

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

5715 HOUSE JUDICIARY

1/9

Yet here we are with the Governor and a couple legislators trying to keep this discriminatory and resource-risky scheme in place.

They propose a constitutional amendment that would:

- gut the guarantee of common use/equal opportunity;
- provide for a subsistence use priority based on rural residency, and
- keep the same mushy "custom" and tradition" use limitations that can't protect resources.

Keep in mind that the priority is ALWAYS in effect, not just when there's a resource shortage. Also, other uses cannot legally be allowed unless and until priority subsistence use opportunities are met. The public is seldom told this--but the courts have consistently ruled this way.

What to do? Personal consumptive use of fish and wildlife makes a major contribution to many people's livelihoods, and improves the quality of life for many more, regardless of their location or culture. The state constitution mandates the conservation and management of resources on a sustained yield (self-perpetuating) basis for the maximum benefit of the people. People's needs must be accommodated, within the limits of resources.

The constitutional "common use" provision is insurance against the kinds of special interest management disasters that inflamed the statehood movement. We need to keep it. It's not a threat

to any of our cultures. Laws don't preserve cultures, people do, through their daily decisions on how to live. If culture is the concern, eliminate RATNet (Rural Alaska Television Network).

There are better ways to get the federal government off our resource management back than sabotaging our Constitution. How? Amend ANILCA. Remove the rural priority, and the mandate to manage under federal dictate. No other state has a "do-it-or-I'll-take-it-away" federal threat over its fish and wildlife management. We don't need it to provide resources for Alaskans.

We do need active management to maintain and enhance fish and wildlife populations. Many salmon populations have been enhanced through improved management and hatcheries. Active management could increase wildlife populations and reduce worries about competition among user groups.

The Alaska Constitution and Statehood Act were approved by the federal government. They conveyed to Alaska the authority to manage resources in the state. These laws should be supported, not subverted. ANILCA can and should be amended to conform to the principles established at and for statehood. We need to get on with managing our resources for the benefit of all Alaskans.

If subsistence use is so important that it must be protected by Constitutional amendment, how can 90% of Alaskans be arbitrarily disqualified by limiting it to rural residents only? Our state

and Federal constitutions are often all that stand between the individual's rights and the burdens of government. The constitution should not reduce your rights in the process of trying to increase someone else's. That is a cheap political shot, and the beginning of the end of equal protection under the law.



Alaska State Legislature

Please enter into the record my testimony to the House Resources
 committee name
 committee on HJR 94, HJR 88, dated 10 March 90
 bill/subject

as per attachment

Signed: Samuel Harris - by Mary Bishop
 Testifier

self
 Representing (Optional)

Box 80522 - FBKs. AK 99708
 Address

457-7815
 Phone No.

Points Against Constitutional Amendment Resolutions
Public Testimony -- March 10, 1990
Sam Harbo, Box 80522, Fairbanks, Alaska 99708, 457-7815

Alaska Supreme Court, McDowell decision, p. 27.

"There are...substantial numbers of Alaskans living in areas designated as urban who have legitimate claims as subsistence users. Likewise, there are substantial numbers of Alaskans living in areas designated as rural who have no legitimate claims."

Court also says, pages 27 and 28,

"...the equal access clauses of article VIII are a special type of equal protection guaranty..."

The equal access clauses of article VIII are the ones violated by the rural provision.

I think everyone realizes that the equal protection guaranties in our Constitutions constitute the very foundation of our democratic system. Let's not tinker with them.

If subsistence is such a critically important use that it must be granted special protection by Alaska statute, isn't it crazy to modify the Alaska Constitution so that such an important use can arbitrarily be taken from some Alaskans?

The kind of thinking that tolerates such an approach really frightens me.

Some might argue that subsistence use in rural Alaska is different than subsistence use in urban Alaska, and hence we must have a rural or local residency provision in statute. If rural subsistence use can be distinguished from urban subsistence use, then one should be able to define them as separate uses. Our constitution allows preferences among beneficial uses. Hence, no constitutional amendment needed.

Fear of federal takeover without a rural provision?

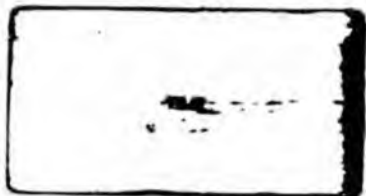
The Alaska Supreme Court in McDowell decision says, page 17:

"State control merely for the sake of control is a questionable goal when the terms infringe upon the open access values of article VIII."

I believe that significantly understates the case!

The clear and compelling reasons why we must not modify the article VIII provisions in our constitution should make for an easy decision for you legislators. You must vote NO on any Constitutional amendment resolution regarding rural or local residency. With such a clear cut case, the argument "I feel I must leave it to the voters" is not only entirely without merit, it is irresponsible.

Given the crystal clear nature of this case, I can only conclude that any legislator who votes in favor of a constitutional amendment resolution does so only because he or she wants to pass discriminatory legislation.





Alaska State Legislature

Please enter into the record my testimony to the HOUSE RESOURCES COMMITTEE
 committee name
 committee on HJR 88 & 90 , dated 3/10/90
 bill/subject

I OPPOSE HJR 88 AND HJR 90.
 I DO NOT WANT ALASKA TO CHANGE
 IT'S STATE CONSTITUTION TO PROVIDE
 A RURAL ~~PREFERENCE~~ PREFERENCE.

Signed: Clemens M. Clooten CLEMENS M. CLOOTEN
 Testifier

Representing (Optional)
1163 LINDA LOU LANE
 Address
907-457-7604
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the _____

committee name

committee on HJR 88 & HJR 90, dated 3/10/90

bill/subject

I urge a vote against both HJR 88 & HJR 90 as the bills are racist and place Alaskans against each other on a basis of race or geographical residence location.

All Alaskans should be able to choose and live a subsistence life style regardless of their race or choice of homesite.

Following a bad lead by the Federal Government is not a solution, only an easy way out and failure of Alaskan legislators to do the job they are voted into office to do.

Signed: Del DeMeritt Del DeMeritt

Testifier

Self

Representing (Optional)

2049 Old Steese Hwy. N. F665 AK 99712

Address

457-2692

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Home Resource
 committee name
 committee on HJR 74, 88, 90, dated 10 March 98
 bill/subject

When Nels Anderson starts the hearing out by claiming subsistence rights are the Native "birthright" ~~it~~ it's hard to convince the media that this is not a racial issue.

Please see attached testimony.

Signed: Mary Bishop
 Testifier

self
 Representing (Optional)

1555 Quin Quad Fbx 99709
 Address

455-6151
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Game Resource
 committee name
 committee on Wildlife, dated 3/10/90
 bill/subject

I am opposed to
 this subsistence Bill.
 All citizens should
 be treated equally,
 no matter where they
 reside.

FRANK MCGILVARY

Signed:

Testifier

Representing (Optional)

Address

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HOUSE RESOURCES
 committee name
 committee on HJR 88, 74, dated 3/10/90
 bill/subject

I'm OPPOSED TO THE OROUK BILLS

Signed: *Carl Russell* Carl Russell
 Testifier

SELF
 Representing (Optional)

PO BOX 56346 NORTH-POLE AK 99705
 Address

488-2648
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HOUSE RESOURCES
 committee name
 committee on HSR 88, 74 , dated 3/10/90
 bill/subject

I'm opposed To The above bills

Signed: *Thomas R. Buhite* Thomas R. Buhite
 Testifier
self
 Representing (Optional)
P.O. Box 80096 College, AK 99708
 Address
479-2425
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HOUSE RESOURCES
committee name
 committee on HJR 88.74 , dated 3/10/90
bill/subject

I'm OPPOSED TO THE ABOVE BILLS

Signed: Gerald Amundson GERALD AMUNDSON
Testifier

SELF
Representing (Optional)

1025 LAKEVIEW TER FBKS AK 99701
Address

456-2207
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the State Resources
 committee name
 committee on _____, dated _____
 bill/subject

[Faint handwritten text, possibly "State Resources Bill"]

Signed: Bruce G. Duvleau **BRUCE G. DUVLEAU**
 Testifier

 Representing (Optional)

 Address

 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Resources
 committee name
 committee on HJR 88 + 74 + 90 dated 3/10/90
 bill/subject

I have been a resident of the state for over 13 years and I am a hunter and fisher. My family and I go regularly to hunt and fish to obtain food for our bodies and renewal for our spirits. My residence in Alaska is by choice - not necessity and Alaska's fishing and hunting opportunities are the primary reasons why I choose to live here.

I am strongly opposed to any legislation or constitutional amendment which denies me the opportunity or gives me less opportunity than others based on where I live within the state or based on someone else's perception of what I need to sustain life. The Alaska Constitution is fine as it is - let's leave it alone.

Signed: Joseph F. Wick
 Testifier

Representing (Optional)
6955 No Name Lane, Fairbanks, AK 99712
 Address
483-4753
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Resources committee name

committee on ASR 74, 88, 90, dated 3/10/90
bill/subject What's wrong with Equality

Article 1, Section 1 of the Alaska Constitution provides, in Part:
"All persons are equal and entitled to equal rights, opportunities, and protection under the law."

The U.S. Supreme Court in Zobel v. Williams 457 U.S. 55 (1982) found that Alaska's attempt "To reward citizens for past contributions" was "Not a legitimate state purpose." Alaska's Supreme Court in Schafer v. Ve 680 P.2d 1169 (AK 1984) stated that: "it is clear that the Federal Constitution will not tolerate a state benefit program which "creates fixed, permanent distinctions between... concededly bona fide residents."

Any attempt to racially discriminate among Alaskans or to create a "privileged (rural) class" will violate the U.S. Constitution.

Equality and equal opportunity is constitutionally mandated. Why would anyone want to ~~erase~~ eviscerate these Basic Principles of Democracy. Until you can look ^{every Alaskan} ~~in~~ in the eye and tell them why you have created a class of persons who have ~~state sponsored~~ state sponsored priority to the opportunity to feed their family before the discriminated class.

The proposed rural priority Amendments do not comply with ANILCA Because of the Kenzie case. The grant a ~~racial~~ racial based privilege ~~that~~ will be the next decisive AND Discriminatory action you could conceive and will likely start a WAR Between Alaskans.

Signed: [Signature] Lynn Levensgood

Testifier

Representing (Optional)

Fairbanks F + G Advisory committee & self

Address

931 VIDE way Fbks AK 99709

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Resources
 committee name
 HJR 88
 committee on HJR 74: Const. Subcommittee dated 3-10-90
 bill/subject

*I oppose changing the
 Constitution to ~~change~~ solve
 this problem. It can be solved
 by legislation.*

Signed: Bill A. Jeff
 Testifier

Representing (Optional)
108 Gruening Way Fairbanks, AK 99712
 Address
457-1478
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Resources
committee name

committee on HJR 74: Const. Subsistence dated 3-10-90
bill/subject

I oppose a constitutional ammendment to change the subsistence rights. There are proposals which can effectively deal with these issues. These proposals should be utilized to solve our problems.

We have a good constitution and we should not tamper with it to solve short term problems just because the Federal government is exerting pressure from a distant and uninvolved point of view.

Signed: Anna M. Swift
Testifier

Representing (Optional)
108 Denning Way Fairbanks, Ak. 99712
Address

457-1470
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Resources Committee on
 committee name HJR 74488
 committee on _____, dated 3/10/90
 bill/subject _____

I am opposed to a Constitutional Amendment because;

- 1) I think we are giving Chesna the Feds are willing - but even if they are not, the Feds would only manage "Substance on Federal lands" - an amendment would merely broaden the discrimination to Federal + State land.
- 2) The requested amendment would do just the opposite of what the framers of the Constitution intended; to wit "to create a "Special minority class" (17%) of the people who could enjoy a privileged position.
- 3) until terms such as "Substance", "Rural" and "Special use" are defined you have no idea what effect or affect the amendment will have.
- 4) "Aboriginal Rights" are nice - as a shame if they are diminished - but we all loose ways of life style as modern times take away options - Should we create an amendment to allow Horse + Buggy on freeways?

Signed: Stephen L. Stone
 Testifier

del (and about 80% of the people I believe)
 Representing (Optional)

Address _____
457-2022 (W) 457-5261 (H)
 Phone No. _____

5) Minority
AFRICAN!

