

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5713 HOUSE JUDICIARY

a Native only preference. Further, such a priority would not be consistent with ANILCA.

* Amend ANILCA to authorize a subsistence preference for Alaska Natives.

The same position as above applies to this option.

V. The administration's preferred approach

In McDowell, the Alaska Supreme Court struck down the state's subsistence priority for rural residents because it violated article VIII of the Alaska Constitution. It did not rely on any provisions of the federal constitution in striking down the subsistence priority for rural residents. Accordingly, the Alaska Constitution can be amended to make constitutional the subsistence priority by rural residents struck down in McDowell.

Amending the state constitution is the cleanest way to allow the state to again be consistent with ANILCA and provide a subsistence priority by rural residents. Such an amendment would ensure that the state would retain management of fish and wildlife on federal land, a goal which played a major role in the statehood movement. In addition, it would permit the state to ensure that rural residents most reliant on fish and wildlife have the necessary opportunities to take those resources when needed. The state has attempted to do so for more than 10 years now, only to be stymied by one court decision after another. By authorizing a subsistence priority for rural residents in the Alaska Constitution, the state would have clear authority to finally implement what has been state policy for more than a decade.

VI. Further Discussion and Considerations

A. The amendment and its effect

The governor has proposed a constitutional amendment which would authorize the limitation of subsistence uses of fish and wildlife to rural residents. Such uses already can be the subject of a priority under the current article VIII, section 4, which authorizes "preferences among beneficial uses." The proposed section 19 would be added to article VIII, and would read:

Nothing in this constitution prohibits the Legislature from limiting the taking of fish and wildlife for subsistence uses to rural residents, and from providing for the allocation of that taking among rural residents on the basis of local or community residents, availability of alternative resources, and customary and direct dependence on

a fish or game population as the mainstay of livelihood.

The wording of the proposed resolution makes clear that:

The intent of the amendment proposed by this resolution is to validate, ratify, and reinstate any provisions of [the 1986 state subsistence law] and of any regulations adopted [thereunder], which otherwise might have to be declared invalid under the Alaska Supreme Court's decision in McDowell v. State, 785 P.2d 1 (Alaska 1989), and to explicitly reverse the effect of the McDowell decision as to those provisions and regulations.

If this resolution passes the Legislature and in the November general election, the state would be authorized to have legislation consistent with ANILCA and the legislation which was enacted in 1986 would be validated retroactively, rather than requiring reenactment. The principle of retroactive validation is accepted in caselaw from other jurisdictions, and has been noted by the Alaska Supreme Court in Matthews v. Quinton, 362 P.2d 932, 938 (Alaska 1961).

B. What happens between July 1 and the general election?

If this resolution passes the Legislature, the state could ask the Alaska Supreme Court for an extension of the stay in McDowell until after the November general election results were certified. The justification for the request would be that, if the amendment does pass in the general election, the disruptions and start-up costs for a contingency plan which would only be effective from July 1 through the general election would not be in the best interests of the state.

The court may not be receptive to such a request, since in a February 26, 1990, order denying a request that the current stay be vacated, the court stated:

The stay entered on January 5, 1990, will expire on the close of business July 1, 1990. Extensions to the stay will not be granted.

The court may have been indicating that the state must face up to the consequences of the McDowell decision. The comment, however, was made in a context in which no party had asked for an extension of the stay. It is possible that if a constitutional amendment did pass the Legislature, the court might consider an extension. At the same time, we cannot rely on an extension of the stay. Thus, a contingency plan will have to be developed which would apply from July 1 until after the November election, in the

event the stay were not continued. The state is currently participating in the federal contingency planning process.

C. The amendment's relationship to the Kenaitze problem.

The proposed amendment only attempts to resolve the problem created by the supreme court's decision in McDowell, which conclusively precludes the state from having a law that is consistent with the definition of and priority for subsistence uses in ANILCA. This imminently threatens the unified management so necessary for the welfare of the fish and wildlife in Alaska and for those who use those resources. The proposed amendment does not attempt to address other subsistence issues, such as the inconsistency of the state's definition of "rural" and Congress's use of that term in ANILCA, as identified by the ninth circuit court of appeals in Kenaitze Indian Tribe v. State, 860 F.2d 312 (9th Cir. 1988).

In that case, the court held that the state's current definition of "rural area" found in AS 16.05.940(25) is not consistent with the use of the term "rural" in ANILCA. The state had defined "rural area" as:

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

The ninth circuit concluded that focusing on the economy of the community or area was not consistent with Congress's intent. It based its view on what it considered the "common sense" meaning of "rural" as being connected to population levels and densities. If the proposed constitutional amendment passes, it would not resolve the "rural" issue; unless the proposed constitutional amendment passes, however, the state cannot even attempt to achieve consistency between its definition of "rural" and the federal one.

Even if the McDowell decision had not been issued, it would still be premature to consider changing state law to define "rural" in a way which would be consistent with ANILCA. Although the ninth circuit said the state definition was not consistent, it did not say what the term "rural" in ANILCA meant, and gave the state no clear guidance as to how the state definition should be amended to make it consistent with ANILCA. The meaning of "rural" in the federal law is currently the subject of federal district court proceedings in the Kenaitze case. Until that litigation provides more guidance as to what would be consistent with ANILCA, it would be inappropriate to try to amend state law to match the federal law. At this point, of course, the state does not even

have the authority to define subsistence in terms of rural residents, quite apart from refining the "rural" definition.

If this constitutional amendment passes, the state will in the meanwhile have gathered more information about the scope of the term "rural" in ANILCA through the federal district court case. A reasoned decision can then be made whether the best course is to repeal the state definition, replace the state definition with another definition, or attempt to amend ANILCA to reflect the state definition in the federal law.

D. Severability

If the constitutional amendment validating the 1986 subsistence law does not pass, the ANILCA standards will apply to federal land in the state. However, what the rules would be for state and private lands depends on the question of severability.

Under McDowell, the limitation of the subsistence priority to only rural residents in the 1986 state law is invalid on state and private lands. However, the court did not decide whether the remainder of the 1986 law, including the priority of subsistence uses over other uses, is also invalid.

The basic question is whether the Legislature would have intended the subsistence mandate and priority to remain in effect if the class of subsistence users included all Alaskans. In that event, hunting by nonresidents and sport and commercial fishing would have to be eliminated before subsistence uses (open to all Alaskans) on any fish stock or game population could be cut back. (The subsistence uses would be subject to reasonable regulation, however, without requiring other uses be eliminated.)

If the Legislature would have intended that the rest of the law fall if the rural limitation were invalid, then the boards would not be required to authorize subsistence fishing and hunting (open to all Alaskans), and would not be required to give it a priority. The boards could in their discretion, however, authorize subsistence and give it a priority, in any given situation.

This question will probably be presented to the superior court when the case returns there from the supreme court.

THE
CONSTITUTION
OF THE
STATE OF
ALASKA



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Stephen McAlpine
Lieutenant Governor

Article VIII

Natural Resources

Section 1 - Statement of Policy.

It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

Section 2 - General Authority.

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

Section 3 - Common Use.

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

Section 4 - Sustained Yield.

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

Section 5 - Facilities and Improvements.

The legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.

Section 6 - State Public Domain.

Lands and interests therein, including submerged and tidal lands, possessed or acquired by the State, and not used or intended exclusively for governmental purposes, constitute the state public domain. The legislature shall provide for the selection of lands granted to the State by the United States, and for the administration of the state public domain.

Section 7 - Special Purpose Sites.

The legislature may provide for the acquisition of sites, tracts, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people.

Section 8 - Leases.

The legislature may provide for the leasing of, and the issuance of permits for exploration of, any part of the public domain or interest therein, subject to reasonable concurrent uses. Leases and permits shall provide, among other conditions, for payment by the party at fault for damage or injury arising from noncompliance with terms governing concurrent use, and for forfeiture in the event of breach of conditions.

Section 9 - Sales and Grants.

Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources. Reservation of access shall not unnecessarily impair the owners' use, prevent the control of trespass, or preclude compensation for damages.

Section 10 - Public Notice.

No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

Section 11 - Mineral Rights.

Discovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State which, upon the date of ratification of this constitution by the people of Alaska, were subject to location under the federal mining laws. Prior discovery, location, and filing, as prescribed by law, shall establish a prior right to these minerals and also a prior right to permits, leases, and transferable licenses for their extraction. Continuation of these rights shall depend upon the performance of annual labor, or the payment of fees, rents, or royalties, or upon other requirements as may be prescribed by law. Surface uses of land by a mineral claimant shall be limited to those necessary for the extraction or basic processing of the mineral deposits, or for both. Discovery and appropriation shall initiate a right, subject to further requirements of law, to patent of mineral lands if authorized by the State and not prohibited by Congress. The provisions of this section shall apply to all other minerals reserved to the State which by law are declared subject to appropriation.

Section 12 - Mineral Leases and Permits.

The legislature shall provide for the issuance, types and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulfur, pumice, and other minerals as may be prescribed by law. Leases and permits giving the exclusive right of exploration for these minerals for specific periods and areas, subject to reasonable concurrent exploration as to different classes of minerals, may be authorized by law. Like leases and permits giving the exclusive right of prospecting by geophysical, geochemical, and similar methods for all minerals may also be authorized by law.

Section 13 - Water Rights.

All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation.

Priority of appropriation shall give prior right. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

Section 14 - Access to Navigable Waters.

Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

Section 15 - No Exclusive Right of Fishery.

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State. [Amendment approved August 22, 1972 - Effective October 14, 1972.]

Section 16 - Protection of Rights.

No person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law.

Section 17 - Uniform Application.

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

Section 18 - Private Ways of Necessity.

Proceedings in eminent domain may be undertaken for private ways of necessity to permit essential access for extraction or utilization of resources. Just compensation shall be made for property taken or for resultant damages to other property rights.

THE FOLLOWING DOCUMENT HAS
NOT BEEN FILMED BUT IS
AVAILABLE IN THE ORIGINAL
FILE

Public Law 96-487
96th Congress

An Act

To provide for the designation and conservation of certain public lands in the State of Alaska, including the designation of units of the National Park, National Wildlife Refuge, National Forest, National Wild and Scenic Rivers, and National Wilderness Preservation Systems, and for other purposes.

Dec. 2, 1960
[H. R. 39]

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

SECTION 1. This Act may be cited as the "Alaska National Interest Lands Conservation Act".

Alaska National
Interest Lands
Conservation
Act.
16 USC 3101
note.

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House of Representatives

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Chair
Special Committee on Foreign Trade
Vice Chair
Resources Committee
Member
Health, Education &
Social Services Committee

Rep. George Jacko, Jr.

M E M O R A N D U M

TO: All Legislators
FROM: Representative *George* Jacko, Jr.
DATE: April 3, 1990
SUBJECT: HJR 74 (Constitutional Amendment for Subsistence)

As most of you know, earlier this session I introduced a resolution that proposes to amend the State Constitution to allow for a subsistence preference. As many of you are also aware it has been pegged by the media and other legislators as a very "divisive" issue.

I've disagreed with that statement from the start, which is why I am happy to pass along to each of you a copy of the poll that the Dittman Research Corporation of Anchorage conducted during March. In a random telephone survey, 547 Alaskans were contacted and 51 percent of the respondents supported the constitutional amendment.

Also attached is a copy of the Associated Press story that reporter Brian Akre wrote about the poll. Please note the last three paragraphs of the article, which list the percentages in favor of a constitutional amendment, by geographic region and by political party.

In January, Mark Hellenenthal and Associates conducted a similar poll and contacted 606 people statewide. The numbers were even more conclusive, 68.6 percent of those contacted support a rural priority. The poll asked the following question: "Until December, Alaska law defined subsistence use as providing a priority for rural Alaskans over urban Alaskans. Do you favor or oppose providing a priority for rural Alaskans in the taking of fish and game for subsistence use?"

I would appreciate your letting me know if you need further information on subsistence and if I can count on your vote.

Thanks for your support.

GOVERNOR COMPER HAS PROPOSED AN AMENDMENT TO ALASKA'S CONSTITUTION WHICH
 WOULD ALLOW PREFERENCE TO RURAL RESIDENTS IN THE TAKING OF FISH AND GAME.
 DO YOU SUPPORT OR OPPOSE SUCH AN AMENDMENT?

DEMOGRAPHICS	UNSURE	SUPPORT	OPPOSE
TOTAL.....	15%	51%	34%
LOCATION			
RURAL.....	12%	69%	20%
CENTRAL.....	6%	47%	46%
SOUTHCENTRAL....	21%	47%	33%
ANCHORAGE.....	14%	47%	38%
SOUTHEAST.....	22%	55%	23%
AGE			
18-24 YRS OF AGE	22%	47%	31%
25-40.....	14%	56%	30%
41-55.....	12%	48%	41%
56+ YEARS OF AGE	22%	41%	36%
SEX			
MALE.....	13%	47%	39%
FEMALE.....	17%	54%	29%
INCOME			
NO RESPONSE.....	33%	48%	18%
TO 20,000 INCOME	17%	51%	32%
\$20-40,000.....	19%	46%	34%
\$40-60,000.....	10%	55%	35%
\$60,000+.....	10%	51%	39%
DO YOU WORK FOR			
FEDERAL GOVT....	9%	59%	32%
STATE GOVT.....	8%	60%	32%
LOCAL GOVT.....	13%	57%	30%
PRIVATE SECTOR..	16%	50%	34%
NOT IN WORKFORCE	18%	42%	40%
VOTER REGISTRATION			
DEMOCRAT.....	14%	58%	28%
REPUBLICAN.....	13%	45%	43%
NON-PARTISAN....	15%	49%	35%
NOT REGISTERED..	21%	34%	24%
TIME IN ALASKA			
UNDER 1 YR IN COMM	0%	42%	58%
1-4 YEARS.....	10%	62%	27%
5-9 YEARS.....	13%	55%	32%
10-14 YEARS.....	15%	52%	34%
15+ YEARS.....	17%	47%	36%

Poll finds support for amendment

JUNEAU (AP)—A majority of Alaskans support Gov. Steve Cowper's proposed constitutional amendment to retain the state's rural preference for subsistence fishing and hunting, according to a recent statewide poll.

The poll conducted by Dittman Research Corp. of Anchorage showed 51 percent of the respondents supported the amendment, 34 percent were opposed and 15 percent were undecided.

