, THIS AMENDMENT WOULD
ALLOW THE LEGISLATURE TO CONSIDER
FEDERAL LAWS AND THEIR VARIOUS
MANDATES AND, IF THEY CHOOSE TO,
ENACT STATE LAWS ACCORDINGLY.

AS THIS COMMITTEE IS WELL AWARE, THE SUPREME COURT'S "McDOWELL DECISION" IS WHY WE ARE HERE TODAY. THIS DECISION THREATENS OUR STATE WITH FEDERAL MANAGEMENT OF THE NATURAL RESOURCES OF ALASKA. HOWEVER, IMPORTANT TO THE DISCUSSIONS, THIS IS NOT A SUBSISTENCE PREFERENCE ISSUE, IT IS A STATEHOOD AND A STATE'S RIGHTS ISSUE.

THE SUPREME COURT DETERMINED THAT THE STATE CONSTITUTION PROHIBITS THE LEGISLATURE FROM ALLOCATING SUBSISTENCE RESOURCES BASED UPON RESIDENCY. WHETHER THE RESIDENCY WAS URBAN/RURAL WAS IRRELEVANT TO THEIR ANALYSIS. MR. HOFFMAN'S PROPOSED AMENDMENT MOVES AWAY FROM ANY CONSTITUTIONAL AMENDMENT THAT PROMOTES THE CONTROVERSIAL ISSUE OF THE URBAN/RURAL SPLIT.

A KEY PHRASE IN THE PROPOSED AMENDMENT IS "VALID FEDERAL LAWS". THIS LANGUAGE WOULD NOT STOP ANY OF THE AFFECTED GROUPS FROM SEEKING CHANGES IN 'ANILCA'.

THIS IS A IMPORTANT ASPECT OF THIS AMENDMENT BECAUSE THIS WOULD ALLOW THE LEGISLATURE TO CHANGE STATE STATUTES WHEN CHANGES TO 'ANILCA' OCCUR.

IF THE COURTS FIND 'ANILCA' INVALID, THEN AGAIN, WITH THIS PROPOSED AMENDMENT, THE ALASKA LEGISLATURE WOULD BE AUTHORIZED BY THE CONSTITUTION TO CHANGE THE LAWS ACCORDINGLY.

IN CONCLUSION, MR. CHAIRMAN, THIS AMENDMENT WOULD ALLOW ALASKA TO CHANGE ITS LAWS, REGARDLESS OF WHAT CONGRESS OR THE FEDERAL COURTS DO, IN ORDER TO RETAIN ALASKAN MANAGEMENT AUTHORITY OVER ALL WILD RENEWABLE NATURAL RESOURCES.

THANK YOU MR. CHAIRMAN,
I AM AVAILABLE FOR QUESTIONS IF THE COMMITTEE SO DESIRES.

Testimony: House Resources 4/20/90

Good afternoon. My name is Bob Hinman. I am here today representing the Territorial Sportsmen, Inc. of Juneau. Territorial Sportsmen is the oldest and one of the largest sportsmen's organizations in Alaska, with more than 1200 members.

Territorial Sportsmen are strongly opposed to any move to change our state constitution as a way of settling the subsistence question. We are not opposed to some type of preference for those really in need of fish and game for subsistence. But we are opposed to re-instituting a program that for over a decade has kept Alaskans divided, pitted neighbor against neighbor, and cost the state and its citizens tremendous amount of money.

We were relieved when the Alaska Supreme Court re-affirmed that the constitution of the state requires that all citizens have equal access under the law to natural resources. But now we find legislation such as this that would try to take away those constitutional guarantees and re-institute the same programs.

As some of you know, I was for 22 years an employee of the Department of Fish and Game, Division of Game, the last 10 as Deputy Director of the Division. (It should be clearly stated here that I DO NOT reflect the official viewpoint of the Department of Fish and Game, probably to the relief of both the Department and myself). I worked closely with the regulatory process and with the Board of Game and saw the implementation of the Federal/State subsistence law. I saw how basically unfair it was, how potentially damaging to our fish and game resources, and

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how illogical it was. It could not, by law, be based on need, only on location of residence. Can anyone explain to me the fairness and logic of a resident of Sitka, even a highly paid government bureaucrat or a person just moved up to Sitka from Los Angeles, having a preference for hunting deer on Admiralty over ANY resident of the Juneau Borough, regardless of need or background? And this is the system we will get back if these moves to change the constitution succeed, because it is presently mandated by Title 3 of ANILCA.

The Territorial Sportsmen believe that the answer lies in changing Title 8 of ANILCA. We must have the flexibility there for the state to manage our fish and game, including provision for subsistence, as a sovereign state should have -- and all other states do have.

Many have said that we must do something NOW to avoid Federal management. I assure you that I am more adamantly opposed to Federal management than the average person -- but what do you think we have now? Or even more so, if the constitutional amendment or some similar scheme comes to be? As long as the state does not have the privilege of managing as it deems appropriate and must follow blindly the dictates of a federal agency, we have federal management in fact.

To change federal law (Title 3) we need a lot of help from outside the state. As long as it is a fight between us and the Secretary of Interior, with territorial state management in place, folks outside aren't going to get very excited. But once the Feds overtly take over management of 50% of more of the state, a

lot of people in other states are going to become very interested indeed and become active in seeing the situation change.

I've been asked, what state law or system is a good alternative to the old subsistence law, that would still provide for subsistence needs. If I had the final answer to that, I'd be the Einstein of the resource world. But it seems to me it would have to be logical (urban/rural is not logical, as I've mentioned), be based on the individual, not his community or place of residence, and reflect need. Before the subsistence law divided Alaskan against Alaskan, the Board of Game used to accommodate these legitimate needs in a variety of ways, including:

Controlled Use Areas, in which the means of access (generally aircraft) are controlled to benefit local users;

Season timing, setting seasons at a time when it was convenient for only local residents to hunt;

Permit issuance limited to issuance only in remote locations.

The system generally worked fine, in that it did not legally prevent any citizen from participating, but it definitely tipped the scales in favor of the local user. Perhaps some similar scheme could be reinstated to satisfy the genuine need for a subsistence preference for some users.

Thank you for the opportunity to testify.

PREPARE



Special Subsistence Edition

March, 1990

An Ecumenical Educational Legislative Information Network for Alaskans who care about Peace, Justice & Creation

My Story

If a rite of puberty for boys growing up in South Texas existed 50 years ago, it most certainly included some form of hunting and/or fishing.

By the time I reached 12, my great ambition was to have my very own .22 rifle. There was nothing wrong with my father's old bolt action rifle, which he freely loaned me for squirrel or rabbit and squirrel hunts with my buddies - after repetitious training in the safe handling of firearms, of course. But just as most boys now yearn for "wheels" of their own, I wanted my very own semi-automatic that I could clean and oil and keep in my own closet!

I still have that first rimfire .22 which my Dad allowed me to choose from the vast stock at Corpus Christi Hardware. It was a reward for practicing hard and winning first in a State music contest when I was 14. Since that time I have enjoyed the thrills of hunting the brown bear of Chichagof Island (not with that little .22, of course), and hooking the king salmon favorite Channel as well as the haibout of Homer.

I share this bit of personal history with you to show you have a right to

know where I am coming from as I make this effort to shed light on what at first may appear to be simply hunting, fishing and gathering by Native Alaskans - Aleuts, Eskimos and Indians.

My education into the life and cultures of Alaska's indigenous

peoples of the sacred was woven into the whole fabric of their lifestyle and culture.

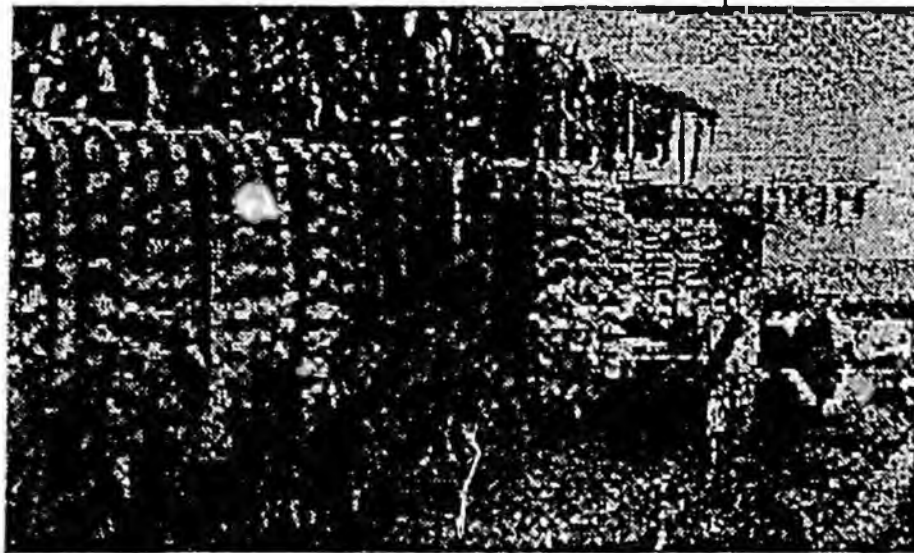
Culture & Tradition

I have come to understand now that what we call "subsistence" is not the same as sport hunting and fishing. It is not simply "living off the land", either. In the words of Jonathan Solomon of Fort Yukon,

When we talk about subsistence in the areas, we should be talking about Native culture and their land. I never heard the word subsistence until 1971

under the Native land claims act. Before that time, when I was brought up in the culture of my people, it's always been 'our culture' and 'our land'. You cannot break out subsistence or the meaning of subsistence or try to identify it, and you can't break it out of the culture. The culture and the life of my Native people are the subsistence way of life. It goes hand in hand with our own culture, our own language, and all our activities.

Culture includes that which matters most to any people - values, religion, all that is sacred. And this may explain why Native Americans (including Alaskans) have never been able to



peoples began in Juneau in 1956. For 10 years I was pastor of the Juneau Methodist Church there. During that time I was fortunate to have a close working relationship with our Choir Director, Richard Newton. Richard is a wise and wonderful Tlinget leader then employed by the U. S. Forest Service; and a line musician who shaped our chancel choir into one of the best in Alaska.

From Richard I learned much about the culture of the rain forest people - including the sacred ritual of returning salmon bones to the river from which they had come. All of life for his people had been tuned to the cycles and recycling processes of nature. The aware-



reach a common understanding about the land with white Europeans and others who immigrated to this continent.

The Land

Land is traditionally not simply "real estate" for Native peoples. It is essence of existence, identity and belonging.

For European immigrants, on the other hand,

...land was merchantable. Law and usage had developed a complicated system of privileges and obligations, all deriving from the notion of a transferable fee title in land. Land that was not encompassed within some form of recorded title was outside of law itself . . . When these Europeans found that Indians had no proceedings for recording title, indeed had no titles, they readily assumed that there was no ownership. ²

This is not to suggest that the Europeans simply occupied and appropriated the land of Native Americans. The Puritans, for example, believed that the confiscation of property was wrong whether boundary markers existed or not. Roger Williams, among others, proposed that the land be purchased from the Native Americans at a reasonable price. This approach, as much as his theological ideas, contributed to his banishment from Plymouth.

Political reality – perhaps more than morality – induced European immigrants to secure land and resources by negotiation rather than by conquest. Hostile environment, Quaker and Puritan ethics, combined with principles of British and International Law (as well as military necessity) reinforced this pattern. During the American Revolution the colonists who cultivated alliances with East Coast tribes became obligated to them for support or – at least – neutrality. ⁴

Such is the historical background for the more than 200 years of treaties between colonial, state and federal governments and Native Americans. As has been well documented, this history has been marred by broken treaties and legislated plunder.

ANCSA

The relationship of the federal government to Alaska Natives both before and after the Alaska Native Claims Settlement Act of 1971 has been essentially the same as that of other Native Americans under American law. ⁵

The highest hopes of Alaska Natives have included the preservation of their land claims, subsistence and self-government. ANCSA addressed only the land claims. However, the Conference Committee report made it clear that the subsistence needs of Alaska Natives were to be protected.

Subsistence

The Conference Committee after careful consideration believes that all Native interests in subsistence resource land can and will be protected by the Secretary (of the Interior) through the exercise of his existing withdrawal authority. The Secretary could, for example, withdraw appropriate lands and classify them in a manner which would protect Native subsistence needs and requirements by closing appropriate lands to entry by nonresidents, when subsistence resources for these lands are in short supply or otherwise threatened. The Conference Committee expects both the Secretary and the State (of Alaska) to take any action necessary to protect the subsistence needs of the Native. (Emphasis added.) ⁶

ANILCA

Since neither the Secretary of the Interior nor the State of Alaska fulfilled these expectations, Congress added Title VIII to the Alaska National Interest Lands Conservation Act of 1980 (ANILCA).