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE MENARD

FYI

NAME: KEN WYME
 TITLE:
 ADDRESS: 9571 NOBLEWOOD STREET
 CITY: ANCHORAGE
 PHONE: 243-7979
 ZIP: 99515

TITLE NO:
 SUBJECT: SUBSTITENCE
 MESSAGE: COMPER ADMINISTRATION ATTEMPT TO OPEN THE STATE CONSTITUTION FOR SI
 TITENCE IS ABSURD AND CONTRARY TO THE BEST INTEREST OF ALL ALASKANS. STATE
 FEDERAL BUREAUCRATS HAVE ROBBED ALASKA NATIVES OF THEIR SELF ESTEEM, SELF
 RESPECT AND SELF RELIANCE RELEGATED THEM TO ASSISTANCE OF WELFARE AND POVER
 ALASKA NATIVES SHOULD BE TREATED LIKE ALL ALASKANS. THE STATE SHOULD GET T
 FEDERAL LAW CHANGED. /CMR

POMID: 03090621
 DATE: 03/02/90
 TIME: 09:06:21
 IDNAME: ANCHORAGE LIO

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GOLL	GRUENBERG	FISCHER
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KUBINA	LARSON	KELLY
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SHARP	SHULTZ	STURGULEWSKI
SHACKHAMMER	TAYLOR	SZYMAWSKI
ULMER	NALLIS	UEHLING
ZAWACKI		ZHAROFF

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: BOB ROBES
 TITLE:
 ADDRESS: POB 1286
 CITY: PALMER
 PHONE: 745-0248
 ZIP: 99645
 BILL NO: SUBSIS
 SUBJECT: SUBSISTENCE

MESSAGE: I SUPPORT EQUAL RIGHTS FOR ALL ALASKANS AND I OPPOSE ANY
 CONSTITUTIONAL AMENDMENT THAT PROVIDES SPECIAL PRIVLIDEGE FOR ANY
 SPECIAL INTEREST.

POMID: 14114345
 DATE: 03/12/90
 TIME: 11:43:45
 LIONAME: MAT-SU LIO

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MENARD	SZYMAWSKI
JACKO	
FOSTER	
NAVARRE	
FURNACE	
SHARP	
HUDSON	
DAVIS, M.	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: JOHN T SHUE JR
 TITLE:
 ADDRESS: HC 02 BX 7636
 CITY: PALMER ZIP: 99645
 PHONE: 745-4911
 BILL NO: HJR 74
 SUBJECT: CONST. AMT: SUBSISTENCE PREFERENCE
 MESSAGE: & 88 & 90: I SUPPORT EQUAL RIGHTS FOR ALL ALASKANS. I OPPOSE
 ANY CONSTITUTIONAL AMENDMENT WHICH PROVIDES SPECIAL PRIVILEGE
 TO ANY GROUP.

POMID: 14134203
 DATE: 03/10/90
 TIME: 13:42:03
 LIONAME: MAT-SU LIO

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JACKO	FAHRENKAMP
FOSTER	ELIASON
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SHARP	STURGULEWSKI
HUDSON	ZHAROFF
DAVIS, M.	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: WAYNE WOODS
 TITLE:
 ADDRESS: POB 3037
 CITY: PALMER ZIP: 99645
 PHONE: 745-2534
 BILL NO: HJR 74
 SUBJECT: CONST. AMT: SUBSISTENCE PREFERENCE
 MESSAGE: & 88 & 90: I AM STRONGLY OPPOSED TO ANY CONSTITUTIONAL AMENDMENT
 THAT WOULD DISCRIMINATE AGAINST ANY GROUP OF ALASKANS IN ALLOCATING
 USES OF OUR COMMON WILDLIFE RESOURCES. NONE-TENTHS OF MY INCOME IS
 REALIZED BY COMMERCIAL CONSUMPTION OF OUR WILDLIFE RESOURCES. AS A
 THIRD GENERATION ALASKAN, I WISH TO PROTECT THE RIGHTS OF MY CHILDREN

POMID: 14181520
 DATE: 03/10/90
 TIME: 18:15:20
 LIONAME: MAT-SU LIO

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SHARP	STURGULEWSKI
HUDSON	ZHAROFF
DAVIS, M.	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: CAL WILLIAMS
 TITLE: POLITICAL CHAIRMAN, N.A.A.C.P.
 ADDRESS: P.O. BOX 200332
 CITY: ANCHORAGE
 PHONE: 276-8698
 ZIP: 99520

BILL NO:
 SUBJECT: SUBSISTANCE
 MESSAGE: WE SUPPORT NATIVE PREFERENCE TO ALL FISH AND GAME SHORT OF THIS. WE SUPPORT HJR 90./CHR

POMID: 03133405
 DATE: 03/12/90
 TIME: 13:34:05
 LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES

DAVIS, M.
 FOSTER
 FURNACE
 JACKO
 MENARD
 NAVARRE
 SHARP

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE MENARD

NAME: STEVE JANIK
 TITLE:
 ADDRESS: 1650 THUJA
 CITY: ANCHORAGE
 PHONE: 349-4854
 ZIP: 99507

BILL NO:
 SUBJECT: SUBSISTENCE
 MESSAGE: I AM OPPOSED TO REPRESENTATIVE JACKO'S PROPOSAL TO AMEND THE STATE CONSTITUTION THAT WOULD ALLOW DISCRIMINATION BASED ON RESIDENCY. DISCRIMINATION BASED ON RESIDENCY IS NO DIFFERENT THAN DISCRIMINATION BASED ON RACE OR RELIGION. /BN

No response necessary

POMID: 03075523
 DATE: 02/02/90
 TIME: 07:55:23
 LIONAME: ANCHORAGE LIO

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GOLL	GRUENBERG	FISCHER
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SHACKHAMMER	TAYLOR	SZYHANSKI
ULMER	WALLIS	UEHLING
ZAWACKI		ZHAROFF

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: DOROTHY T. SIMPSON
TITLE:
ADDRESS: 2130 KNOTTINGHAM DR
CITY: FAIRBANKS ZIP: 99709
PHONE: 479-2632
BILL NO: HJR 88
SUBJECT: SUBSISTENCE
MESSAGE: I STRONGLY OPPOSE THE GOVERNOR'S SUBSISTENCE BILL.

POMID: 07143108
DATE: 03/12/90
TIME: 14:31:08
LIONAME: FAIRBANKS LIO

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FURNACE	HALFORD
SHARP	STURGULEWSKI
HUDSON	ZHAROFF
DAVIS, M.	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: EVIE WITTEN
TITLE:
ADDRESS: 525 N STREET
CITY: ANCHORAGE ZIP: 99510
PHONE: 258-5647
BILL NO:
SUBJECT: SUBSISTENCE
MESSAGE: PLEASE SUPPORT HJR 88: AMEND THE ALASKA STATE CONSTITUTION TO AGREE WITH ANILCA. SUBSISTENCE RIGHTS SHOULD NOT BE GRANTED ON THE BASIS OF RACE, HEALTH, AND TRADITIONAL RURAL USES SHOULD BE ALLOWED TO CONTINUE WITHOUT CUMBERSOME BUREAUCRATIC CONTROL. KEEP SUBSISTENCE RIGHTS UNDER STATE CONTROL. WORK OUT DETAILS AFTER 7/1/90.

POMID: 04131859
DATE: 03/12/90
TIME: 13:18:59
LIONAME: BARROW INFO OFFICE

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FURNACE	HALFORD
SHARP	STURGULEWSKI
HUDSON	ZHAROFF
DAVIS, M.	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: T. K. FOSS
 TITLE:
 ADDRESS: 1509 BANWISTER
 CITY: ANCHORAGE, AK ZIP: 99508
 PHONE: 272-6354
 BILL NO: HJR 90
 SUBJECT: CONSTITUTIONAL AMENDMENT-SUBSISTENCE
 MESSAGE: RE HJR90, HJR80, HJR74 I AM OPPOSED TO THE PASSAGE OF THE ABOVE
 HJR 80, HJR 74, HJR 90. /JM

POMID: 03104659
 DATE: 03/12/90
 TIME: 10:46:59
 LIONAME: ANCHORAGE LIO

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SHARP	SHULTZ	STURGULEWSKI
SHACKHAMMER	TAYLOR	SZYMAWSKI
ULMER	WALLIS	UEHLING
ZAWACKI		ZHAROFF

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: GARY FEASTER
 TITLE: MAT VALLEY SPORTSMENS CLUB
 ADDRESS: POB 1075
 CITY: PALMER ZIP: 99645
 PHONE: 745-3841
 BILL NO: HJR 74
 SUBJECT: CONST. AMOT: SUBSISTENCE PREFERENCE
 MESSAGE: & 80 & 90: I REPRESENT 110 MEMBERS OF THE MATAHUSKA VALLEY
 SPORTSMENS CLUB. WE STRONGLY OPPOSE ANY AMENDMENTS TO THE CONSTITUTION
 WHICH PROVIDE SPECIAL PRIVILIGES TO ANY GROUP. SUCH AMENDMENTS WILL
 VIOLATE THE RIGHTS OF ALL ALASKANS.

POMID: 14114757
 DATE: 03/12/90
 TIME: 11:47:57
 LIONAME: MAT-SU LIO

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MENARD	SZYMAWSKI
JACKO	FAHRENKAMP
FOSTER	ELIASON
NAVARRE	FRANK
FURNACE	HALFORD
SHARP	STURGULEWSKI
HUDSON	ZHAROFF
DAVIS, M.	

when such action will only exacerbate the present situation? How will they craft an amendment that will not fly in the face of Article I and/or Article VIII of the State Constitution?

Is it the intent of the legislature to once again exhibit their most famous posture--supine--and leave it to the public to clean up the sorry messes (laws) foisted upon them as we have had to do so many times?

6. . If the federal government moves to manage for subsistence uses on federal land sue at the first and every additional opportunity. A determined effort in the courts will hasten resolution of the issue.

7. Lastly, let us not hear a single legislator state "I'm voting for the resolution to amend the Constitution in order to let the voters decide." If any legislator can't do better than that--resign and go home now!

Robert A. Rausch
P.O. Box 32662
Juneau, Alaska 99803

789-3764

A CONSTITUTIONAL AMENDMENT ESTABLISHING
A SUBSISTENCE PRIORITY FOR RURAL ALASKANS

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

March 7, 1990

I. The problem

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

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

II. Objectives to be achieved in any solution

We believe that any solution must meet the following objectives:

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

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

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

III. Review process

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

IV. Solutions suggested

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 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 uses and give these uses (as opposed to users) 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.

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FEDERAL/STATE OPTIONS

The following is an outline of the major legal options which have been suggested to date for solving the current subsistence problem in Alaska, beginning with an historical review of how we got here.

I. CHRONOLOGY OF EVENTS LEADING TO McDOWELL V. STATE:

1960 - The *Federal government* transferred authority for management of fish and game in Alaska to the new State government.

1971 - The *Alaska Native Claims Settlement Act (ANCSA)* extinguished aboriginal hunting and fishing rights. No law was enacted on protection of subsistence, but the Conference Report stated Native subsistence and subsistence lands would be protected by the State of Alaska and Department of Interior.

1978 - The *State subsistence law* created a priority for subsistence over all other fish and game uses. It did not define subsistence users (e.g., as "rural residents," "Natives," or other).

1980 - The *Alaska National Interest Lands Conservation Act (ANILCA)* required a subsistence priority for rural residents on Federal "public lands." It also said the State of Alaska could manage fish and game on all lands if it enacted a law granting a subsistence priority to rural residents, in compliance with ANILCA.

1982 - The Federal government said the State was in compliance with ANILCA, after the Boards of Fisheries and Game adopted regulations creating a rural subsistence priority.

1982 - *Ballot Proposition 7* to repeal the State's subsistence priority was rejected by voters.

1985 - The *Madison* decision was issued by the State Supreme Court which ruled that the 1978 State law did not specifically allow the Boards to grant a subsistence priority to rural residents.

1986 - The *State subsistence law* (1978) was amended by the Legislature to give a specific subsistence priority to rural residents.

1989 - The *Kenaitze decision* was issued by the Federal appeals court which said the State's definition of "rural" (the economic nature of the community) was not consistent with that of ANILCA (the population of the community).

II. McDOWELL v. STATE DECISION

On December 22, 1989, the State Supreme Court ruled that the State law (1978, amended in 1986) granting a subsistence priority based solely on residency is unconstitutional under the Alaska State Constitution.