The results do not indicate that the issue has sharply divided Alaskans, as some lawmakers predict it will, pollster Dave Dittman said Friday.

"I just don't see it as being that divisive," he said. "There's just not that strong an opposition to it, but there's not that strong support either at 51 percent. I think it's something folks would rather not worry about."

The random telephone survey of 547 Alaskans was conducted March 13-18. It has a error margin of plus or minus 4.5 percent.

The subsistence question was one of 26 questions on a monthly survey that Dittman conducts for a variety of clients. No client sponsored the

(See POLL, Page A-7)

POLL: 51 percent favor rural preference

(Continued from Page A-1)
subsistence question, Dittman said.

The Legislature is considering several subsistence measures in response to a recent Alaska Supreme Court ruling. The court ruled the state subsistence law was unconstitutional because it provided a preference to rural residents.

Federal law, however, requires a rural preference. Cowper has proposed changing the state Constitution to allow that preference. If two-thirds of the House and Senate agrees, the measure will be referred to voters in November.

Should the Legislature fail to come up with a solution, the federal government may assume management of fish and game on its lands within Alaska as early as summer, officials say.

Cowper reacted cautiously to the poll results.

"This trend looks good, but it's very early and the public hasn't really heard the arguments on both sides," he said. "The amendment just keeps the status quo, and my guess is that most people are satisfied to keep things as they are."

Rep. George Jaco, D-Pedro Bay, introduced a measure similar to Cowper's. He said he also was pleased with the poll.

"I'm actually thrilled," he said. "The numbers look good. The next

thing to do is to get the resolution out of the House."

Sen. John Binkley, who supports Cowper's proposal, said he was not surprised by the results. "I think it's encouraging. It shows the majority of Alaskans support the system of subsistence that we have."

Rep. Ramona Barnes, an Anchorage Republican who opposes solving the problem with a constitutional amendment, said it's too early in the debate for a poll to have much meaning.

"There's not been a great deal of discussion statewide," she said. "Only now are the sports groups getting involved."

Two factors may have affected the poll's results.

Respondents were asked if they would support or oppose Cowper's amendment "which would allow preference to rural residents in the taking of fish and game." The question did not specifically mention "subsistence" and did not provide any further information.

"I don't think people understood the question," Barnes said. "When it's explicit, they're very opposed to amending the Constitution."

The poll also was not limited to registered voters or those most likely to vote. But Dittman said generally about 95 percent of those who respond to such telephone surveys in Alaska are registered.

According to the poll, support for the amendment is strongest among rural residents—69 percent in favor compared with 20 percent opposed. It was weakest in the Fairbanks-Interior region—47 percent in favor compared with 46 percent opposed.

Anchorage was 47 percent in favor and 38 percent opposed, Southcentral had 47 percent in favor and 33 percent opposed, and Southeast residents favored the measure 55 percent to 23 percent.

Support among Democrats was stronger than among Republicans. Democrats favored the amendment 58 percent to 28 percent, while Republicans were split 45 percent in favor and 43 percent opposed. Non-partisans favored the measure 49 percent to 35 percent.

TESTIMONY OF
JULIE. E. KITKA, PRESIDENT
ALASKA FEDERATION OF NATIVES
BEFORE THE HOUSE RESOURCES COMMITTEE

April 3, 1990

Mr. Chairman, members of the committee, my name is Julie Kitka and I am the president of the Alaska Federation of Natives. On behalf of the AFN Board of Directors, we very much appreciate this opportunity to testify in support of the proposed amendment to the Alaska Constitution.

As you know, last December the Alaska Supreme Court ruled by a vote of four to one in McDowell v. State that the Alaska Constitution prohibits the Legislature from enacting legislation providing rural Alaska residents a subsistence hunting and fishing priority over other residents. While AFN believes that McDowell was decided incorrectly, the Alaska Supreme Court is the final arbiter of the intent of the Alaska Constitutional Convention delegates embodied in the Alaska Constitution. Consequently, until the text is amended, the McDowell decision's interpretation of the Alaska Constitution stands.

In considering whether to amend the Alaska Constitution to grant the Legislature the authority the Alaska Supreme Court has said the Legislature lacks, it is important to recognize the Supreme Court's limited role in developing public policy.

In McDowell, the Alaska Supreme Court did not decide that providing residents of rural areas a subsistence hunting and fishing priority is a bad policy. Rather, the Court held that, in the opinion of a majority of the

Justices, it is a policy the Legislature presently has no authority to implement.

This distinction is important because, if the Legislature and the Alaska electorate believe that a subsistence priority is good public policy, there is substantial precedent for amending the state's constitution to provide the Legislature authority to enact one. The 1972 constitutional amendment authorizing the Legislature to limit entry to Alaska's fisheries is the most well-known example.

In 1986, the Legislature (through enactment of ch. 52 SLA 1986) determined that establishing a rural subsistence priority is the public policy that best advances the interests of all Alaskans. While the AFN Board supports the Legislature's determination, it is important to emphasize that a rural resident subsistence priority is AFN's second policy choice.

In 1977, AFN testified before Congress that, in addition to a rural resident priority, an Alaska Native priority is the fairest and most workable way to address the subsistence issue. See Inclusion of Alaska Lands in National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems: Hearings on H.R. 39, et al., before the Subcomm. on General Oversight and Alaska Lands of the House Comm. on Interior and Insular Affairs, 95th Cong., 1st Sess., Part XII at 461-97 (1977) [hereinafter "House Interior Hearings"].

An Alaska Native subsistence priority is supported by more than half a century of precedent. Between enactment of the first Alaska Game Act in 1902 and the transfer of authority to regulate hunting and fishing to the new State of Alaska in 1960, Congress afforded Natives a subsistence priority. See 48 U.S.C. 198 (Indians and Eskimos authorized to hunt for food during closed season) and 48 U.S.C. 199 (Indians and Eskimos exempted from licensing requirements to which other resident hunters were subject).

And contrary to much erroneous popular wisdom, Congress did not abandon its commitment to protect Native subsistence hunting and fishing when it enacted the Alaska Native Claims Settlement Act in 1971. At the time ANCSA was enacted, Congress was aware that the Board of Fish and Game was not protecting the legitimate interests of Native subsistence hunters and fishermen. Consequently, although section 4(b) of ANCSA extinguished Native "aboriginal hunting or fishing rights that may exist," Congress did not abandon its longstanding concern that subsistence hunting and fishing by Alaska Natives be protected.

As you know, both the U.S. Senate and House of Representatives passed an ANCSA bill, after which a Senate House Conference Committee blended the text of the two bills into the version of ANCSA enacted into law. Significantly, the declaration of policy in the Senate bill stated that one of the purposes of ANCSA was to protect "Native subsistence hunting, fishing, trapping and gathering rights." See

S. 35, sec. 2(a)(7), 92nd Cong., 1st Sess., (1971) reprinted at 117 Cong. Rec. 38,920 (1971). To implement that policy, sec. 21 of the Senate bill directed the Secretary of the Interior to designate public lands surrounding "native villages and groups" as "subsistence use units." In appropriate instances, the section then required the Secretary to close a unit to harvest "other than by residents of the unit for subsistence purposes."

At the request of the State of Alaska, the conferees deleted both the statement of policy and sec. 21 of the Senate bill from the version of ANCSA enacted into law. In their place, the conferees included the following language in the ANCSA Conference Report:

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

take any action necessary to protect the subsistence needs of the Natives. (Emphasis added.)

See Conf. Rep. No. 746, 92nd Cong., 1st Sess. at 37 (1971).

When it enacted the Alaska National Interest Lands Conservation Act in 1980, Congress decided to establish a rural resident priority rather than an Alaska Native and rural resident priority. It did so for one reason: to enable the State of Alaska, acting through the Board of Game and Board of Fisheries, to continue to regulate the taking of fish and game on all lands and within all waters within the State.

Representing the State at the beginning of Congress' consideration of ANILCA in 1977, Governor Hammond told Congress that:

fish and wildlife have little regard for bureaucratic boundaries and, so far as I am concerned, this is argument enough in itself against segmenting the management of a single species or population according to land ownership or user groups. Split management of a single living resource may make some marginal sense in the context of political science; but it makes absolutely no sense whatsoever in the context of biological science.

House Interior Hearings, Part XII at 417 (statement of Jay Hammond).

As soon as Congress agreed with Governor Hammond's argument, the State shifted its ground and urged Congress

not to require it to implement a Native priority. For example, after asserting that the State "should continue to be the primary statewide resident fish and wildlife manager," Ronald Somerville, an Alaska Department of Fish and Game employee speaking on the State's behalf, told Congress: "As the Alaska Native Claims Settlement Act specifically extinguishes all aboriginal hunting and fishing rights, there should be no ethnic rights reestablished specifically or in pseudo form." Alaska Lands: Hearings on H.R. 1652, et al., before the Subcomm. on Fisheries and Wildlife Conservation and the Environment of the House Comm. on Merchant Marine and Fisheries, 95th Cong., 1st Sess., Part 1 at 208 (1971) (statement of Ronald Somerville).

Congress adopted Mr. Somerville's suggested approach because it agreed with Governor Hammond's characterization of the subsistence problem, i.e. that the Board of Fisheries and Board of Game had failed to protect Native and non-Native residents of rural areas from unfair competition from urban hunters and fishermen for access to the increasingly limited harvestable surplus of fish stocks and game populations.

In explaining the situation to Congress, Governor Hammond first acknowledged "the perception that State regulation has either favored urban hunters too much, or not favored rural hunters enough when the difficult allocation decisions were made." He then conceded:

State policy under this administration has explicitly stated that subsistence will have will have priority when there is a conflict and a thorough review of recent fish and wildlife regulations will show scores of cases where the local, rural user has been favored in regulation. Nevertheless, the perception persists, in some justification. (Emphasis added.)

House Interior Hearings, Part XII at 419.

AFN reluctantly agreed to support Congress' decision to adopt the State's suggested approach and establish a subsistence priority for rural residents, rather than Alaska Natives plus rural residents. While AFN continues to support that approach, it continues to do so reluctantly.

AFN supports the rural resident subsistence priority because, if properly implemented in good faith, a rural resident priority can remedy the problem Governor Hammond identified.

At its core, the subsistence problem is simple: too many Alaskans annually attempt to harvest too few fish and too few game animals. That being the case, the Alaska Legislature has two options. It can allow any Alaska resident who wishes to do so to hunt and fish, "first-come, first-served," until the harvestable surplus of a population or stock is taken at which time the hunting or fishing season is closed. Or it can allocate hunting and fishing opportunities among Alaska residents in a manner that beset

advances what the Legislature determines is the highest public interest.

Between 1960 and 1975 the Legislature delegated the Board of Fish and Game, and after 1976 the Board of Fisheries and Board of Game, near total discretion to allocate hunting and fishing opportunities in whatever manner the Boards thought appropriate. During those years, the Boards usually adopted "first-come, first-served" based regulations.

The "first-come, first-served" system severely disadvantaged residents of Native villages who depended on hunting and fishing to obtain a significant portion of their annual food requirements. Village residents were simply being overwhelmed by the increasingly large number of urban hunters and fishermen.

In 1978, two years prior to Congress' enactment of ANILCA, the Legislature enacted a comprehensive subsistence statute, ch. 151 SLA 1978, that established a subsistence priority. The Board of Fisheries and Board of Game subsequently determined jointly that the 1978 statute embodied a legislative intent to limit the Alaska subsistence priority to residents of rural areas.

When the Alaska Supreme Court decided in Madison v. Alaska Department of Fish and Game that the Legislature did not intend the 1978 statute to limit the subsistence priority to rural residents, in 1986 the Legislature enacted a statute that, on its face, limited the subsistence

priority to residents of "rural areas." Ch. 52 SLA 1986. It did so because, after a full and comprehensive debate during which all interested parties were afforded an opportunity to present their views, the Legislature concluded that a rural subsistence priority was the best solution to a difficult policy issue of the utmost public consequence.

The Alaska Supreme Court's decision in McDowell v. State in no way lessens that important legislative judgment.

For that reason, Mr. Chairman, AFN supports enactment of a constitutional amendment to authorize the State to again implement the policy it has implemented since 1978.

However, we do so with an important caveat.

In lieu of an Alaska Native subsistence priority, the Committee should consider amending the proposed constitutional amendment to, in addition to authorizing the Legislature to establish a rural resident priority, authorize the Legislature to establish a subsistence priority for hunters and fishermen who are members of identifiable groups who have a culture and tradition of subsistence use of fish and game in Alaska. Suggested technical language is attached to my testimony.

In conclusion, Mr. Chairman, on behalf of the AFN Board of Directors I again would like to express our appreciation for the opportunity to present AFN's views as to why the proposed constitutional amendment should be enacted and placed on the November 1990 election ballot. During the

weeks ahead, AFN and its member organizations look forward to continuing to work closely with you, other members of the Committee and the Legislature, the Governor and his staff and all other interested parties in this most important issue.

AMENDMENT TO HOUSE JOINT RESOLUTION NO. 88 (GOVERNOR'S BILL)

Line 14: Between "residents" and "," insert the following phrase:

"and members of identifiable groups who have a culture and tradition of subsistence use of fish and game in Alaska."

Line 15: Between "residents" and "on" insert the following phrase:

"and members of such groups"

SUBSISTENCE TIME TABLE

- 1959 Alaska becomes a state and for the first time assumes management authority of her fish and game resources. The new constitution abolishes fish traps and specifies that fish and game shall be managed on a sustained yield basis for the common good.
- 1968 The discovery of oil at Prudhoe Bay and subsequent need for a pipeline to the ice free port of Valdez forces the resolution of aboriginal land claims.
- 1971 Alaska Native Claims Settlement Act brings wealth and technology to the bush. This Act extinguishes aboriginal claims to fish and game.
- 1972 Due to circumstance unrelated to Alaska, Congress passes The Marine Mammals Protection Act, seizing management authority of ten species of marine mammals from states and establishing federal Native subsistence policy. Alaska is forced to abandon her extensive conservation programs and the federal government refuses to fund any replacement programs.