ANILCA requires the state to manage fish and game resources according to federal subsistence requirements as the price to be paid for the right of managing fish and game on federal (public) lands. ⁷



Failure to provide subsistence preference to those who depend customarily and directly on fish and wildlife the mainstay of livelihood, who are local residents, and have no alternative resources available, will mean the transfer of management of public lands to the federal government. ⁸

Conclusions

The conclusions drawn by David Case in his monumental study are worth quoting at length:

To some extent, federal treaties and statutes have protected Alaska



Native subsistence interests for many years. Earlier enactments afforded minimal exemptions, often limited to specific species or wildlife taken by primitive hunting methods. In all likelihood more realistic forms of protection were unnecessary because there was little real conflict over the exercise of aboriginal hunting and fishing rights. However, Alaska statehood, the enactment of ANILCA and the relatively rapid development of the new state exacerbated these conflicts. The federal response has not been the abandonment of Native subsistence values, but the protection of those values in the form of exemptions from recent wildlife conservation treaties and statutes. Moreover, the state has been virtually compelled under ANILCA to adopt statewide subsistence protections, structured in significant part to protect

Native subsistence interests.

Although the umbrella of federal protection now shelters both Natives and non-Natives, the fact does not entail a diminishment of Native values so much as an acknowledgement that in Alaska significant numbers of non-Natives now share those values by their participation in the subsistence economy. Nor do recent federal enactments necessarily preclude the possibility of some tribal control of subsistence hunting and fishing. In fact, recent amendments to the Lacey Act imply that, even in Alaska, tribal fish and game management may receive additional support through federal enforcement. Particularly when

issued a stay, postponing until July 1³ the effects of the December 22 decision. This means that the State of Alaska has very little time to change either the State Constitution to accommodate the ANILCA protection of Alaska Native subsistence rights OR get Congress to change ANILCA to accommodate the Alaska Constitutional position, which has been supported by influential special interest groups of sports hunters and fishermen, commercial fishermen and hunters, environmental and animal rights groups.

In our view, the historic federal trust position of protecting traditional Native American subsistence culture and rights must prevail. The alternative would mean the extension of "the trail of broken treaties" to the remaining great land capable of keeping at least some of the promises of democracy made to the people who were here first.

It is important, of course, for Native Alaskans and other Alaskans who value the subsistence way of life to cooperate and - if possible - reach a consensus on the best way to ensure its preservation.

As Representative Eileen Panigeo MacLean of Barrow wrote recently,

It is up to us Alaska Natives to be aware of subsistence issues and to understand the arguments as we advocate for our hunting and fishing rights. If we do not, we will lose control over our destiny and our culture shall not survive.

We must continue to stand up and speak for our needs, so that we will not wake up one day to find that we are no longer able to gather the resources which sustain us. We must keep our authority of local control.

We must give support and encouragement to the various groups and commissions that advocate for our way of life and show our appreciation for their efforts and dedication. They are working to protect our resources and our right to the resources not just for themselves, but for us and for our future generations. ¹⁰

Alaska IMPACT adds its voice to those who advocate for the Native Alaska subsistence way of life. As has

The Conflict

Last December 22, the Alaska Supreme Court ruled that Alaska's subsistence statute giving rural residents priority in hunting and fishing privileges discriminated against urban residents. The decision was based on the Alaska Constitution's "common-use" clause which provides that all residents have equal rights to use fish and wildlife.

On January 5, Alaska's Supreme Court Chief Justice Warren Matthews

been demonstrated time and again in the "South 48" and in Hawaii, it is easy for a dominant majority to ride roughshod over minority cultures and their rights and traditions.

Our hope is expressed in these wise words of our noted legal authority on the impact of American laws on Alaska Native peoples:

Perhaps in Alaska, in the waning days of the twentieth century, we will at last find one place where the relationships between immigrant and aboriginal Americans can be structured so that each may enrich the other, and thereby ensure the diversity that is the hallmark of a free society. "

Is There A Solution?

On February 1, 1990, the Board of Directors of the Alaska Federation of Natives adopted a position statement on subsistence, including the following:

We believe that if Alaskans are going to solve this problem:

a) an amendment to the Alaska Constitution to enable the legislature to enact and the administration to implement a rural subsistence priority which protects customary and traditional use of fish and game by Alaska Natives and other rural residents is the preferred solution; and

b) AFN is committed to working with the Governor and legislative leadership in considering other solutions which meet AFN'S policy goal.

Senator Stevens

In his address to the Joint Session of the 16th Alaska Legislature



on January 17, Senator Ted Stevens pointed out that a federal solution would risk serious losses to the state. "I would urge you not to think that the federal solution is the one that is easiest," he said, "because we will lose more than we gain."

Governor Cowper

Governor Steve Cowper has stated that,

Subsistence is a way of life for thousands of Alaskans, not a weekend hobby, and we've got to do everything possible to protect that way of life. I'll be working with the Alaska Federation of Natives, other Native groups and the legislature to shape a solution to this latest problem that the (Alaska) Supreme Court has dropped in our laps. ¹²

Several legislative measures have already been introduced in Juneau, including:

SCR 39 by Senator Jay Kerttula of Palmer which would establish a Commission to review the legal situation and identify possible options for a solution for the Senate

HB 415 by Representative Ramona Barnes of Anchorage, which would amend the Alaska subsistence law and base "subsistence user" criteria on 1) local residency and 2) direct dependency on subsistence resources and income below the national poverty level.

HJR 74 by Representative George Jacko would amend the Constitution by adding a section to give the legislature authority to grant a preference for subsistence use of fish and wildlife and State-owned renewable natural resources.

Very likely there will be many more measures by various pressure groups during this session. Alaska IMPACT will alert members to advocacy action possibilities as appropriate.

This edition of Prepare was written by the Executive Director of Alaska IMPACT. If you have information, questions or suggestions, please write or phone:

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Notes:

- ¹Village Journey, Thomas R. Berger, Hill & Wang, 1983, p. 52
- ²Indians and Other Americans, Fey & McHale, Harper, 1959, p. 28
- ³Behind the Trail of Broken Treaties, Vine Deloria, Delta, 1974, p. 95
- ⁴Alaska Natives & American Law, David S. Case, U of A Press, 1984, p. 47
- ⁵Ibid., p. 47 ff.
- ⁶Senate Report 92-381, 92nd Congress, 1st Session, December 14, 1971 at 37
- ⁷Case, op. cit., p. 300
- ⁸Ibid., p. 303
- ⁹Ibid., pp. 313, 314
- ¹⁰Tundra Times, January 29, 1990, p. 29
- ¹¹Case, op. cit., p. 477
- ¹²AFN Newsletter, Special Issue, February 1990, p. 7

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- Alaska Federation of Natives, Journal Oryg, page 1
- Doug L. Peterson's Alaska Encyclopedia, Carolyn B. Morse 1979-1986, page 8
- Alaska Federation of Natives, 1980-1989, page 8
- Sheep Mountain Press, Natural World, page 8
- Village Journey, Hill & Wang, p. 52



3/18/90

TCC supports Native subsistence priority

Interior Alaska's largest Native organization voted Thursday to throw its support behind an amendment to the state constitution that would give Alaska Natives priority hunting and fishing rights.

Tanana Chiefs Conference, a non-profit social services organization that serves 43 Interior villages, also voted against rejoining the Alaska Federation of Natives at its annual convention Thursday.

"Tanana Chiefs Conference . . . urges the state of Alaska, the general public and all Alaska Natives to support the proposed amendment to the Alaska State Constitution to provide for Native subsistence preference," the resolution said.

Native organizations in the state now are divided over whether to support Fort Yukon Rep. Kay Wallis' amendment

that would give all Alaska Natives and rural residents priority hunting and fishing rights. The Alaska Federation of Natives supports Gov. Steve Cowper's amendment that would give subsistence priority to rural residents only.

The Alaska Federation of Natives, a statewide Native organization, backs Cowper's amendment because it believes the Native-preference bill has no chance of passing in the Legislature, AFN Board of Directors chairman Ralph Eluska told TCC delegates earlier this week.

Tanana Chiefs Conference withdrew from AFN two years ago because it felt the organization wasn't adequately representing village needs and fighting to protect tribal lands.

VILLAGE PARTICIPATION CONFERENCE RESOLUTION # 90 - 16

TITLED: Resolution of information concerning subsistence as a way of life, not a way of law, and,

WHEREAS, Currently new people have tried to make difficult or impossible laws governing our customary and traditional use of these resources, and,

WHEREAS, Despite of all : : laws that have been forced upon us, we have continued to live in our customary and traditional ways; and,

WHEREAS, The people have shared these resources with members in their communities and other communities since time immemorial; and,

WHEREAS, The law administrators have attempted to administer and enforce laws in Alaska that have created genocidal social cultures and suppressed indigenous lifestyle, and,

Now therefore be it

RESOLVED: That the 1990 Village Participation Conference hereby informs the administrators of Alaska and Law enforcement officials that the Alaska Native People will continue to live their traditional and customary lifestyles in spite of any laws they create.

ADOPTED this 23rd day of February, 1990 at the Village Participation Conference in Juneau, Alaska.

Chester S. Ballot

Chester Ballot, Chairman
1990 Village Participation Conference

SUBSISTENCE NOW, SUBSISTENCE FOREVER!

"DEFENDING A WAY OF LIFE"

by Nels A. Anderson, Jr.

AS WE ARE GATHERED HERE TO ADDRESS THE ISSUE OF SUBSISTENCE, WE ARE GIVEN THE OPPORTUNITY TO DEFEND SUBSISTENCE WHICH IS OUR WAY OF LIFE. I CANNOT THINK OF A MORE IMPORTANT ISSUE THAN SUBSISTENCE. I CANNOT THINK OF A TIME WHEN IT IS SO CRITICAL FOR ALL OF US TO UNITE AND WORK TOGETHER TO DEFEND OUR WAY OF LIFE IN ALASKA.

IN ALASKA, "SUBSISTENCE" MEANS SUSTENANCE GAINED FROM THE FISH, GAME, MARINE MAMMALS, BIRDS AND BERRIES FROM THE LAND, WATERS AND AIR OF ALASKA. THE ALASKA FISH AND GAME NEWSLETTER OF NOVEMBER-DECEMBER 1989 STATES THAT SUBSISTENCE USES "VARY FROM 10 POUNDS PER PERSON TO A HIGH OF 1498 POUNDS PER PERSON PER YEAR. THE AVERAGE HARVEST IS 250 POUNDS. IN APPROXIMATELY HALF OF THE SAMPLED ALASKA COMMUNITIES, WILD FOOD HARVESTS ARE GREATER THAN THE AVERAGE 222 POUNDS PER PERSON OF STORE-BOUGHT MEAT, FISH AND POULTRY PURCHASED BY FAMILIES IN THE WESTERN UNITED STATES EACH YEAR."

ALONG WITH THE FOOD VALUE, SUBSISTENCE HAS A DEEPER, FAR-REACHING MEANING. IT IS THE RELATIONSHIP THAT OUR ANCESTORS HAD WITH THE LANDS AND WATERS OF ALASKA. IT IS THIS RELATIONSHIP THAT MAKES THOSE OF US WHO LIVE HERE FEEL WHOLE AND ONE WITH NATURE. SUBSISTENCE DEFINES WHO WE ARE AS NATIVES OF ALASKA. WITHOUT SUBSISTENCE WE ARE NOTHING. *not a culture.*

SUBSISTENCE FOOD HAS TRADITIONAL, HISTORICAL, AND CULTURAL VALUE. SUBSISTENCE FOOD HAS BEEN AND IS SHARED WITH THE FAMILY, THE AGED, THE WIDOWS, AND EVERYONE ELSE IN THE COMMUNITY. SUBSISTENCE FOOD HAS BEEN AND IS SHARED ACROSS THE STATE WITH FRIENDS AND RELATIVES FROM BARROW TO METLAYATLA. SUBSISTENCE FOOD HAS BEEN AND IS SHARED AMONG NATIVE AND WHITE ALIKE.

THE WORD, "SUBSISTENCE", WAS THE MEANING OF LIFE FOR OUR ANCESTORS. IT MEANS THE SAME THING FOR THOSE OF US TODAY.

OUR ANCESTORS, THE FIRST PEOPLE OF ALASKA, THE INDIANS, ESKIMOS, AND ALEUTS, LIVED OFF THE LAND FOR THEIR SURVIVAL. THEY USED THE RESOURCES THAT WERE AVAILABLE. THEY BUILT UP OUR CULTURES, TRADITIONS AND VALUES THAT ENCOMPASSED THE USE OF THE RESOURCES THAT NATURE HAD TO OFFER.