The impact of this decision is clear: State law is now out of compliance with ANILCA. The former rules remain in effect until July 1, 1990, as a result of the Supreme Court's stay. After that, if there is no State and/or Federal solution, "dual management" will occur: the Federal government will take over management of fish and game on its "public lands" (more than 60 percent of lands in Alaska), while the State will retain management on State and private lands (including Native corporation lands).

III. LEGAL AND POLITICAL OPTIONS FOR SOLUTION

Over all, there are four kinds of choices: to amend the State Constitution, to amend ANILCA, to amend both the State Constitution and ANILCA, or to do nothing.

A. AMEND THE STATE CONSTITUTION.

Process: The Alaska Legislature must pass an amendment resolution by 2/3 vote of both houses (at least 27 Representatives and 14 Senators). The amendment must then be approved by a majority of voters in the General Election on November 6.

Substance: At least two major options have been mentioned to date.

1. Amend the State Constitution to allow the Legislature to adopt a law giving a subsistence priority to rural residents, thus complying with ANILCA.

Advantage: This option would leave the current system in place. The State of Alaska could continue to manage fish and game on all lands. This option requires no amendment to ANILCA.

Disadvantage: This option still requires a definition of "rural" (Kenaitze decision). The definition chosen by the Federal District Court might exclude some Native communities from the subsistence priority (particularly the Kenai Peninsula, Southeast Alaska and perhaps some regional centers).

2. Amend the State Constitution to allow the State to retain fish and game management on all lands by permitting the Legislature to adopt laws consistent with valid Federal law (ANILCA).

Advantage: This option holds greater appeal for Alaska legislators and voters, stressing State management rather than allocation priorities. It also leaves the current system of management in place under the State, while requiring no amendment to ANILCA.

Disadvantage: This option still requires a definition of "rural."

B. AMEND THE STATE CONSTITUTION AND ANILCA TO AGREE.

Process: The Alaska Legislature must pass an amendment resolution by a 2/3 vote of both houses (at least 14 senators and 27 representatives). The amendment must then be approved by a majority of voters in the General Election on November 6. The U.S. Congress (both the House of Representatives and Senate) must then adopt an amendment to ANILCA, and this must be signed by the President.

Substance: At least three major options have been mentioned to date.

1. Amend the State Constitution and ANILCA to allow a subsistence priority for Alaska Natives.

Advantage: This option protects Natives' subsistence rights statewide and includes all Natives resident in Alaska. It does not require that "rural" be defined.

Disadvantage: This option excludes non-Native rural people who depend on subsistence (many of whom are members of Native families). This may be seen by legislators and voters as a racial distinction.

2. Amend the State Constitution and ANILCA to allow a subsistence priority for Natives and rural residents.

Advantage: This option protects both Native subsistence rights statewide and the interests of other rural residents who depend on subsistence.

Disadvantage: This option may be seen by legislators and voters as a partly racial distinction. It still requires a definition of "rural."

3. Amend the State Constitution and ANILCA to allow a subsistence priority for rural residents and members of identifiable groups with cultures and traditions of subsistence use.

Advantage: This option would probably protect both Native and non-Native rural subsistence rights.

Disadvantage: "Cultures and traditions" might be interpreted in ways which harm Native interests. This option may still be seen by legislators and voters as a de facto racial distinction. It still requires a definition of "rural."

C. AMEND ANILCA.

Process: The U.S. Congress (both the House and Senate) must adopt an amendment to ANILCA, and this must be signed by the President.

Substance: At least two major options have been mentioned to date.

1. Amend ANILCA to conform to the State Constitution, (e.g., permit system or other criteria).
NOTE: This would require that a new State law implementing this system be adopted by the Legislature and signed by the Governor.

Advantage: Some urban subsistence users, such as urban Natives, might qualify.

Disadvantage: This option is not certain to satisfy the State Supreme Court's standards of constitutionality. It might also divide villages and Native families, according to the permit criteria chosen. It would be expensive, creating a large new bureaucracy and much paperwork.

2. Amend ANILCA to pre-empt State law, requiring a subsistence priority for particular groups (currently rural residents) on all lands in Alaska. (NOTE: This might be managed directly by Federal agencies or imposed by Congress on implementing State agencies.)

Advantage: This option unifies all fish and game management in Alaska under Federal law.

Disadvantage: Politically, it is very difficult to achieve, particularly without the agreement of the State and the Alaska Congressional Delegation.

D. DO NOTHING.

On July 1, 1990, the Federal government (Secretaries of Interior and Agriculture, with the U.S. Fish and Wildlife Service as lead) will take over management of fish and game on its "public lands," while the State of Alaska will have fish and game management on the remaining State and private lands.

Unresolved Issues:

1. Will the Federal government manage fish and game on its "public lands" directly (through the Federal agencies) or indirectly (by imposing Federal subsistence priority for rural residents on State agencies)?
2. Will Federal jurisdiction include only federally-owned "public lands," or more than that? Will Federal jurisdiction reach out for migratory salmon in navigable waters or migrating animals on any lands, in order to avoid management chaos?
3. Will the State and Federal management systems have very different regulations, making it difficult for subsistence users to follow? Will confusion and uncertainty lead to community disruption and/or management chaos?
4. How will the Federal government define "rural," and how will this impact the Kenai Peninsula, Southeast and perhaps regional centers?
5. Will the accumulation of problems and resentments from a dual management system have further negative impact on statewide politics and ethnic group relations in Alaska? Will the increased problems and resents be focused on Alaska Natives and the U.S. Congress, and will they lead to a repeal or watering down of federal subsistence law?

NOTE: A fifth strategy (judicial) has already been tried, without success. Both the State of Alaska and AFN petitioned the State Supreme Court to rehear the McDowell case and to reconsider its decision. The petitions were rejected.

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AFN TESTIMONY TO STATE HOUSE RESOURCES COMMITTEE BY JULIE KITKA

(APRIL 20, 1990)

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

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

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

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

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

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

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

AND GAME MANAGEMENT AT HOME, IN ALASKAN HANDS.

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

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

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

IS POLITICS. ALL THE AMENDMENT ITSELF WOULD DO IS TO CLEAR AWAY THE CONSTITUTIONAL OBJECTION FOUND BY THE SUPREME COURT IN MCDOWELL AND TO GIVE THE LEGISLATURE A POLITICAL OPTION IT CANNOT NOW CHOOSE, EVEN TO SAVE ITS OWN CONTROL OF FISH AND GAME.

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

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

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

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

I CANNOT OVERSTATE, MR. CHAIRMAN, THE IMPORTANCE OF ACTING EXPEDITIOUSLY. ADJOURNMENT OF THIS SESSION IS SCHEDULED IN LESS THAN THREE WEEKS. SEVEN DAYS AGO THE UNITED STATES FISH AND WILDLIFE SERVICE PUBLISHED IN THE FEDERAL REGISTER ITS FORMAL NOTICE OF "INTENTION TO PROPOSE INTERIM RULES IMPLEMENTING TITLE VIII OF THE ALASKA NATIONAL

INTEREST LANDS CONSERVATION ACT." WHY? AS INTERIOR SECRETARY LUJAN STATED AT OUR CONFERENCE LAST WEEK, THE UNITED STATES DOES NOT WISH TO COME INTO ALASKA AND TAKE OVER FISH AND GAME MANAGEMENT ON FEDERAL LANDS. BUT IT WILL DO SO IF THERE IS NO SOLUTION AT THE STATE LEVEL BY JULY 1. THE INTERIOR DEPARTMENT IS NOW GEARING UP TO DO JUST THAT, AND FEDERAL LAW REQUIRES IT TO GO THROUGH A PUBLIC CONSULTATION PROCESS ON INTERIM AND PERMANENT RULE - MAKING. THE DEADLINE FOR RECEIPT OF RECOMMENDATIONS AND COMMENTS AT INTERIOR IS MAY 14.

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

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

BE PERSUADED TO ADOPT SOME FORM OF STATUTORY LANGUAGE WHICH, WHILE PERHAPS SATISFYING THE STATE CONSTITUTION, WOULD STILL BE OUT OF COMPLIANCE WITH FEDERAL LAW. I URGE THE COMMITTEE TO SEE THAT EITHER OF THE LAST TWO OPTIONS REPRESENTS A FAILURE OF POLITICAL WILL AND WILL PRECIPITATE A LONG-TERM CRISIS OF FISH AND GAME MANAGEMENT IN ALASKA WHICH WE SHALL ALL COME TO REGRET.

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

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

LATER DESCRIBE IT AS HAVING BEEN UNAVOIDABLE OR UNINTENDED.

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

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

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

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

MR. HOPSON SAID:

"WE ALL HAVE A RESPONSIBILITY TO MANAGE THE RESOURCES AND THE ANIMALS GOD HAS PUT ON THIS EARTH. WE MIGHT ASK OURSELVES WHO ARE WE MANAGING IT FOR. IS THIS AN ISSUE OF WHO GETS TO TAKE THE LAST SEAL OR THE LAST CARIBOU? IS THIS AN ISSUE OF RETURNING TO A LIFESTYLE WHICH HUNTS WITH BOWS AND ARROWS OR LIVES WITHOUT MODERN CONVENIENCES? OR IS IT, MORE APPROPRIATELY, AN ISSUE OF KEEPING OUR CULTURE ALIVE

AND DYNAMIC, NOT A MUSEUM RELIC? A CULTURE IS TO BE LIVED AND EXPERIENCED, NOT STUDIED AND OBSERVED.

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

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

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

FROM THAT PERSPECTIVE, WE STRONGLY URGE THE LEGISLATURE TO ACT EXPEDITIOUSLY, TO ADOPT A CONSTITUTIONAL AMENDMENT IN COMPLIANCE WITH FEDERAL LAW AND TO MOVE FORWARD IN THE

EFFORT TO RETAIN FISH AND GAME IN THE HANDS OF THOSE WHO
KNOW BEST HOW TO MANAGE THEM - THE ALASKANS.

THANK YOU.

ALASKA FEDERATION
OF NATIVES, INC.



JANICE E. RYAN
PUBLIC INFORMATION OFFICER

3707

411 W. 4th Avenue
Suite 301

Anchorage, AK 99501
(907) 274-3611



SUBSISTENCE: A Strategy for Our Future

**Egan Convention Center
Anchorage, Alaska
April 10-11, 1990**



A Conference of the Native Community

Species		Historic range	State	When listed	Critical habitat	Special rules
Scientific Name	Common Name					
Boreognathes—Borage family						
<i>Cryptomus crassipes</i>	Tongue Creeper cat's-eye	U.S.A. (TX)	E		NA	NA

Dated: February 28, 1990
 Richard N. Smith,
 Acting Director, Fish and Wildlife Service,
 [FR Doc. 90-8577 Filed 4-12-90; 8:45 am]
 BILLING CODE 4310-06-M

50 CFR Part 36

RIN 1016-AB43

Intention To Propose Interim Rules Implementing Title VIII of the Alaska National Interest Lands Conservation Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to propose rules and request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that it will be developing interim regulations pertaining to the implementation of the subsistence priority for rural residents of Alaska under title VIII of the Alaska National Interest Lands Conservation Act of 1980. The Alaska Supreme Court recently ruled that the laws used by the State of Alaska to provide the subsistence priority required by title VIII violated the Alaska Constitution. The Alaska Supreme Court stayed its decision until July 1, 1990. Should the State be unable to rectify the situation, the Federal government may be required to take over the implementation of title VIII on public lands on July 1, or potentially sooner.

DATE: For written comments to be considered in the initial drafting of the rules, they should be received by May 14, 1990.

ADDRESSES: Comments should be addressed to the Regional Director, ATTN: Glenn Ellison, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Glenn Ellison, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3542.

SUPPLEMENTARY INFORMATION: Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126) requires the Secretary of the

Interior to implement a program to grant preference in favor of subsistence uses of fish and wildlife on public lands unless the State of Alaska implements a subsistence program consistent with ANILCA's requirements. The State of Alaska has implemented such a program since the enactment of ANILCA in 1980 pursuant to findings by the Department of the Interior that the State subsistence program is consistent with ANILCA. In December 1989, however, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural limitation in the State subsistence definition, which is required by ANILCA, violates the Alaska Constitution. The Court stayed the effect of the decision until July 1, 1990.