- 1974 Construction of the Trans-Alaska Pipeline brings wealth and population growth to urban centers. Increased access to transportation technology fuels tension between urban and rural Alaskans competing for fish and game.
- 1978 Seeing the need to protect subsistence users and fearing federal intervention, Alaska's legislature establishes two tiered subsistence criteria when stocks are low: 1) Subsistence gains priority over other uses 2) when stocks are too low for all subsistence uses, priority is based on A. customary and direct dependence on the stock as a mainstay of livelihood, B. local residency, C. availability of alternate resources.
- 1980 Alaska National Interest Lands Conservation Act designates over one hundred million acres of land as federal preserves and sets "rural" as a requirement for subsistence use on all federal land. The Alaska Board of Fish and Game adopts rural priority regulations to comply with federal standards and maintain control on federal lands.
- 1982 Voters reject initiative to repeal rural priority. At this time urban residents were still eligible for subsistence as first tier users.

1985 The Alaska Supreme Court decides two cases, one declaring rural priority regulations inconsistent with the 1978 statute and the other forcing the state to establish subsistence regulations even when stocks are plentiful. A federal court rules that urban is any community with a population larger than 2,500 people, and declares everything else rural for subsistence purposes.

1986 To comply with the Court decision the Alaska Legislature re-writes laws governing subsistence establishing rural priority for first and second tier users.

1989 The Alaska Supreme Court rules rural priority unconstitutional. The court ruling states "One purpose of the 1986 act (like the 1978 act) is to ensure that those Alaskans who need to engage in subsistence hunting and fishing in order to provide for their basic necessities are able to do so." It also states that "many people living in urban areas have legitimate claims as subsistence users, while many people living in rural areas have no legitimate claims."

This ruling upholds the right of the State to regulate subsistence but declares that the urban rural distinction is too crude a test to determine the actual needs of the people of Alaska.

Alaska House Of Representatives

Resource Committee

Subsistence Hearings

March 10, 1990

Dear Representatives

My name is Rick Bierman. I live in Juneau and I am a subsistence user of fish and game. My family and I own land on Shelter Island and we depend on local deer populations as a major source of food. If subsistence regulations are activated locally, people from Haines and Skagway will have priority use of deer populations on Shelter and Scudias Islands, and the local Admiralty area---even if these people are not subsistence users and have never hunted in the Juneau area before.

In 1989, The Alaska Supreme Court ruled rural priority unconstitutional. The court ruling states "One purpose of the 1986 act (like the 1973 act) is to ensure that those Alaskans who need to engage in subsistence hunting and fishing in order to provide for their basic necessities are able to do so." It also states that "many people living in urban areas have legitimate claims as subsistence users, while many people living in rural areas have no legitimate claims." This ruling upholds the right of the State to regulate subsistence but declares that the urban rural distinction is to "crude" a test to determine the actual needs of the people of Alaska.

Like any simple approach to a complicated problem, rural priority sounds much better than it works. To make matters worse, the original legislation has been altered by so many governing bodies, that it, all too often, achieves the opposite effect that it was intended to. A constitutional amendment will etch this injustice in stone.

Protecting the rights of people who depend on wild resources to maintain their existence, is a proper function of government. However, protection must be applied to the people who have legitimate claims, not handed out or withheld solely on the basis of where one chooses to reside. Although, as Governor Cowper pointed out, a more equitable solution will be costly; democracy was not designed to be efficient, it was designed to protect individual rights, and justice has never come cheaply.

It is my opinion that the State's original 1972 statute stressing local priority came closest to the ideal of protecting the individual rights of Alaskans who depend on wild resources. It is the federal government with the enactment of ANILCA, that imposed rural priority over local priority---and it is the federal law not the constitution of Alaska that needs to change; anything short of this, will be a cop-out!

Sincerely,

Alex Bierman and family

P.O. Box 120166

Nuke Bay, Alaska 99521



SUBSISTENCE SITES: March 21, Wednesday 6:30-9:30p.m.

6:30 - 7:25 p.m. Southeast;
Angoon-Gabriel George-788-3553 .

Craig-Fred Hamilton-755-2394- listen only

Edna Bay
Elfin Cove
Gustavus

Haines-Marilyn Wilson-766-2211

Hoonah-Wanda Culp -945-3557

Hydaburg-Adrian LeCornu-285-3761/285-3939

Kake-Marvin Kadake-785-3804

Kasaan

Klukwan-Joe Hotch-767-5556/789-5505/766-2210

Klawock-James Martinez-Klawock IRA President -755-2263

Metlakatla- Mayor is in town in person. Does he wish to comment?

Pelican-Jim Phillips

Port Protection

Tenakee-Ray Paddock

Saxman-Matilda Kushnik -225-2058

Skagway- Minnie Stevens-983-2885

Wrangell-John Feller-874-3261

Yakutat-Hank Porter-784-3250

10 minute break

7:35-8:30 Southcentral:

Akhiok-Mitch Simeonoff or David Eluska-836-2229/836-2210

Chenega Bay-Daryl or Mr. Charles Selanoff/573-5132

Chickaloon

Chignik-Ron Bowers/749-2280

Glacier View

Karluk-Mary Reft/241-2214

Larsen Bay-

Old Harbor-Ron Berntsen or Sven Haakanson/286-2204
286-2233/286-2287

Ouzinkie-Joe Llanos or Zack Chichenoff/680-2226/2209/2264

Perryville-Boris Kosbruk/853-2211

Port Lions-Bobby Anderson or Pete Squartsoff/454-2332/454-2207

Talkeetna

Tatitlek

Trapper Creek

Talkeetna

Skwentna

Sutton

Willow

10 minute break

8:40-9:30 Southwest:

Aleknagik-842-5953

Clarks Point-236-1221

Egegik-233-2231

Ekwok-464-3311

Levelock-287-3030

Manokotak-289-1027

Naknek (Bristol Bay Borough)-246-4224

New Halen-571-1226

New Stuyahok-693-3111

Nondalton-294-2210

Manokotak-289-1027

Pilot Point-797-2205 (Janice Ball)

St. Paul - 546-2331

Togiak-493-5820

Unalaska-581-1251

end

LAW OFFICES

BIRCH, HORTON, BITTNER AND CHEROT

A PROFESSIONAL CORPORATION

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JUNEAU, ALASKA 99901
(907) 586-2880
TELECOPIER (907) 586-2884

MEMORANDUM

TO: Senator Bettye Fahrenkamp

FROM: William P. Horn *WPH* VIA TELECOPY

DATE: March 19, 1990

SUBJ: Comments on Drafts of New Article VIII, Section 19

Each of the drafts of a new Article VIII, Section 19 of the Alaska Constitution appears to be an effort to satisfy the requirements of Sections 803 and 804 of the Alaska National Interest Lands Conservation Act (ANILCA), P.L. 96-487 16 U.S.C. §§ 3113, 3114. The first draft looks inadequate; the second and third drafts appear to set the stage for compliance with ANILCA. In addition, there are significant differences among the three iterations as discussed below.

DRAFT ONE

This would authorize the establishment of a preference system for subsistence uses in rural areas of Alaska. However, it is unlikely to enable the Legislature to satisfy ANILCA's requirements. The draft is deficient on at least three points.

First, it introduces the term "non-commercial uses" as part of the subsistence definition. Section 803 expressly provides for barter and sale of handicraft articles made from non-edible byproducts of subsistence resources and blanket restriction regarding commercial use may not comport with ANILCA.

Second, the "personal use" limitation is more strict than § 803. The Federal definition includes reference to "sharing" of subsistence resources. This draft may rule out such sharing. A factual hypothetical is as follows: Mr. A in a bush village

Senator Bettye Fahrenkamp
March 19, 1990
Page 2

routinely brings in moose that are provided to others in the village. He personally uses one animal. A definition that rules out sharing would likely mean that the taking of the moose to be given to others would not qualify for the preference. This is inconsistent with § 803.

Third, the new section does not provide for a "second tier" allocation per § 804. ANILCA provides a generalized preference to "rural residents" -- this is the so-called "first tier." When resources are inadequate to provide for the first tier class of individuals, § 804 authorizes an allocation within this group. A subset of the first tier class gets an added priority based on (1) customary and direct dependence, (2) local residency, and (3) availability of alternative resources. Draft One does not provide for such a second tier allocation.

However, this may not be a fatal flaw as the Alaska Supreme Court has indicated that allocation based on these kind of criteria appears constitutional. To ensure satisfaction of ANILCA, subsequent implementing legislation or regulations should include a second tier arrangement per § 804.

DRAFT TWO

This version of a new Section 19 addresses in significant fashion the "non-commercial" and "personal use" issues raised above. It also expressly authorizes the creation of a second tier allocation system. The draft appears to empower the Legislature to pass a bill that can comply with ANILCA. Stylistically, it follows the form of Article VIII, Section 15 that set up the limited entry fishing program. That section uses the "does not restrict/does not prohibit" form rather than an affirmative authorization.

Obviously, the constitutional amendment by itself will not satisfy ANILCA. An appropriate State statute will have to be enacted to accompany or follow the amendment.

DRAFT THREE

This tracks ANILCA more closely than the other two versions. It would also enable the Legislature to act to comply with the Federal statute. It appears, however, that the second paragraph is an attempt to merge the first and second tier classes into one group. That is not authorized by ANILCA § 804. Indeed, the effort to limit the size of the first tier class has been slapped down by Ninth Circuit U.S. Court of Appeals in the Kenaitze case. Once the State manages to get by the newer McDowell hurdle, the Kenaitze matter still must be resolved.

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Senator Bettye Fahrenkamp
March 19, 1990
Page 3

CONCLUSION

Drafts Two and Three appear to do the job of taking steps to satisfy ANILCA. I would suggest using the first paragraph of Draft Three and an altered version of the second paragraph of Draft Two:

SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE AND RENEWABLE NATURAL RESOURCES. Subsistence uses of fish and wildlife and renewable natural resources are the customary and traditional, non-wasteful, non-commercial uses of these resources, taken by a resident in the area where the resident resides for personal or family consumption, for barter or sharing for personal or family consumption, or for customary trade.

The legislature may grant a preference for subsistence uses of fish and wildlife and renewable resources in rural areas of the State and may allocate subsistence resources among users.

WPH:jap
WPH221M.ASR

Attachment

Proposed New §19 of Art VIII

DRAFT ONE SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE AND RENEWABLE NATURAL RESOURCES. Subsistence uses of fish and wildlife and renewable natural resources are the non-wasteful non-commercial uses of locally available resources owned by the state taken and used by residents for personal use.

The legislature may grant a preference for subsistence uses of fish and wildlife and renewable resources in rural areas of the state.

DRAFT TWO SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE AND RENEWABLE NATURAL RESOURCES. Subsistence uses of fish and wildlife and renewable natural resources owned by the state are the customary and traditional, non-wasteful, non-commercial uses of those resources available in the area where a resident resides, taken and used by a resident for personal or family consumption or for customary trade.

Nothing in this Constitution prohibits the legislature from granting a preference for subsistence uses of fish and wildlife and renewable resources in rural areas of the state or from allocating subsistence resources among users.

DRAFT THREE SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE AND RENEWABLE NATURAL RESOURCES. Subsistence uses of fish and wildlife and renewable natural resources are the customary and traditional, non-wasteful, non-commercial uses of these resources, taken by a resident in the area where the resident resides for personal or family consumption, for barter or sharing for personal or family consumption, or for customary trade.

The legislature may accord a priority in rural areas for the taking of fish and wildlife and renewable natural resources for subsistence uses, and may provide for the allocation of that taking based upon local or community residence, or customary and direct dependence on the resource.

RURAL ALASKA RESOURCES ASSOCIATION

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

MEMBERS:

Aleutian/Pribilof
Islands Association, Inc.

Bristol Bay Native
Association

Central Council,
Tlingit & Haida

Copper River Native
Association

Kawerak, Inc.

Kodiak Area Native
Association

Maniilaq Association

The North Pacific Rim

North Slope Borough

Nunam
Kittlutsisti

Tanana Chiefs
Conference, Inc.

Tyonek,
Native Village of

ASSOCIATE MEMBERS:

Koyukon
Development Corporation

Bering Sea
Fishermen's Association

RURAL CAP STAFF:

Bob Polasky

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.

[Handwritten signature and date]
10/10/89



DRAFT DRAFT DRAFT DRAFT
ALASKA SPORTFISHING ASSOCIATION

We support fair allocation of Alaska's Fish and Wildlife resources to all user groups: sport, subsistence and commercial. We do not oppose subsistence harvests. We support generous subsistence harvests by Alaskan residents. We do object to the statutory priority given subsistence harvesters, both in state legislation and Title VIII of ANILCA. These statutes have diluted the authority of the Boards of Fisheries and Game to the extent that they can no longer make reasonable allocative decisions on a case by case basis. These statutes have caused extensive litigation and have resulted in unfair allocations of fish and game resources in numerous areas of the state. Recent court decisions will result in additional unfair allocations in the immediate future.

Alaska has been singled out, alone among the 50 states, in having its authority to manage resident fish and game threatened with federal take over if we do not follow the mandate of Title VIII of ANILCA. We believe that the State of Alaska, through the Boards of Fisheries and Game, should be free to allocate fish and wildlife resources throughout Alaska and the state should manage those harvests. The threat of federal take over should be removed by amending the ANILCA legislation.

The Boards of Fisheries and Game should have the flexibility and authority to meet the particular needs of each user group based on data from resource scientists and input from the user public by judicious adjustment of seasons, bag limits and methods and means.

Our position is that:

- 1) Subsistence is a valid use of Alaska's fish and wildlife resources.
- 2) There should be no statutory harvest priority accorded to any one user group on public lands.
- 3) There should be no change in the state constitution which allows the establishment of a harvest priority.
- 4) The State of Alaska should manage all resident fish and wildlife on all lands in Alaska through the Boards of Fisheries and Game without federal threats or interference.
- 5) Title VIII of ANILCA be amended to remove the threat of federal take over of fish and game management on all Alaska public lands.



ALASKA OUTDOOR COUNCIL, INC.

RECEIVED

March 1, 1990

Rep. Cliff Davidson
Pouch V
Juneau, Alaska 99811

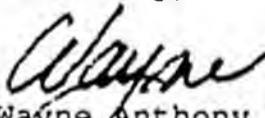
Dear Cliff:

Attached hereto is a MEMORANDUM ON FISH AND WILDLIFE MANAGEMENT which constitutes the formal and official position of the ALASKA OUTDOOR COUNCIL, INC. on the Subsistence issue. This position paper was extensively reviewed by the AOC Board of Directors, in consultation with recognized fish and wildlife managers, before the AOC Board passed it. We believe it is the best solution to the problems facing the State of Alaska regarding the Subsistence issue.