PAGE TWO OF SIX

AFTER THE FIRST CONTACT WITH THE WHITE CULTURE, IT WAS NECESSARY TO REDEFINE OUR VIEW OF HOW WE WOULD PROTECT WHAT WE HAD USED FOR FOOD AND CLOTHING AND SHELTER FOR CENTURIES AND CENTURIES.

IN THE 1970'S THERE WAS RAPID GROWTH IN OUR POPULATION. THERE WAS MORE AND MORE PRESSURE ON OUR FISH AND GAME BY SPORT HUNTERS AND SPORT FISHERMEN. MANY VILLAGE PEOPLE FELT THREATENED AND STARTED TO SPEAK UP ABOUT WANTON WASTE OF FISH AND GAME.

RURAL LEGISLATORS RESPONDED BY SPONSORING LAWS THAT MORE CLEARLY DEFINED WANTON WASTE AND WHAT PARTS OF ANIMALS COULD BE LEFT IN THE FIELD WITHOUT PENALTY. THERE WERE EFFORTS TO BRING FISH AND GAME MANAGEMENT CLOSER TO HOME BY FORMING LOCAL AND REGIONAL FISH AND GAME BOARDS WITH AUTHORITY TO MANAGE OUR RESOURCES.

EVEN WITH LAWS GUARDING AGAINST WASTE OF FISH AND GAME, WE, AS A PEOPLE, WERE MISSING THE POINT. WE WERE SPEAKING ALL AROUND THE PROBLEM BUT WE COULD NOT DEFINE WHAT WAS BOTHERING US. WE ALL KNEW THAT WE HAD TO PROTECT OUR ANCESTORAL RIGHTS TO SUBSISTENCE FISH AND GAME. THE BIG QUESTION WAS HOW COULD IT BE DONE?

CONCERN WAS ALSO EXPRESSED BY OUR VILLAGES THAT SOMETHING NEEDED TO BE DONE NOT ONLY TO PROTECT OUR FISH AND GAME BUT ASSURE ACCESS TO THEM AS WELL. ELDERS BEGAN TO THINK THAT A TIME WOULD COME WHEN OUR FISH AND GAME RESOURCES WOULD BECOME SCARCE. HOW WOULD WE FEED OUR CHILDREN AND OURSELVES IF THERE WERE NO MORE FISH AND GAME?

SOMETHING HAD TO BE DONE. IN 1977, THE STATE HOUSE OF REPRESENTATIVES FORMED A SPECIAL COMMITTEE ON SUBSISTENCE. THE COMMITTEE HAD EIGHT MEMBERS. THEY WERE REPRESENTATIVES BILLY AKERS, NELS ANDERSON (CHAIR), SAN COTTEN, STEVE COWPER (NOW GOVERNOR), PHILIP GUY, JOE HAYES, AL NAKAK AND LEO SCHAEFFER.

A SUBSISTENCE COMMITTEE OFFICE WAS OPENED IN DILLINGHAM. THE OFFICE WAS STAFFED BY DOROTHY LARSON AND FORMER REPRESENTATIVE ADELHEID HERMANN.

THE COMMITTEE'S TASK WAS TO TACKLE THE ISSUE OF SUBSISTENCE AND DRAFT LEGISLATION FOR CONSIDERATION BY THE LEGISLATURE. IN 1977 AND 1978 THE COMMITTEE HELD HEARINGS ACROSS THE STATE, IN URBAN AND RURAL ALASKA. IT WAS CLEAR THAT THERE WERE STRONG FEELINGS THAT A BILL TO PROTECT SUBSISTENCE WAS NEEDED.

PAGE THREE OF SIX

THERE WERE A FEW VOICES OF OPPOSITION DURING THE HEARINGS. ALTHOUGH THERE WERE SOME WHO THOUGHT THAT SUCH LEGISLATION WAS NOT NEEDED, IT WAS THE CONSENSUS OF THE SPECIAL COMMITTEE ON SUBSISTENCE THAT LEGISLATION HAD TO BE DRAFTED AND ACTED ON.

HOUSE BILL 960 PASSED THE HOUSE ON MAY 26, 1978, WITH 28 YEAS, 8 NAYS AND 4 EXCUSED.

HOUSE BILL 960 PASSED THE SENATE ON JUNE 16, 1978, WITH 17 YEAS AND 3 NAYS.

GOVERNOR HAMMOND SIGNED THE BILL AND WE HAD OUR SUBSISTENCE BILL IN THE LAW BOOKS OF ALASKA.

THIS IS A BRIEF LEGISLATIVE HISTORY OF HOW SUBSISTENCE BECAME A PART OF OUR FISH AND GAME MANAGEMENT SCHEME IN ALASKA.

WHERE DO WE GO FROM HERE?

WHEN WE ON THE SPECIAL COMMITTEE OF SUBSISTENCE DEBATED SUBSISTENCE, WE NEVER ONCE CONSIDERED THE ISSUE ON RACIAL OR ECONOMIC TERMS. WE NEVER THOUGHT THAT ONLY NATIVES COULD BE SUBSISTENCE USERS. WE NEVER THOUGHT THAT SUBSISTENCE SHOULD BE BASED ON NEED LIKE A WELFARE PROGRAM.

SUBSISTENCE USERS WERE TO BE CONSIDERED IN ALL FISH AND GAME MANAGEMENT DECISIONS. IF FISH AND GAME RESOURCES DECLINED TO SUCH A POINT THAT ACCESS HAD TO BE RESTRICTED, SUBSISTENCE USERS WOULD BE THE LAST TO BE AFFECTED. SPORT HUNTING, SPORT FISHING AND COMMERCIAL FISHING WOULD BE RESTRICTED BEFORE SUBSISTENCE USE WAS STOPPED.

RURAL DESIGNATIONS FOR CUSTOMARY AND TRADITIONAL USES OF FISH AND GAME HAVE CHANGED SINCE 1978 BUT WERE ADJUSTED BY THE FISH AND GAME BOARDS TO MAKE SURE THAT SUBSISTENCE WAS NOT THREATENED. WHEN CONGRESS PASSED THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT, GENERALLY KNOWN AS ANILCA, IT INCLUDED A SUBSISTENCE PRIORITY ON FEDERAL LANDS.

ANILCA, TITLE VIII, VERY CLEARLY STATED THAT ALASKA HAD TO PROTECT SUBSISTENCE AND GIVE A PRIORITY TO RURAL RESIDENTS OF ALASKA, INCLUDING NATIVES AND NON-NATIVES ON PUBLIC LANDS. OUR STATE HAS TO COMPLY WITH THIS LAW OR THE FEDERAL GOVERNMENT IS MANDATED TO COME IN AND MANAGE FISH AND GAME ON FEDERAL PUBLIC LANDS.

PAGE FOUR OF SIX

OVER THE YEARS, THE ISSUE OF SUBSISTENCE HAS BEEN DEBATED FURTHER IN THE LEGISLATURE, ALASKA AND FEDERAL COURTS AND THE U.S. CONGRESS.

IN 1982 THE SUBSISTENCE LAW WAS CHALLENGED BY AN INITIATIVE THAT WOULD HAVE REPEALED SUBSISTENCE. THAT YEAR WE ALL WORKED TOGETHER AND DEFEATED THE INITIATIVE BY A WIDE MARGIN. WE WERE UNITED THEN AND WE NEED TO UNITE ONCE AGAIN TO DEFEND SUBSISTENCE WHICH IS OUR WAY OF LIFE.

IN 1986 THE LEGISLATURE AMENDED THE 1976 SUBSISTENCE LAW WHICH LIMITED SUBSISTENCE USE TO FISHERMEN AND HUNTERS IN "RURAL AREAS". THIS HAD TO BE DONE TO BRING OUR LAW INTO COMPLIANCE WITH ANILCA.

YOU CAN SEE HOW IMPORTANT IT IS TO PROTECT TITLE VIII IN ANILCA. IT IS THE KEY TO MAKING SURE THAT SUBSISTENCE IS PROTECTED.

ON DECEMBER 22, 1989, THE ALASKA SUPREME COURT GAVE US A CHRISTMAS PRESENT AND SAID THAT OUR SUBSISTENCE LAW IS UNCONSTITUTIONAL. IT IS UNCLEAR WHAT THE DECISION REALLY MEANS BUT IT IS CLEAR THAT THE SUBSISTENCE LAW IS IN TROUBLE. WE HAVE TO FIGURE OUT HOW TO FIX THE PROBLEM.

WE HAVE TO CONSIDER LEGISLATION INTRODUCED BY REPRESENTATIVE RAMONA BARNES, REPRESENTATIVE GEORGE JACKO AND SENATOR JAY KERTTULA.

REPRESENTATIVE BARNES' LEGISLATION AMENDS CURRENT LAW TO ADDRESS WHO IS A SUBSISTENCE USER. HER ORIGINAL BILL WOULD IDENTIFY SUBSISTENCE USERS BASED ON LOCAL RESIDENCY AND ON ANNUAL INCOME, OR NEED. I BELIEVE THAT REPRESENTATIVE BARNES HAS INTRODUCED A SPONSOR SUBSTITUTE THAT WITHDRAWS NEED AS A CRITERIA FOR SUBSISTENCE USE.

SENATOR KERTTULA HAS A RESOLUTION IN THE SENATE THAT CREATES A COMMISSION TO REVIEW THE SUBSISTENCE QUESTION AND COME UP WITH OPTIONS FOR THE SENATE'S CONSIDERATION.

REPRESENTATIVE GEORGE JACKO INTRODUCED LEGISLATION THAT AMENDS THE CONSTITUTION THAT WOULD BRING THE STATE OF ALASKA INTO COMPLIANCE WITH THE FEDERAL LAW. IT WOULD ALLOW THE LEGISLATURE TO ENACT LAWS THAT WOULD COMPLY WITH TITLE VIII OF ANILCA.

PAGE FIVE OF SIX

WE ALL KNOW THAT WE NEED TO WORK TOGETHER TO PROTECT AND DEFEND SUBSISTENCE IN ALASKA. IT IS AN ALASKAN PROBLEM AND WE SHOULD NOT GO OUTSIDE OF OUR STATE LOOKING FOR A SOLUTION. OUR CURRENT SUBSISTENCE LAW WAS FOUND TO BE OUT OF COMPLIANCE WITH THE STATE'S CONSTITUTION. THAT DECISION WAS NOT UNANIMOUS BUT STANDS AS THE LAW OF THE LAND AT THIS TIME. SINCE WE HAVE NO SUBSISTENCE LAWS ON OUR BOOKS, WE ARE NOW OUT OF COMPLIANCE WITH FEDERAL LAW

WHAT ARE WE GOING TO DO? DO WHAT WE DID IN 1978 AND 1982.

FIRST, WE ALL HAVE TO WORK TOGETHER. ALL OF OUR PROFIT AND NON-PROFIT VILLAGE AND REGIONAL CORPORATIONS HAVE TO WORK TOGETHER AND SPEAK WITH ONE VOICE. WE HAVE TO SET ASIDE OUR DIFFERENCES AND WORK AS ONE TO PROTECT SUBSISTENCE.

SECOND, WE HAVE TO AGREE ON A PLAN OF ACTION THAT WILL GUARANTEE THAT SUBSISTENCE IS PROTECTED.

IT IS MY VIEW THAT WE SHOULD MAKE SURE OF THE FOLLOWING:

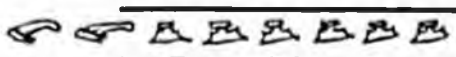
1. WE SHOULD NOT MAKE SUBSISTENCE A RACIAL ISSUE.
2. WE SHOULD NOT MAKE SUBSISTENCE A WELFARE PROGRAM.
3. WE SHOULD ALL AGREE ON ONE PLAN OF ACTION AND CARRY IT OUT UNITED AS ONE VOICE.
4. WE SHOULD NOT TRY TO AMEND ANILCA IN CONGRESS.
5. WE SHOULD MAKE SURE THAT EVERY ELIGIBLE VOTER IS REGISTERED SO THEY CAN VOTE IF THERE IS A CONSTITUTIONAL AMENDMENT TO PROTECT SUBSISTENCE ON THE BALLOT IN NOVEMBER.