As a result, the Department of the Interior may be required to take over the implementation of title VIII of ANILCA on public lands on July 1, 1990. The Service, as the lead agency in the process of writing interim regulations for subsistence management on public lands, these rules would impact the subsistence use of fish and wildlife resources on public lands in Alaska managed by the Fish and Wildlife Service, National Park Service, Bureau of Land Management, Forest Service, Air Force, Army and various other Federal land managing agencies. This notice solicits comments and suggestions from resource users, other Alaskans and the general public on how title VIII should be implemented on public lands. Due to the uncertain nature of the situation and short time available, the development of these regulations is a contingency against the sudden requirement for the Federal government to take over implementation of title VIII on public lands. The mandates under which the regulations must operate include, but are not limited to the following:

- (1) Ensure the maintenance of healthy fish and wildlife populations;
- (2) Define subsistence uses as 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;

(3) Provide for nonwasteful subsistence uses of fish and wildlife and other renewable resources as the priority consumptive use of such resources on public lands, when it is necessary to restrict consumptive uses;

(4) Provide subsistence users reasonable access; and

(5) Provide for a system of regional participation.

The subsistence priority will not be based on race, color, or creed.

The potential need for quick action precludes a longer comment period than would normally be the case. Should Federal management become reality, it is the Federal government's intention to work in close cooperation with the State and minimize disruption to fish and wildlife users and historical state management of resident fish and wildlife. Title VIII allows reasonable regulations to provide access and to protect the viability of all wild renewable resources. The protection of wild renewable resources and the opportunity to utilize those resources by rural Alaskan residents on public lands for subsistence purposes are of paramount importance to the Federal government and to the public as a whole.

If Federal management appears to be required beyond December 31, 1990, the development of permanent regulations will commence in early July 1990. Permanent regulations will provide for regional councils and extensive public involvement in development of the permanent regulations and annual rule making. This regulation writing effort will include a Notice of Intent, public comment period and the acceptance of written and verbal comments throughout the process.

Dated: April 6, 1990.

John F. Turner,

Director, U.S. Fish and Wildlife Service,
 [FR Doc. 90-8534 Filed 4-12-90; 8:45 am]

BILLING CODE 4310-06-M



SUBSISTENCE:

A Strategy for Our Future

**Egan Convention Center - Lower Level
Anchorage, Alaska
April 10-11, 1990**

Conference Guide & Agenda

ALASKA FEDERATION OF NATIVES, INC.

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



Open Letter to Alaska Native leaders:

On behalf of the Alaska Federation of Natives and its member organizations, I would like to extend a heart-felt welcome to you. Thank you for taking the time to attend this important two-day summit conference.

As you know, on December 22, 1989, the Alaska Supreme Court ruled the State subsistence law unconstitutional. Since January, in meetings across the state, Native people have been reviewing the legal situation and the range of possible solutions to the serious situation we now face.

Over the course of these next two days, we hope to review the best possible information on the consequences of the McDowell decision as it affects Native people and hunting and fishing rights. We believe that if Native people are informed about political and legal developments which affect them, they can more effectively protect and promote their own interests and the public interest.

Immediately following the two-day meeting, the House and Senate Resources Committees of the Alaska State Legislature will hold a joint hearing on subsistence. The hearing is scheduled for Wednesday, April 11, from 5:30-9:00PM. It will be held at the Egan Convention Center in the same room as this conference. AFN strongly urges you to plan on testifying. Many legislators do not understand why subsistence is critical to the cultural and economic survival of Native families. This is an opportunity for you to share your knowledge and your views on how the situation should be resolved.

Protecting subsistence hunting and fishing will continue to be a challenge to Alaska Natives for some time. We urge you to continue to stay involved. Thank you.

Sincerely,

A handwritten signature in cursive script that reads 'Julie E. Kitka'.

Julie E. Kitka
President

AGENDA

Tuesday, April 10, 1990

- 8:00am WELCOME - Julie Kitka, AFN President
INVOCATION - Rev. Anna Frank, Episcopal Diocese of Alaska
- 8:40 INTRODUCTION & PURPOSES - Ralph Eluska, AFN
PRESENTATION Walter Charley, Athabascan Elder
- 8:55 REVIEW OF AGENDA - Co-moderators Perry Eaton & Marlene Johnson
- 9:00 PANEL: "CHALLENGES FACING ALASKA NATIVES - SUBSISTENCE"
Panel Moderators: Perry Eaton & Marlene Johnson Julie Kitka, AFN
John Shively, NANA Bob Polasky, RurAL CAP Chris McNeil, SEALASKA
- Resource people: Don Mitchell, AFN Counsel
Bill Caldwell, Alaska Legal Services
Alan Mintz, DC Counsel
QUESTIONS FROM THE FLOOR
- 10:30 Break
- ISSUE #1: FEDERAL PRE-EMPTION & DUAL MANAGEMENT OF FISH & GAME
- 10:45 FEDERAL/STATE PANEL: "HOW WOULD IT WORK?"
Panel Moderator: Johnny Hawk
Glenn Elison, USF&S Steve Behnke, ADF&G
Tom Koester, Dept. of Law Stan Leaphardt, CACFA
QUESTIONS FROM THE FLOOR
- 11:30 PANEL: "HOW WILL IT AFFECT US?"
Panel Moderator: Chris McNeil, SEALASKA
Trefon Angasan, BBNC, "Unanswered Questions & Continuing Litigation"
Ken Johns, CRNA, "Impacts on Villages Surrounded by State & Federal Land"
Myron Naneng, AVCP, "Impacts on the Y-K Delta"
Clare Swan, Kenaitze Indian Tribe, "Kenaitze Lawsuit"
Ed Thomas, T&H, "Co-Management under '638"
Walter Sampson, NANA, "Living with Federal Management"
QUESTIONS FROM THE FLOOR
- 12:30pm Break for lunch

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AGENDA

Tuesday, April 10, 1990

2:00pm REMARKS BY CO-MODERATORS (AGENDA/PRODEDURES)

ISSUE #2: CONGRESS & ANILCA

2:05 PANEL: "OPENING ANILCA"

Panel Moderator: Edgar Blatchford

David Eluska, RurAL CAP

Cheryl Sutton, KPFA

Willie Kasayulie, ANC

Robert Willard, SENS

Mitch Demientieff, TCC

Emily Barnett, Sierra Club

Bud Burris, Alaska Outdoor Council Wayne Anthony Ross, Alaska Outdoor Council

QUESTIONS FROM THE FLOOR

4:00 PRESENTATION BY SENATOR TED STEVENS VIA TAPE

Marie Matsuno Nash, Senator Stevens' Staff Representative

4:20 PANEL: "CONGRESSIONAL STAFF QUESTIONS & ANSWERS"

Panel Moderator: Tim Wallis

Greg Renkas, Chief of Staff, Senator Frank Murkowski

Greg Chapados, Chief of Staff, Senator Ted Stevens

Rick Agnew, Counsel, Congressman Don Young

CLOSING REMARKS, Eddie Hopson, Inupiat Elder

5:30 Recess

Wednesday, April 11, 1990

8:30am REMARKS BY CO-MODERATORS (AGENDA/PROCEDURES)

8:40 OPENING REMARKS, Rev. Billy Sheldon, Sr., Inupiat Elder

ISSUE #3: STATE CONSTITUTIONAL AMENDMENT

9:00 GOVERNOR STEVE COWPER

9:20 QUESTIONS & ANSWERS, Mike Irwin, Office of the Governor

9:45 CONGRESSMAN DON YOUNG

10:15 Break

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AGENDA

Wednesday, April 11, 1990

10:30am LEGISLATORS' PANEL: "THE NEXT FOUR WEEKS - OPTIONS AVAILABLE TO THE ALASKA STATE LEGISLATURE"
Panel Moderator: Nels A. Anderson, Jr.
Sen. Al Adams Rep. Eileen MacLean Rep. George Jacko
Rep. Kay Wallis Sen. Jack Coghill Rep. Lyman Hoffman
QUESTIONS FROM THE FLOOR

12:30pm Break for lunch

ISSUE #4: CONSTITUTIONAL AMENDMENT APPROACH

1:30 PANEL: VILLAGE PERSPECTIVES
Dolly Garza, Southeast Tom Tilden, Bristol Bay Gary Oskolkoff, Southcentral
Paul John, Western Alaska Ronald Brower, Jr., North Slope Will Mayo, Interior

2:20 PANEL: REGIONAL PERSPECTIVES
Myron Naneng, AVCP Robert Willard, SENSC Mitch Demientieff, TCC
Trefon Angasan, BBNA Sam Demientieff, FNA

3:10 Break

3:30 PANEL: "WHERE DO WE GO FROM HERE?"
Ralph Eluska, AFN Matthew Iya, RARA Dewey Skan, Jr., Rural CAP
Bart Garber, NARF Byron Mallott, SEALASKA Willie Kasayulie, ANC

4:45 CLOSING REMARKS Dr. Walter Soboleff, Tlingit Elder

5:00 BENEDICTION Bishop Jacob Nelson, Moravian Mission of Alaska, Bethel

CONFERENCE CLOSING

5:30pm- JOINT HOUSE/SENATE RESOURCES HEARING
9:00pm

PLEASE TESTIFY: This joint House/Senate Resources Committee Hearing is an excellent opportunity for Native people from throughout the State to make clear how critically important subsistence activities are to our cultures, economies and lifestyles. Please take advantage of it and testify.

FEDERAL/STATE OPTIONS

The following is an outline of the major legal options which have been suggested to date for solving the current subsistence problem in Alaska, beginning with an historical review of how we got here.

I. CHRONOLOGY OF EVENTS LEADING TO McDOWELL v. STATE

1960 - The *Federal government* transferred authority for management of fish and game in Alaska to the new State government.

1971 - The *Alaska Native Claims Settlement Act (ANCSA)* extinguished aboriginal hunting and fishing rights. No law was enacted on protection of subsistence, but the Conference Report stated Native subsistence and subsistence lands would be protected by the State of Alaska and Department of Interior.

1978 - The *State subsistence law* created a priority for subsistence over all other fish and game uses. It did not define subsistence users (e.g., as "rural residents," "Natives," or other).

1980 - The *Alaska National Interest Lands Conservation Act (ANILCA)* required a subsistence priority for rural residents on Federal "public lands." It also said the State of Alaska could manage fish and game on all lands if it enacted a law granting a subsistence priority to rural residents, in compliance with ANILCA.

1982 - The Federal government said the State was in compliance with ANILCA, after the Boards of Fisheries and Game adopted regulations creating a rural subsistence priority.

1982 - *Ballot Proposition 7* to repeal the State's subsistence priority was rejected by voters.

1985 - The *Madison* decision was issued by the State Supreme Court which ruled that the 1978 State law did not specifically allow the Boards to grant a subsistence priority to rural residents.

1986 - The *State subsistence law* (1978) was amended by the Legislature to give a specific subsistence priority to rural residents.

1989 - The *Kenaitze decision* was issued by the Federal appeals court which said the State's definition of "rural" (the economic nature of the community) was not consistent with that of ANILCA (the population of the community)

II. McDOWELL v. STATE DECISION

On December 22, 1989, the State Supreme Court ruled that the State law (1978, amended in 1986) granting a subsistence priority based solely on residency is unconstitutional under the Alaska State Constitution.

The impact of this decision is clear: State law is now out of compliance with ANILCA. The former rules remain in effect until July 1, 1990, as a result of the Supreme Court's stay. After that, if there is no State and/or Federal solution, "dual management" will occur: the Federal government will take over management of fish and game on its "public lands" (more than 60 percent of lands in Alaska), while the State will retain management on State and private lands (including Native corporation lands). Over all, there are four kinds of choices: to amend the State Constitution, to amend ANILCA, to amend both the State Constitution *and* ANILCA, or to do nothing.

III. LEGAL AND POLITICAL OPTIONS FOR SOLUTION

A. AMEND THE STATE CONSTITUTION.

Process: The Alaska Legislature must pass an amendment resolution by 2/3 vote of both houses (at least 27 Representatives and 14 Senators). The amendment must then be approved by a majority of voters in the General Election on November 6.

Substance: At least two major options have been mentioned to date.

1. Amend the State Constitution to allow the Legislature to adopt a law giving a subsistence priority to rural residents, thus complying with ANILCA.

Advantage: This option would leave the current system in place. The State of Alaska could continue to manage fish and game on all lands. This option requires no amendment to ANILCA.

Disadvantage: This option still requires a definition of "rural" (Kenaitze decision). The definition chosen by the Federal District Court might exclude some Native communities from the subsistence priority (particularly the Kenai Peninsula, Southeast Alaska and perhaps some regional centers).