The AOC is an organization representing approximately 55 separate state outdoors clubs and associations throughout Alaska with some 11,000 members, and therefore this paper reflects the views of a large segment of the outdoor community.

Recently, the Governor indicated that he would support a Constitutional Amendment to Alaska's Constitution to authorize a rural preference for the taking of fish and wildlife in Alaska. We believe such an action would be very divisive to the people of the State and oppose such a procedure. In this day and age when the very concept of hunting is under attack from certain groups, we believe all hunters and fisherman, and other out-of-doors people need to stand together, and not be divided over who should, or should not, receive preferential rights to take fish and wildlife resources in this State. We urge you to consider the enclosed position paper, and get involved in supporting the procedures it outlines. We would be happy to discuss it further with you at your convenience.

For the AOC Board of Directors,
I am,
Sincerely,


Wayne Anthony Ross
Attorney at Law

ALASKA OUTDOOR COUNCIL, INC.



March 1, 1990

Rep. Richard Schultz
Pouch V
Juneau, Alaska 99811

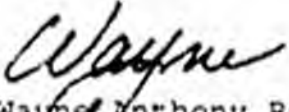
Dear Dick:

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For the AOC Board of Directors,
I am,
Sincerely,


Wayne Anthony Ross
Attorney at Law

RURAL ALASKA RESOURCES ASSOCIATION

P.O. Box 200908
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MEMBERS:

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Kawerak, Inc.

Kodiak Area Native
Association

Manilaq Association

The North Pacific Rim

North Slope Borough

Nunam
Kittlutsiti

Tanana Chiefs
Conference, Inc.

Tyonek,
Native Village of

February 20, 1990

RECEIVED FEB 21 1990

DEAR BUSH CAUCUS MEMBERS:

Please find the enclosed position statement by the Rural Alaska Resources Association. We believe that the immediate solution is to amend the State of Alaska's Constitution. We further believe that the subsistence priority is very critical to the well-being of the Native people.

At this point of time we do not want to amend ANILCA nor do we want to see any permit system for the subsistence users.

Sincerely,

ASSOCIATE MEMBERS:

Koyukon
Development Corporation

Bering Sea
Fishermen's Association

RURAL CAP STAFF:

Bob Polasty

RURAL ALASKA RESOURCES ASSOCIATION


Matthew Iya, Chairman

Enclosure

MI:ct





ALASKA FEDERATION OF NATIVES, INC.

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



February 6, 1990

Distinguished Members of the
Alaska State Legislature
Juneau, Alaska

Dear State Legislator:

I am pleased to convey to you the enclosed document which represents the Alaska Federation of Natives' official Position Statement on Subsistence.

The Federation's position statement is the result of lengthy analysis and evaluation by the Native community of options available in response to the December, 1989 Alaska Supreme Court decision in McDowell v State of Alaska.

The AFN Board of Directors, representing statewide Native corporations, non-profit associations and villages approved and adopted the position statement at its February 1, 1990 meeting.

AFN's preferred solution to the current legal situation is a constitutional amendment. AFN is committed to working with Governor Cowper and the leadership of the Alaska Legislature to see if there is both acceptable language and support to go forward with this approach. AFN is convinced that if a constitutional proposal is advanced by the Governor and the Legislature and eventually can be voted upon by Alaskans it will pass with overwhelming support.

Please feel free to contact me if you need clarification on our position statement. AFN looks forward to working with you as your deliberations continue. Thank you.

Sincerely,

Julie Kitka
President

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.

RECEIVED MAR 12 1990

NATIONAL RIFLE ASSOCIATION OF AMERICA

Publishers of THE AMERICAN RIFLEMAN
AND
THE AMERICAN HUNTER



1600 Rhode Island Avenue, N.W. • Washington, D.C. 20036 • (202) 828-6000

8 March 1990

Rep. Cliff Davidson
Pouch V
Juneau, Alaska 99811

Dear Cliff:

I have enclosed a copy of an article that I have written for Sunday's Anchorage Times. I hope you will read it and consider it when you discuss the Subsistence issue with your colleagues.

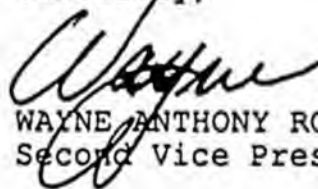
Also, on 29 April 1986, the Board of Directors of the National Rifle Association of America unanimously adopted a resolution that included the following language:

"...The National Rifle Association of America supports equal hunting rights for all citizens of the United States without regard to race, creed or place of residence..."

I urge you to support this position.

Thank you for your attention to this matter.

I am,
Sincerely,



WAYNE ANTHONY ROSS
Second Vice President, NRA

UNITED FISHERMEN OF ALASKA

TESTIMONY ON SUBSISTENCE

March 10, 1990

My name is Cheryl Sutton and I will be speaking on behalf of the United Fishermen of Alaska as their Subsistence Committee Chair.

Commercial fishermen, and many other Alaskans, stand to suffer great injury if the subsistence issue is not settled in a manner conducive to sound fish and game management practices and non-disruptive allocative priorities. UFA does not support the concept of attempting to settle this issue by means of a constitutional amendment.

UFA has produced an issue paper on subsistence. I would like to briefly state our position and make other comments.

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

The following areas need to be addressed and answers to the questions sought out by the legislature.

- * The federal government's jurisdiction over fish and game populations both on federal lands and state lands and waters needs to be clearly defined. For example, does the state or the federal government have jurisdiction over anadromous fish harvested in state waters but spawning within federal areas?
- * The consequences or benefits of a "federal" takeover for subsistence management need to be delineated for the public. The public should not be forced to stand in fear of a concept they do not understand.
- * The legislature must consider that "rural" will still not be defined in the adoption of the proposed constitutional amendments. There will be no federal definition for rural.
- * How will the state handle the Ninth Circuit's ruling relative to the Kenaitzes and its subsequent classification of the Kenai area as rural?
- * More clear policy guidance must be provided for the Boards of Fisheries and Game and other regulatory agencies creating subsistence regulations.

• The state must consider the economic and social implications of further reducing the cash economies of coastal Alaska communities through making them more subsistence dependent. The very people these constitutional amendments are designed to help may be harmed more than helped.

• The *commercial* sale of subsistence harvests is increasing. The potential for major growth of subsistence harvests being sold under "customary trade and barter" is very likely. This problem must be closely examined and appropriate safeguards taken to prevent its occurrence.

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

• An enforceable and mutually protective definition for priority as it relates to competing fishery uses must be developed.

UFA does not believe that a constitutional amendment is the solution to this problem. We believe the solution is many faceted; however, until answers are provided to the questions we have brought forward, an equitable solution will not be found. We have offered our assistance to work with the administration and legislature, as well as other affected groups. We continue to offer that assistance. The solution to the subsistence issue will not be found unless all parties work together to formulate the best plan possible. This plan should include changes on both the state and federal levels if we are to see a long-term solution.

Thank you for the opportunity to testify. I would be glad to FAX a copy of this testimony and the UFA issue paper if the committee would so desire.



Goldbelt

Goldbelt Place, Suite 300/801 W. 10th Juneau, Alaska 99801 (907) 463-4846

RECEIVED 12 1990

March 9, 1990

The Honorable Cliff Davidson
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Davidson:

Goldbelt, Incorporated ("Goldbelt") is one of the four urban corporations created by the passage of the Alaska Native Claims Settlement Act of 1971, as amended ("ANSCA").

Goldbelt strongly endorses House Joint Resolution No. 90, which will provide for Alaska Native residents and rural residents the right for subsistence use of plants, fish, and wildlife. We are greatly heartened by Representatives Kay Wallis of Fort Yukon and Richard Foster of Nome stepping forward in support of this Alaska Native subsistence priority.

Goldbelt and its more than 2,700 Alaska Native shareholders, who principally reside in Juneau, have been severely harmed by having been denied subsistence rights since 1978 when the "State's" subsistence law took effect. Subsistence for Alaska Natives is an integral part of their cultural well being. An Alaska Native priority, if approved by the voters, will restore to urban Natives their rights to subsistence as prior to 1978. I cannot overemphasize how important this is to the future of our children.

I respectfully ask your active support in favor of House Joint Resolution No. 90. Thank you.

Sincerely yours,

GOLDBELT, INCORPORATED

Joseph G. Wilson
President & Chief Executive Officer

Bush Caucus on Subsistence
March 9, 1990
Page 2

cc: Shee Atika, Inc., Sitka
Douglas IRA
Juneau ANB/ANS
Glacier Valley/ANS
Andy Ebona, T&H Community Council
Paul Young, Ketchikan Indian Corporation



ALASKA OUTDOOR COUNCIL, INC.

March 1, 1990

Rep. Curt Menard
Pouch V
Juneau, Alaska 99811

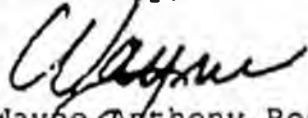
Dear Curt:

Attached hereto is a MEMORANDUM ON FISH AND WILDLIFE MANAGEMENT which constitutes the formal and official position of the ALASKA OUTDOOR COUNCIL, INC. on the Subsistence issue. This position paper was extensively reviewed by the AOC Board of Directors, in consultation with recognized fish and wildlife managers, before the AOC Board passed it. We believe it is the best solution to the problems facing the State of Alaska regarding the Subsistence issue.

The AOC is an organization representing approximately 55 separate state outdoors clubs and associations throughout Alaska with some 11,000 members, and therefore this paper reflects the views of a large segment of the outdoor community.

Recently, the Governor indicated that he would support a Constitutional Amendment to Alaska's Constitution to authorize a rural preference for the taking of fish and wildlife in Alaska. We believe such an action would be very divisive to the people of the State and oppose such a procedure. In this day and age when the very concept of hunting is under attack from certain groups, we believe all hunters and fisherman, and other out-of-doors people need to stand together, and not be divided over who should, or should not, receive preferential rights to take fish and wildlife resources in this State. We urge you to consider the enclosed position paper, and get involved in supporting the procedures it outlines. We would be happy to discuss it further with you at your convenience.

For the AOC Board of Directors,
I am,
Sincerely,



Wayne Anthony Ross
Attorney at Law

At the present time, Alaska is not fully committed to such intensive management programs. Alaska can satisfy the Alaska Constitution, and its citizens' desire for Alaska's fish and wildlife resources, by committing itself to intensive management programs.

Title VIII of ANILCA mandates Federal management of fish and wildlife resources on Federal lands in Alaska if Alaska's subsistence law does not conform with the provisions of ANILCA. ANILCA mandates subsistence uses be granted on the basis of residency only.² This directly conflicts with the provisions of Alaska's Constitution, Art. VIII, §§ 3, 15, & 17. The Alaska Supreme Court has held that a preference based on residency violates these provisions.

No other state in the Union operates under the immediate legislative threat of a Federal take-over of its fish and wildlife management. Indeed, local management of fish and wildlife was one of the cornerstones of the statehood movement.

There are three things the State of Alaska should do to resolve the problem of threatened Federal takeover.

First, the Legislature should repeal the laws providing for rural subsistence³ preferences and allow the Boards of Fish and Game to manage Alaska's fish and wildlife resources in conformity with Alaska's Constitution, using scientifically recognized Fish and Wildlife management techniques, including intensive management and resource harvesting governed by seasons and bag limits, methods and means. The Legislature should pass legislation or resolutions necessary to implement such management.

Second, the State should notify its Congressional delegation of its management program, and ask the Congressional delegation to seek changes in ANILCA recognizing this State's right to manage its fish and wildlife resources under such a program.⁴

² ANILCA does not permit access to be regulated on need or reliance.

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CORRECTION

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



ALASKA OUTDOOR COUNCIL, INC.

March 1, 1990

M

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Pouch V
Juneau, Alaska 99811

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I am,
Sincerely,

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Attorney at Law



ALASKA OUTDOOR COUNCIL, INC.

MEMORANDUM ON FISH AND WILDLIFE MANAGEMENT

The State Constitution requires that all fish and wildlife resources be managed for "common use."
Alaska Constitution, Art. VIII, §§ 3, 15 and 17.

The Alaska Supreme Court ruled in *McDowell v. State*, that this is an important constitutional right of all Alaskans and requires that all Alaskans have equal access to Alaska's fish and wildlife resources. The State of Alaska cannot discriminate on the basis of residency in allocating access to this important resource.

The State Constitution requires that all fish and wildlife resources be managed on the principle known as "sustained yield."
Alaska Constitution, Art VIII, § 4.

The Alaska Constitution requires Alaskans to manage fish and wildlife resources to insure that Alaskans can harvest these resources each year. The term "sustained yield" is a recognized biological principle. Proper fish and wildlife management should focus on resources, not on politics or sociology.

The State of Alaska must be allowed to manage its fish and wildlife resources. The Federal Government should not be allowed to manage fish and wildlife on Federal lands in Alaska.

A comprehensive fish and wildlife management system administered by Alaskans using biological principles is absolutely essential for the well-being of fish and wildlife resources in this state. Established management techniques can ensure that there are more fish and wildlife resources for all Alaskans.¹

¹ For example, *The Anchorage Times*, Wednesday, February 7, 1990, contained an article entitled "Proper Resource and Game Management Will Alleviate Moose Problem." The article was written by Jim Page, a forester with the Alaska Department of Natural Resources, Division of Forestry. Mr. Page stated that "[i]n 1983 Swedish hunters harvested 232,000 moose compared to an Alaskan hunter harvest of 10,000 . . . Sweden attributes their great moose harvest, in part, to intensive forest management".

At the present time, Alaska is not fully committed to such intensive management programs. Alaska can satisfy the Alaska Constitution, and its citizens' desire for Alaska's fish and wildlife resources, by committing itself to intensive management programs.

Title VIII of ANILCA mandates Federal management of fish and wildlife resources on Federal lands in Alaska if Alaska's subsistence law does not conform with the provisions of ANILCA. ANILCA mandates subsistence uses be granted on the basis of residency only.² This directly conflicts with the provisions of Alaska's Constitution, Art. VIII, §§ 3, 15, & 17. The Alaska Supreme Court has held that a preference based on residency violates these provisions.

No other state in the Union operates under the immediate legislative threat of a Federal take-over of its fish and wildlife management. Indeed, local management of fish and wildlife was one of the cornerstones of the statehood movement.