FROM MY PERSPECTIVE AS A LEGISLATOR IN 1978 AND AFTER VERY CAREFUL CONSIDERATION, I THINK A CONSTITUTIONAL AMENDMENT IS NEEDED. THE AMENDMENT WOULD GRANT A RURAL PREFERENCE. IT WOULD ALLOW THE LEGISLATURE TO ALLOCATE FISH AND GAME ON THE BASIS OF LOCAL RESIDENCY AND CUSTOMARY AND TRADITIONAL USE OF FISH AND GAME FOR FOOD, CRAFTS, CLOTHING AND SHELTER. IF THIS IS DONE, ALASKA'S CONSTITUTION WOULD BE IN COMPLIANCE WITH FEDERAL LAW.

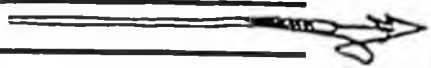


MAR 29 REC'D

KAWERAK, INC.



P.O. BOX 948 • NOME, ALASKA 99762



(907) 443-5231

SERVING THE
VILLAGES OF

- BREVIG MISSION
- COUNCIL
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- SHISHMAREF
- SOLOMON
- STEBBINS
- ST MICHAEL
- TELLER
- UNALAKLEET
- WALES
- WHITE MOUNTAIN

March 22, 1990

Citizen Advisory Commission on Federal Areas
250 Cushman Street, Suite 4H
Fairbanks, AK 99701

Dear Commission Members:

I am pleased to know of your public hearing on Subsistence on March 31, 1990. Subsistence is indeed a controversial and much misunderstood issue. The more it is discussed the more understanding will come, hopefully.

In addition to the possible loss of lands, subsistence is the most critical issue facing Natives of Alaska. One of the issues misunderstood is that Natives want racial preference with regards to subsistence. This is not true. It is a political issue for Natives. Alaska Natives have a political relationship with the U.S. Government.

Most important of all is the cultural aspects of subsistence. Subsistence is much more than mere sustenance. Before the cultural interruption and devastation, Natives lived in a sacred manner respecting all living things. It was and is still believed that all life evolved from one Great Spirit Source so that all living things have a spiritual nature. Therefore, one must respect all living things. (There are variations on this theme from village to village and tribe to tribe.) Most of our ceremonies revolve around subsistence. Our songs and dances revolve around subsistence. Our lives and livelihood revolve around subsistence. It is difficult to segregate any part of Native lifestyle that does not include subsistence in some important way. In many christian teachings, it is said that we all are one with God. A subsistence lifestyle is the perfect analogy of that teaching. Subsistence is very much a part of our lives spiritually, physically and psychologically.

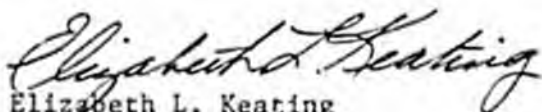
We are all aware of the fallout of the great changes to Alaska Native cultures. The social devastation of broken families, unemployment, substance abuse, school dropout rates, suicide of our young adults, etc. They have been widely chronicled in the AFN Report and the Anchorage Daily News "People in Peril" series. The U.S. Federal Government and the State of Alaska consider the problem serious enough to be exploring a Joint Task Force to address the problems.

Subsistence is the last vestige of important cultural connection for Natives. When the early Christians tried to destroy our outward spiritual practices, they disturbed our entire belief system. Our respect for all living things including our own life worth or value came into question. Many of us lost our self-esteem, became ashamed and uncomfortable about life in general. It was easy to consume the alcohol which was introduced to us. Many of us became self destructive. We lost our respect for all life including our own. If Native subsistence needs are disregarded, I don't want to venture to guess the outcome in terms of further social and political alienation. I hope that all the thoughtful Alaskans who worked so hard to pass the subsistence proposition last time will do so again.

I am enclosing resolutions and position statements of Rural Alaska Resource Association (RARA), Bristol Bay Native Association, SE Native Subsistence Committee and AFN. Kawerak, Inc. Board Subsistence Committee has not yet developed a position statement. One is expected by mid-April.

Sincerely,

KAWERAK INCORPORATED



Elizabeth L. Keating
President

cc: Bush Causus Members/
Representative Cotten, House Speaker
Senate President, Tim Kelly
AFN

RURAL ALASKA RESOURCES ASSOCIATION

P.O. Box 200908
Anchorage, Alaska 99520
(907) 279-2511

MEMBERS:

Adelphi/Prudhoe
Islands Association Inc

Bristol Bay Native
Association

Central Council
Tribes & Nations

Copper River Native
Association

Kawerak Inc

Kodiak Area Native
Association

Manilaq Association

The Arctic Pacific Rim

North Slope Borough

Unalakleet
- Nulikuit

Tanana Chiefs
Conference Inc

Tyonek
Native Village of

ASSOCIATE MEMBERS:

Koyukon
Development Corporation

Bering Sea
Fishermen's Association

RURAL CAP STAFF

Bob Prasky

RARA Position Statement in Regards to the McDowell Decision

It is the position of the Rural Alaska Resources Association that the State Supreme Court Decision in McDowell v. State of Alaska of December 22, 1989, seriously jeopardizes the subsistence rights of Alaska Natives. The McDowell decision places the State Subsistence law out of compliance with the Alaska National Interest Lands Conservation Act (ANILCA) which requires a subsistence preference for rural Alaskans.

It is RARA's position that the preferred solution to the McDowell decision is to recommend that the State's Constitution be amended to include specific language providing for a subsistence priority for Alaska Natives, in recognition of their culture. Such an amendment would insure that the customary and traditional rights of Alaska's Native people are protected. A priority amendment which includes a priority for Alaska Natives could also provide, through other language, equal subsistence preferences or priorities for non-Native rural Alaskans. It is RARA's position that a subsistence preference in the State Constitution be sought with a "Native Preference" as our first concern to insure current and future generations of Alaska Natives maintain their customary and traditional rights to subsist.

It is also our position, that we would oppose efforts to amend ANILCA as an initial approach to a solution, and also would oppose any solution incorporating a permit system.

BRISTOL BAY NATIVE ASSOCIATION
P.O. Box 310
Dillingham, Alaska 99576
(907) 842-5257

*1/24/90
TO DAVID
258-2157*

PRESS RELEASE

February 28, 1990

Delegates to the Second Annual Bristol Bay Tribal Government Conference today strongly endorsed a subsistence priority for Alaska Natives to be implemented by "any possible means" by state, federal or tribal governments. The action was taken in anticipation of a statewide subsistence conference to be held in April by the Alaska Federation of Natives.

While endorsing a Native preference for subsistence, conferees did not exclude other methods of protecting subsistence rights. The delegates supported a proposed amendment to the state constitution which would allow a preference for subsistence uses on the basis of local residency, customary or traditional use, or dependence on the resources for food and other purposes. Legislation to place the amendment on the November ballot has been introduced by State Representatives George Jacko and Peter Goll.

The amendment would overturn the recent "McDowell" decision in which the Alaska Supreme Court found the state's subsistence priority law to be unconstitutional and placed state law in direct conflict with federal law.

The three-day tribal conference focused on protecting subsistence rights in the aftermath of the Supreme Court's ruling. Conference delegates gave clear direction to the Bristol Bay Native Association and other Native organizations to continue educational and informational efforts at the village level as they attempt to forge a position of statewide unity on subsistence.

Statement of Robert Willard, President
Southeast Native Subsistence Commission
Before the Egan Forum, Democratic Luncheon
Baranof Hotel, Juneau, AK
February 14, 1990

Thank you. My name is Robert Willard. My real name is *Kitch Nalx'*. I am from Angoon, but I reside in Juneau-where I now serve my people as the elected President of the Southeast Native Subsistence Commission.

In Tlingit, the word for what has become known as subsistence is *Haa koos tee yee* which means "our culture." Prior to any regulation, it was called *haa ut ayee*-"our food." Subsistence is the birth right of the Native people.

The Southeast Native Subsistence Commission is an affiliate of the tribal governing Central Council of the Tlingit & Haida Indian Tribes of Alaska which is federally-recognized. The Subsistence Commission is supported by and represents the view of the Grand Camp of the Alaska Native Brotherhood, the Grand Camp of the Alaska Native Sisterhood, Sealaska Corporation, and the Central Council of the Tlingit & Haida Indian Tribes of Alaska, and we believe in the best interests of the IRA governments of Southeast.

The Commission of 23 members, representing all southeast Alaska communities and our tribal members in Anchorage, as an instrumentality of the tribal government, must and will speak for the Tlingit and Haida Nations, which

number approximately 16,000 as relates to subsistence matters.

Establishing an entity that addresses only subsistence has long been a dream of many of the Native leadership. In December of 1989, Richard Stitt, Grand President of the Alaska Native Brotherhood issued his order and created what is now called the Southeast Native Subsistence Commission.

At its February 2-3, 1990 meeting the Commissioners decided to take the position that as a prerequisite to an amendment to the Alaska Constitution that a Native priority be incorporated into such an amendment.

I would like now to explain to you, to the Governor, to the Alaska State Legislature and mostly to the residents of Alaska as to why we require that an Alaska Native priority clause be incorporated into the Alaska Constitution.

Firstly, the Commissions' position of an Alaska Native priority is not to the exclusion of all others that reside in remote villages, or other settlements in rural Alaska.

Foremost though the Commissioners felt that anything less than a Native priority would effectively threaten the survival of the cultures of the Alaska Native people. For the sake of the cultures of the Tlingit and Haida Nations, and the future generations, we will now take our stand.

The Commission is emphatic in this deliberate and serious endeavor to advise the Alaska legislative, administrative, regulatory and judicial branches of state

government that in its collective processes, the net effect of their actions may carry with it the destruction of the Alaska Native cultures.

Before we approve any Constitutional amendment, the Commissioners want to know what an Alaska Statute and its promulgated rules and regulations will contain before we advise our constituents on how to vote should the Legislature pass a measure that will place a Constitutional amendment before the voters.

The Commissioners and the supporting Southeast Native regional organizations feel strongly that with only a "rural priority" it will take a different form. I speak of a form that it may take with only a rural priority, when the Legislature gets through with it. By the time the rule-making Alaska Board of Fisheries, and the Alaska Board of Game gets through with it, you won't even recognize it, because the rule-making agencies give no consideration to the effect a regulation may have upon the cultures.

In 1925, our people in Hoonah were told that in creating the Glacier Bay National Monument, "it will be good for you. We'll preserve the Native food for you!" Did they ever preserve it. Now the National Park Service will not even let the Tlingits of Hoonah into Glacier Bay. The Hoonah Tlingit people have evidence of use and occupancy for subsistence purposes into the Glacier Bay that date back thousands of years.

A further concern of the Commission is that without clear and convincing language, written into the Alaska Constitution, the Alaska Courts will, by common law, establish law that takes no consideration as to the effects upon the cultures of the nations of the Haida, the Inupiaq, the Yupik, the Athabaskan, the Aleut, the Eyak, the Tsimshian and the Tlingit.

The Commissioners are concerned that without direction from the Governor, that the regulatory agencies will continue to disregard the cultural implications—irrespective of what the Governor might publicly say.

If the regulatory agencies were guided by clear and definitive Constitutional language that any action they take may have a detrimental effect upon the cultures of the Alaska Native, then we may have arrived at a solution to part of our concern. That is what we mean by a law taking a different form when it goes through its process. A rural preference or priority is too ambiguous and leaves too much to the interpretation of the Alaska Courts.

The Southeast Native Subsistence Commission, as an affiliate of the regional governing Central Council of the Tlingit & Haida Indian Tribes of Alaska will advocate a Native priority on grounds of the effect it will have to save the Native cultures. It follows therefore that the tribal members will look to this Commission as to whether a State Constitutional amendment is acceptable.

The Commissioners believe that the State of Alaska must now recognize the cultures and the cultural traits of the Alaska Native people. That before you pass any law, promulgate any regulation, issue any policy, that you measure its impact upon the cultures of the Alaska Native people.

We realize that an Alaska Native priority policy goes beyond the provision found in the Alaska National Interest Land Conservation Act. We realize that the implication of an Alaska Native priority may mean that the State of Alaska might give formal recognition to the tribal governments in Alaska. It is likely timely that the State of Alaska give formal recognition to the federally-recognized tribal governments, but that is a separate state policy consideration.

In the subsistence issues though, the Southeast Native Subsistence Commission would like to see subsistence institutionalized as the official State policy in recognition of the cultures of the Alaska Native people. The State of Florida is known as a State that gives special recognition to its elderly people—because it is the State's public policy to do so. If the State of Alaska would establish subsistence as is the official State policy is the reason that we ask for an Alaska Native priority to be incorporated into the Alaska Constitution. Subsistence is the last remaining evidence of the cultures of Alaska's Native people, and I hope this represents the feelings of the Commissioners of the Southeast Native Subsistence Commission, and the

concurring Southeast Native regional organizations as to our rationale in a Native priority being incorporated into any State Constitutional amendment. Anything less would mean that we would be party to the destruction of the cultures of the Alaska Native people and we will not do that.