2. Amend the State Constitution to allow the State to retain fish and game management on all lands by permitting the Legislature to adopt laws consistent with valid Federal law (ANILCA).

Advantage: This option holds greater appeal for Alaska legislators and voters, stressing State management rather than allocation priorities. It also leaves the current system of management in place under the State, while requiring no amendment to ANILCA.

Disadvantage: This option still requires a definition of "rural."

B. AMEND THE STATE CONSTITUTION AND ANILCA TO AGREE.

Process: The Alaska Legislature must pass an amendment resolution by a 2/3 vote of both houses (at least 14 senators and 27 representatives). The amendment must then be approved by a majority of voters in the General Election on November 6. The U.S. Congress (both the House of Representatives and Senate) must then adopt an amendment to ANILCA, and this must be signed by the President.

Substance: At least three major options have been mentioned to date.

1. Amend the State Constitution and ANILCA to allow a subsistence priority for Alaska Natives.

Advantage: This option protects Natives' subsistence rights statewide and includes all Natives resident in Alaska. It does not require that "rural" be defined.

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Conscience Guide 7

FEDERAL/STATE OPTIONS

Disadvantage: This option excludes non-Native rural people who depend on subsistence (many of whom are members of Native families). This may be seen by legislators and voters as a racial distinction.

2. Amend the State Constitution and ANILCA to allow a subsistence priority for Natives and rural residents.

Advantage: This option protects both Native subsistence rights statewide and the interests of other rural residents who depend on subsistence.

Disadvantage: This option may be seen by legislators and voters as a partly racial distinction. It still requires a definition of "rural."

3. Amend the State Constitution and ANILCA to allow a subsistence priority for rural residents and members of identifiable groups with cultures and traditions of subsistence use.

Advantage: This option would probably protect both Native and non-Native rural subsistence rights.

Disadvantage: "Cultures and traditions" might be interpreted in ways which harm Native interests. This option may still be seen by legislators and voters as a de facto racial distinction. It still requires a definition of "rural."

C. AMEND ANILCA.

Process: The U.S. Congress (both the House and Senate) must adopt an amendment to ANILCA, and this must be signed by the President.

Substance: At least two major options have been mentioned to date.

1. Amend ANILCA to conform to the State Constitution, (e.g., permit system or other criteria).
NOTE: This would require that a new State law implementing this system be adopted by the Legislature and signed by the Governor.

Advantage: Some urban subsistence users, such as urban Natives, might qualify.

Disadvantage: This option is not certain to satisfy the State Supreme Court's standards of constitutionality. It might also divide villages and Native families, according to the permit criteria chosen. It would be expensive, creating a large new bureaucracy and much paperwork.

2. Amend ANILCA to pre-empt State law, requiring a subsistence priority for particular groups (currently rural residents) on all lands in Alaska. (NOTE: This might be managed directly by Federal agencies or imposed by Congress on implementing State agencies.)

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FEDERAL/STATE OPTIONS

Advantage: This option unifies all fish and game management in Alaska under Federal law.

Disadvantage: Politically, it is very difficult to achieve, particularly without the agreement of the State and the Alaska Congressional Delegation.

D. DO NOTHING.

On July 1, 1990, the Federal government (Secretaries of Interior and Agriculture, with the U.S. Fish and Wildlife Service as lead) will take over management of fish and game on its "public lands," while the State of Alaska will have fish and game management on the remaining State and private lands.

UNRESOLVED ISSUES:

1. Will the Federal government manage fish and game on its "public lands" directly (through the Federal agencies) or indirectly (by imposing Federal subsistence priority for rural residents on State agencies)?
2. Will Federal jurisdiction include only federally-owned "public lands," or more than that? Will Federal jurisdiction reach out for migratory salmon in navigable waters or migrating animals on any lands, in order to avoid management chaos?
3. Will the State and Federal management systems have very different regulations, making it difficult for subsistence users to follow? Will confusion and uncertainty lead to community disruption and/or management chaos?
4. How will the Federal government define "rural," and how will this impact the Kenai Peninsula, Southeast and perhaps regional centers?
5. Will the accumulation of problems and resentments from a dual management system have further negative impact on statewide politics and ethnic group relations in Alaska? Will the increased problems and resents be focused on Alaska Natives and the U.S. Congress, and will they lead to a repeal or watering down of federal subsistence law?

NOTE: A fifth strategy (judicial) has already been tried, without success. Both the State of Alaska and AFN petitioned the State Supreme Court to rehear the McDowell case and to reconsider its decision. The petitions were rejected.

UNANSWERED QUESTIONS & CONTINUING LITIGATION

1. Assuming that on July 1, 1990, the State is not in compliance with Title VIII of ANILCA, how did Congress intend the Title VIII subsistence priority to be implemented?

There are two possibilities. The first possibility is that Congress intended the Title VIII subsistence priority to take the place of State law and intended the U.S. Fish and Wildlife Service and other federal agencies to take the place of the Alaska Board of Fisheries and Board of Game. The second possibility is that Congress intended the Title VIII subsistence to take the place of State law, but intended the Alaska board of Fisheries and Board of Game to implement priority (subject to federal oversight). The first possibility results in dual regulation of the same fish stocks and game populations. The second possibility allows regulation of the taking of fish stocks and game populations to be done by one regulator using two legal standards.

2. What is the jurisdiction of the Title VIII subsistence priority?

Section 804 of ANILCA establishes a federal subsistence priority for the taking of fish stocks and game populations on "public lands" in Alaska. 1) What stocks and populations did Congress intend the term "public lands" to include? 2) Does the section 804 priority apply fishing for fish stocks throughout their ranges (for example, to subsistence fishing for a Yukon River salmon stock up and down the entire Yukon River)? Or is the priority just limited to subsistence fishing that occurs on federal land (for example, fishing inside the boundaries of the Yukon Delta Wildlife Refuge)? 3) Similarly, does the section 804 priority apply to game animals only when they are hunted on federal land? Or does it apply to the hunting of game animals everywhere they roam?

3. Which hunters and fishermen did Congress intend the Title VIII subsistence priority to benefit?

Section 803 of ANILCA limits the subsistence priority to hunters and fishermen who are "rural Alaska residents." In 1986, the Alaska Legislature enacted a law that says that "rural Alaska residents" live in communities and areas in which hunting and fishing for food is a principal characteristic of the economy of the community or area. The Ninth Circuit Court of Appeals has held that Congress intended "rural Alaska residents" to be hunters and fishermen who live in locations that are "sparsely populated, where the economy centers on agriculture or ranching." According to the court: "rural is the antonym of urban and includes all areas in between cities and towns of a particular size." Because of the conflict between these definitions - if the Alaska Constitution is amended to give the Legislature authority to enact laws that comply with Title VIII of ANILCA - the State must deal with the question of "rural." Three policy choices have been identified to date:

- 1) amend the State definition of "rural area" to conform to the Ninth Circuit definition,
- 2) Congress must amend section 803 of ANILCA to conform to the State definition,
- 3) or Congress and the State must amend both federal and state law to enact a new, mutually agreed upon "rural" definition.

cont. on page 11

Unanswered questions (cont.)

4. Should the Alaska Legislature pass, and should the voters adopt, a constitutional amendment that authorizes the Legislature to enact laws that comply with Title VIII of ANILCA?

In 1978, and again in 1986, the Alaska Legislature passed laws of general applicability that the Legislature thought established a subsistence priority in Title VIII of ANILCA. ANILCA requires the benefits of the subsistence priority to be limited to "rural Alaska residents." In McDowell v. State, the Alaska Supreme Court held that the Alaska Constitution does not grant the Legislature authority to limit the benefits of a subsistence priority to rural residents." To give the Legislature the authority that the Court has said it lacks, the Governor and several legislators have introduced bills to amend the Alaska Constitution to allow the Legislature to establish a "rural resident" subsistence priority. The important unanswered questions include:

- 1) Should such an amendment be adopted? If not, should an amendment be adopted that allows the subsistence priority to be limited to Natives, Natives and non-Natives who live in ANCSA villages, or some other group of hunters and fishermen?
- 2) If such an amendment should be adopted, what is the likelihood that the Alaska Legislature, by a 2/3 vote of each house, would agree to put such an amendment on the 1990 election ballot?
- 3) And if it were to appear on the 1990 election ballot, what is the likelihood that such an amendment would be approved by a majority of the voters?

COURT CASES

There are a number of cases in the federal and state courts in which subsistence users have challenged a variety of State restrictions on subsistence hunting and fishing practices. Some of the most important of these cases were described below. If the McDowell decision results in a dual management system after July 1, these cases will be affected in different ways.

THE "RURAL" RESTRICTION

Kenaitze Indian Tribe v. Alaska (federal court). In this case, the federal court of appeals threw out the State Legislature's 1986 definition of "rural area" (as a place where subsistence is "a principal characteristic of the economy"). This definition had been used to deny subsistence fishing rights to the Kenaitze Tribe and most other subsistence users on the Kenai Peninsula. The court of appeals ruled that the definition was inconsistent with ANILCA's use of the "rural" classification, and that "rural" must be given its ordinary meaning. The federal district court is now considering whether the entire Kenai Peninsula, or only parts of it, are rural for subsistence purposes.

Last summer, the Kenaitze Indian Tribe was permitted, by a preliminary injunction, to operate a single tribal subsistence fishing net. A similar preliminary injunction for the upcoming season is currently being negotiated between the Kenaitze Indian Tribe and the State. The issue of whether the State or the federal government will have jurisdiction over the Kenai fisheries after July 1 has not yet been raised in this case.

RESTRICTIONS ON "CUSTOMARY AND TRADITIONAL" USES

Kitka v. Alaska (federal court). This lawsuit was filed by residents of Sitka. Although the Joint Boards had determined that Sitka was a "rural area" under the State's definition, the Board of Fisheries, following an approach similar to the approach the Joint Boards follow in making the "rural area" determination, ruled that Sitka residents do not qualify for "customary and traditional" uses of any fish or shellfish species, except sockeye salmon and herring. The Board therefore refused to authorize any subsistence uses of shellfish, groundfish, four species of Pacific salmon, and all other finfish. The plaintiffs have challenged these restrictions as violations of ANILCA; they also allege that they are unconstitutional under the federal Constitution. On its own initiative, the federal court has indicated that it might find parts of the City and Borough of Sitka to be non-"rural."

Sumner Strait Advisory Committee v. Alaska (federal court). In this case a local advisory committee and non-Native residents of Port Protection and Port Baker (on the northwest tip of Prince of Wales Island) challenge the finding of the Board of Fisheries that local residents do not qualify for "customary and traditional" subsistence uses of any species of fish (even though the Board of Game has found that they are entitled to subsistence uses of deer). Plaintiffs allege that the Board's action violates ANILCA. They also allege that the Board illegally refused to follow the recommendation of the regional advisory council.

Bobby v. Alaska (federal court). This is the Lime Village case in which the federal court ruled unlawful the Board of Game's closed-season and individual-bag-limit restrictions on subsistence moose and caribou hunting. The court held that the closed seasons were inconsistent with traditional hunting seasons, and that individual bag limits were in conflict with the communal system of sharing game resources. In response to the court's order, the Board eliminated individual bag limit, replacing them with a community harvest-reporting system (but individual harvest tickets are still required). The Board also eliminated the closed season on caribou, but retained two closed moose seasons. Lime Village has objected to the closed moose seasons and the requirement for individual harvest tickets, and the Board of Game has agreed to reconsider those restrictions at its next subsistence meeting. The hunting grounds of Lime Village include both federal and non-federal lands.

John v. Alaska (federal court). In this case residents of Mentasta and Dot Lake, along with the Mentasta Village Council, have successfully argued that ANILCA requires the Board of Fisheries to allow a subsistence fishery at the historic site of Batzulnetas on the upper Copper River, which has been closed to subsistence fishing since 1964. The court ruled that in refusing to permit the subsistence fishery, the Board had not taken the steps and made the findings necessary under the State subsistence law and ANILCA. The court therefore directed the Board to adopt new regulations consistent with the law. A subsistence fishery was conducted at Batzulnetas last summer under a preliminary injunction, and a new preliminary injunction for this upcoming season is currently being negotiated.