There are three things the State of Alaska should do to resolve the problem of threatened Federal takeover.

First, the Legislature should repeal the laws providing for rural subsistence³ preferences and allow the Boards of Fish and Game to manage Alaska's fish and wildlife resources in conformity with Alaska's Constitution, using scientifically recognized Fish and Wildlife management techniques, including intensive management and resource harvesting governed by seasons and bag limits, methods and means. The Legislature should pass legislation or resolutions necessary to implement such management.

Second, the State should notify its Congressional delegation of its management program, and ask the Congressional delegation to seek changes in ANILCA recognizing this State's right to manage its fish and wildlife resources under such a program.⁴

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Third, the State should initiate litigation in the Federal Courts to prohibit the Federal Government from interfering with State management of fish and wildlife resources on Federal lands in Alaska.

None of these remedies are mutually exclusive. That is, the State can do one, the other, or all, at this time.

Those people who utilize Alaska's fish and wildlife resources for personal consumptive use must be reassured that the State will ensure that they will continue to have access to these resources within Constitutional limitations.

Because in some areas of the State, personal consumptive uses of fish and wildlife may be more prevalent, some people believe that the State is unwilling or unable to recognize this lifestyle. They believe that only the Federal government will allow this and lifestyle to continue.⁵

Alaskan State Officials must demonstrate that Alaskans, working together, can solve our own problems, without Federal intervention.

The Governor should immediately call the state's Boards of Fish and Game into session to set seasons and bag limits, methods and means, for the upcoming fishing and hunting seasons. Once Alaskans see that they will have a reasonable opportunity to harvest fish and wildlife resources next season, some of their anxiety should be diminished. Again, however, the decisions of the boards must be based on sound management principles, and not based on politics or socioeconomics.

The Boards of Fish and Game should continue to set fishing and hunting seasons based on sound wildlife and fish management principles and the biological principle of sustained yield.

Seasons and bag limits, methods and means should be utilized to ensure proper fish and wildlife management, sustained yield, and

⁵ Again, it is not government's role to *preserve* any particular lifestyle. It also bears mentioning that the Alaska Native Claims Settlement Act (ANCSA) provided for transfer of 44,000,000 acres of land, and \$960,000,000 to the Native peoples of Alaska and in exchange, ANCSA abrogated all native hunting and fishing rights. Thus, the claim arising from some Native groups that subsistence rights are somehow an aboriginal right of the Native people of Alaska, should not be given serious consideration.

access to the fish and wildlife resources to all types of uses, i.e., commercial, non-consumptive uses, and consumptive uses. Personal consumptive use should remain on an equal footing with the other uses.

During periods when fish and/or wildlife stocks are low in a particular area, the Boards can regulate fish and wildlife harvest using the traditional methods of seasons and bag limits, methods and means, in conformity with the Alaska Constitution, to ensure that local residents still have a fair opportunity to harvest fish and wildlife resources in areas close to their residence.⁶ In addition, the State should designate an area as an "Intensive Management Area" to restore fish and wildlife populations to sufficient numbers in order that liberal seasons and bag limits can be resumed as soon as possible.

Active and intensive management will allow all Alaskans to live the lifestyle they would like, relative to fish and wildlife resources.

ANILCA must be changed to clearly allow the State to solve its own problems.

Alaska should be allowed to handle its own problems without unnecessary Federal interference. The above outlined plan would be one method of doing so.

The Congressional delegation should be asked to obtain passage of the necessary changes in ANILCA.

The Governor can and should enlist the support of other governors for Alaska's position on these changes. Members of the legislature can and should enlist the aid of other legislatures in supporting Alaska's position also.

The argument is simple. If the Federal government assumes management of fish and wildlife resources in Alaska, the same thing could happen in other states having any Federal inholdings. The cost of Federal management of Alaska's resources would be borne by the taxpayers of the other states. Finally, under a Federal take-over, Alaskan fish and wildlife resources would not be managed for

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all Americans, but, under the terms of ANILCA, these resources would be managed only for the rural subsistence users living in Alaska. How many non-Alaskans would be willing to pay for that program?

ANILCA has been amended nine times since 1980. Our Congressional delegation should not have trouble doing it one more time, if the State's plan is a reasonable one.

The State of Alaska should be prepared to litigate the question of Federal Management, if it is unsuccessful in a modification of ANILCA.

The State should immediately initiate litigation in the event that the Congressional delegation is unable, or unwilling to obtain the necessary changes in ANILCA. The Alaska Constitution, including the "common use" and equal treatment provisions, was approved by Congress at the time of statehood. The threat of Federal take-over management, through the ANILCA legislation, flies in the face of the implied approval of Alaska's right to manage its own fish and wildlife resources granted through the Statehood process.



ALASKA OUTDOOR COUNCIL, INC.

ALASKA OUTDOOR COUNCIL, INC.
P.O. BOX 34097
JUNEAU, ALASKA 99803

P.O. Box 34097
Juneau, Ak. 99803

Jan. 26, 1990

The Honorable Steve Cowper
Governor, State of Alaska
Box A
Juneau, Ak. 99811

Dear Governor Cowper:

We feel the time has come where we must express some deep concerns over the direction the course of events has taken since the State's prejudicial law allowing some citizens access to common property resources, while barring others, was struck down in the McDowell case. The lack of leadership by our delegation in Washington is especially disheartening, while your statements at the Egan Forum Friday, January 19, at least offer some hope for those of us who have struggled all these long years to correct what we knew to be a grievously discriminatory situation.

There are a couple of factors though which have finally caused us to voice concern hoping some corrective action may be taken. To date those most closely involved with this issue within state government ranks have consistently held forth the solution to our current dilemma must be one which includes the blessing of only one segment of Alaska's population. We feel this is an unfortunate line of thinking and sincerely hope such is not the case.

Secondly, we feel this is not a Democratic nor a Republican issue; however, we do feel it is an issue which deserves a Democratic solution. In short we feel it would be entirely antithetical to Democratic principles if we were to permanently affix a discriminatory bias favoring one portion of Alaska's populace over another. If we are ever going to heal the scars which have been induced by this and other divisive issues, we must begin by finding solutions which treat citizens fairly and equally.

We are certainly not opposed to Alaskans being accorded the opportunity to follow a lifestyle which necessitates living off of wild resources; however, any regulatory or statutory provision which recognizes such a lifestyle as a preference among beneficial uses must be crafted in such a way so as to provide the same priority access for any citizen who chooses to so live, regardless of where they reside. Further, we must

strive to avert escalating any further divisiveness, racial or otherwise, by insuring all groups will be treated equally.

Before closing, we would like to offer a couple of what we feel to be constructive suggestions. One, we should move to avoid any chaos which will lead to problems with federal management by immediately convening the Boards of Fish and Game to promulgate reasonable regulations. It is our understanding Secretary of Interior Lujan feels any gesture on our part to begin the long process of resolving this issue will assist him in holding off on pre-empting state management. The second item which we feel must be accomplished would be the amendment of ANILCA either legislatively or through a suit filed by the State.

Thank you for taking the time to contemplate these salient points. As our Governor, we look to you for leadership in resolving this issue and hope all groups with a vested interest will be brought into the process. We further look to you in upholding the public trust which should be central to any longstanding and meaningful solution to this ongoing controversy.

Sincerely Yours,



Ed Grasser, Director
Legislative Affairs

cc: Tim Kelly, Pres., Alaska State Senate
Sam Cotten, Speaker, Alaska House of Rep.
Sen. Bettye Fahrenkamp, Chair Senate Resources
Rep. Curt Menard, Co-chair House Resources
Rep. Cliff Davidson, Co-chair House Resources ✓
Don Collingsworth, Commissioner ADF&G



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all Americans, but, under the terms of ANILCA, these resources would be managed only for the rural subsistence users living in Alaska. How many non-Alaskans would be willing to pay for that program?

ANILCA has been amended nine times since 1980. Our Congressional delegation should not have trouble doing it one more time, if the State's plan is a reasonable one.

The State of Alaska should be prepared to litigate the question of Federal Management, if it is unsuccessful in a modification of ANILCA.

The State should immediately initiate litigation in the event that the Congressional delegation is unable, or unwilling to obtain the necessary changes in ANILCA. The Alaska Constitution, including the "common use" and equal treatment provisions, was approved by Congress at the time of statehood. The threat of Federal take-over management, through the ANILCA legislation, flies in the face of the implied approval of Alaska's right to manage its own fish and wildlife resources granted through the Statehood process.



Alaska Professional Sportsmen's Association

Representing Alaska's Big Game Guides, Outfitters, Air Taxis, Sport Fishing Guides,
Lodges, Support Industries and Alaskan Sportsmen

March 1990

P.O. Box 190842 • Anchorage, Alaska 99518

Regular Meetings

The Board of Directors/Executive Committee meet regularly on the first and third Tuesday of each month at 6:30 pm at the Days Inn, Conference Room 201. If you are in town you are most welcome to attend.

The APSA Spring general membership meeting will be April 6, Friday 9 a.m. - 1:00 p.m. at the Clarion Hotel.

The Great Alaska Sportsman Show begins that afternoon.

SPECIAL SUBSISTENCE ISSUE

As a result of federal court and State Supreme Court decisions the subsistence issue is now back before the Legislature and possibly Congress. As a service to our members. We have reprinted a number of opinions on the issue from various perspectives. We have also addressed some of the facts and fictions of what federal law says.

APSA will be following this issue closely. If you have an opinion you would like to share write APSA.

Subsistence Under Federal Law

WHAT IS IT? WHAT ISN'T IT?

With the passage of ANILCA IN 1980 the Congress placed into law a new and controversial concept - A Subsistence preference for 'rural' Alaskans. What does Title VIII of ANILCA really say - and what does it not say?

The subsistence preference is a civil right granted by Congress to individuals who reside in 'rural' communities or areas of Alaska.

This civil right may be gained or lost depending on the 'status' of the community or area as 'rural'. It is not a right granted in perpetuity.

Subsistence preference is not a property right, the user does not have any right of ownership over subsistence resources until taken.

This civil right is not granted to a race or culture but to people in 'rural' communities or areas. Native and non-Native have been granted preference.

Can this preference be granted on the basis of 'need'? Not for the first tier of subsistence allocations but if a specific wildlife or fish or other resource is under stress (sustained yield can not be assured under present allocations) then the subsistence user most directly dependent on the resource has a higher priority.

How did Congress define 'rural'? It didn't. That's one of the major problems. Under other federal laws 'rural' is defined as a community of 2,500 or less. Given previous federal court decisions and the recent State Supreme Court decision the population trigger used by the U.S. Census Bureau is about all that is left.

What did Congress say about the State of Alaska's role in Subsistence?

Congress found the State competent to manage all fish and game and other resources (including subsistence resources) within the borders of the state regardless of land ownership. Yes, that includes federal (public) lands. However, in some Wildlife Refuges and units of the National Park System different philosophies of management are required by ANILCA then are often practiced by the State. Enhancement programs are often not allowed on many federal lands due to specific language in ANILCA that require the resources to be managed in "their natural state".

But how does the State manage fish and game on federal lands now? Under a Master Memorandum of Agreement which was signed by Governor Hammond and the Secretary of Interior in 1981.

(continued on page 3)

MESSAGE FROM THE PRESIDENT

The Task Force has completed its work and is no longer in existence, however, it has left us with fifteen crisp, new pages of legislation to consider. The recommendations of the task force are calling for a new guide area permitting system. The members of the task force in general felt that this was the best system to manage the big game resources of the state on state, private and federal lands and the best system to manage the guide/outfitter industry. The bill numbers are SB 422 and HB 448, you can obtain copies of the legislation from Senator Faiks office or the House and Senate Resource Committees.

This is very intricate and complicated legislation. It calls for establishing hundreds of guide areas throughout the state, with a system of individual guide qualifications consisting partially of an operational plan to be submitted by each guide/outfitter

(continued on page 2)

President's Message (continued from page 1)

for each area of interest to the guide/outfitter. These operational plans must then be reviewed by the Commercial Services Board along with seven or eight other criteria to determine the most qualified guide/outfitter applicant for the area in question. A wildlife conservation fee of \$25 for each big game animal and \$5 for each deer shall be paid by all Commercial Use Permit holder's to the State of Alaska. This includes animals harvested by residents and nonresidents alike, the justification is that the hunter uses a commercial service provider who is receiving income from the commercial use of the resource therefore the State must receive a benefit.

At least two good things may come from this legislation; the three GMU restriction on guide/outfitters has been lifted because this will not be necessary if the new area system is implemented, and the task force has recommended the State seek a new memorandum of agreement with the Federal land managers re-asserting state's rights to manage fish and game on federal lands.

Be sure to get a copy of the proposed legislation, study it and comment to your legislators and to the APSA.

Remember that your board of directors is meeting the first and third Tuesdays of every month in Anchorage at the Days Inn. This meeting is open to all members and their guests, your attendance is encouraged and needed.

I made an error in the last newsletter; any interim outfitter is eligible to take the guide/outfitter exam this March. You need only to be present for the exam and to pay the exam fee, there is no sign-up deadline for interim outfitters. Contact Kurt West with Occupational Licensing in Juneau for more information and a study packet. Contact me for information on study groups for the guide/outfitter exam.

Nick Pierskalla

NEW GUIDE/OUTFITTER/TRANSPORTER LEGISLATION INTRODUCED

By request of the Governor the House and Senate Resources Committees introduced legislation developed by the Task Force on Guiding and Big Game. Senate Bill 422 and its companion House Bill 448 were introduced, as a courtesy to the Governor, at the end of January.

Although APSA has reviewed drafts of this legislation, President Nick, who served on the Governor's Task Force, had not seen the final legislation by press time. The APSA Legislative Committee will be reviewing these bills closely and will bring recommendations to the APSA General Membership meeting April 6th just before the Great Alaska Sportsman's Show in Anchorage. Plan to attend as the position APSA takes on this important legislation will make a difference in how you do business in the future.

Copies of each bill are available at your local Legislative Information Office. If you can not visit an LIO call APSA and we will send you a copy of the legislation.

ALEX TARNAI WINS LAWSUIT

Alex Tarnai, a Hungarian-born trapper and guide and the only full-time resident of the Nowitna National Wildlife Refuge, a 2 million acre area of rivers, forest, canyons and foothills midway between Fairbanks and the Bering Sea won his lawsuit against the US Fish and Wildlife Service.