ALASKA FEDERATION OF NATIVES, INC.



411 W. 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-3611

POSITION STATEMENT ON SUBSISTENCE

As they have for generations, Alaska Natives continue to depend upon hunting and fishing and gathering to obtain food to feed their families.

Hunting, fishing and other subsistence activities remain the linchpin of traditional Alaska Native culture and Alaska Native spiritual values.

For almost a century the United States Congress has consistently recognized the necessity to protect Alaska Native subsistence activities, the most recent expression of this important national policy being Title VIII of the ANILCA of 1980, which establishes hunting and fishing for subsistence uses by Alaska Natives and other residents of rural villages as the priority use of Alaska fish stocks and game populations.

For more than a decade, successive Alaska legislatures and administrations have enacted and administered legislation intended to implement Congress's subsistence policy.

In December 1989, in McDowell v State the Alaska Supreme Court held that the legislature's attempt to implement Congress's subsistence policy violated Article VIII of the Alaska Constitution.

The McDowell v State decision threatens the State's ability to continue to regulate the taking of fish and game on all lands and within all waters in Alaska.

Any solution to this situation must be consistent with the Congressional policy that Alaska Natives and other rural subsistence hunting and fishing activities are the priority use of Alaska's fish stocks and game populations.

We believe that if Alaskans are going to solve this problem:

- (a) an amendment to the Alaska Constitution to enable the legislature to enact and the administration to implement a rural subsistence priority which protects customary and traditional use of fish and game by Alaska Natives and other rural residents is the preferred solution; and
- (b) AFN is committed to working with the Governor and Legislative leadership in considering other solutions which meet AFN's policy goals.

Approved and adopted by the Board of Directors, February 1, 1990.

AVCP

Association of Village Council Presidents
P.O. Box 219 • Bethel, Alaska 99559 • Phone 545-3521

March 5, 1990

Julie E. Kitka, President
Alaska Federation of Natives, Inc.
411 West 4th Avenue, Suite 301
Anchorage, Alaska 99501

Dear Julie,

The purpose of this letter is to urge AFN to temporarily restrain from expressing support for the Governor's proposed constitutional amendment which merely reinstates the past "rural" subsistence system. AVCP believes that support for such an amendment would be premature before other options, including some form of Native preference, are fully explored. It is also AVCP's position that AFN should not take such a position until it has attempted to reach a consensus on this issue with other Native groups active in this area.

AVCP believes that it is important to view the current subsistence situation as a possibility to strengthen Native subsistence rights. We should not be too quick to settle for the old system. As we all know, the "rural" subsistence law, and the State's implementation of that law, was far from ideal. The State's definition of "rural" ignored the vital role subsistence plays in Native culture, and instead focused on subsistence as an economic and needs based system. The State's definition of "rural" was thrown out by the Ninth Circuit Court of Appeals, but it remains on the State's books, and quite possibly remains in State plans. Additionally, the Federal District Court may define the term "rural" in the Kenaitze case, and may do so in a way that would restrict subsistence rights in regional centers like Barrow, Nome, Kotzebue, Dillingham and Bethel, and in many Southeast and Southcentral communities.

"Rural" subsistence rights will not protect Native subsistence rights far into the future even if the State and the courts allow a broad definition of that term. In the foreseeable future, more Native communities will grow, develop and change. Inevitably, some communities will lose their "rural" status, and the Alaska Natives in those communities will lose their subsistence rights and an essential part of their culture. It is a cruel irony that once Natives achieve the goal of economic development that so many encourage, they risk losing subsistence rights and culture. Accepting a "rural" priority may protect most Alaska Natives in the short term, but it will not provide the kind of protection many desire for the long term.

The definition of "rural" is not the only problem with going back to the status quo. The State Boards of Fish and Game, who

are responsible for assuring that the subsistence priority is carried out, have time and again sided with sport and commercial interests over subsistence. Some have suggested that a separate Board be created to deal with subsistence issues. Additionally, the system of Advisory Committees and Regional Councils, created to guarantee that subsistence users have real, substantive input into subsistence regulation, is largely ineffective. The Committees and Councils in some areas are dominated by interests hostile to subsistence. In other areas the Committees and Councils are underfunded or understaffed.

Does the current situation present opportunities to remedy the problems with the Boards and the Advisory Committees and Regional Councils? Are there realistic options available which guarantee subsistence rights for Alaska Natives rather than settling for protection of only those who fall within some unknown definition of "rural"? These questions need to be asked and answered with a full understanding of what the risks and possibilities are. These questions need to be answered before Native organizations lend their support to a "rural" constitutional amendment.

Furthermore, AVCP strongly urges AFN to withhold support for a "rural" constitutional amendment until attempting to form a consensus with other Native organizations active in this area. Alaska Natives must work together if a State statute, constitutional amendment, or ANILCA amendment is to be accomplished. The Southeast Native Subsistence Commission, Rural Alaska Resource Association, Village Participation Conference, and BBNA have all expressed support for some form of Native preference. Tanana Chiefs, the Alaska Native Coalition, AVCP and others have yet to express their position. There must be a meeting of the leadership of these various Native groups for discussion and consensus building. Such a meeting should be held at the earliest possible opportunity. Only after such a meeting will AFN know the strength of Native support for a "rural" constitutional amendment versus other realistic options.

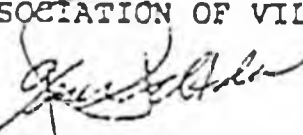
Finally, AVCP unequivocally believes that Alaska Natives should not choose an opening position in the subsistence debate that represents the least that they will settle for. It may be that some form of "rural" solution will prove to be acceptable and possible as the debate progresses. However, if Alaska Natives start off supporting a return to the status quo, they may foreclose the possibility of getting anything better. The place to begin the debate is with a position that strengthens and improves Native subsistence rights. At the very least, AFN should refrain from supporting a "rural" amendment until it is clear that such an amendment is the best possible solution.

AVCP plans to attend AFN's March 7th meeting in Anchorage, and will be available to answer any questions the AFN Board may have in regards to this letter. AVCP looks forward to continued

cooperation and communication with AFN on this most important of issues.

Sincerely,

ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS



Gene Peltola
President

cc: Willie Kasayulie, Chairman of the Board, AVCP
Mitch Demientieff, President, Tanana Chiefs Conference
Robert Willard, President, Southeast Native Subsistence Comm
Mathew Iya, Chairman, RARA

ALASKA FEDERATION OF NATIVES, INC.

411 W. 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-2611



AFN TESTIMONY TO STATE HOUSE RESOURCES COMMITTEE BY JULIE KITKA
(APRIL 20, 1990)

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, LADIES AND
GENTLEMEN:

I APPRECIATE THE OPPORTUNITY TO TESTIFY TODAY ON THE ISSUE
OF SUBSISTENCE. I DO SO REPRESENTING THE BOARD OF DIRECTORS
OF THE ALASKA FEDERATION OF NATIVES AND ITS CONSTITUENT
ORGANIZATIONS AND COMMUNITIES. WHAT I WILL PRESENT TODAY IS
THE CONSENSUS POSITION OF THE STATEWIDE ALASKA NATIVE
COMMUNITY ON THE SUBJECT OF SUBSISTENCE AND AN EXPLANATION
OF SEVERAL SPECIFIC LEGAL QUESTIONS WHICH ARISE UNDER IT.

THE FIRST THING I MUST TRY TO MAKE CLEAR IS THAT SUBSISTENCE
IS MORE THAN A POLITICAL ISSUE. FOR NATIVE PEOPLE,
SUBSISTENCE IS THE FOUNDATION OF CULTURE - A SET OF TRADITIONAL
PRACTICES WHICH ARTICULATE OUR RELATIONSHIP TO THE LAND - A
HERITAGE RECEIVED FROM OUR ANCESTORS WHICH WE MUST PASS ON TO OUR
DESCENDENTS.

AS ALASKA NATIVES, WE FIND OURSELVES AT A CRITICAL JUNCTURE IN OUR CONTEMPORARY POLITICAL HISTORY. A PROFOUND CHALLENGE CONFRONTS US: HOW TO PROTECT OUR SUBSISTENCE LIFESTYLES AND PRACTICES FROM THE DAMAGE WROUGHT BY THE RECENT ALASKA SUPREME COURT DECISION IN MCDOWELL V. STATE. IN THE EFFORT TO PROTECT THE CULTURES AND ECONOMIES OF OUR VILLAGES, WE, LIKE ALL ALASKANS, FIND OURSELVES CAUGHT BETWEEN ANILCA, WHICH GUARANTEES A RURAL PRIORITY FOR SUBSISTENCE HUNTING AND FISHING, AND THE ALASKA CONSTITUTION, WHICH WILL NOT PRESENTLY ALLOW SUCH A PREFERENCE.

AS YOU KNOW, MR. CHAIRMAN, A WIDE VARIETY OF OPINION ABOUT WHAT SHOULD BE DONE TO SOLVE THIS DILEMMA HAS ARISEN WITHIN THE NATIVE COMMUNITY DURING THE PAST FOUR MONTHS. SOME NATIVE PEOPLE HAVE FAVORED AMENDING BOTH THE STATE CONSTITUTION AND ANILCA TO PROVIDE FOR A "NATIVE" SUBSISTENCE PRIORITY, FOR A "NATIVE-PLUS-RURAL" PRIORITY OR FOR OTHER ALTERNATIVES. OTHER NATIVE PEOPLE HAVE ADVOCATED AMENDING THE STATE CONSTITUTION, EITHER TO RE-ESTABLISH THE RURAL PRIORITY OR TO PERMIT THE LEGISLATURE TO KEEP FISH AND GAME MANAGEMENT IN STATE HANDS BY COMPLYING WITH FEDERAL LAW. THERE ARE POTENTIALLY MANY VARIATIONS ON THESE MAJOR THEMES. BUT ONE THING IS CERTAIN: NO ISSUE IN RECENT MEMORY HAS SO EFFECTIVELY GALVANIZED THE PARTICIPATION OF NATIVE PEOPLE IN THE POLITICAL PROCESS AS HAS THE FALL-OUT FROM MCDOWELL.

AS YOU ALSO KNOW, MR. CHAIRMAN, AFN SPONSORED A STATEWIDE NATIVE SUMMIT CONFERENCE ON SUBSISTENCE IN ANCHORAGE LAST WEEK. OUT OF THAT GATHERING, A BROAD POLICY CONSENSUS EMERGED. IT CONTAINED MANY DETAILED SUB-ISSUES, INCLUDING THE CALL FOR A THOROUGH EVALUATION OF STATE SUBSISTENCE MANAGEMENT, A CONTINGENCY POSITION REGARDING FEDERAL MANAGEMENT AND SEVERAL LONG-RANGE GOALS. BUT WITH REGARD TO THE LEGISLATION NOW PENDING BEFORE THIS COMMITTEE, THE CONFERENCE RESOLUTION WAS BRIEF AND TO THE POINT. IT DIRECTED ALL NATIVE ORGANIZATIONS TO "ACT TO GAIN APPROVAL OF AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF ALASKA THAT ALLOWS THE STATE TO EXERCISE MANAGEMENT JURISDICTION OVER ALL FISH, WILDLIFE, PLANT AND OTHER RENEWABLE NATURAL RESOURCES WITHIN ITS BOUNDARIES AND PROVIDES THAT THE STATE SHALL EXERCISE MANAGEMENT OF SUBSISTENCE RESOURCES THEREIN IN ACCORDANCE WITH APPLICABLE FEDERAL LAW."

THAT IS THE HEART OF IT. THE STATEWIDE NATIVE COMMUNITY IS NOW UNANIMOUSLY ON RECORD IN FAVOR OF A CONSTITUTIONAL AMENDMENT TO KEEP FISH AND GAME MANAGEMENT IN THE HANDS OF THE STATE GOVERNMENT, IN COMPLIANCE WITH FEDERAL LAW. WE DO NOT - AND I EMPHASIZE NOT - WISH TO SEE A FEDERAL TAKEOVER AFTER JULY 1. SUCH A SCENARIO COULD ONLY BE THE RESULT OF A TRAGIC POLITICAL FAILURE IN ALASKA. WHAT NATIVES WANT IS FOR THE LEGISLATURE AND THE PEOPLE TO FIX THE ISSUE HERE, TO COMPLY WITH FEDERAL LAW AND TO KEEP FISH AND GAME MANAGEMENT AT HOME, IN ALASKAN HANDS.

