

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5848 HOUSE JUDICIARY

252



UNITED FISHERMEN OF ALASKA

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

April 26, 1990

MEMBER ASSOCIATIONS

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

Representative Peter Goll
Box V
Juneau, AK 99811

Dear Peter:

Here is our effort. It does not please AFN. It does not suit the Outdoor Council. I don't know if you can incorporate any of it into the work your committee is doing. But it is what the fishermen want.

The proposed language to amend HJR 74 fills a void by dividing the responsibility of resolving subsistence uses in Alaska between the federal and state government. Congress has yet to take up solving the problem of defining "rural" following the Kenaitze decision. Our congressional delegation has shown little interest in participating in the process following McDowell. It is federal law that is driving the issue and federal lands where the activity is required by those laws. The Alaskan Legislature can not find the long-lasting solution to subsistence unilaterally.

We can not support just a partial solution to the subsistence dilemma. Even with the amendment that you have before the committee, the state will still be out of compliance with ANILCA.

I know that you will give this careful consideration. If I can help you with any questions feel free to call.

Yours sincerely:

Ken Castner
Executive Director

OFFERED IN THE HOUSE

TO: CS FOR HOUSE JOINT RESOLUTION NO. 74 (Resources)

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 retention of
state management of fish and
wildlife and other wild renewable
natural resources; and providing
for an effective date.

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. RETENTION OF NATURAL RESOURCES MANAGEMENT BY
THE STATE. Nothing in this constitution prohibits the
legislature from enacting laws providing that rural residents
shall have a reasonable opportunity to take fish and wildlife
and other wild renewable resources for subsistence uses, and
that such uses shall be accorded a priority over other
consumptive uses, if those laws are consistent with Title VIII
of the Alaska National Interest Lands Conservation Act, Pub.L.
96-487, and are necessary in order to retain management
authority over those resources by the State.

* Section 2. The intent of the amendment proposed by this
resolution, together with the changes to the Alaska National

Interest Lands Conservation Act (ANILCA), Pub.L. 96-487, required before this amendment becomes effective, as specified in section 4 below, is:

(a) 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;

(b) to require an amendment to ANILCA to conform that act to the provisions of the new statutes and amendments enacted by ch. 52, SLA 1986 and of any regulations adopted under those statutes and amendments, which limit subsistence uses to rural residents who reside in a community or area of the state in which subsistence uses are a principal characteristic of the economy of the community or area, such that the interpretation of ANILCA in the decision of the Ninth Circuit Court of Appeals in Kenaitze Indian Tribe v. State of Alaska, 860 F.2d 312 (9th Cir. 1989) is negated; and

(c) to require an amendment to ANILCA that removes the term "customary trade" from the definition of "subsistence uses" such that in the future the sale (exchange for money) of fish or game, or parts thereof, will not be held to be a "subsistence use" that State law banning such sale must yield to (see e.g. U.S. v. Sakurai, et al., No. A88-026 CR (D. AK 1989)), and further will not be accorded a priority over the taking of fish or game resources for other purposes.

DRAFT

* Section 3. 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.

* Section 4. The amendment proposed by this resolution is effective only upon certification of the election returns by the lieutenant governor and certification by the governor that Congress has amended Title VIII of ANILCA in substance as follows:

(a) the term "rural Alaska residents" in ANILCA is defined as a person domiciled in 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;

(b) the term "customary trade" is deleted from the definition of "subsistence uses" in ANILCA; and

(c) the term "customary and traditional uses" in ANILCA is defined as a long-term, consistent pattern of use of a wide diversity of fish and game resources, recurring seasonally, near or reasonably accessible to the user's residence, in which the user employs methods and means of harvest, utilizes techniques of handling, preparing, preserving and storing the products of harvest, and engages in customs of distributing and sharing those products that have been traditionally used by past generations.

DRAFT

FISCAL NOTE

CC

REQUEST:

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

No FY 90 impact.

Prepared by: Molly McCannan
Division: Commissioner's Office
Approved by Commissioner: *William H. Miller*
Agency: Fish and Game

Phone: 465-4100
Date: 4/21/90
Date: 4/23/90

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

AMENDED FISCAL NOTE

FISCAL NOTE

REQUEST:

Revision Date: 5/2/90
Title: Relating to the retention of state management of fish and wildlife
Sponsor: Rep. Jacko
Requestor: Rep. Jacko

Agency Affected: Office of the Governor
BRU: Elections
Components: I - Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The fiscal impact for FY'90 is -0-.

Prepared by: Linda Edgeworth
Division: Division of Elections

Phone: 465-4611
Date: 5/2/90

Approved by Commissioner: [Signature]
Agency: Division of Elections

Date: 5.2.90

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

FISCAL NOTE

REQUEST:

Revision Date: 4/30/90
 Title: Relating to retention of state management of fish and wildlife
 Sponsor: Rep. Jacko
 Requestor: Rep. Jacko

Agency Affected: Office of the Governor
 BRU: Elections
 Comments: II- Primary & General Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL SUPPLIES	2.2*	-0-	-0-	-0-	-0-	-0-
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.2*	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	2.2*	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	2.2*	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The fiscal impact for FY 90 is -0-.
 * Costs included cover 2 to 3 pages in each Official Election Pamphlet, for printing and typesetting, and costs estimated to cover computer programming requirements for vote counting purposes.