In 1985, Tarnai and a friend (a FWS employee), planned to enjoy each others company for a week while Tarnai trapped. The FWS gave him a ticket for using a subsistence cabin for recreational purposes. The "recreation" was the visit of his friend. The FWS employee was threatened, by the Refuge Manager, with a citation if she visited Tarnai. She was also told she might loose her job with the FWS.

The Constitution of the United States guarantees each American the right of free association, at least that is what a number of judges told APSA when this case was brought to their attention. And the judge who ruled in favor of Tarnai agreed.

But this would not have happened if Tarnai had not sued. It also would not have happened if Tarnai had accepted, what we are told was, a \$50,000 settlement offer by the FWS. Tarnai said no - and now we have a federal judges opinion that gives guidance to federal agencies on the limitations they can put on our rights within federal areas.

Thanks Tarnai and thanks Leslie - at least we know there are two Alaskans willing to fight their tor rights.

APSA JOINS INTERNATIONAL SHOOTING & HUNTING ALLIANCE

G. Ray Arnett, President of the International Shooting & Hunting Alliance has agreed to represent APSA in Washington, DC. Arnett is a former Assistant Secretary of Interior for Fish, Wildlife and Parks, former Alaskan (brought in the discovery well in Kenai), and former National President of the NRA.

Arnett also agreed to allow ISHA General Counsel, Stephen Boynton to be a Co-counsel or legal advisor to APSA. Arnett also joined APSA as a supporting member.

As you will recall, President Nick met with Arnett and Boynton while in Washington DC. Nick has stated that the decision by Arnett is welcome news given the problems Alaskan sportsmen face in Congress. The ISHA has been very involved in establishing the new Sportsmen's Caucus in Congress.

Subsistence (continued from page 1)

What is the role of the Federal Agencies then?

To monitor and cooperate on species management and to manage the habitat within the conservation System Unit. In units of the National Park Service habitat management is approached with a different philosophy than most other agencies "Put a fence around it, allow only those the NPS believes appropriated through the gate, under sever stipulations, and 'watch' don't manage the resource." Never, if ever, manage the resource, but always manage the people. Regardless what befalls the resource, by man or nature, just watch - don't help.

But what if the Feds come in and take over subsistence management?

No federal agency has any basis, under ANILCA, to manage any subsistence resources outside of federal (public) lands. The only exceptions are species under the Marine Mammal Protection Act, Endangered Species Act or International Treaties and in most cases this is done in cooperation with the State.

Then what does federal 'take over' really mean? Good question.

The only example we have to help Alaskans understand what Federal take over of subsistence resources on federal lands mean is the DRAFT Federal Subsistence Resource Management Program developed by a multi-agency federal task force in 1986.

Basically federal 'take over' under that program, which has never been released to the people of Alaska for review and comment, would establish a Federal Subsistence Resource Management Board (see chart). This board would review the recommendations of the State Boards of Fish and Game as well as the National Park Subsistence Advisory Commissions and make a formal determination that recommendations were or were not consistent with Title VIII of ANILCA and publish federal resource allocation regulations each year.

Do the Fed's really want to take over? No, but there are some agencies like the NPS that see this as an opportunity to extend their regulatory controls over users.

The Fed's can not afford, financially or politically to "take over". Such an act would pit village against village, rural community against "area" residents and federal managers against state managers for those species that migrate in and out of federal jurisdiction.

Why hasn't the Federal Plan been released? Because of politics and only politics.

The Federal Plan was written to be published in the Federal Register whether the State was or was not in compliance with Title VIII of ANILCA. This was done in anticipation of possible future changes in State law by the Legislature or the Courts. The Federal Subsistence Resource Management Plan MUST be immediately released for public review and comment - and not held in SECRET. It must not be published under federal emergency regulatory authority which does not allow Alaskans a reasonable opportunity to review and comment on the plan before it goes into effect.

Is the Federal government helping Alaska solve the legal and management problems created by ANILCA and the State Supreme Court decision? No. The Fed's have gone into hiding. They do not have a solution that would allow the State to pass a law that would be in compliance with ANILCA Title VIII and in conformance with Article VIII of our State Constitution.

What can I do to help?

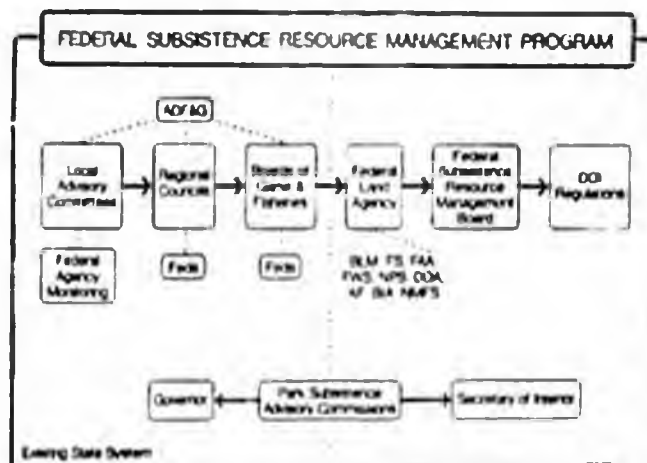
Every Alaskan, Native or non-Native, urban dweller or rural citizen, sportsperson or couch potato must DEMAND that the Federal agencies come out of the closet and sit down with State officials and cooperate. The problem was created by Congress, in a poorly worded, patchwork law that does not define "rural" - it was not created by the State of Alaska.

DEMAND that the federal plan be published before it goes into effect. If it were published then Alaskans could know and understand what the possible Federal take over means and does not mean. Alaskans deserve the right, under the Federal Administrative Procedures Act to see and discuss this plan before it goes into effect, even if it never does.

Support your legislature as it wrestles with its responsibilities. Alaska must craft what ever law Alaska believes is in the best interest of Alaskans - not Congress.

But Alaskans must not wait for leadership, because it will not come from Juneau or Washington, D.C. If we are a State, as any other State, if we are a people that cares about our destiny then each Alaskan must take pen in hand and write the Secretary of the Interior and DEMAND fairness under the law. Demand the federal agencies come to the table. Demand the federal DRAFT plan be released NOW. It only takes a moment but if each of you take action today it can cause a tidal wave.

(Prior to leaving the US FWS, Ric Davidge served as the Chairman of the Federal multi-agency task force that wrote the federal plan. Since 1986 he has tried to have it released so that Alaskans can review and make comments before it goes into effect.)



1990 Membership Drive Underway

The response from members of APSA to the "re-up" package has been very good. We anticipate the new Code of Ethics to be printed by March and every member will have a framable copy to go with your Membership Certificate. In the future you will receive "year" stamps which can be placed on the bottom of your certificate when you re-up.

If you have not sent in your membership dues for 1990 we need them before March. We are trying to get all re-ups started at the beginning of each year.

Our Corporate Sponsorship Program is also underway and we will bring you an update in March. If you know of a business willing to support APSA let us know. The first 12 Corporate Sponsors (\$1,000) will receive banner recognition in the newsletter.

Worth & Whitney Appointed To State Big Game Commercial Services Board

Governor Cowper has appointed Glen Alsworth, Mayor of the Lake and Peninsula Borough and owner/operator of Lake Clark Air, Inc. and a member of APSA since 1987 to the new Big Game Commercial Services Board along with Clark Whitney a Commercial Drift fisherman and also an APSA member since '87.

"We are delighted with the appointments of Glen and Clark to the Board", said President Nick. "Both gentlemen will bring an important perspective to State regulation of our industry," Nick continued.

The first meeting of the new Board was February 5 in Anchorage. If you want to contact Glen or Clark give the office a call.

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APSA Co-Council Program Growing Fast

One of the programs that makes this organization different from other groups is our litigation program. In addition to the Legal Defense Fund and in order to be effective in litigation, APSA has requested a few outstanding attorneys to join APSA as Co-Councils.

In addition to providing ongoing legal advice to APSA, members with legal problems are referred to an APSA Co-Council as each has specific expertise in important areas of law germane to APSA and its goals and objectives.

As of press time the following attorneys have agreed to work with APSA as Co-Councils. Stephen S. Boynton, General Counsel for the International Shooting & Hunting Alliance in Washington, DC.

Jeff Parker, former Counsel to the Sierra Club, sportfishing guide and a member of the law firm of Adler, Jameson & Claraval in Anchorage. Jeff is recognized as one of Alaska's leading environmental attorneys.

Wayne Anthony Ross, Alaska's leading sportsman's attorney, a National Vice President of the National Rifle Association, recipient of many national awards for his advocacy of sportsman's issues in Alaska and across the nation.

Three other attorneys have been requested to join this impressive group and we anticipate their formal agreement this month.

If you have legal problems or just need some advice call the office and we can put you in touch with the right attorney.

Alaska Outdoor Council Requests Nominations

Nominations for twelve conservation awards have been requested by the Outdoor Council. APSA is an active member of the Council and has been requested to forward any nominations our members believe appropriate. The awards offered are:

- Fish and Wildlife Officer of the Year
- Waterfowl Conservationist of the Year
- Game Conservationist of the Year
- Fish Conservationist of the Year
- Water and Soils Conservationist of the Year
- Education Conservationist of the Year
- Conservationist Industry of the Year
- Forester Conservationist of the Year
- Conservationist Legislator of the Year
- AOC Organization of the Year
- Sportsman Conservationist of the Year
- Most Outstanding Member

If you have any recommendations please write APSA and provide the name, organization and explain why you have recommended this individual.

APSA Members Appointed to Bristol Bay Salmon Enhancement Association Board

President Nick Pierskalla and member Jim Broady have been appointed to the Board of Directors of the Bristol Bay Salmon Enhancement Association. Broady serves as the alternate for Nick on the Board.

This is an important development, in that APSA is the only sportsman's group on the Board. If you are interested in what the Association is doing or have specific concerns regarding salmon enhancement in Bristol Bay give Nick or Jim a call.

Alaska Supreme Court decisions send message to native population

By John Shively

In what can only be termed a double-barreled blast from a culturally biased shotgun, the Alaska Supreme Court has sent a message to Alaska natives, which will reverberate for years. During the week before Christmas, in two separate but legally related cases, the Alaska Supreme Court has told Alaska natives there is no room under the state constitution to assist them either in preserving their own culture or in helping them participate in Western culture.

In a case involving the state's local hire law, the supreme Court found it unconstitutional to attempt to help people in economically disadvantaged areas obtain jobs on state-funded projects. Although this case has implications for non-natives, there is no question that the most economically disadvantaged areas in the state are those areas primarily inhabited by Alaska's native people.

In the second case, the Supreme Court threw out the state's subsistence use of fish and game. The state's subsistence law, because the law favored rural residents over urban residents in subsistence use of fish and game. The state's subsistence law was an effort to resolve a very difficult and long-standing issue relating to the protection of hunting and fishing rights which are the basis of the native culture.

There are several issues common to these cases. Both involved a split decision of the court. The local hire law saw a 3-2 division in the court, and the subsistence law a 4-1 division.

In both cases the Supreme Court was concerned with the concept of equal allocation and access. In the local hire law, the case was decided under the equal protection clause of the constitution. The subsistence decision was based on the concepts of equal access and common use found in the natural resources article of the constitution.

The Supreme Court in both cases seems to recognize that inequality is rampant in our society. The only question the court decides is who is going to be more unequal than whom.

In these cases the Supreme Court, in its very finite wisdom, decided that the primarily non-native urban society should have the upper hand over the primarily native rural society. In the local hire case, the job preference was available only if the state Department of Labor determined an area to be economically depressed. In such areas, the preference applied to

only 50 percent of the jobs for which there were qualified local residents.

Thus, there were plenty of opportunities for urban workers to participate in rural projects. However, the Supreme Court refused, even in this limited manner, to assist people in rural Alaska in participating in Alaska's economy. Absent this kind of assistance, most of the jobs will go to urban residents who have direct access to union halls and to the headquarters of those construction companies which perform the work on most state-funded projects.

The decision on the state subsistence law is on the other end of the cultural scale. Rural Alaskans, particularly native people, depend on fish and game resources for a great deal of their livelihood.

In order to protect this life-style, the federal government passed a law requiring the state to adopt subsistence legislation that gave preference—not exclusive use—in hunting and fishing to rural Alaskans. Sport hunting and fishing would still take place while this preference was exercised. The court has now dismembered this subsistence law.

It should be of some concern to citizens, who believe judicial decisions should be free of personal bias, that three of the four justices who decided to overturn the subsistence law have recently held sport hunting and/or sport fishing licenses. At the very least, this gives the appearance of a conflict of interest, as their decision gives themselves and other urban sportsmen a potentially bigger piece of the Alaska's fish and game pie. Remember, this is the same Supreme Court which oversees a criminal justice system which incarcerates natives at a rate which is over twice their percentage of the population.

It is also worthy of note that major portions of the subsistence decision are based on the court's belief that the intent of a piece of federal legislation was directly incorporated into the Alaska's constitution. Native leaders might note with some irony that the title of that act was, appropriately, the White Act, and that its major purpose was to eliminate fishing rights for certain natives.

In both the local hire and subsistence cases, Chief Justice Warren Matthews, Justice Edmond Burke and Justice Daniel Moore found for urban non-natives.

Also in both cases, Justice Jay Rabinowitz found on the side of rural Alaskans. The fact that Justice Rabinowitz

is generally considered to be the most judicially distinguished justice of the five members of the Supreme Court should cause some people to think twice about what the Supreme Court has done.

Justice Allen Compton dissented from the opinion in the local hire case but joined with the majority in the subsistence case.

The key point here is to look at the message the Supreme Court has delivered to Alaska natives. The message would seem to be that, "We refuse to use the state constitution to preserve your subsistence culture or help you get jobs in the Western culture."

It is a devastating and tremendously significant message to those natives who for years have been told that, if they just work within the system, the system will recognize the importance of them as a distinct and important part of our Alaskan society.

The message is a sobering one. It would seem to give a great deal of credence to those leaders of the native community who promote a sovereign relationship with the federal government as the only logical method for solving the many difficult social, legal and economic problems facing Alaskan natives. Indeed, the United States Supreme Court has an almost 200 year tradition of protecting the rights of indigenous people.