IN ORDER TO ACCOMPLISH THIS, A CONSTITUTIONAL AMENDMENT MUST BE ADOPTED BY AT LEAST 2/3 OF BOTH HOUSES BEFORE ADJOURNMENT AND BY A MAJORITY OF THE VOTERS ON NOVEMBER 6. THERE ARE SEVERAL BILLS CURRENTLY BEFORE THIS COMMITTEE WHICH EFFECTIVELY PERFORM THAT FUNCTION. AFTER CAREFUL LEGAL REVIEW, WE RECOMMEND THAT THE LANGUAGE SUGGESTED BY REPRESENTATIVE LYMAN HOFFMAN BECOME THE VEHICLE FOR SUCH A CONSTITUTIONAL AMENDMENT. WE FURTHER RECOMMEND THAT IT BE INSERTED AS AN AMENDMENT TO ANY OF THE CURRENTLY PENDING BILLS WHICH THE COMMITTEE DEEMS APPROPRIATE.

WE URGE THE HOFFMAN LANGUAGE BECAUSE OF ITS EMPHASIS ON ALLOWING THE LEGISLATURE TO ENACT LAWS, CONSISTENT WITH VALID FEDERAL LAWS, WHICH WILL KEEP FISH AND GAME MANAGEMENT IN STATE HANDS. IF THAT IS THE FUNDAMENTAL PURPOSE OF ALL THIS, THEN THAT IS WHAT THE VOTERS SHOULD READ IN THE TEXT OF THE AMENDMENT WE ARE ASKING THEM TO APPROVE.

I ALSO WANT TO POINT OUT THAT THE HOFFMAN LANGUAGE IS "PERMISSIVE" TO THE LEGISLATURE. IT DOES NOT BIND STATE GOVERNMENT TO ANY SPECIFIC SUBSISTENCE POLICY - SUCH AS A STATED PRIORITY FOR ANY GROUP. ALL IT PROVIDES IS THE CONSTITUTIONAL AUTHORITY FOR THE LEGISLATURE TO COMPLY WITH FEDERAL LAW, A POWER IT DOES NOT PRESENTLY ENJOY. AFTER RECEIVING SUCH AUTHORITY FROM THE VOTERS, THE LEGISLATURE HAS EVERY RIGHT NOT TO EXERCISE IT, IF IT SO CHOOSES. THAT IS POLITICS. ALL THE AMENDMENT ITSELF WOULD DO IS TO CLEAR

AWAY THE CONSTITUTIONAL OBJECTION FOUND BY THE SUPREME COURT IN MCDOWELL AND TO GIVE THE LEGISLATURE A POLITICAL OPTION IT CANNOT NOW CHOOSE, EVEN TO SAVE ITS OWN CONTROL OF FISH AND GAME.

SEVERAL BRIEF TECHNICAL ISSUES ON THE HOFFMAN LANGUAGE NEED TO BE CLARIFIED: FIRST, WE HAVE RECENTLY HEARD THE CRITICISM THAT, SINCE THE HOFFMAN LANGUAGE IS PURPOSELY GENERAL IN SCOPE, AND SINCE THE THREE SECTIONS OF ARTICLE VIII OF THE STATE CONSTITUTION WHICH THE SUPREME COURT USED IN MCDOWELL TO INVALIDATE THE RURAL PRIORITY ARE SPECIFIC IN SCOPE, A FUTURE COURT MIGHT INTERPRET THE HOFFMAN LANGUAGE AS NOT SPECIFICALLY SUPERSEDING ANY OR ALL OF THOSE SECTIONS. THIS ARGUMENT IS SPECIOUS. THE HOFFMAN LANGUAGE CAREFULLY BEGINS WITH THE WORDS "NOTHING IN THIS CONSTITUTION." THAT MEANS WHAT IT SAYS. ALL ARTICLES AND SECTIONS WHICH THE SUPREME COURT FOUND VIOLATED IN MCDOWELL ARE IN THIS CONSTITUTION, AND WE FEEL CERTAIN THAT ANY FUTURE COURT WOULD FIND LIKEWISE.

A SECOND CRITICISM OF THE HOFFMAN LANGUAGE COULD BE THAT IT SHOULD SAY "ANILCA," RATHER THAN "FEDERAL LAW." WE DISAGREE. THE USE OF THE TERM "FEDERAL LAW" PROVIDES THE LEGISLATURE WITH THE BROADEST POSSIBLE AUTHORITY TO ACT. IT ASSURES THE ABILITY OF FUTURE LEGISLATURES, IF THEY SO WISH, TO ENACT LAWS IN COMPLIANCE WITH FUTURE FEDERAL FISH AND GAME STATUTES WHICH MIGHT OTHERWISE THREATEN A FEDERAL

MANAGEMENT TAKEOVER. AGAIN, THIS DOES NOT REQUIRE THE LEGISLATURE TO DO SO. IT GIVES IT THE FREEDOM TO ACT. IF THE LEGISLATURE WISHES TO NARROW THE SCOPE OF ITS PRESENT LEGISLATION TO ADDRESS ONLY ANILCA, THIS LANGUAGE WOULD ALLOW IT TO DO SO WITHOUT PUTTING UNNECESSARY LIMITATIONS ON THE AUTHORITY OF FUTURE LEGISLATURES TO ADDRESS - PRO OR CON - FUTURE FEDERAL ENACTMENTS.

ANOTHER CONCERN WHICH MIGHT BE RAISED IS THAT THE HOFFMAN LANGUAGE PROVIDES A "BLANK CHECK" TO THE FEDERAL GOVERNMENT TO IMPOSE FUTURE FEDERAL POLICY JUDGMENTS ON STATE FISH AND GAME MANAGEMENT. THE OBVIOUS RESPONSE IS THAT THE FEDERAL GOVERNMENT ALREADY HAS SUCH AUTHORITY, AS IT CLEARLY EXERCISED IN TITLE VIII OF ANILCA. WHAT THE HOFFMAN AMENDMENT WOULD DO IS TO ALLOW THE STATE TO ENACT LAWS WHICH KEEP FISH AND GAME MANAGEMENT IN STATE HANDS. NOTHING IN THE HOFFMAN LANGUAGE EITHER EXPANDS OR DIMINISHES THE LEGAL AUTHORITY OF THE UNITED STATES GOVERNMENT - NOR COULD IT.

I CANNOT OVERSTATE, MR. CHAIRMAN, THE IMPORTANCE OF ACTING EXPEDITIOUSLY. ADJOURNMENT OF THIS SESSION IS SCHEDULED IN LESS THAN THREE WEEKS. SEVEN DAYS AGO THE UNITED STATES FISH AND WILDLIFE SERVICE PUBLISHED IN THE FEDERAL REGISTER ITS FORMAL NOTICE OF "INTENTION TO PROPOSE INTERIM RULES IMPLEMENTING TITLE VIII OF THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT." WHY? AS INTERIOR SECRETARY LUJAN STATED AT OUR CONFERENCE LAST WEEK, THE UNITED STATES DOES

NOT WISH TO COME INTO ALASKA AND TAKE OVER FISH AND GAME MANAGEMENT ON FEDERAL LANDS. BUT IT WILL DO SO IF THERE IS NO SOLUTION AT THE STATE LEVEL BY JULY 1. THE INTERIOR DEPARTMENT IS NOW GEARING UP TO DO JUST THAT, AND FEDERAL LAW REQUIRES IT TO GO THROUGH A PUBLIC CONSULTATION PROCESS ON INTERIM AND PERMANENT RULE - MAKING. THE DEADLINE FOR RECEIPT OF RECOMMENDATIONS AND COMMENTS AT INTERIOR IS MAY 14.

IN ADDITION, THE DEPARTMENT OF THE INTERIOR IN ALASKA HAS BEEN AT WORK FOR ALMOST TWO MONTHS, THROUGH A SPECIAL DEPARTMENTAL TASK FORCE, DRAWING UP A PLAN FOR A FEDERAL MANAGEMENT TAKEOVER. BECAUSE THE NATIVE COMMUNITY IS NOT A PARTY TO THAT PROCESS, I CAN NOT TELL YOU WHAT THE PLAN WILL LOOK LIKE. BUT I AM CONVINCED THAT THE DEPARTMENT IS MOVING QUICKLY TO CARRY OUT ITS NON-DISCRETIONARY RESPONSIBILITY UNDER FEDERAL LAW.

ONE ADDITIONAL ISSUE, MR. CHAIRMAN, NEEDS TO BE AIRED. AS WE HEAD TOWARDS ADJOURNMENT, THE GREAT QUESTION IN EVERYONE'S MIND IS WHETHER BOTH HOUSES OF THIS LEGISLATURE WILL ADOPT SOME FORM OF CONSTITUTIONAL LANGUAGE TO KEEP FISH AND GAME IN ALASKAN HANDS, OR WHETHER THE BODY WILL TURN ITS BACK ON THE ISSUE AND GO HOME WITHOUT TAKING ACTION. A THIRD ALTERNATIVE, OF COURSE, IS THAT THE LEGISLATURE MIGHT BE PERSUADED TO ADOPT SOME FORM OF STATUTORY LANGUAGE WHICH, WHILE PERHAPS SATISFYING THE STATE CONSTITUTION, WOULD STILL

BE OUT OF COMPLIANCE WITH FEDERAL LAW. I URGE THE COMMITTEE TO SEE THAT EITHER OF THE LAST TWO OPTIONS REPRESENTS A FAILURE OF POLITICAL WILL AND WILL PRECIPITATE A LONG-TERM CRISIS OF FISE AND GAME MANAGEMENT IN ALASKA WHICH WE SHALL ALL COME TO REGRET.

THERE MAY BE, ON THE PART OF SOME LEGISLATORS, A CAREFULLY UNSPOKEN ASSUMPTION THAT WHAT REALLY NEEDS TO BE DONE - NO MATTER HOW LONG THE EFFORT AND HOW PAINFUL THE COST - IS TO FORCE THE CONGRESSIONAL OPENING OF ANILCA IN ORDER TO GET RID OF THE RURAL SUBSISTENCE PRIORITY. MY RESPONSE TO THAT SILENT AGENDA IS TWO-FOLD: FIRST, THAT IT SHOULD NOT BE SILENT; AND, SECOND, THAT IT WON'T WORK.

ON THE QUESTION OF SILENCE, LET ME SAY THAT ANY AGENDA WHICH ASSUMES THAT THE FINAL BLOW TO SUBSISTENCE CAN ONLY BE DELIVERED BY PURPOSEFULLY RAISING THE LEVEL OF REGULATORY CONFUSION, POLITICAL ANGER AND INDIVIDUAL PAIN IN THIS STATE TO A POINT WHERE THE MAJORITY WILL BE FORCED TO TURN ON THE MINORITY IS IRRESPONSIBLE. IF THIS SHOULD TURN OUT TO BE THE COURSE WHICH THE STATE OF ALASKA HONESTLY WISHES TO PURSUE, IT HAS EVERY RIGHT TO DO SO. BUT IT SHOULD SAY SO. IT SHOULD STEP OFF ON THAT PATH CONSCIOUSLY, KNOWING THE CONSEQUENCES AND SAYING THE TRUTH. NO ONE, IN GOOD FAITH, MAY KNOWINGLY ENGINEER A POLITICAL AND SOCIAL CRISIS AND LATER DESCRIBE IT AS HAVING BEEN UNAVOIDABLE OR UNINTENDED.

ON THE ISSUE OF POLITICAL FEASIBILITY, LET ME BE EQUALLY FRANK. I THINK IT IS HIGHLY UNLIKELY THAT THE UNITED STATES CONGRESS WILL OPEN ANILCA. BUT IF IT DOES, I CAN PROMISE YOU THAT ITS RECONSIDERATION OF THIS ENORMOUS FEDERAL STATUTE WILL NOT BE LIMITED TO SUBSISTENCE. ONCE YOU OPEN ANY PART OF IT, ALL OF ITS PROVISIONS BECOME FAIR GAME. SOME PEOPLE IN ALASKA OBVIOUSLY DO NOT BELIEVE THAT, BUT THE POLITICAL REALITY IS THAT THERE ARE DOZENS OF OUTSIDE INTERESTS (AND THEIR ADVOCATES IN THE CONGRESS) WHO WILL MAYE IT COME TRUE.