Native Village of Dot Lake v. Alaska & Kluti Kaah Native Village of Copper Center v. Alaska (federal court). These cases were filed the first week of January this year when the Alaska Department of Fish and Game, after the McDowell decision came down, issued emergency orders closing the winter Dot Lake subsistence moose hunt and the winter Nelchina subsistence caribou hunt. The hunts were reinstated when the Alaska Supreme Court stayed the effect of its McDowell decision until July 1. The plaintiffs in both cases allege that existing restrictions on their subsistence hunting violate ANILCA; they also allege that they have a constitutional right to engage in subsistence hunting. The Dot Lake moose hunting grounds include mostly non-federal lands, whereas subsistence hunting of the Nelchina caribou herd takes place on both federal and non-federal lands.

Continuing Litigation

Morry and Kwethluk IRA Council v. State (State court at Barrow). In this case a resident of Anaktuvuk Pass and the Kwethluk Tribe challenge, under both ANILCA and the State subsistence law, the \$25.00 tag fee and the hide and skull sealing requirements as applied to the subsistence hunting of grizzly bears. The bear hunting grounds of both villages include mostly federal lands.

CUSTOMARY TRADE

Tanana Fish and Game Association v. Alaska (federal court). In this case the people of Tanana challenge a Board of Fisheries regulation which prohibits them from selling the roe from Yukon River salmon lawfully taken for subsistence uses. The bulk of this incidental by-product is otherwise wasted. The Village fish and game association argues that limited exchanges of this incidental roe for cash qualifies as "customary trade" within ANILCA's definition of subsistence uses, and that the State therefore cannot lawfully prohibit this trade. The association has developed a program to regulate and limit the roe trade. The local advisory committee adopted the program, but the Board of Fisheries rejected it. The issue whether the Yukon River subsistence salmon fisheries should be managed by the State or the federal government has been raised in this case.

United States v. Sakurai (federal court). In this federal criminal prosecution under the Lacey Act for selling herring roe-on-kelp, the court dismissed the charges against two residents of Hydaburg, who had earned \$7,000 to \$9,000 for such sales during each of the previous two years. The court ruled that such sales were "customary trade" within the meaning of ANILCA, and that the amounts involved did not constitute a "significant commercial enterprise."

SUSTAINED YIELD

Kwethluk IRA Council v. Alaska (federal court). This case was filed after the Board of Game in March rejected an emergency petition from the Kwethluk Tribe for an immediate, limited subsistence hunt of the Kilbuck Mountains caribou herd. The Board attempted to base its decision on the sustained yield principle. Last week the federal court granted a preliminary injunction requiring the State to make available to the Tribe between April 5 and April 15 a subsistence hunt, with a quota of 50 caribou. The court rejected the Board's sustained yield determination because the State did not have a game management plan for the Kilbuck herd and the Board had not adopted "an articulated and evenly applicable definition of sustained yield." The court criticized the Board for acting "in an *ad hoc* fashion, as though it had unfettered discretion to decide what meaning it would attribute to the sustained yield issue in any particular case." The court found that a hunt of 50 animals would not adversely affect the herd, and that Kwethluk had demonstrated an urgent need for the meat.

Tlingit and Haida Central Council v. State (State court). In this recently filed case, individual Tlingit and Haida Indians and Tlingit and Haida Central Council challenge the State's management of sea cucumbers harvests in Southeast Alaska. They allege that the State is mismanaging this resource by allowing commercial harvests in violation of the sustained yield principle, to the detriment of long-established subsistence uses of sea cucumbers throughout the region.

THE FOLLOWING BILLS have been introduced by various legislators and the Governor in an attempt to provide a legislative solution to the current situation regarding subsistence. They are listed in order of when they were introduced. For more information on these proposals please contact the bill's sponsor.

SPONSORED BY REP. RAMONA BARNES

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 415
IN THE LEGISLATURE OF THE STATE OF ALASKA
SIXTEENTH LEGISLATURE - SECOND SESSION
A BILL

For an Act entitled: "An Act relating to subsistence hunting and fishing." BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 16.05.258(a) is amended to read:

(a) The Board of Fisheries and the Board of Game shall identify the fish stocks and game populations, or portions of stocks and populations, that are customarily and traditionally used for subsistence [IN EACH RURAL AREA IDENTIFIED BY THE BOARDS].

* Sec. 2. AS 16.05.258(c) is amended to read:

(c) The boards shall adopt subsistence fishing and subsistence hunting regulations for each stock and population for which a harvestable portion is sufficient to accommodate the subsistence uses of the stock or population, then the boards may provide for other consumptive uses of the remainder of the harvestable portion. If it is necessary to restrict subsistence fishing or subsistence hunting in order to assure sustained yield or continue subsistence uses, then the preference shall be limited, and the boards shall distinguish among subsistence users on the basis of their [BY APPLYING THE FOLLOWING CRITERIA:

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

(2) LOCAL RESIDENCY,] and the

(3)] availability of alternative resources.

* Sec. 3. AS 16.05.258 is amended by adding a new subsection to read:

(g) Methods and means employed in the pursuit, capture, and transport of fish or game for subsistence use may not include

(1) motorized vehicles, including motorized boats, aircraft, snow machines, trucks, and automobiles;

(2) poison or a similar substance;

(3) explosive devices or charges that could affect more than one animal at a time;

(4) gill nets, seines, or long lines;

(5) traps or snares that the Board of Fisheries or Board of Game determines to be inhumane.

* Sec. 4. AS 16.05.940(29) is amended to read:

(29) "subsistence fishing" means the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources [BY A RESIDENT DOMICILED IN A RURAL AREA OF THE STATE] for subsistence uses with a dip net, spear [GILL NET, SEINE], fish wheel, [LONG LINE,] or other means defined by the Board of Fisheries;

* Sec. 5. AS 16.05.940(30) is amended to read:

(30) "subsistence hunting" means the taking of, hunting for, or possession of game [BY A RESIDENT DOMICILED IN A RURAL AREA OF THE STATE] for subsistence uses by means defined by the Board of Game;

* Sec. 6. AS 16.05.940(31) is amended to read:

(31) "subsistence uses" means the noncommercial, customary, and traditional uses of wild, renewable resources [BY A RESIDENT DOMICILED IN A RURAL AREA OF THE STATE] for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of non-edible by-products of fish and wildlife resources taken for personal or family consumption; in this paragraph, "family" means persons related by blood, marriage, or adoption living in the same household, and a person living in the household on a permanent basis;

* Sec. 7. AS 16.05.940(26) is repealed.

SPONSORED BY REP. GEORGE JACKO, REP. PETER GOLL
HOUSE JOINT RESOLUTION NO. 74
IN THE LEGISLATURE OF THE STATE OF ALASKA
SIXTEENTH LEGISLATURE - SECOND SESSION

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

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

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

SECTION 19. SUBSISTENCE USE OF RENEWABLE NATURAL RESOURCES. The legislature may grant a preference for subsistence use of fish and wildlife and State-owned renewable natural resources. This constitution does not restrict the power of the legislature to allocate access among residents to fish and wildlife and State-owned renewable natural resources for subsistence uses on the basis of local residency, customary or traditional use, or dependence on the resources for food and other purposes.

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

INTRODUCED BY GOVERNOR COWPER

HOUSE JOINT RESOLUTION NO. 88 IN THE LEGISLATURE OF THE STATE OF ALASKA
SIXTEENTH LEGISLATURE - SECOND SESSION

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

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

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

SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE. 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 residence, availability of alternative resources, and customary and direct dependence on a fish or wildlife population as the mainstay of livelihood.

* Sec. 2. The intent of the amendment proposed by this resolution is to validate, ratify, and reinstate any provisions of the new statutes and amendments enacted by ch. 52, SLA 1986, and of any regulations adopted under those statutes and amendments, 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.

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

PROPOSED LEGISLATION (cont.)

SPONSORED BY REP. KAY WALLIS

HOUSE JOINT RESOLUTION NO. 90
IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

Proposing an amendment to the Constitution of the State of Alaska relating to subsistence uses of plants, fish, and wildlife by rural residents.

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

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

SECTION 19. SUBSISTENCE USES OF PLANTS, FISH, AND WILDLIFE. Nothing in this constitution prohibits the legislature from limiting the taking of plants, fish, and wildlife for subsistence uses by rural residents, and from providing for the allocation of that taking among rural residents on the basis of local or community residence, availability of alternative resources or cultural, traditional, and customary uses of plants, fish, or wildlife, or dependence on plants or fish or wildlife population as the mainstay of livelihood.

* Section 2. The amendment proposed by this resolution shall be placed before the voters of the State of Alaska at the next general election in conformity with Article XIII, Section 1, Constitution of the State of Alaska, and the election laws of the State.

*REP. LYMAN HOFFMAN'S PROPOSED AMENDMENT
TO HB88 - GOVERNOR COWPER'S PROPOSAL*

Section 19. RETENTION OF FISH AND WILDLIFE MANAGEMENT BY THE STATE. Nothing in this constitution prohibits the legislature from enacting laws relating to the allocation for subsistence uses of fish and wildlife and wild renewable natural resources which are consistent with valid federal laws in order to retain management authority over such resources by the State of Alaska.

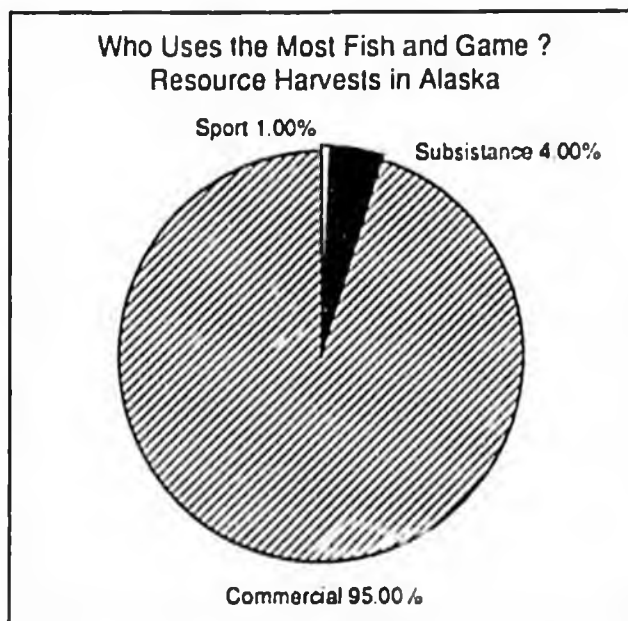
APPENDIX

Does subsistence take most of Alaska's fish & game?

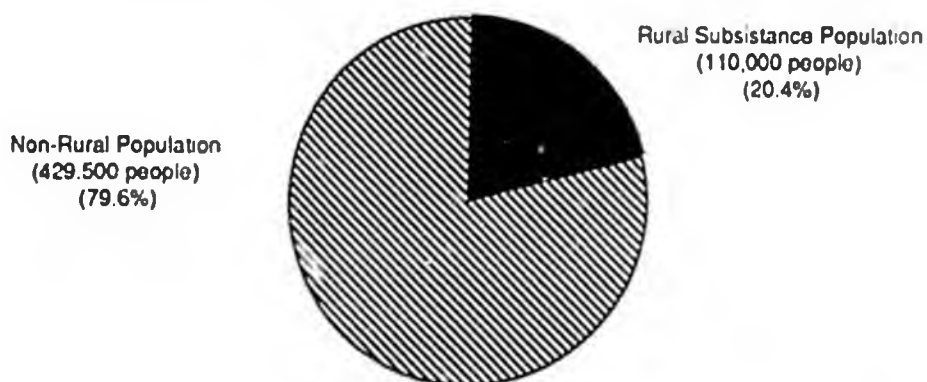
" As a general rule, no. Commercial fishing outstrips subsistence many times. In Alaska in 1986, commercial fisheries harvested about 8,500,000 pounds of salmon, halibut, herring and shellfish. This compares with a harvest of 40,305,449 pounds of subsistence foods and 7,072,046 of sport-caught fish and game. Thus, commercial fisheries took 95 percent, subsistence took 4 percent, and sport took 1 percent of the total statewide harvest. (This does not include commercial ground fish harvests, which totaled 2,995,200,000 pounds.)

Of course, the proportions vary by area. In the areas with roads, the sport harvest is usually larger than the subsistence harvest. In the areas without roads, the subsistence harvest is larger than the sport harvest. But commercial fishing is the clear leader in overall volume."

SOURCE: Alaska Fish & Game Magazine.



How Many Subsistence Participants, 1985 ?