Prepared by: Linda Edgeworth Phone: 465-4611
 Division: Division of Elections Date: _____

Approved by Commissioner: [Signature] Date: 4.30.90
 Agency: Division of Elections

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

HJWD
TODAY

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHJR 74

However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be \$51.2

Under these circumstances the fiscal note would be:

53.4

STATE OF ALASKA
CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS
250 Cushman Street, Suite 4H
Fairbanks, Alaska 99701
(907) 456-2012

TO: Commission Members
FROM: Staff
DATE: April 19, 1990
RE: Commission recommendation on Constitutional Amendment

Enclosed please find the Commission's proposal for a constitutional amendment to resolve the issues posed by the McDowell decision, passed at the teleconference meeting on April 17th. We have put the recommendation in the form of a "House (Senate) Joint Resolution", as it would appear to members the Legislature who will give it their consideration.

Also enclosed is a letter of transmittal, written at the direction of the Commission, incorporating the six points raised by Rep. Goll and discussed at our last two meetings. Staff has composed the letter in a manner we hope retains the spiritual integrity of the points raised by Rep. Goll, albeit it is not a verbatim transcript of what he wrote after the March 31st meeting and staff distributed prior to Tuesday's teleconference. If this approach is not satisfactory, please advise staff of your concerns. We have tried to use an affirmative tone throughout the letter; an appeal to statesmanship, if you will.

The letter is addressed to and will be sent separately to Governor Cowper, Senate President Kelly and House Speaker Cotten with Commission approval. The letter is dated April 21, 1990. Staff will cc: to each member of both houses the proposed amendment and the letter with your concurrence.

Finally, Chairman Williams has asked staff to convey his apologies to those members of the Commission he failed to recognize during the teleconference. He was unaware of your delayed arrival and did not mean to infringe upon your right to participate fully.

F A X T R A N S M I T T A L M E M O

TO: Rep. Peter Goll
DEPT: FAX #: 463-5661
FROM: S. LEPPHART PHONE: 456-2012
CO: CHCA FAX #: 456-2039

NO. OF PAGES 6

Post-Net brand fax transmittal memo 7071

April 21, 1990

Honorable Steve Cowper (Tim Kelly/Sam Cotton)
Governor (President of the Senate/Speaker of the House)
State of Alaska
P.O. Box A
Juneau, Alaska 99811

DRAFT

Dear Governor Cowper:

For the past eight years, the Citizens' Advisory Commission on Federal Areas has been engaged in the task of determining the impacts of the Alaska National Interest Lands Conservation Act (ANILCA) on the people of our state and making recommendations to both state and federal agencies in order to minimize conflicts. One of the most important, and unfortunately most contentious, provisions of this federal statute has been Title VIII-Subsistence Management and Use. ANILCA Title VIII requires the state to provide for a subsistence preference for rural residents in order to retain fish and wildlife management authority on federal lands. In December 1989 the Alaska Supreme Court ruled in the McDowell decision that the state's subsistence law violated the Alaska Constitution. Consequently, the Secretary of the Interior may in the near future revoke the state's authority to manage fish and wildlife resources on federal lands because Alaska law is no longer consistent with ANILCA Title VIII.

A number of proposals have been made which would either amend ANILCA or the Alaska Constitution in order to resolve this dilemma. On March 31, 1990, this Commission held a meeting in Anchorage which was teleconferenced to 20 Alaska communities in order to provide the public with an opportunity to be heard on the various alternatives. Since that meeting, the Commission has studied the proposals and the public testimony and has decided on a recommended course of action which we hereby convey to you for consideration.

Enclosed with this letter is a proposed amendment to the Alaska Constitution. The proposed amendment grants, or perhaps more accurately restores, to the Alaska Legislature, the authority to formulate a subsistence statute consistent with ANILCA. In addition to the proposed amendment, we offer the following thoughts which should be considered now and in subsequent legislative sessions.

THE STATE OF ALASKA MUST TAKE IMMEDIATE ACTION TO PREVENT FEDERAL INTERVENTION IN FISH AND WILDLIFE MANAGEMENT ON FEDERAL LANDS. We believe that if the federal government revokes the state's authority to manage fish and wildlife on federal lands that all Alaskans will suffer but none more than those people whom ANILCA Title VIII was intended to protect. Imposition of a subsistence management

DRAFT

Governor Steve Cowper
 April 21, 1990
 page 2

DRAFT

scheme fashioned by Washington can only be inferior to a locally derived solution utilizing the democratic processes governed by the Alaska Constitution. We must emphasize that if, because of McDowell, the federal government assumes fish and wildlife authority on federal lands, the issues raised by Kenaitze will remain a problem. We believe the people of Alaska, Native and non-Native, "rural" or "urban" have a greater wisdom to achieve a resolution of those issues than do the federal agencies and courts. We believe that the Secretary of Interior recognizes this and will not impose a federal subsistence management regime if the Legislature acts on our proposal.