The message delivered by the Supreme Court is every bit as explicit and blatant as those messages delivered by white judges during the declining days of racial segregation in the South, and the message delivered by George Armstrong Custer and his compatriots as they herded American Indians across the Western frontier. The court seems to be saying: "There are more of us white guys than you natives, and the more of us there are, the less we will leave for you."

Even though these Supreme Court decisions will be challenging to Alaska natives, these people have survived hardship for thousands of years. They were here long before institutions such as the Alaska Supreme Court were envisioned by mankind and will be here long after the justices of the Supreme Court have cashed out their state retirement and fled to some exotic southern climate.

Even though the Supreme Court found a unique way to say, "Merry Christmas" to Alaska natives, I believe the new challenges presented to the native leader-

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Alaska Supreme Court

(continued from page 5)

ship will be met, just as other challenges have been met in the past. Alaska natives are survivors, and they will ultimately prevail. However, I am ashamed and saddened that the Alaska Supreme Court will not allow the state to participate in the resolution of these problems.

John Shively is a vice president of NANA Regional Corporation. He is a former chairman of the state Board of Game and was chief of staff to Gov. Bill Sheffield.

Reprinted courtesy of Anchorage Times, January 3, 1990.

Personal Property Taxes & Local Rural Residency

Do you park your plane at Lake Hood during the winter? Do you own a home in Anchorage, but your residency record is at your lodge or business - but must pay personal property taxes to the Municipality of Anchorage? Have you been determined a "local rural resident" by the National Park Service which allows you to qualify under Title VIII of ANILCA as a "rural resident"?

Important questions which may decide your legal residency status. Some members have recently been notified by federal and state law enforcement officers that because of these confusing issues they will no longer be allowed to harvest fire wood or other "subsistence resources" in a Federal Park or Preserve. Even though they meet State of Alaska residency requirements under the law there is confusion.

Think hard about where you want to list your principle domicile - or establish your residence. Do you live any place more than six months and a day? It could make a big difference in how you are treated by the Fed's and the State.

Remember that conspiracy between government officials to deny you of your civil rights is a violation of the Federal Civil Rights Act. Think about it.

Communicating Effectively with Washington, DC

It is important we let our representatives know how we feel about actions they take or do not take in our behalf. The best way

to let them know is write them a letter. It doesn't need to be long. It doesn't need to be typed. It does need to be a personal letter that conveys your thoughts in your words.

Think K I S S (keep it simple, stupid)

BE BRIEF What do you want them to do and why?

BE ACCURATE Tell them your side and substantiate it.

BE POSITIVE Concentrate on the good parts. • Don't knock the other side. • Offer Suggestions. • Suggest alternatives.

BE SPECIFIC Address the letter to your legislator. • Indicate which bill you are talking about. • Ask for the vote and a response.

BE PERSISTENT Be aware legislators maintain informal running counts pro and con on controversial legislation.

Addresses:

The Honorable Knute Knudson, Jr., Deputy Assistant Secretary, FWP, US Department of the Interior, Wash., DC. 20240.

Senator Ted Stevens (or) Frank Murkowski, U.S. Senate, Washington D.C. 20510.

Representative Don Young, U.S. House of Representatives, Washington D.C. 20515.

Senator (or) Representative Ak, State Senate (or) House, Pouch V Capitol Bldg, Juneau, AK 99811.

Subsistence issue needs final solution

by Clem Tillion

The Chief Justice of the state Supreme Court's recent action—delaying the effective date of the courts decision striking down Alaska's subsistence laws that grant special preference to rural residents for the taking of fish and game resources in the areas in which they live—leaves me a little baffled.

It looks like the court wanted its decision to be available to the state legislature for its consideration and the Chief Justice probably only later realized that if the state was to close all subsistence to save the resource from an influx of urban hunters, it would have substantial negative impact on those depending on it this winter.

It's one of those cases where if they delayed their actions until the season was over the legislature would also be over.

Now what the Chief Justice's action, however admirable, has done, is tell the state its law is unconstitutional but we grant our permission to enforce an un-

constitutional law until July 1.

Well, thanks for the hand, Chief, but it sure puts the troopers in a tough position when you tell a cop to go out and arrest someone under a law already declared unconstitutional.

I know my years spent in writing law are far different than ruling on it, but in the four years I was chairman of the judiciary committee if one of the staff lawyers had told me "it's unconstitutional, Mr. Chairman, but I think we can still get convictions under it," I'd have eyed him like a black bull looking at a red calf and sent for a second opinion.

Unlike some in Anchorage, I happen to agree with the basic premise of our subsistence law, as did a majority of Alaskans as shown by the referendum that attempted to repeal the law via a statewide vote a few years back.

There are still Alaskans living on a non-cash or marginal cash life style and we should take into consideration that those who harvest resources to eat should have a preference so long as it is their only practical alternative.

With the exception of those seven native villages that refused to accept the land claims act, such as Gambell and Savoonga, the rest of our native people gave up their aboriginal rights in exchange for land and oil money. As such, it is not unreasonable for them to live under the same laws and regulations as any other citizen of the state living in like manner. Therein lies our dilemma.

Alaska is in the proverbial Catch-22 position: We are prohibited from writing racist law, not only by our state constitution but by the federal Civil Rights Act, an act that was opposed by the Council of North American Indians at the time of its passage as they foresaw the very problems facing Alaska today.

So what do we do?

The feds gave us the right to manage our fish and game resources as part of our statehood grant but Congress then passed other laws taking back much of which they had given us.

The one staring us in the face now states that if the state does not pass legislation granting rural residence priority over the fish and game resources on federal lands abutting the area they live, the management of those resources of the federal lands shall revert to the federal government.

If the federal law had even a need basis on their land use, however much

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Subsistence issue

(continued from page 6)

some of us dislike the word need, we could write a legal law saying that citizen can hunt.

I hope our legislature can at least find a temporary solution, such as the prohibition against transporting subsistence hunters and fishermen by air, and a prohibition against the transporting by air or automobile, but this alone will not solve our problem for the federal law requires that we grant a rural preference

Halibut Cove charter boat skipper Clem Tillion is a former president of the Alaska Senate.

Reprinted from the Anchorage Times 1/14/90

Subsistence ruling levels the playing field

By Wayne Ross

On WEDNESDAY, JAN. 3, The Anchorage Times printed an article by JOHN SHIVELY, vice-president of NANA REGIONAL CORPORATION. It has to be one of the most amazing articles I have read in the last 20 years. If you haven't seen it, and if you are interested in the subsistence issue, I'd suggest that you pick up a copy of Wednesday's Times.

Mr. Shively obviously was angry when he wrote the article. Mom always said that if you wrote something when you were

angry, you shouldn't mail it. Instead, wait until you had calmed down and then re-read what you had written. Then, chances were, if you had good sense, you'd tear it up and start over again. Clearly, Mr. Shively didn't have the benefit of this good advice. He must have sent in his column while he was still angry. He should have kept it and re-read it the next day. It must be embarrassing to him to see his angry words published.

Mr. Shively attempts to take the Alaska Supreme Court to task for its decision overturning the state's subsistence law. He accuses the court of being "culturally biased," possessing "finite wisdom," and of refusing "to preserve (native) subsistence culture." He accuses the court of being racist like "white judges during the declining days of racial segregation in the South" and of being like "George Armstrong Custer... as (he) herded American Indians across the Western Frontier."

You have to give Mr. Shively credit for one thing. He writes a very colorful article. Inaccurate. But colorful.

After reading the Supreme Court's decision, and later, Mr. Shively's article, I can only conclude that Mr. Shively never actually read the court's opinion. After all, Mr. Shively is an intelligent man, former chairman of the state Board of Game, and chief of staff for Gov. Sheffield. If Mr. Shively had read the actual opinion, he could not have come to the conclusions he did.

Mr. Shively claims the subsistence decision discriminates against natives. It does not. Instead, it restores equality to all Alaskans, native and non-native alike.

The state's subsistence law gave a priority to rural residents. This law made urban residents second-class citizens with less rights to fish and game resources than rural residents.

Many native people live in urban areas. Many non-native people live in rural areas. The state's subsistence law granted subsistence rights to non-native rural residents, while denying subsistence rights to urban natives. Indeed, one of the plaintiffs in the case that ultimately overturned this discriminatory law was a native who, simply because of where he chose to live, had been denied his subsistence rights.

Mr. Shively attempts to demonstrate bias on the part of several of the justices because they recently held "sport hunting and/or sport fishing licenses." He claims that because the justices held those licenses "this gives the appearance of a conflict of interest as their decision gives themselves and other urban sportsmen a potentially bigger piece of Alaska's fish and game pie." This argument makes as much sense as saying because a judge has a driver's license, he should not participate in deciding a drunk driving case. Nonsense, Mr. Shively.

The court's decision is fair and clear. Since Alaska's Constitution reserves all fish and game resources "for the common use," it is a violation of that constitution to discriminate in awarding those resources based upon where a person chooses to live.

Mr. Shively correctly points out that Alaskan natives have survived for

(continued on page 8)

Anyone Interested in submitting articles for the newsletter, please send copy to Ric Davidge



JOIN ALASKA'S FASTEST GROWING PROFESSIONAL SPORTSMANS ASSOCIATION

Membership Application

- Professional \$100.00
- Supporting \$25.00
- Charter \$1000.00
- Business Sponsor \$1000.00
- Legal Defense Fund \$1000.00

Name _____
Address _____
City _____ State _____ Zip _____
Phone _____
Business Represented _____
Signature _____
Date _____

Subsistence ruling

(continued from page 7)

thousands of years, and that new challenges to the native leadership will be met. He claims, however, that he is "ashamed and saddened that the Alaska Supreme Court will not allow the state to participate in the resolution of these problems." Cheer up, Mr. Shively. The Supreme court said no such thing. The Supreme Court only held that in solving the subsistence problem, the state could not discriminate.

But what is the problem?

Remember this. Natives and non-natives alike have enjoyed subsistence hunting in Alaska for hundreds of years. Discrimination, however, reared its ugly head for the first time in 1978 when the Alaska Legislature enacted a subsistence law and later, when Congress enacted subsistence provisions in ANILCA. We can have subsistence hunting without discrimination. But we must not allow people like Mr. Shively to make it a racist issue.

It's an Alaskan issue, Mr. Shively. And we are all Alaskans. And as Alaskans, we can solve this problem. But, says the Alaska Supreme Court, in doing so, we must be fair to everyone.

Everyone. Mr. Shively. Are you listening?

Wayne Anthony Ross is an attorney in private practice in Anchorage and second vice president of the National Rifle Association.

Reprinted from the Anchorage Times 1/7/90

THE BEST DEAL IN TOWN What do you get for your membership?

Member services are being expanded to include:

Monthly Newsletter - The newsletter not only tells you what has happened but what may happen in the coming months impacting your business.

New patch, decals and membership cards now available.

Professional Support - Our staff and professional committees represent decades of experience in recreation industries and in government. We are all here to help you operate your business with the least amount of conflict.

Representation in Juneau and Washington D.C. - Never sleep while Congress or the Alaska Legislature is in session - we don't. You receive professional and influential representation of your concerns in our state and national capitols. We review legislation that would impact your business and work hard to ensure that if new laws pass, they will help - not hurt.

Legal Defense Fund - A goal of the APSA is the establishment of a Legal Defense Fund (\$100,000 CD) to back up our efforts to protect your rights as sportsmen. With 100 members pledging \$1000 we are establishing this important tool. Remember money is muscle.

General Liability Insurance/Bonding - We are working with national organizations to obtain a group general liability policy for our members. We are also working on a self bonding program that should help meet your bonding requirements for operation on federal or state lands.

Affiliate/Association Memberships - As a member you will have affiliate status with major national groups also fighting for your rights. You will receive newsletters and other information on what is happening in Congress or other states that may effect you.

Political Clout - There is strength in numbers. This organization finds itself in the right place, at the right time, and with the right issues to advance the interests of sportsmen and women in Alaska.

Saving on Legal Fees - We are gathering a group of legal professionals to assist to our members. Additionally our staff is familiar with federal and state laws and assists members prepare a case with your lawyer.

Law Enforcement Hot Line - We coordinate law enforcement concerns and meet with top Federal and State law enforcement officials regularly. Your membership is an investment in your business. Many members have already found they spend more time developing their business and less time fighting with government by joining APSA. Compare the value, we are confident you will join.

Together we can make a difference.



Alaska Professional Sportsmen's Association
P.O. Box 190842
Anchorage, Alaska 99518



Davidson, Cliff
P. O. Box V
Juneau, AK 99811



Alaska State Legislature

Please enter into the record my testimony to the House Resource
committee name
committee on RB-113/ HJR 88-74-90, dated March 10, 1990
bill/subject

I am very reluctant to see any subsistence issue resolved by constitutional amendment.

- ① because my interests reflect (apparently) a minority viewpoint - the "common" use of natural resources without ^{my} being excluded - because I am white / and have a western european cultural heritage - and because I live in a moderately developed community (Kenai pen.)
- ② I do not like the appearance of "basic" human rights being mandated or influenced by "Majority Rule" -

For those reasons I am opposed to HJR[#] 88-74-90 OF these proposed resolutions / proposed constitutional amendments - I find find HJR -74 most tolerable.

Both HJR-88 and HJR 90 suggest "urban exclusion."

Of the bills under consideration, I find HB-415 most acceptable. "And then" only "IF" the following changes are made - next page

Signed: Walter Brown

Testifier

self

Representing (Optional)

P.O. Box 3502, Kenai AK 99611

Address

262-1908

Phone No.

HB-415

page 2 - section 3 - new subsection (9)

Delete Items

- (1) motorized vehicles, including motorized boats, aircraft, snow machines, trucks, and automobiles.
- (4) gill nets, seines, or long lines
- (5) traps or snares that the Board of Fisheries or Board of Game determines to be inhumane.
(#5 - "inhumane" could be abused)

page 2 - section 4 - (29)

add/retain/put back in

[Gill Net, Seine] [Long Line]

I am deeply distressed by any appearance of an arbitrary determination of an "access" to natural resources based on where I live - how much money I earn or don't earn - the color of my skin - etc.

What ever happened to the "melting pot theory"
Now instead of being able to utilize any or all of the various social/cultural heritages -

I am now compelled to align myself with some "Special Action" group or entity.

I fully realized that natural resources need to be "managed". It appears that more and more of those resources are managed for "special" groups - rather than for biological/habitat concerns.