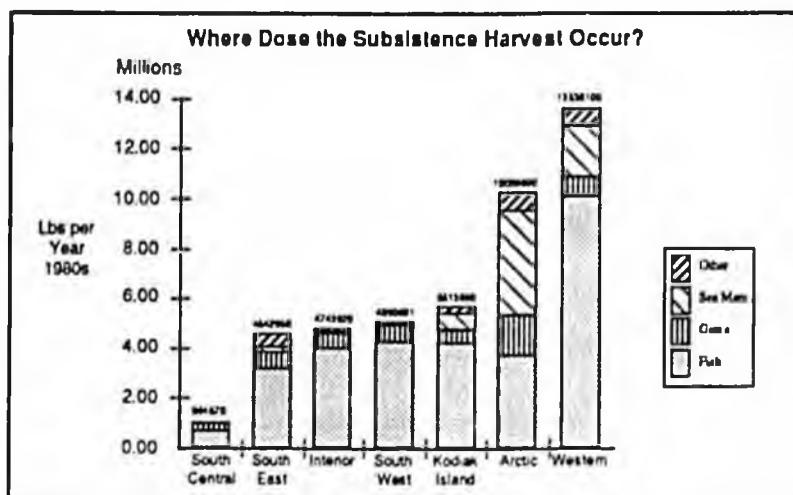


How many people participate in subsistence? " During the 1980s, our best estimate is that there were about 110,075 people in about 225 communities who participated in subsistence practices to some degree. Of these, about 50,000 were Alaska Native, and about 60,000 were not Alaska Native.

This represents the number of people living in rural areas having subsistence uses, as determined by the Boards of Fisheries and Game under the laws and regulations that existed during the 1980s. By comparison, there were about 429,500 non-rural residents, who could hunt and fish under sport, commercial, and personal use regulations, but not under subsistence regulations (Fig. 1). "

SOURCE: Subsistence in Alaska: A Summary. Division of Subsistence, Alaska Department of Fish & Game, February 26, 1990.

APPENDIX



Where does the subsistence harvest occur? " Subsistence uses occur in all regions of the state. The largest annual harvests occur in the Western Region (about 13.5 million pounds) and Arctic regions (about 10 million pounds). Other sizable non-commercial harvests occur on Kodiak Island (5.5 million pounds), Southwest Region (5.0 million pounds), the interior Region (4.7 million pounds), and the Southeast Region (4.5 million pounds). The smallest harvest occurs in the Southcentral Region (.9 million pounds), primarily in the Copper River Basin, Tyonek, English Bay and Port Graham (Fig. 3). "

SOURCE: Subsistence in Alaska: A Summary, Division of Subsistence, Alaska Department of Fish and Game, February 26, 1990.

PUBLIC HEARING NOTICE: The Joint House and Senate Resources Committee of the Alaska State Legislature is holding a Public Hearing at the AFN Subsistence Conference, Wednesday, April 11 from 5:30 to 9:00PM (see conference agenda, page 5). The hearing will take place in the Summit Room of the Egan Convention Center, on the lower level.

Although we realize this is short notice, this hearing is of GREAT importance to Alaska Native people. The Joint Committee needs to hear your views and testimony on various bills, proposals and options being considered by the Legislature.

We strongly urge you to attend and to present your views. Depending on the number of participants, testimony may have to be limited to 3 minutes per person. However, **WRITTEN TESTIMONY IS WELCOME.** If you have had time to prepare written testimony, please mail it to the Alaska State Legislature, Joint House/Senate Resources Committee, P.O. Box V, Juneau, AK 99811.

Natives reach consensus on subsistence

Summit endorses Hoffman proposal

by Geoff Kennedy
for the Tundra Times

Alaska Natives are now publicly speaking with one voice. They've agreed to seek a rural preference constitutional amendment in the immediate future and Native preference as a long-term solution to the state's subsistence problem.

The people speak

—Page four

The Alaska Federation of Natives Subsistence Summit Conference, which drew about 700 people, produced the long-awaited consensus after a three-hour, closed-door meeting Wednesday.

Conference participants endorsed a proposal by Rep. Lyman Hoffman, D-Bethel, to amend the State Constitution to allow the state to conform to federal law. The Alaska National Interest Lands Conservation Act of 1980 provided a subsistence priority for rural Alaskans.

The 1986 state subsistence law conformed to ANILCA, but the state Supreme Court last December declared that the law violated the State Constitution.

Hoffman's proposal doesn't endorse a rural preference in so many words, but does so indirectly by endorsing conformity to the federal law which provides the rural preference.

A member of Hoffman's staff says the proposal also would provide the state flexibility in case ANILCA is amended to provide a Native preference.

The conference also resolved "that Native tribes and organizations will work in the long-term to gain a subsistence priority for Alaska Native tribal members and to affirm the power of Alaska Native tribes to manage and regulate subsistence uses by their members."

The conference supported the continuation of state management of fish and game on federal lands in Alaska. But it threatened to withdraw that support unless the state reviews and revises its subsistence management system.

In such a review, the state should define *rural* to include as many Alaska Natives as possible, the conference said, and it should establish a subsistence system for persons who don't live in rural areas but who can show a "traditional and customary" use of subsistence resources.

The review and revision process must include representatives of Native organizations, the conference said, and the state must devise a management system "that is responsive to the true subsistence needs of affected Alaskans."

If the state fails to enact a subsistence law that meets federal requirements, the conference wants the federal government to involve Native organizations directly in any federal takeover of fish and game management on federal lands in the state.

The conference doesn't want the state to contract with the federal government to manage such federal lands. Instead, it encourages the federal government to contract with tribal organizations to do that job.

Interior Secretary Manuel Lujan says federal law requires him to take over the management of federal lands in Alaska unless the state enacts a law that meets federal requirements. Lujan gave that message at least three times Wednesday: at an Anchorage Chamber of Commerce breakfast, at the summit conference and at a special evening legislative teleconference held at the site of the conference.

As the leadoff witness at the teleconference, Lujan told lawmakers there is "no better thing than for the Legislature to pass a constitutional amendment, and, of course, get it signed by the governor so that we can continue the arrangement which we have right now."

During the summit conference, Rep. Don Young, R-Alaska, and Gov. Steve Cowper endorsed a rural preference constitutional amendment. Sen. Ted Stevens, R-Alaska, sent a videotaped message urging participants to "let reason prevail" and support a rural preference.

Cowper and Rep. George Jacko, D-Pedro Bay, have also introduced measures to provide a rural preference constitutional amendment. Rep. Kay Wallis, D-Fort Yukon, has introduced a measure that would provide a Native-preference constitutional amendment.

Amending the constitution requires approval by two-thirds of each house of the Alaska Legislature and then approval by a majority of the state's voters.

Mike Lane of KSKO in McGrath assisted in this story.

Native people speak out on subsistence

by Geoff Kennedy
for the Tundra Times

It started as an informational meeting, but the flow of information soon reversed direction at the Alaska Federation of Natives subsistence conference last week in Anchorage.

AFN had drawn criticism from many rural Natives when it supported an amendment to the State Constitution to provide a subsistence preference for rural Alaskans. Critics complained that the AFN made the decision in Anchorage without consulting rural Natives who want a Native preference instead.

AFN maintains that such a proposal has almost no chance of getting by the first step in the legislative process, approval by two-thirds of both houses of the Legislature.

A Supreme Court justice has given the state until July to replace the subsistence law declared unconstitutional last December.

By the middle of the first day of the two-day conference, a number of participants grew impatient with the format, which consisted of panels of agency representatives briefing participants about recent court decisions, prospects of federal and state co-management of fish and game on federal and state lands in Alaska, implications of changing the Alaska National Interest Lands Act and prospects of changing the State Constitution to provide subsistence priorities for rural and Native residents.

Participants increasingly used the question-and-answer periods to communicate their thoughts and feelings instead.

Rudy James of Ketchikan took issue with Sen. Ted Stevens, R-Alaska, Rep. Don Young, R-Alaska, and Interior Secretary Manuel Lujan, all of whom warned Alaskans that the federal government would be forced to take over management of fish and game on federal lands in Alaska July

1, if the state does not devise a subsistence law that conforms to ANILCA. They said this would not be desirable.

James said Southeast Alaska Natives fared better before the state took over management of fish and game.

"Non-Natives control the Legislature. Our lifestyles have been crushed by (the state)," he said to Sen. Jack Coghill, R-Nenana.

The state doesn't have to answer to anyone for its treatment of Natives, he said, but the federal government has to answer to the United Nations. When President Bush mentions human rights violations in the Soviet Union, he knows Soviet President Mikhail Gorbachev can point out how the United States treats Natives, James said.

Coghill said he, like James, was an Alaska Native.

"What tribe?" James retorted.

Coghill said he comes from a clan in Scotland. The Nenana senator said he's aware of the mistreatment of Native Americans in other states and that's why he and others who drew up the State Constitution ensured no one would discriminate against Natives. When Alaska became a state, it prevented the federal government from taking Alaska's wealth out of the state, Coghill said.

Then, why is it, James asked, that before statehood 90 percent of the fishermen in his area were Native and now 90 percent are non-Natives?

Later, James answered his own question.

"It comes down to money. The fact that we've been doing it for thousands of years means nothing."

James blames the state government itself for what he considers the erosion of Native subsistence rights.

As an example, he said, his niece, Lillian Charles, was arrested once for scraping pitch from a tree for Native medicine.

The solution to all subsistence pro-



Jesse Foster of Quinhagak addresses the legislative teleconference Wednesday.

blems is a simple one, he said.

"You can't have tribal subsistence without tribal sovereignty. The answer to all these problems is for the state and the federal government to allow tribal sovereignty. One of the greatest crimes is they have taken away our way of living."

Politicians pass laws to govern Tlingit people without even taking the time to understand the culture they're trying to govern, said Matilda Kushnik of Saxman.

Alaska Natives cannot tell the peoples of Europe, Asia and Africa what to do; in the same way European settlers and their descendants cannot come to Alaska and tell Natives how to live, either, Kushnik said. Most non-Native Americans are decent people, she said, and if they understood the situation Alaska Natives are facing, they would permit Natives to carry out their lifestyles.

Elizabeth Keating, originally from Holikachuk, told a panel of Bush Caucus legislators, "We have a consensus in the Native community. We want a Native preference, but you're saying we can't have that."

Gov. Steve Cowper said he understands the sentiments behind the

support for a Native preference, but he said such an proposal is unrealistic.

"I cannot support any policy that has no chance of passage in the 16th Alaska Legislature," he said.

Cowper agreed with Stevens and Young that the state would be worse off trying to amend ANILCA because animal rights activists in other states could seize the opportunity to ban all hunting and trapping in Alaska.

Doing nothing and allowing a federal takeover would result in two different forms of management of lands in Alaska, and that's poor public policy, Cowper said.

Earlier, Bud Burris of the Alaska Outdoor Council and Wayne Anthony Ross, vice president of the National Rifle Association, said all Alaskans should oppose both a rural and a Native subsistence priority. Ross considers any such priority discriminatory.

Walter Charley of Glennallen disagreed sharply. Charley said he was thrown out of a hotel and denied service at a restaurant in Anchorage in 1940 because he is Native. That, he said, is discrimination.

"Subsistence is not discrimination," he said.



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NEWS RELEASE

FOR IMMEDIATE RELEASE
April 13, 1990

CONTACT: Janice Ryan
274-3611

NATIVE SUBSISTENCE CONFERENCE ADOPTS RESOLUTION

More than 700 Alaska Natives, representing villages, regional and statewide organizations, gathered at the Egan Convention Center in Anchorage this week for two days of intensive discussions of the current subsistence issue. The Conference, to which all Native people and organizations were invited, was hosted by the Alaska Federation Natives on April 10 and 11. It concluded with a five-hour public hearing before the House and Senate Resources Committees of the Alaska State Legislature.

The issue at stake is continued Federal and State protection of subsistence uses for Alaska Natives and other rural residents throughout the State.