PROTECTION OF SUBSISTENCE USES FOR ALASKA'S CITIZENS IS AN ACHIEVABLE GOAL. Whether they live in an "urban" area or in a "rural" area, all of Alaska's people have a stake in subsistence. Both federal and state courts have repeatedly affirmed this important point which is being overlooked in the scramble to achieve that which ANILCA, unfortunately, failed to define. We are confident that Alaskans are capable of understanding each other's needs and acting responsibly to meet those needs. Granting the Legislature broad authority to consider appropriate criteria, including geographic factors, i.e. "rurality", if you will, is a necessary first step. The Legislature must respond with positive leadership now and in the future to ensure retention of local authority to resolve this issue.

WE RECOGNIZE THE SPECIAL IMPORTANCE OF SUBSISTENCE ACTIVITIES IN THOSE GEOGRAPHIC AREAS OF THE STATE REMOVED FROM THE CENTERS OF COMMERCE. WE BELIEVE THAT GEOGRAPHIC, SOCIOECONOMIC AND CULTURAL CONSIDERATIONS ARE THE BASIS FOR THE SPECIAL IMPORTANCE OF SUBSISTENCE TO PEOPLE IN SO-CALLED RURAL AREAS OF ALASKA. Recognizing the importance of subsistence to those Alaskans who do not have easy access to jobs, markets and services does not have to be as painful as we have been making it. Nor should an individual's choice of where to live preclude the opportunity to harvest fish and wildlife resources for personal and family consumption. Again, it is a matter of coming to understand each other's needs. The Alaskan people demonstrated affirmatively in 1982 that they were capable of such understanding. Putting aside the vagaries of both state and federal court decisions regarding subsistence, Alaska has had a reasonably workable subsistence management system. It is not perfect and may never be, but it is workable and can be made better, but only if federal intervention in our affairs beyond what has already occurred is prevented.

WE PROPOSE AMENDING THE ALASKA CONSTITUTION IN SUCH A WAY AS TO EMPOWER OUR ELECTED OFFICIALS TO ACT RESPONSIBLY. ONCE THE CONSTITUTION IS AMENDED, WE URGE THE LEGISLATURE TO PROVIDE, BY STATUTE, A PREFERENCE IN THE USE OF LOCAL RESOURCES BY LOCAL PEOPLE IN THOSE GEOGRAPHIC AREAS OF ALASKA WHERE SUBSISTENCE HAS SPECIAL IMPORTANCE. When resource uses must be limited to preserve the biological integrity of fish and wildlife populations, the Alaska Statutes should provide for an allocative decision making process which protects the needs of those people for whom subsistence has special importance. Opportunities for all Alaskans to enjoy

DRAFT

Governor Steve Cowper
April 21, 1990
page 3

DRAFT

use of our fish and wildlife resources can be maintained and enhanced. Active management of our resources and understanding each other's needs are all that is necessary to assure these opportunities. These are not mutually exclusive goals; we do not have to remain a divided family.

The issue of subsistence is of the utmost importance to the Alaskan people. We ask that you give your most careful consideration to the points we have raised and use your influence to advance our proposal. We remain committed to assisting in any way possible a successful resolution of this and other land and resource management problems.

Sincerely,

Lew M. Williams
Chairman

cc: Alaska Senate
Alaska House of Representatives

DRAFT

Citizens' Advisory Commission on Federal Areas
April 21, 1990

DRAFT

IN THE HOUSE

HOUSE JOINT RESOLUTION NO.--
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 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. USE OF FISH AND WILDLIFE RESOURCES FOR SUBSISTENCE. The legislature may grant a preference in the use of fish and wildlife resources for subsistence based upon geographic, socioeconomic and cultural considerations.

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.

DRAFT

CHICKALOON VILLAGE FISH & GAME CONSERVATION COUNCIL
P.O. BOX 1109
CHICKALOON, ALASKA 99674

March 9, 1990

Max F. Gruenburg Jr.
Alaska State Legislature
State Capitol
P.O. Box V
Juneau, Alaska 99811

RE: Letter responding to Senate Majority Leader Patrick M.
Rodey of February 5, 1990 to Traditional Village
Governments

Dear State Legislator,

Chickaloon Village Fish and Game Conservation Council
wishes to make clear our position on the Subsistence issue
which is going to plague your government until the laws and
regulations regarding Alaska Natives are upheld.

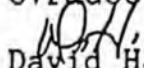
In attempting to make our position clear we are
attaching our response to Senator Rodey.

If you have any comments on what was mentioned in the
response please feel free to contact us as stated in the
attached letter.

Thank you for your consideration and time concerning the
Survival of a People.