AT BEST, ANY AMENDING OF ANILCA WILL BE A THREE TO FIVE-YEAR PROCESS, DURING WHICH TIME THE FEDERAL GOVERNMENT WILL BE IN ALASKA ANYWAY, MANAGING MOST OF OUR FISH AND GAME. EVEN IF THE CONGRESSIONAL PROCESS STARTS WITH SUBSISTENCE, DOZENS OF OVERSIGHT BEARINGS, FLOOR SPEECHES, BILLS AND AMENDMENTS WILL EVENTUALLY REACH OUT AND TOUCH EVERY FEDERAL LAND USE QUESTION IN ALASKA. SENATOR STEVENS AND OTHER MEMBERS OF OUR CONGRESSIONAL DELEGATION HAVE DESCRIBED THAT SCENARIO IN STARK LANGUAGE. HOW MUCH DOES ALASKA REALLY WANT TO PAY TO THE REST OF THE COUNTRY IN ORDER TO GET RID OF THE SUBSISTENCE PRIORITY? HOW LONG WILL IT TAKE? AND WHAT WILL THE PERMANENT CONSEQUENCES BE FOR THE POLITICAL, ECONOMIC AND SOCIAL ENVIRONMENT OF OUR STATE?

I HAVE CONCLUDED THAT THE REAL OUTCOME OF AMENDING ANILCA WILL BE SO COSTLY TO THE STATE GOVERNMENT, TO THE STATEWIDE

BUSINESS COMMUNITY AND TO THE GENERAL PUBLIC THAT-ONCE THEY SEE IT-THEY WILL INSIST THAT THIS PANDORA'S BOX REMAIN CLOSED. FISH AND GAME IS GOING TO HAVE TO BE DEALT WITH WHERE. I URGE ALL MEMBERS OF THE LEGISLATURE TO RECOGNIZE THAT THE UNSPOKEN AGENDA OF TARGETING ANILCA, INSTEAD OF AMENDING THE STATE CONSTITUTION, IS A PROCESS BY WHICH POLITICAL MISPERCEPTION PRODUCES BAD LAW.

IN CLOSING MR. CHAIRMAN, I WISH TO GO BACK TO A NATIVE PERSPECTIVE ON ALL OF THIS. DURING LAST WEEK'S STATEWIDE SUBSISTENCE CONFERENCE, ONE OF THE NATIVE ELDERS WHO SPOKE TO US WAS EDWARD HOPSON, AN INUPIAT ESKIMO LEADER FROM THE ARCTIC SLOPE REGION. I WANT TO QUOTE SEVERAL LINES FROM WHAT HE TOLD US, IN THE HOPE THAT HIS GOD-GIVEN ELOQUENCE MIGHT SUCCEED WHERE MY WORDS FAIL.

MR. HOPSON SAID:

"WE ALL HAVE A RESPONSIBILITY TO MANAGE THE RESOURCES AND THE ANIMALS GOD HAS PUT ON THIS EARTH. WE MIGHT ASK OURSELVES WHO ARE WE MANAGING IT FOR. IS THIS AN ISSUE OF WHO GETS TO TAKE THE LAST SEAL OR THE LAST CARIBOU? IS THIS AN ISSUE OF RETURNING TO A LIFESTYLE WHICH HUNTS WITH BOWS AND ARROWS OR LIVES WITHOUT MODERN CONVENIENCES? OR IS IT, MORE APPROPRIATELY, AN ISSUE OF KEEPING OUR CULTURE ALIVE AND DYNAMIC, NOT A MUSEUM RELIC? A CULTURE IS TO BE LIVED AND EXPERIENCED, NOT STUDIED AND OBSERVED.

"... HUNGER KNOWS NO LAW. WHEN OUR PEOPLE ARE HUNGRY THEY WILL HUNT AND FISH. WHEN THE DUCKS FLY, WE WILL HARVEST DUCKS. WHEN THE CARIBOU COME, WE WILL TAKE THEM. TO DO LESS WILL MEAN THE DEATH OF OUR PEOPLE. IT WILL MEAN THE DEATH OF BOTH SPIRIT AND BODY. TO ALLOW THE BODY ALONE TO LIVE ON WITH STORE-BOUGHT OR WESTERN MAN'S FOOD WILL SURELY SEE THE DEATH OF THE SPIRIT AND OF THE CULTURE OF THE PEOPLE. THE BODY WILL SOON FOLLOW. FOR OUR OLD PEOPLE IT WILL COME SOONER, AND PERHAPS FOR THEM IT WILL BE A MORE HUMANE DEATH. FOR THE YOUNGER PEOPLE IT WILL MEAN A SLOWER DEATH OF THE BODY, AND IT WILL COME FROM ALCOHOL, DRUGS AND CANCER THAT COMES FROM THESE FOODS AND FROM THE LOSS OF SPIRIT.

"...NO LAW CAN CREATE A CULTURE. WE MUST DO THAT OURSELVES AND WE MUST WORK CONSTANTLY TO PROTECT IT."

MR. CHAIRMAN, FOR ALASKA NATIVES SUBSISTENCE REPRESENTS EVERYTHING. WHAT IS BEING CONSIDERED IN THIS LEGISLATURE IS OUR ECONOMIC SURVIVAL, OUR CULTURAL IDENTITY AND OUR PHYSICAL AND PSYCHOLOGICAL HEALTH.

FROM THAT PERSPECTIVE, WE STRONGLY URGE THE LEGISLATURE TO ACT EXPEDITIOUSLY, TO ADOPT A CONSTITUTIONAL AMENDMENT IN COMPLIANCE WITH FEDERAL LAW AND TO MOVE FORWARD IN THE EFFORT TO RETAIN FISH AND GAME IN THE HANDS OF THOSE WHO KNOW BEST HOW TO MANAGE THEM - THE ALASKANS. THANK YOU.

BY REP. JACKO, Goll

1 IN THE HOUSE

2

HOUSE JOINT RESOLUTION NO. 74

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

Proposing an amendment to the Constitu-
tion of the State of Alaska relating to
a preference for subsistence use of fish
and wildlife and state-owned renewable
natural resources.

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9

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

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

13 SECTION 19. SUBSISTENCE USE OF RENEWABLE NATURAL RESOURCES. The
14 legislature may grant a preference for subsistence use of fish and
15 wildlife and State-owned renewable natural resources. This constitu-
16 tion does not restrict the power of the legislature to allocate access
17 among residents to fish and wildlife and State-owned renewable natural
18 resources for subsistence uses on the basis of local residency, cus-
19 tomary or traditional use, or dependence on the resources for food and
20 other purposes.

21 * Sec. 2. The amendment proposed by this resolution shall be placed
22 before the voters of the state at the next general election in conformity
23 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
24 tion laws of the state.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH STATE CAPITOL
SUNEAU ALASKA 998
907 465 1800

MEMORANDUM

February 1, 1990

SUBJECT: Sectional summary of House Joint Resolu-
tion 74; Proposing an amendment to the
Constitution of the State of Alaska relating
to a preference for subsistence use of fish
and wildlife and state-owned renewable
natural resources

TO: Representative George Jacko

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is a sectional summary of HJR 74, requested by Alexis Miller of your staff.

A summary or analysis of a resolution is not an authoritative interpretation of the resolution. The resolution itself is the best statement of its contents.

Section 1 of the resolution amends the Natural Resources Article, Article VIII, of the Constitution of the State of Alaska by adding a new section entitled: Subsistence Use of Renewable Natural Resources.

The first sentence of the amendment authorizes the legislature to provide that subsistence use of fish and wildlife and state-owned renewable natural resources is preferred over other uses.

The second sentence of the amendment provides that the power of the legislature to allocate access to renewable natural resources for subsistence uses on the basis of certain criteria is not constrained by other provisions of the Alaska Constitution. The legislature is specifically authorized to allocate access to renewable natural resources for subsistence uses on the basis of local residency, customary or traditional use of the resources, or dependence on the resources for food and other purposes. The legislature may allocate access to renewable natural resources for subsistence use on the basis of criteria other than those listed.

Representative George Jacko
Page 2
February 1, 1990

but an allocation system utilizing other criteria must be consistent with other provisions of the Alaska Constitution.

In regard to renewable natural resources, other than fish and wildlife, the amendment applies only to those resources owned by the state. Unlike fish and wildlife which the state manages wherever they are found in the state (unless preempted by the federal government), the state may not mandate a preference for subsistence use of other renewable natural resources owned by the federal government or by private persons.

Section 2 of the resolution provides that this amendment shall be placed on the ballot at the next general election for acceptance or rejection by the voters of the state.

GU:pl
WKP1/076

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2

HOUSE JOINT RESOLUTION NO. 88

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

Proposing an amendment to the Consti-

6

tution of the State of Alaska relating

7

to subsistence uses of fish and wildlife

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by rural residents.

9

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

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

12

SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE. Nothing in

13

this constitution prohibits the legislature from limiting the taking

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of fish and wildlife for subsistence uses to rural residents, and from

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providing for the allocation of that taking among rural residents on

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the basis of local or community residence, availability of alternative

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resources, and customary and direct dependence on a fish or wildlife

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population as the mainstay of livelihood.

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* Sec. 2. The intent of the amendment proposed by this resolution is to
20 validate, ratify, and reinstate any provisions of the new statutes and
21 amendments enacted by ch. 52, SLA 1986, and of any regulations adopted
22 under those statutes and amendments, which otherwise might have to be
23 declared invalid under the Alaska Supreme Court's decision in McDowell v.
24 State, 785 P.2d 1 (Alaska 1989), and to explicitly reverse the effect of
25 the McDowell decision as to those provisions and regulations.

26

* Sec. 3. The amendment proposed by this resolution, and the intent of
27 the amendment as set out in this resolution, shall be placed before the
28 voters of the state as one ballot proposition at the next general election
29 in conformity with art. XIII, sec. 1, Constitution of the State of Alaska.

FISCAL NOTE

REQUEST:

Revision Date: 3/2/90
Title: Constitutional Amendment:
Subsistence
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Dept. of Fish and Game
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No FY 90 impact.

Prepared by: Molly McCannan
Division: Commissioner's/Office/
Approved by Commissioner: *Shirley D. Wiley*
Agency: _____

Phone: 465-4100
Date: 3/1/90
Date: 2 29 91

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JENEAU

7-212 38

March 2, 1990

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a joint resolution proposing an amendment to the Alaska Constitution to give rural residents a priority for subsistence uses of fish and wildlife.

In Title VIII of the Alaska National Interest Lands Conservation Act ("ANILCA"), P.L. 96-487, 94 Stat. 2371, 2422 (1980), the United States Congress established a priority for subsistence uses of fish and wildlife by rural residents on federal land, and provided that the priority would be implemented by the secretaries of interior and agriculture unless the state enacted legislation affording the same priority. In ch. 52, SLA 1986, the legislature gave rural residents a priority for subsistence uses of fish and wildlife. The legislature enacted ch. 52, in part, to prevent a federal takeover of fish and wildlife management on federal land, an action with which I wholeheartedly agree.

In McDowell v. State, 785 P.2d 1 (1989), however, the Alaska Supreme Court held that a subsistence priority for rural residents violates the Alaska Constitution. This raises the distinct possibility that the state will lose management of fish and wildlife on federal land and, conceivably, state-wide. Such a result is simply unacceptable. It also means that the state might find it difficult, if not impossible, to ensure that rural residents most reliant on fish and wildlife have the necessary opportunities to take those resources when needed.

Section one of the joint resolution would add a new section to art. VIII of the Alaska Constitution to ensure that the constitution does not prohibit (1) a subsistence priority for rural residents, and (2) the allocation of fish and wildlife for subsistence uses on the basis of local or community residence, availability of alternative resources,

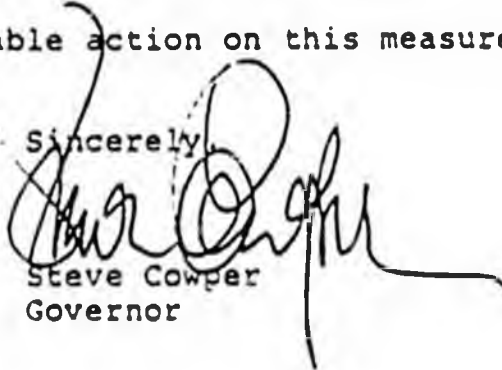
and customary and direct dependence on a fish or game population as a mainstay of livelihood. This would give the legislature clear constitutional authority to enact laws that are consistent with the subsistence provisions of ANILCA.

Section 2 of the joint resolution would validate, ratify, and reinstate those provisions enacted by ch. 52, SLA 1986, held invalid by the Alaska Supreme Court in the McDowell decision. While the court declared that those provisions were inconsistent with the constitution as it read at the time of the decision, they have not been repealed by the legislature nor declared void in a final court judgment. (In any event, while there is a presumption that a constitutional amendment is not retrospective, case law from this and other jurisdictions makes clear that an amendment will have retroactive effect if such an intent is clearly expressed, as here. See Mathews v. Quinton, 362 P.2d, 932, 938 -- 939 [Alaska 1961].) By reinstating and ratifying the provisions of the 1986 law, the state would be back in the same position it was in before the McDowell decision, but with the certainty that the provisions of the 1986 law are constitutional.