During the first day and one-half, participants listened to speakers and panelists, including Governor Steve Cowper, Senator Ted Stevens (by pre-recorded videotape), Congressman Don Young, Interior Secretary Manuel Lujan, State legislators, Native leaders and representatives of commercial fishing, environmental and sport hunting and fishing groups. Among the topics presented and submitted for discussion on the floor:

- the recent Alaska-Supreme Court decision in McDowell v. State which declared that the State subsistence law of 1986 - providing a subsistence priority to all rural Alaskans, Native and non-Native alike - was unconstitutional;
- the imminent prospect of a Federal takeover of fish and game management on Federal lands, if no State solution to the constitutional crisis can be found by July 1, 1990;
- how such a system of "dual management" (with the Federal government implementing a rural subsistence priority on Federal lands and the State government an as-yet unknown subsistence policy on State and private lands) would actually work, given unknown plans of the Federal agencies and unresolved issues in Federal and State courts;

****more****

- the political risks to Alaska Natives and the State as a whole of persuading the U.S. Congress to open the Alaska National Interest Lands Conservation Act (ANILCA) to amend the federal subsistence law; and,
- various options and legislative processes by which the State Constitution might be amended to bring Alaska back into compliance with Federal law and avoid Federal intervention.

On Wednesday, Secretary Lujan addressed the Conference, stating that the Federal government will fulfill its non-discretionary obligations under ANILCA and is already deeply involved in planning for that contingency on July 1. However, the Secretary strongly urged that the State of Alaska act expeditiously to solve the problem at the State level, and to avoid the necessity of a Federal takeover. Governor Cowper echoed this point in his remarks, while making it clear that he would not support a state measure which was not politically viable and did not have the backing of the Native community. Senator Stevens and Congressman Young reiterated previous public statements on the dangers of opening ANILCA in the Congress, and urged that the State Legislature and the Governor solve the problem in Juneau before the end of the legislative session.

On the final afternoon of the Conference, a lengthy debate within the Native community was held and a variety of positions were presented and argued. Prior to adjournment, conferees unanimously adopted several resolutions representing a balance of viewpoints, recommending that all Native organizations seek:

- to continue to support the inherent Native rights to subsistence uses and resources;
- to gain approval of a State constitutional amendment allowing the State of Alaska to continue exercising fish and game management on all lands within its boundaries in accordance with applicable Federal law (ANILCA);
- to advocate a thorough review of the entire system of State management of subsistence, involving Native individuals and organizations directly affected, addressing the definition of "rural," emphasizing the needs and rights of customary and traditional subsistence users, and recommending necessary changes in statutes and regulations to improve State operation of subsistence management - and to make such a review process a prerequisite for continued Native support of a constitutional amendment to retain fish and game management in State hands;

- to involve Native people and their organizations directly in the development and implementation of any Federal subsistence management regime on Federal lands, in the event that dual management occurs after July 1, with specific intention to resist any attempt by the State of Alaska to contract with the Federal government for any role in managing subsistence on Federal lands and to maximize opportunities for the contracting of federal management responsibilities to Native tribal organizations;
- to initiate a campaign of public education to familiarize legislators, other officials and the general public with the facts of subsistence resources and uses;
- to initiate a vigorous campaign of voter registration throughout Alaska.

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ALASKA FEDERATION OF NATIVES, INC.

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THE ALASKA FEDERATION OF NATIVES

The Alaska Federation of Natives (AFN) is a statewide advocacy organization working on behalf of 80,000+ Eskimos, Aleuts and Indians. It is the largest Alaska Native organization with a membership of 137 villages, 13 Alaska Native regional corporations, and 10 regional non-profit organizations.

The mission of AFN is to enhance and promote the cultural, economic and political voice of the entire Alaska Native people, their governments and organizations, with respect to federal, state and local laws; to foster and encourage preservation of Alaska Native cultures; to promote understanding of the economic needs of Alaska Natives and encourage development consistent with those needs; to protect, retain and enhance all lands owned by Alaska Natives and their organizations; and to promote and advocate programs and systems which instill pride and confidence in individual Alaska Natives.

HISTORY

The Alaska federation of Natives was formed in October of 1966 when Alaska Natives came together for a statewide conference to address the need for a settlement of Alaska Native aboriginal land claims.

Between 1966 and 1971, AFN worked to attain passage of the Alaska Native Claims Settlement Act (ANCSA). When this goal was achieved in December of 1971, it was not an end for AFN but a new beginning.

As Alaska Natives began the task of implementing ANCSA, AFN offered technical assistance and managed a number of statewide human service programs. As the strength and independence of the regional associations grew, the human service programs were transferred to these associations.

A responsive AFN organization evolved to address the new challenges and issues facing Alaska Natives. Funds collected through membership fees allowed AFN to become a prime negotiator in the federal legislative process to ensure Alaska Native interests were addressed, clarified and protected under the development and passage of the Alaska National Interest Lands Conservation Act of 1980; the 1987 Amendments to the Alaska Native Claims Settlement Act (1991 legislation) and other federal legislation impacting Native Americans.

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AFN BACKGROUND
PAGE 2

AFN assumed an active role in the Alaska State legislative process by promoting legislation for funding new and/or maintaining existing rural programs in the areas of health, education, resource development, labor and government.

AFN CONVENTION

Since 1966, the annual AFN convention has become a traditional meeting place for over 3,000 Alaska Natives. Each October, the convention provides delegates from each Alaska community with an opportunity to discuss current issues of importance to the Native community, to establish the AFN priorities for the upcoming year, to renew old friendships, and, most importantly, to strengthen common bonds among the diverse ethnic group of the state. Each voting delegate is authorized by resolution to participate in the decision-making process of the convention. During the convention, delegates act on resolutions received from the many entities and individuals, elect the AFN Chairman and the village representatives to the AFN Board of Directors. The Board, in turn, directs AFN staff to carry out the direction set by the delegates. AFN becomes the VOICE OF THE PEOPLE.

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April 16, 1990

The Honorable Steve Cowper
Governor - State of Alaska
Pouch A
Juneau, Alaska 99811

Dear Governor Cowper:

On behalf of the AFN Board of Directors, I would like to express our appreciation to you for making time in your schedule to attend the recent AFN statewide subsistence conference. As you know, the Native leaders who attended spent two days discussing the subsistence issue, and, prior to adjourning, passed several resolutions, copies of which are enclosed, that urge the AFN Board to adopt and implement a comprehensive subsistence policy. The thoughts you shared with those in attendance about how best to achieve our mutually shared goals were both informative and helpful.

In your presentation to the conference, you reiterated what you have publicly stated on many occasions - "any proposal, if it is to go anywhere, must enjoy the support of both the Native community and myself. In short, we have to be together on this one."

I applaud you for your commitment to the people most affected by the McDowell decision - the Native people of Alaska. On behalf of AFN, I pledge our continued cooperation and assistance to a timely resolution of the situation facing us today.

In your presentation you outlined three requirements for an acceptable solution.

- (1) The approach must be along the lines of a constitutional amendment;
- (2) the constitutional amendment must, at a minimum ensure the continued subsistence priority for rural Alaskans on both state and federal lands; and

(3) passage of the constitutional amendment cannot be put at risk by the inclusion of language that will meet with opposition from those - legislators and voters alike - who might otherwise endorse a rural subsistence preference.

As a result of our deliberations over the two-day meeting, I believe we are in agreement with your three requirements.

In that regard, by a unanimous vote, on April 11 the conference adopted a resolution that urges AFN to support an amendment to the Alaska Constitution to grant the legislature authority to regulate subsistence resources consistently with federal laws and retain fish and game management authority on federal lands. The amendment that Representative Lyman Hoffman recently proposed would achieve that result.

However, the resolution's support for a constitutional amendment is not unconditional. Rather, the amendment conditions support on the State, prior to July 1, initiating a review of "all State subsistence statutes, policies, regulations, programs and practices in every area of State jurisdiction in order to establish all overall subsistence management regime that is responsive to the true subsistence needs of affected Alaskans." Such a review has an important purpose. The Alaska subsistence statute merely establishes state policy. The statute delegates implementation of that policy to the Alaska Board of Fisheries and Board of Game, whose members have broad administrative discretion to exercise independent judgment. For that reason, no matter how wise the policy it codifies and no matter how carefully it is drafted, over time, no subsistence statute is any better or worse than the people who implement it.

As you know, in the early 1980s several Board members exercised their administrative discretion in a manner purposely and repeatedly calculated to prove that the State subsistence law was unworkable. While considerable progress has been made since then, both during your and during the previous administration, to ensure that individuals appointed to the boards are committed to exercising administrative discretion to implement the Alaska subsistence statute in good faith and with appropriate sensitivity to the needs and lifestyle of Alaska Natives and other residents who depend upon fish and game for their sustenance, at best, the boards' implementation has been uneven, particularly in southeast Alaska.

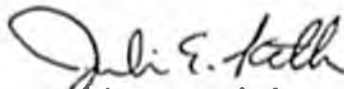
In addition, time and time again, problems between subsistence users and the State regulatory system escalate and

turn into conflicts which eventually end up in court. This costs both the State and the subsistence users much time, energy and money. In our view, litigation should be an avenue of last resort. A thorough review of the State regulatory system as it affects real people could provide us both an opportunity to make government work better for people and cut down the costs in continuing to litigate problems.

For these reasons, the Native leaders who attended the statewide subsistence conference were of the strong opinion that a thorough independent review of the boards' implementation of the Alaska subsistence statute is long overdue.

To be effective, such a review must involve Native organizations whose membership has been adversely affected by board implementation decisions. On behalf of AFN, I would like to commit our organization to working with you, Commissioner Collinsworth, ADF&G staff, the boards and all other interested parties to ensure that such a comprehensive review can proceed as soon as possible.

Sincerely,



Julie E. Kitka
President

cc: AFN Board of Directors
AFN Legislative Committee
RurAL CAP
Association of Village Council Presidents
Tanana Chiefs Conference
Southeast Native Subsistence Commission

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SUBSISTENCE SUMMIT CONFERENCE
ALASKA FEDERATION OF NATIVES
RESOLUTION NO. 90-1
APRIL 11, 1990

ENTITLED: Alaska NATIVE SUBSISTENCE RIGHTS:
AN AFFIRMATION AND A STRATEGY

WHEREAS, the Alaska Federation of Natives, constituted of Regional Corporations, Regional non-profit organizations and other affiliated groups from throughout Alaska, represents those entities and communities in advancing their subsistence rights and interests; and

WHEREAS, approximately four percent (4%) of all fish and wildlife harvested in Alaska is taken by subsistence users; and

WHEREAS, less than one percent (1%) of salmon harvested in the State is taken by subsistence users; and

WHEREAS, in the 1980s, 50,000 Natives and 60,000 non-Natives were subsistence users; and

WHEREAS, approximately 40,000 urban Natives are deprived of their subsistence rights; and

WHEREAS, under ANILCA, the determination of priority subsistence rights among resource users is made only when it is necessary to restrict the taking of populations of fish and wildlife in order to protect the continued viability of such populations; and

WHEREAS, Congress declares that the continuation of opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public 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; and

WHEREAS, as identified in Alaska Native Health Service studies, Alaska Natives may be adversely affected by the unavailability or scarcity of traditional foods and changes in Native lifestyle; and

WHEREAS, Title VIII of ANILCA was enacted in part to fulfill the unmet subsistence oriented requirements and purposes of ANCSA and to essentially protect the cultural and traditional Alaska Native lifestyle;

NOW THEREFORE BE IT RESOLVED that the Alaska Federation of Natives is directed by the delegates herein assembled at the Subsistence Summit Conference to adopt as its principal direction and recommends to all appropriate Native organizations the following:

- Act to continue to support the inherent Native rights to subsistence resources and uses.
- Act to gain approval of an amendment to the Constitution of the State of Alaska that allows the State to exercise management jurisdiction over all fish, wildlife, plant and other renewable natural resources within its boundaries and provides that the State shall exercise management of subsistence resources therein in accordance with applicable federal law.
- Act prior to July 1, 1990, to have the State of Alaska review and revise as necessary all State subsistence statutes, policies, regulations, programs and practices in every area of State jurisdiction in order to establish an overall subsistence management regime that is responsive to the true subsistence needs of affected Alaskans. Such review and revision shall include representation from Native organizations that represent those Alaskans directly affected. This review shall seek to establish a definition of "rural" which includes as many Alaska Native people as possible and that the State administration adopt a subsistence system for individuals not in "rural" areas who can demonstrate traditional and customary utilization of natural resources. Such review and revision shall be undertaken with the fundamental intent to allow those Alaskans who by custom, tradition, location, and circumstance have practiced subsistence use of Alaska's resources up to the present and will in the future, to do so in an appropriately responsive, sensitive, comprehensive, timely and continuing manner.