Sincerely,

CVF&GCO


David Harrison,
Tribal Fish & Game Officer

CHICKALOON VILLAGE FISH & GAME CONSERVATION COUNCIL
P.O. BOX 1109
CHICKALOON, ALASKA 99674

March 9, 1990

Patrick M. Rodey, Senator
Alaska State Legislature
Office of Majority Leader
P.O. Box V
State Capitol
Juneau, Alaska 99811

RE: Subsistence Activities of Alaska Native People (so-called
Subsistence user vs. Commercial user vs. Sport user)

Dear State of Alaska et. al.,

Regarding the request of input by State Senator Patrick M. Rodey on February 5, 1990. We at Chickaloon Village are wishing to express some of our views toward your dilemma about the subsistence issue within your government. (State of Alaska). We will not address the McDowell v. State decision directly but rather indirectly.

The State of Alaska must understand that Subsistence means a Way of Life, Survival to Indigenous peoples of Alaska, Chickaloon Village and many other villages of Indigenous peoples believe this way. (See note #1 for english definition of Subsistence)

What your government has done is allow people who have money buy what ever it needs to subsist (to provide sustenance) and have left the poor and homeless no way subsist (to provide sustenance), but to go on public assistance, thus destroying this person, because they care for their family and they can not subsist (provide sustenance), because the State will come arrest them for providing there own food, clothing, shelter. The State of Alaska would rather do it thru the Welfare lines at the Public Assistance office. If they are able to subsist (provide sustenance) for their families off the vast amount of **NATURAL RENEWABLE RESOURCES** in Alaska, such as hunting, fishing, and trapping, etc.

On the other hand if the State of Alaska would stop managing the Fish and Game on a Maximum harvest and manage on a sustained yield, then your government might have to stop arguing about what fish and game user gets priority over an other.

The so-called Subsistence user and the so-called Commercial user of the resources both fall within the limits of the Indigenous and English definition of subsistence, one is providing the barest necessities and the other is a means of obtaining the necessities of life. Both users are using the resources for the means of support or livelihood. Although to the Subsistence user it is the barest essential

of life in regard to food, clothing, and shelter.

The Sport users use does not fall within the definition of subsistence and therefore does not qualify as subject to having a priority for use. Unless the State Government would rather have the people from other places take the food off the tables off the biggest tourist attractions in Alaska the Alaska Natives.

Our way of thinking is that people that have poverty level incomes, people on Public assistance, or any other fixed income by your government or the federal government, should have priority above everyone else for use of the RENEWABLE RESOURCES. The commercial user should have the next priority of use, and last but not least, the persons who HUNT AND FISH FOR THE SPORT SHOULD BE ADMITTED TO THE ALASKA PSYCHIATRIC INSTITUTE. Anyone that kills animals just for the fun (Sport) are some real sick people and should be cared for.

Persons that are sport hunting and fishing should be arrested not those that are trying to provide for their families, such as the Women in Kenai this past summer, only to mention one out of several incidents. We estimate that your government has charged at least one person in every Alaska Native Village with illegally taking game. All too often they were arrested for their subsistence activities.

But we wonder how you are able to have your government arrest those in need (of Subsistence) without committing an act of Genocide as provided by the federal Statute 18 USC Chapter 50A, et. seq., when in fact the State is forbidden to interfere with Alaska Native Property and Fishing activities, as provided in the State Constitution Article XII, section 12. The Athabascan people have historically sold Moose, Caribou, Salmon, and Furs to the traders, mines, U.S. Military, etc. for your dollars (Subsistence).

The State of Alaska has every right to regulate the Non Native Subsistence activities, provided that there regulations comply with Tribal and Federal law, regulations and ordinances. The State of Alaska has disclaimed the property and fishing rights of Alaska Natives forever. Statehood Act Section 4; State Constitution Article XII, Section 12. State of Alaska laws and regulations forbid your government to regulate the Alaska Natives subsistence activities.

The regulation of activities of Alaska Natives is violating the United States Constitution Article I, Sec. 8; United States Constitution Article VI, the State of Alaska Constitution Article XII, Section 12, and committing Genocide against same pursuant to the federal statute 18 USC Chapter 50A.

The State of Alaska has not shown evidence of Delegation of Authority by Indian Tribes as required by 30 CFR 229.105. When the Indian Tribes have delegated authority to the State to regulate their resources (Subsistence). Tribes at any time have authority from the federal government to withdraw delegated authority pursuant and in accordance with 30 CFR

229.106. The State must comply and cease all activity up that tribal area within 30 days.

Provided Further; the State of Alaska has not removed the legal impediments for its assumption of jurisdiction over Alaska Native Activities. The impediments in the way of the State of Alaska are 1. they must amend the State Constitution to remove the Article XII Section 12, in part. 2. They must then provide a vote of the Native People of each Traditional Village Government (people) as mandated by the Indian Civil Rights Act (Public Law 90 284, Title IV et. seq.); 30 CFR 229.105 provides for the creation of evidence of delegated authority from Indians to State. Also See Memorandum Descriptive Marked AA. (Kostlivtzov Memorandum); and the 1950 Report from the United States Law Section titled "Russian Administration and the Status of the Alaska Natives" regarding the United States interpretation of the Memorandum Descriptive Marked AA. (Kostlivtzov Memorandum).