I sure don't envy your job -

Walter Brown

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: POLLY WHEELER
TITLE:
ADDRESS: P.O. BOX 82291
CITY: FAIRBANKS
PHONE: N/R-

ZIP: 99708

BILL NO: HJR 74
SUBJECT: CONST. AMDT: SUBSISTENCE PREFERENCE
MESSAGE: I SUPPORT A CONSTITUTIONAL AMENDMENT TO PROVIDE A PREFERENCE FOR
SUBSISTENCE USE OF ALASKA'S FISH AND WILDLIFE BASED ON LOCAL AND RURAL RESIDENCY
THIS PREFERENCE HELPS PROVIDE THE OPPORTUNITY FOR ALASKA'S PEOPLE TO LIVE OFF
THE LAND AND PRESERVE OR PARTICIPATE IN A RURAL LIFE STYLE. WE URBAN RESIDENTS
HAVE ADEQUATE OPPORTUNITY TO HUNT AND FISH. EOM

POMID: 07105429
DATE: 02/15/90
TIME: 10:54:29
LIONAME: FAIRBANKS LIO

COPIES: REPRESENTATIVES

JACKO
BOYER
DAVIS, M.
KOPONEN
SHARP
MILLER
MACLEAN
KUBINA
FOSTER
GOLL
GRUSSENDORF
MENARD
NAVARRE
HUDSON
FURNACE



Ric Davidge

Alaska Public Policy Consultant

(907) 536-1912 FAX (907) 562-1824

March 13, 1990

Alaska State Legislature
PO Box 7
Juneau, Alaska 99811

Legislator.

As most of you know I was the Chairman of the Federal Subsistence Resource Management Program Task Force in 1986 that wrote the federal plan. Since that time I have consistently followed the federal and state subsistence issues and remained a student of legislation and court decisions.

Attached, for your use and review, is a DRAFT Subsistence Bill that could pull you out of this mess. This legislation recognizes the uniqueness of federal lands in Alaska, the problems of Title VIII and the responsibilities and complexities of concurrent legislative jurisdiction in the management of fish and wildlife resources on federal lands.

This legislation also provides a definition of rural, consistent with existing federal law and programs and allows that definition to be modified by the US Census Bureau consistent with their normal delineation processes nationally.

This legislation will only apply to federal lands and not to state or private lands in Alaska as a Constitutional amendment would.

This legislation will not change anything significantly. The federal agencies are in the process of wrestling with the Kinitzi federal court decision as it applies to the definition of rural and the Secretary of Interior is considering an amendment to ANILCA to resolve that problem.

The passage of this legislation is consistent with Title VIII and its legislative history as it is constructed from Title VIII.

This legislation avoids a Constitutional amendment and the political problems I know most of you wish to avoid.

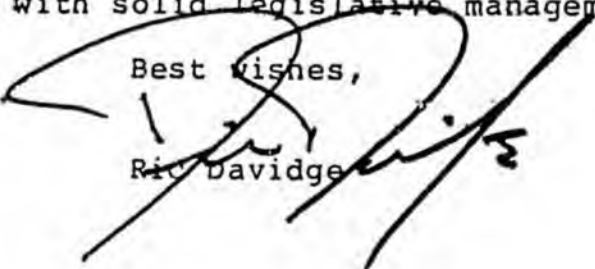
Can the State Legislature pass a law that only affects how it (the State) functions within its responsibility under concurrent legislative jurisdiction over federal lands? I believe it can in

light of the fact that federal lands within a state must be managed consistent with federal law and that when there is a conflict between federal and state law it is the federal law that prevails unless that federal law is determined unconstitutional by the US Supreme Court.

I suggest you present this as a Committee alternative. Hold a teleconference and find out what level of support or opposition you have. The most important new positions taken at the teleconference last Saturday are the number of sportsmen's groups supporting federal management rather than a Constitutional amendment.

I hope this is constructive. I know it will generate some opposition based on growing expectations of some Native leaders, but I believe it can prevail with solid legislative management.

Best wishes,


Ric Davidge

PROPOSED SUBSISTENCE LAW

FINDINGS

The Legislature finds and declares that -

(1) the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the federal lands and by Alaska Natives on Native lands is essential to native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence;

(2) the situation on Federal lands in Alaska is unique in that; federal law mandates a subsistence preference on federal lands consistent with the provisions of The Alaska National Interest Land Claims Settlement Act (ANILCA), and fish and wildlife resources on federal lands are managed cooperatively by federal and state agencies under concurrent legislative jurisdiction.

(3) fish and wildlife habitat on federal lands is under direct federal management while fish and wildlife resources are under concurrent jurisdiction.

(4) with the passage of ANILCA the Congress of the United States found that the State of Alaska was competent to manage these resources and because of the State's management experience and management resources the State was determined as the appropriate lead agency for the management of fish and wildlife resources on federal lands.

(5) all management of fish and wildlife resources on federal lands must be consistent with federal law. In the event of federal/state law conflicts it is federal law that prevails.

(6) ANILCA does not define "rural" or "urban" resulting in significant difficulty in implementing a coordinated and cooperative management program

POLICY

It is hereby declared to be the policy of the Legislature that;

(1) consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the federal lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes of each of the federal Conservation System Units established, designated, or expanded by or pursuant to title II through VII of ANILCA, the purpose of this Act is to provide the opportunity for rural residents engaged in a subsistence way of life to do so;

(2) nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the federal lands of Alaska when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population, the taking of such

population for nonwasteful subsistence uses shall be given preference on the federal lands over other consumptive uses; and

(3) except as otherwise provided by this Act State agencies in managing subsistence activities on the federal lands and in protecting the continued viability of all wild resources in Alaska, shall cooperate with adjacent public or private landowners and land managers.

PREFERENCE FOR SUBSISTENCE USES

The taking on federal lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on federal lands of fish and wildlife for other purposes. Whenever it is necessary to restrict the taking of populations of fish and wildlife on federal lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria:

- (1) customary and direct dependence upon the populations as the mainstay of livelihood;
- (2) local residency; and
- (3) the availability of alternative resources.

DEFINITIONS

As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; and for customary trade.

For the purposes of this Act, the term -

- (1) "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and
- (2) "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses -
 - (A) for other fish or game or their parts; or
 - (B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.
- (3) "rural" means any community whose population is customarily or traditionally dependent on the harvesting of fish and wildlife resources on federal lands with a population not greater than 2500 or as delineated by the US Census Bureau.

COOPERATIVE AGREEMENTS

The Governor may enter into cooperative agreements or otherwise cooperate with Federal agencies and other land owners including private land owners to effectuate the purposes of this Act.

10. 786-7853

MARCUS JENSEN'S TESTIMONY BEFORE HOUSE RESOURCE COMMITTEE,
STATEWIDE HEARING ON H.B. 74, 88 and bill on urban subsistence

MR. CHAIRMAN: MY NAME IS MARCUS JENSEN AND I HAVE LIVED IN ALASKA OVER 60 YEARS. MY GRANDFATHER WAS IN NOME IN 1898, and HIS SON THOMAS SPENT MOST OF HIS LIFE IN NOME. THOMAS JENSEN SERVED IN THE TERRITORIAL LEGISLATURE IN 1925, SERVED ON THE FIRST ALASKA GAME COMMISSION, I HAVE RAISED MY FAMILY HERE IN ALASKA AND AM ONLY SAYING THIS TO SHOW THAT OUR ROOTS ARE PRETTY SOLID IN ALASKA. I AM INTERESTED IN WHAT HAPPENS TO OUR STATE AND THE DIRECTION IT TAKES.

I STARTED SERVING IN THE ALASKA TERRITORIAL LEGISLATURE IN 1949. I SERVED IN BOTH THE HOUSE AND SENATE, AND THE LAST TERM WAS IN 1962. I served on MANY COMMITTEES THAT HAD NATIVE MEMBERSHIP. WE SAT AS ONE PEOPLE, WE WORKED TOGETHER IN HARMONY AND SOLVED OUR PROBLEMS. THE WORD "SUBSISTENCE" WAS NEVER MENTIONED. EVERYONE WENT ABOUT THEIR BUSINESS AND TOOK CARE OF THEIR PERSONAL NEEDS IN THEIR OWN WAY.

FISH IS ONE OF THE BIGGEST FOOD SUPPLIES FOR ALL ALASKANS. OUR BIG RIVERS USUALLY CARRY THREE OR FOUR DIFFERENT ^{SPECIES} FROM SPRING THROUGH FALL. CERTAINLY DURING THAT TIME A PERSON COULD SET ASIDE A FEW FISH FOR HOME USE. FROM MY INFORMATION: MOST VILLAGES SMOKE OR FREEZE THEIR FISH FOR THEIR HOME SUPPLY. I THINK IF EACH VILLAGE HAD SIZEABLE CANNING EQUIPMENT IT WOULD ENLARGE THE DIFFERENT POSSIBILITIES OF USING THE FOOD.

ALASKA IS MADE UP OF MANY TYPES OF HABITAT. PERSONALLY I HAVE HUNTED WITH A PACKTRAIN ABOVE THE ARCTIC CIRCLE, SPENT OVER TWENTY YEARS HUNTING AND GUIDING IN THE ALASKA RANGE. EACH YEAR I HAVE HUNTED AND GUIDED IN SOUTHEASTERN ALASKA.

I WOULD LIKE TO GIVE THE COMMITTEE SOME OF MY OBSERVATIONS AS TO WHY THESE BILLS ARE NOT NEEDED. LET'S TAKE KODIAK ISLAND/ ANYONE FAMILIAR WITH THAT AREA KNOWS THAT THEY HAVE ABUNDANCE OF FISH AND DEER. THE SOUTHEAST PANHANDLE ACTUALLY IS ONE COMMUNITY BECAUSE THE AREA AND PEOPLE ARE ALL

JENSEN PAGE 2

LIVING IN THE SAME ECONOMY - FISHING, LUMBERING, TOURISM, AND PLENTY OF THE FOOD RESOURCES FOR EVERYONE.

THE ARCTIC CARIBOU HERD HAS CERTAINLY TAKEN CARE OF THAT AREA, AND WILL CONTINUE TO DO SO, BECAUSE WEATHER AND DISTANCE ^{ALLOWS} ~~HAS~~ VERY LITTLE URBAN PRESSURE.

THE NOME COASTLINE, WHERE WE ARE TALKING ABOUT MARINE MAMMALS, HAS NO COMPETITION.

TODAY ALL THE VILLAGES ON THE BIG RIVERS WHOSE PEOPLE ARE FISHERMEN HAVE LARGE INCOMES BECAUSE OF THE HIGH PRICE OF THE FISH TODAY. A GREAT NUMBER OF THEM MAKE \$100,000 OR MORE A YEAR, AND ARE ENJOYING A MUCH HIGHER MIXED DIET THAN THEY COULD ~~Y~~ YEARS BEFORE.

ONE THING THAT IS HARD FOR ME TO COMPREHEND IS WHY NATIVE LEADERSHIP IS PRESSING FOR A SUBSISTENCE BILL WHEN THEY HAVE FORTY FOUR MILLION ACRES OF PRIVATE LAND TO HUNT ON. I LOOK BACK ON HOW MANY ANIMALS WE USED TO TAKE OUT OF ONE SMALL VALLEY ~~AND~~ ~~AND~~ THEN THINK OF THE FORTY FOUR MILLION ACRES!

I WOULD ASK THIS COMMITTEE TO NOT PASS OUT ANY OF THESE BILLS. THEY ARE NOT NEEDED AND WILL ONLY CAUSE FRICTION AMONG OUR PEOPLE.

IT MIGHT BE OF INTEREST TO THE COMMITTEE THAT ALASKA IS THE ONLY STATE IN THE UNION WHERE THE FEDERAL GOVERNMENT HAS PASSED A LAW THAT EFFECTIVELY SAYS "YOUR CONSTITUTION IS WRONG, AND WE ARE GOING TO TELL YOU HOW TO RUN YOUR STATE!" THIS SEEMS SO WRONG THAT TO SATISFY MYSELF I DID A LITTLE RESEARCH, AND HERE IS WHAT I HAVE FOUND:

THE FEDERAL GOVERNMENT WAS ASKED TO COME IN AND CREATE LEGISLATION DEALING WITH THE ALLOCATION OF SUBSISTENCE. GOVERNOR HAMMOND, IN 1978 TESTIFIED BEFORE A FEDERAL HOUSE SUBCOMMITTEE, AND I QUOTE: "THE ALLOCATION OF RESOURCES TO BE CONSUMED AMONG THOSE WHO WOULD COMPETE FOR THE RIGHT TO CONSUME THEM IS A DIFFICULT PROBLEM AT BEST. I WOULD HOPE THAT THIS CONGRESS ESTABLISHES THE PRIORITY OF SUBSISTENCE USES WHERE THERE IS A CONFLICT. I

JENSEN PAGE 3

"I BELIEVE THAT THIS IS A LEGITIMATE SUBJECT FOR LEGISLATION, AND HOPE THAT THIS PRINCIPLE, WHICH HAS BEEN STATE POLICY FOR SOME TIME, MIGHT BE ENACTED INTO FEDERAL LAW." unquote

IT IS OBVIOUS THAT THIS FEDERAL LEGISLATION, TITLE 3 SUBSISTENCE, WAS DEVELOPED WITH THE HELP OF GOVERNOR HAMMOND'S STAFF AND THE NATIVE LEADERSHIP. WHEN THE LEGISLATION FIRST APPEARED IN PUBLIC IT WAS A REAL BOMBSHELL!

I AM FOR THE RURAL AREAS OBTAINING AS MUCH FOOD SUPPLY AS POSSIBLE FROM THE LAND. IT CAN BE DONE EFFECTIVELY BY METHOD AND MEANS, SEASON AND BAG LIMIT.

MARCH 10, 1990

March 14, 1990

Dear Concerned Elected Official:

Please evaluate the enclosed letter. It is the result of an honest effort to find a common ground for the people of Alaska. It is being distributed to six papers around the state, including the *Tundra Drums* and *Tundra Times*.

I must be honest to admit that because of my strong feelings on this matter, the original drafts were composed with considerable anger. It was anger at some elected officials, not our perceived 'opponents'. Nevertheless, I hope that the letter is received in the constructive manner in which it is intended.

If you wish to contact me, please don't hesitate to call- 745-4358.

Respectfully,

Bob

Robert H. Parkerson
HC 02, Box 7630-A1
Palmer, Alaska 99645