Section 3 of the joint resolution is, essentially, the standard language directing the lieutenant governor to place the proposed constitutional amendment, including the statement of intended effect, before the voters in a single ballot proposition at the next general election.

I urge your prompt and favorable action on this measure.

Sincerely,


Steve Cowper
Governor

NEWS RELEASE

STATE OF ALASKA

OFFICE OF THE GOVERNOR
P.O. BOX A
JUNEAU, ALASKA 99811

STEVE COWPER,
GOVERNOR



FOR INFORMATION CONTACT

DAVID RAMSEUR
PRESS SECRETARY

TERRENCE O'MALLEY
DEPUTY PRESS SECRETARY

(907) 465-3500

FOR IMMEDIATE RELEASE
March 2, 1990
No. 90-40

COWPER INTRODUCES SUBSISTENCE CONSTITUTIONAL AMENDMENT

JUNEAU--Gov. Steve Cowper today is introducing a joint resolution in both houses of the state legislature that would give rural Alaska residents a priority for subsistence uses of fish and wildlife.

The resolution would amend the state constitution to authorize a subsistence priority for rural residents. In determining subsistence eligibility, the amendment would allow the state to consider where a person lives, what the availability of alternative resources is, and whether subsistence is the customary and primary livelihood of people in the area.

"We've considered a whole gamut of options, from completely restructuring our fish and game management system to challenging federal subsistence law in court," Cowper said. "We've concluded that a constitutional amendment is the only practical way we can guarantee that Alaskans who depend on a subsistence way of life won't be deprived of access to fish and game."

The resolution must pass by a two-thirds majority vote in both the House and Senate before appearing on November's general election ballot for voter approval.

In 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA) mandating a priority for subsistence uses of fish and wildlife on federal lands by rural residents. ANILCA also set out that the federal government would take over management of fish and game resources on federal lands in Alaska if the state did not pass similar legislation giving rural residents subsistence priority.

•MORE•

In 1986, Alaska's legislature passed subsistence legislation giving rural residents preference when resources are scarce, thus preventing a federal takeover of fish and wildlife management on federal lands in Alaska.

Last December, in *McDowell v. State*, the Alaska Supreme Court declared that law unconstitutional, thereby jeopardizing the state's authority to manage fish and wildlife on federal lands and perhaps throughout the state. That ruling also would make it difficult, if not impossible, for the state to ensure that Alaskans who depend on fish and wildlife the most have the necessary opportunity to take those resources.

"Although we've asked the Supreme Court to reconsider its ruling on subsistence, it's unlikely the court will reverse itself," Cowper said. "The current subsistence situation is unacceptable. Alaska has to be able to manage its own fish and wildlife resources. Otherwise, the federal government would be making decisions about the allocation of our resources and how people here should live their lives. Alaskans know what's best for Alaskans and I believe we need to stand together to protect our citizens' rights through a constitutional amendment."

The joint resolution introduced today would add a new section to Article VIII of the state constitution ensuring that the constitution does not prohibit:

- a subsistence priority for rural residents; and
- the allocation of fish and wildlife for subsistence uses on the basis of local or community residence, availability of alternative resources, and customary and direct dependence on a fish or game population as a mainstay of livelihood.

In addition, the resolution would reinstate the provisions of the 1986 subsistence law ruled unconstitutional by the state Supreme Court in December. That would put subsistence back in the same position it was before the Supreme Court decision in the *McDowell* case. The resolution also directs the lieutenant governor to place the proposed constitutional amendment before voters in November's general election.

Last month, the Alaska Federation of Natives adopted a policy position supporting a similar constitutional amendment giving subsistence preference to rural residents.

A CONSTITUTIONAL AMENDMENT ESTABLISHING
A SUBSISTENCE PRIORITY FOR RURAL ALASKANS

Position paper prepared by
Alaska Department of Fish and Game
and
Alaska Department of Law

March 7, 1990

I. The problem

On December 22, 1989 the Alaska Supreme Court issued a decision in McDowell v. State that the rural preference in the state subsistence law was unconstitutional. This ruling makes it constitutionally impossible for Alaska to enact a law consistent with Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). That section makes federal officials responsible for providing a preference for subsistence uses of fish and wildlife by rural residents on federal public lands unless, in laws of general applicability, the state provides for such uses.

Without a solution to the problem created by the McDowell decision, management of fish and wildlife will be conducted both by the federal and the state governments. This will undoubtedly lead to conflicts over the allowable uses of fish and wildlife and take many of the decisions out of the hands of Alaskans and give them to the federal government. The state was granted a stay by the Supreme Court until July 1 with respect to existing regulations only.

II. Objectives to be achieved in any solution

We believe that any solution must meet the following objectives:

The state must retain its traditional role as manager of the fish and wildlife resources in Alaska in order to ensure the continued health and viability of those resources, as well as to make sure management of the resources is responsive to the needs of Alaskans.

There should be a priority for subsistence uses of fish and wildlife by those Alaskans who most rely on such uses, the majority of whom live in rural areas of the state.

The greatest certainty and predictability must be given to all fish and wildlife users, requiring that potential management conflicts between state and federal management agencies be minimized.

III. Review Process

In the two months since the ruling, the administration has received comments from a wide range of interested and affected Alaskans, reviewed a number of recommended solutions, and met with a variety of user groups including Alaska Native organizations, commercial fishing organizations, and sportsmen and outdoor groups. Since allocation of Alaska's fish and wildlife resources touches nearly everyone in the state, the administration has kept an open mind in reviewing all proposed solutions. For that reason, a great deal of time has been spent in reviewing the legal parameters of the court ruling and all such proposals.

IV. Options suggested

* Ask the Alaska Supreme Court to reconsider its decision in McDowell.

The state requested a rehearing of the supreme court's decision, arguing that the court overlooked or misconceived several legal principles and material facts. That request for rehearing has been denied.

* Amend the Alaska Constitution to authorize a subsistence priority for rural residents.

Since this is the preferred option chosen by Governor Cowper, it will be discussed in more detail in sections V and VI of this paper.

* Amend ANILCA to eliminate the federal subsistence priority for rural residents.

The administration rejected this approach primarily because it does not have the support of either the Alaska Congressional delegation or the Alaska Native community, both of which would be essential for any amendment to pass Congress. ANILCA was crafted as a compromise which balanced a number of competing interests. Amending it would require an agreement among the state, the Alaska Native community, and the Alaska Congressional delegation at the very minimum. In addition, in the 1978 subsistence statute, throughout the ANILCA legislative process, in the 1982 statewide ballot referendum, and in the 1986 subsistence statute the state has continually supported a subsistence priority FOR rural residents.

* Amend ANILCA to preempt state law as necessary to grant rural residents a subsistence priority statewide.

Under this scenario, we would ask Congress to apply the supremacy clause and require the state to give rural residents a subsistence priority statewide, despite the constitutional problems addressed by the Alaska Supreme Court in McDowell. Because of state sovereignty principles, this was not considered to be an option that the state should willingly support. Without state support, it is probably not politically attainable.

* Amend state law to provide a subsistence priority to state residents most dependent on fish and wildlife, as determined through some kind of individualized permitting system, and then amend ANILCA to conform to the state law.

This option was initially suggested by Governor Cowper early in the debate on how to resolve the dilemma posed by the supreme court's ruling. State officials went to great lengths to attempt to develop a system that would be consistent with the state constitution. The tentative proposal was for a three-member Subsistence Commission with powers and authorities similar to the Commercial Fisheries Entry Commission to determine who was a "subsistence user," using a set of criteria for making those determinations. This option was eventually rejected because 1) it would be extremely burdensome and intrusive on those Alaskans it was intended to protect; 2) it would create a large, cumbersome bureaucracy with a cost of many millions of dollars a year; 3) it was estimated that at least 100,000 individual determinations would need to be made, all of them subject to appeals and litigation; 4) it would require a minimum of three to four years to establish such a system and make the initial determinations; and 5) there was a serious question whether such a system would be consistent with the Alaska Constitution as interpreted in McDowell.

In addition, this approach would still result in state law being inconsistent with the subsistence preference provisions of ANILCA, in the absence of an amendment to ANILCA, already determined to be unattainable. This create an unacceptable risk of a federal takeover of fish and wildlife management.

* Interpret section 804 of ANILCA as preempting state law on federal lands (as those may ultimately be defined by the courts), with implementation carried out by state officials.

State and federal attorneys agree that Congress intended the ANILCA subsistence priority for rural residents to apply on federal lands and to preempt conflicting state laws. A legal argument can be made that, under the supremacy clause of the United States Constitution, state officials can implement the ANILCA subsistence priority by rural residents on federal lands directly under ANILCA. On the other hand, it can be argued that state officials are bound by the state constitution and cannot implement a conflicting federal law.

Another uncertainty is the geographic scope of the ANILCA preference. "Public lands" are defined as "land situated in Alaska which, after the date of enactment of this Act, are Federal lands, except [valid state and Native corporation selections]." "Federal land" is defined as "lands the title to which is in the United States after the date of enactment of this Act." "Land" is defined as "lands, waters, and interests therein."

The possible geographic scope of the ANILCA preference under these definitions ranges from "narrow" (wildlife only when they are physically present on federal land, and fish only when in non-navigable waters on federal land) to "broad" (wildlife throughout their migratory range, even when not on federal land, and fish wherever they are in any waters of the state, including the territorial sea).

This option is not the preferred option for reasons in addition to the uncertainty over the geographical scope of ANILCA. Since the state would be acting under federal, as opposed to state authority, there would undoubtedly be litigation challenging the ability of the state to proceed directly under ANILCA. The more direct avenue is to amend the state constitution to allow state agencies to act directly under state law. However, the preemption option may provide a fallback position if the constitutional amendment fails.

* Seek cooperative agreements with the Secretaries of Interior and Agriculture under which the ANILCA priority would be implemented by them, perhaps only through closure authority to avoid dual management of the resource.

It is clear that a failure by the state to give rural residents a subsistence priority, something which McDowell now says is impossible under the state constitution, would result in a federal takeover of fish and game management for subsistence uses on federal public lands. The Secretary of the Interior has made it clear he wishes to see the state resolve this issue in order to bring us into compliance with the provisions of ANILCA. One former Interior Department official believes that the Secretaries' authorities to implement a subsistence priority for rural residents on federal lands is limited under ANILCA to their authority to close the lands to the taking of fish and wildlife until the priority is satisfied. However, current Department of the Interior officials have also made it clear that they believe their authority to be much more expansive than mere closure authority.

This is an option that, of necessity, is being discussed with federal officials both for the time period between July 1 and the effective date of a constitutional amendment, and in the event an amendment does not pass the Legislature or the voters. Because it

easily could result in a federal takeover of fish and wildlife management however, it is not the preferred option.

* Use current management tools -- seasons, bag limits, same-day (or even two-day) airborne prohibitions, etc. -- creatively to benefit those most dependent on fish and wildlife.

Some people point to the fact that prior to the state's 1978 statute giving subsistence uses a priority, the Boards of Fisheries and Game had the authority to provide for subsistence uses using the traditional regulatory tools of methods and means. They argue that in order to make the state approach consistent with ANILCA, these traditional regulatory tools could be employed to explicitly favor rural residents. Any direct attempt by the boards to implement such a priority through regulations would be subject to the same constitutional challenge as the rural preference struck down in McDowell. In addition, ANILCA only stays the federal responsibility for providing the subsistence priority by rural residents on federal lands if the state has, in laws of general applicability, the same definition of and priority for subsistence as the federal law. Simply using traditional management tools would not satisfy that requirement of ANILCA, again running the risk of a federal takeover.

* Challenge the ANILCA subsistence priority for rural residents and/or Congress' power to require such a priority on constitutional grounds.

The administration does not support this option primarily because we support the rural subsistence preference contained in ANILCA and believe an attempt to challenge that priority is not warranted. Such a challenge would probably be based on the grounds that the ANILCA priority violates 1) equal protection, applicable to federal statutes under the due process clause of the Fifth Amendment to the United States Constitution, and 2) the statehood compact. With respect to the first argument, the federal constitution has a much more deferential equal protection test than the Alaska Constitution, and the state is not considered to have very strong legal arguments. With respect to the second argument, a unanimous United States Supreme Court ruled in 1976 that the federal government has the constitutional authority to regulate fish and wildlife on federal lands.

* Amend the Alaska Constitution to authorize a subsistence priority for Alaska Natives.

Although many of the rural residents who most rely on fish and wildlife for their economic and cultural well-being are Alaska Natives, there are also many non-Native rural residents who depend on the same fish and wildlife. The administration does not support