Your government says that the Alaska Native Claims Settlement Act of 1971 (Public Law 92-203) extinguished those rights, but in fact if you read ANCSA closely under section 2f it states as follows in pertinent part:

"no provision of this Act shall be construed to constitute a jurisdictional act",

Providing further; The United States has a sacred obligation under United Nations Charter, Article 73 Non Self Governing Territories, to bring the inhabitants of Alaska up to self-government, this was not accomplished by the act of Statehood, where the majority of those that did vote were non-native federal placements. Alaska Natives were refused the right to vote because of a prerequisite of being able to speak the English language. This prerequisite was repealed in 1970.

We must inform you that Chickaloon Village has authorized both hunting and fishing ordinances which regulate the activities of hunting and fishing within the jurisdiction of Chickaloon Village based upon Jurisdictional Claim dated May 23, 1985, Federal recognition of this claim was on May 24, 1985, which are enforceable under 18 USC 1164 and 1165

What Chickaloon Village is stating is that we will regulate our own Governmental Functions such as licensing, courts, fish and game, etc. within the means allowable under Tribal, International, and Federal laws and regulations.

Regarding the State of Alaska interference of subsistence and other Traditional Governmental functions, we hope that your government responds favorably towards the remarks that have been made.

We hope the State of Alaska as a legislative body chartered under the United States and being charged with being a federal instrument to successfully accomplish the Sacred Obligation to the inhabitants of Alaska as Stated by the United States in the United Nations Charter, Article 73

Non Self-governing Territories, adheres to Traditional Tribal Laws as they are enforceable under federal statute. Ibid.

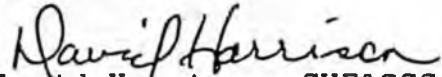
We further wish to Officially Invite the State Of Alaska Governor Steve Cowper and or the State Legislature, or their designee to meet at Chickaloon on this subject for additional information, as it is such a vital issue concerning survival of a People. Please contact and inform CVF&GCC if a meeting is agreeable.

If State Legislature and/or the Governor needs clarification of any of the points made please feel free to contact the Chickaloon Village Fish and Game Conservation Council at P.O. Box 1109, Chickaloon, Alaska 99674, or Fish and Game Officer David Harrison by phone at 745-0505 or 745-7184 mess.

Thank you for your time, consideration and any response you or your colleagues may have on this matter.

Respectfully,

CVF&GCC



David Harrison, CVF&GCC
Tribal Fish & Game Officer

cc: Chickaloon Village Council
Alaska Traditional Tribal Councils
Alaska IRA Tribes (Federal Corporations charter under
the Secretary of the Interior)
International Indian Treaty Council, NGO Consultive II
Status, United Nations Human Rights Commission
Inuit Circumpolar Conference, NGO, United Nations Human
Rights Commission
President, United States of America
United States, Secretary of State, Washington, D.C.
Secretary of the Interior
United States Department of Fish and Game Management
United States Attorney, Washington D.C., and Anchorage
Governor, State of Alaska
State of Alaska Legislature
State of Alaska Department of Fish and Game Management
Anchorage Daily News

NOTES:

1. The relationship of the Indigenous view point of subsistence becomes very apparent to what the definition of Subsistence is according to 1980 Websters New World Dictionary and the 1988 Websters Ninth New Collegiate Dictionary in pertinent parts are as follows respectively:

WNWD 1980

1. *existence; being; continuance*
2. *the act of providing sustenance*
3. *means of support or livelihood; often, specifically, the barest means in terms of food, clothing, and shelter needed to sustain life*

WNNCD 1988

1.
 - a.1 - *real being*
 - a.2 - *the condition of remaining in existence*
 - b. - *an essential characteristic quality of something that exists*
 - c. - *the character possessed by whatever is logically conceivable*
2. - *means of subsisting as*
 - a. - *the minimum (as of food and shelter) necessary to support life*
 - b. - *a source or means of obtaining the necessities of life*

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

VIA FAX

May 2, 1990

Rep. Max Gruenberg, Jr.
Co-Chairman
House Judiciary Committee
Alaska State Legislature
Juneau, AK 99576

Re: Subsistence

Dear Rep. Gruenberg:

We urge the immediate passage of the constitutional amendment proposed by Rep. Lyman Hoffman. The adverse consequences of failing to amend the constitution would be enormous. Not only would all user groups suffer but the health of our wildlife populations would be endangered under a splintered management system.

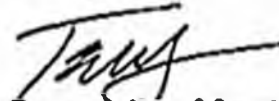
We believe the issue will become less divisive as Alaskans come to understand it better. Urban hunters and fishermen actually have the most to lose under a federal takeover since long term their hunting and fishing activities would tend to be forced onto the 25% of the state that is not federal or Native land.

Unfortunately, a relative handful of anti-subsistence extremists continue to spread distorted information. There is no possibility, for example, of successfully challenging Title VIII of ANILCA in the federal courts. Congress insulated ANILCA from constitutional attack by expressly invoking its plenary authority over Indian affairs. The U.S. Supreme Court has already confirmed that it was passed under that Congressional authority.

"Standing up" to the federal government over a law designed to help Alaska Natives would inevitably fail and would be a black mark on Alaska history. It would follow the same doomed course as Washington's defiance of the federal courts over Indian treaty rights.

We feel this is an issue all Alaskans should decide. Please get it on the ballot.

Sincerely,



Terry Hoefflerle
Executive Director



Southeast Native Subsistence Commission

P.O. Box 21828, Juneau, AK 99802

Telephone (907) 586-9219

FAX (907) 586-9266

May 2, 1990

The Honorable Peter Goll
Chairman, Judiciary Committee
House of Representatives
Pouch V.
Juneau, Alaska 99811

Dear Mr. Chairman:

As the Judiciary Committee considers HJR 74, would you announce the effect of the resolution as to whether it will, or will not, include subsistence opportunity in the urban areas. Because I must give a report to the Commission members, who collectively represent sixteen thousand Alaska Natives in the Southeast, is the reason I respectfully request that this be done.

In the Southeast, over three-fourths of the Native population would be effectively excluded were to either revert back to the 1986 law, or to simply meet the federal provision. It is a part of the resolution passed unanimously by all Statewide Native organizations at the April Subsistence Summit sponsored by the Alaska Federation of Natives and the Central Council of the Tlingit and Haida Indian Tribes of Alaska.

Thank you for this consideration and concern.

Respectfully,

SOUTHEAST NATIVE SUBSISTENCE COMMISSION

A handwritten signature in cursive script that reads "Robert Willard".

Robert Willard
President



FROM: ROBERT PRICE

Amendment to CS for House Joint Resolution No. 74

Section 1 of the resolution should be amended to read:

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

Section 19. SUBSISTENCE IN THE STATE OF ALASKA. Nothing in this constitution prohibits the legislature from enacting laws relating to the taking of fish and wildlife and other wild renewable natural resources for subsistence uses.

EXPLANATION OF AMENDMENT.

The amendment of Representative Hoffman authorizes legislation in order to comply with ANILCA, but because ANILCA only deals with subsistence on federal lands the amendment is accordingly restricted to federal lands. This means that State lands, private lands, and State waters are not covered by the amendment. In Southeast Alaska, this would mean that subsistence salmon from State waters would not be covered by the resolution.

The proposed amendment broadens the language to include subsistence on not only federal lands, but State lands, State waters and private lands.

House Judiciary Committee
April 27, 1990
Testimony regarding HJR 74

Mary L. Bishop
1555 Gus's Grind
Fairbanks, AK 99709

My name is Mary Bishop. I'm from Fairbanks and serve as newsletter editor for the Alaska Outdoor Council.

You are considering HJR 74, a proposal which has as its stated purpose to amend the state constitution IN ORDER TO retain management authority over fish and game resources within the state. I oppose this proposal for several reasons.

1. First, if you support this amendment, you are not supporting the state's right to manage fish and game. Instead, you are relinquishing MY individual rights to equal opportunity with regard to any resource use--and you're relinquishing to the federal government any state right to manage.

The proposal clearly says at the beginning: "NOTHING in this constitution prohibits..." That means nothing in Title VIII of the state constitution--that part that the court ruled on in McDowell. It also means nothing in Title I, the equal protection clause--our state's bill of rights.

Let me quote for you from the State Supreme Court's McDowell decision, pp 26-27:

"One purpose of the 1986 act is to ensure that those Alaskans who need to engage in subsistence hunting and fishing in order to provide for their basic necessities are able to do so. This is an important interest. However, the means used to accomplish this purpose are extremely crude."

And the Court found the law to be unconstitutional--it did not meet its stated purpose--which the Court agreed was "an important interest."

Now, we are suggesting that the purpose of a Constitutional amendment is NOT to provide for basic necessities--but rather to retain state management. Are we willing to relinquish individual rights to equal protection for this purpose? What does the Supreme Court have to say about that? Again look to page 27 of McDowell.

[Another] purpose is to comply with ANILCA in order to retain state fish and game control on federal lands. It is difficult to view this as a sufficiently important purpose. ANILCA does not require state compliance. State compliance merely for the sake of control is a questionable goal when the terms infringe upon the open access values of article VIII."

Not only would the proposed amendment in HJR 74 infringe upon article VIII, it would wipe out Article I--my equal protection.

I'm sorry, but important as I believe state management to be, there is NOTHING more important than equal opportunity. To compromise that concept is not negotiable. If we compromise it once, when do we compromise it next? Maybe the next time the state has a difficult time dealing with the feds? Our Supreme Court seems to think it's a bad deal. I view it as dangerous thinking. As statesmen and legislators, I hope you would agree.

2. My second objection to this proposal is that it doesn't get us anywhere in resolving the issue. We are still left, if it passes, with a rural preference, which is undefined--along with mushy words like customary and traditional--which are undefined. The only thing that is clearly defined is that I have lost my equal opportunity to the resources which I once had--an individual right of equal opportunity--the sort of thing that constitutions are suppose to support--not deny!

3. Third, the proposal leaves us wide open not only for a rural priority, but also for a priority based upon race--as it would allow anything "consistent with valid federal law". Federal law does allow for certain types of discrimination.

Even now, I can hear the lobbyists in D.C. saying: "Alaskan's must have thought the idea of a Native priority was okay--after all they amended their state Constitution just to make it possible." Do you remember the history of the subsistence law? That argument was successful in Congress 10 years ago; history does repeat itself. Are we going to do it all over again?

4. Finally, I object to this approach because I am convinced that there are other options open to us for retaining management come July 1--at least long enough for us to come to some resolution of the problem--a resolution that the majority of Alaskans will accept.

In conclusion, I urge you to disregard this proposal. I urge you to consider the major question: Is there a need for a priority? If so, WHY, FOR WHAT PUBLIC PURPOSE? Simply to retain management authority is no reason, especially when it relinquishes the individual constitutional right to equal opportunity.



Analysis by Mary Bishop

In very clear language the Alaska Supreme Court has ruled that the state subsistence preference law just doesn't come close to making it, when examined under the provisions of the state's Constitution.

Here are some highlights of the unusually lengthy decision.

"The state argued that the preference was not truly discriminatory because anyone who wants to hunt and fish for subsistence purposes could move to a rural area.

"We find this argument unpersuasive," the court curtly replied. "If it were valid, virtually any discrimination based on residence would be justified — the residents of the disfavored area could simply move."

"The state argued that one purpose of the law was to comply with a federal act in order to retain state fish and game control on federal land.

"State control merely for the sake of control is a questionable goal when the terms infringe upon the open access values of article VIII (of the state Constitution)," replied the high court.

"The state, and the single dissenting opinion, argued that the preference was valid because the constitution clearly allows for resource management with preferences among beneficial uses of fish and game.

This argument "is also off the mark," replied the court. "The state may, indeed must, make allocation decisions between sport, commercial, and subsistence users. That authority, however, does not imply a power to limit admission to a user group."

"The court opinion describes McDowell's argument "that the right to subsistence should depend upon individual needs and traditions, not on one's place of residence."

"The record supports (McDowell's) claim that there are substantial numbers of urban subsistence users. A state (Subsistence Division) study of subsistence use patterns found that of some 255 holders of subsistence salmon permits for the 1980 Tanana River fishery, approximately 20% exhibited the attributes commonly associated with a traditional subsistence lifestyle, even though they all resided in the urban Fairbanks area. Similarly, in the city of Homer, an urban area under the regulations, the study reports that 34.2% of the city residents obtained at least one-half of their meat and fish supply from personal hunting and fishing activities."

"Likewise the study documents the fact that numerous Alaskans who live in areas classified by the regulations as rural do not engage in subsistence activities," continued the court.

"One purpose of the state law, says the Court, is to ensure that those Alaskans who need to engage in subsistence hunting and fishing in order to provide for their basic necessities are able to do so.

Judge Rabinowitz argued that the urban/rural classification devised for this purpose, though not perfect, "is sufficiently close to withstand scrutiny under Alaska's equal protection provisions."

The other judges disagreed. "...the means used to accomplish this purpose are extremely excessive," wrote the Court. "A classification scheme employing individual characteristics would be less invasive of the article VIII open access values..."

Justice Moore, in his concurring opinion, wrote: There is only a modest correlation between the set of people who reside in areas designated as rural under the (state subsistence) Act and the set of people who are dependent upon subsistence hunting and fishing. The fit between the Act and the state's interest does not even approach that required to withstand close scrutiny."

"Another purpose of the law is to aid communities whose residents are dependent on subsistence, as distinct from aiding the individual resident.

Only four days earlier the high court had ruled against the state's law providing a local hire preference. Using the same logic they noted that it doesn't make sense to conclude that a statute could discriminate in order to aid communities but could not discriminate in order to aid individuals. "The community are merely the collective sum of the residents."

"The court's opinion notes two significant memoranda of the state's Constitutional Convention Committee on Resources:

— "The expression "for common use" implies that these resources are not to be subject to exclusive grants or special privileges as was so frequently the case in ancient royal tradition"

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



Initial reflections from Alaska Legal Services

Over the past several years Alaska Legal Services, a public corporation funded by state and federal dollars, has been an advocate of a subsistence priority for rural groups.

On December 29, ALS attorney Bill Caldwell prepared a 6 page memorandum to "Interested Persons" describing his initial reflections on the impact of the McDowell decision.

Following are some excerpts from his reflections. The entire analysis may be obtained from ALS.

"The McDowell decision constitutes a judicial "repeal" of the State subsistence law. The Secretary of the Interior must therefore assume management of fish and wildlife uses on the "public lands"."

"...it is doubtful that a workable, meaningful priority system that is valid can pass State constitutional muster. As I read the McDowell opinion, which is fundamentally anti-tribal, only an individual subsistence permit system, which is open to all Alaskans, urban and rural alike, will be valid. Even then, there will be a heavy presumption against the validity of any qualifying criterion which excludes anyone from participation in subsistence uses."

"Some of the questions of immediate import are: What will be the extent of federal "public lands" jurisdiction...? How will the federal management system be implemented, and will it (or can it be made to) afford a more effective voice to rural users? What can Native corporations...and tribal governments and organizations do to protect subsistence uses? What should proponents of pending subsistence proposals to the fish and game boards now do?"

"...ANILCA mandate(s) a priority for subsistence uses by rural residents of such public lands...expressly excluded are State and Native Corporation lands (including former reservations...)"

"By far the most important legal issue...is whether the State or the Secretary now

has management jurisdiction over the salmon fisheries in the navigable waters of the State and the territorial sea (the three-mile limit)."

"The outcome of this important legal issue is by no means certain, but it is one that affects the vital interests of nearly every village and tribe and rural subsistence user. In-depth research and analysis should begin forthwith. The issue is most likely to arise immediately in the Kenaitze litigation."

"Good arguments need to be developed in support of maximum federal jurisdiction. (I make this assumption not because federal jurisdiction is desirable or anything to be thrilled about, but simply because it carries with it greater legal protection for subsistence uses.)"

"...subsistence users should insist that the Secretary...attempt...to conform the State regulations to the standards which the federal courts have laid down in decisions such as Bobby v. Alaska and John v. Alaska."

Editor's note: As a result of the Bobby decision, the harvest regulations for residents of Lime Village are as follows for Unit 19. Moose: no bag limit either sex, season Aug 10-Sept 25 and Nov. 20 through March 31, no quota. Caribou: year round for bulls, cows and calf closed April 1 to August 9, quota 100.

"...the McDowell decision also makes it appropriate for tribal governments to consider whether or not they should assert regulatory jurisdiction, for conservation purposes if for none other, over their traditional...and fishing grounds, or over the lands they consider Indian country."

"A related issue for Native tribal organizations is whether they can...and/or should seek to contract with the Secretary for fish and game management under the Indian Self-Determination Act."

"The subsistence litigation season seems, sadly, to be a year round season with no bag limits."

RESOLUTION OF THE ALASKA CONFERENCE OF MAYORS

RESOLUTION NO. 90-9

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

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

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

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

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

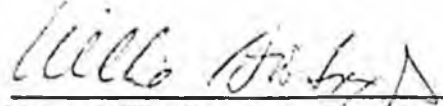
NOW, THEREFORE, BE IT RESOLVED, that the Alaska Conference of Mayors support amending Article VIII, Constitution of the State of Alaska, by adding a new section to read:

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

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

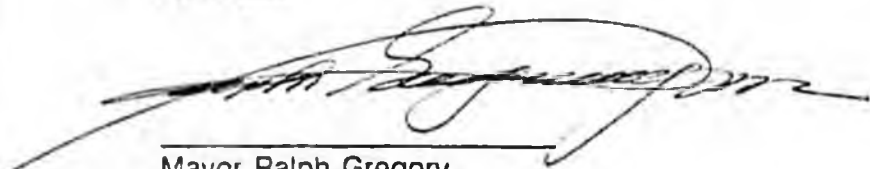
BE IT FURTHER RESOLVED that once such an amendment is adopted, the Alaska State Legislature provide, by statute, a preference in the use of local resources by local people in those geographic areas of Alaska where subsistence has special importance.

Adopted this 27th day of April 1990.



Mayor Willie Goodwin, President

ATTEST:



Mayor Ralph Gregory
Secretary/Treasurer

A PROPOSED AMENDMENT TO CSHJR 74 (RES)

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

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

OFFERED IN THE HOUSE

TO: CSHJR 74 (Res)

Page 1, lines 12 - 26

Delete all material and insert:

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

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

over those resources by the State.

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

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

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

ENDNOTES

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

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

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



United States Department of the Interior

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

Honorable Bill Sheffield
Governor of Alaska
Juneau, Alaska 99811

Dear Governor Sheffield:

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

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

Sincerely,

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

Assistant Secretary for Fish and
Wildlife and Parks

Enclosure



United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

In Reply Refer To
FWS.CW.0311

Memorandum

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

From: Gale A. Norton
Associate Solicitor
Conservation and Wildlife

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

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

Background

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

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

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

New State Subsistence Legislation

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

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

The counterpart portion of Section 803 of ANILCA states:

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

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

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

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

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

However, the phrase "customary and traditional" is intended to place particular emphasis on the protection and continuation of the taking of fish, wildlife, and other renewable resources in areas of, and by persons (both Native and non-Native) resident in, areas of Alaska in which such uses have played a long established and important role in the economy and culture of the community and in which such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation.

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

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

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

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

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

Conclusion

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

ALASKA FEDERATION OF NATIVES, INC.

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



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 PANJORA'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.

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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.

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 supports 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. I

he said such an proposal is unrealistic.

"I cannot support any policy that has no chance of passage in the 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 hunting and trapping in Alaska.

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

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

"Subsistence is not discrimination," he said.



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,

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/PROCEDURES)

ISSUE #2: CONGRESS & ANILCA

2:05 PANEL: "OPENING ANILCA"

Panel Moderator: Edgar Blatchford

David Eluska, RurALCAP

Cheryl Sutton, KPFA

Willie Kasayulie, ANC

Robert Willard, SENSC

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, SENSEC 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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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.

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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.

PROPOSED LEGISLATION (cont.)

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.

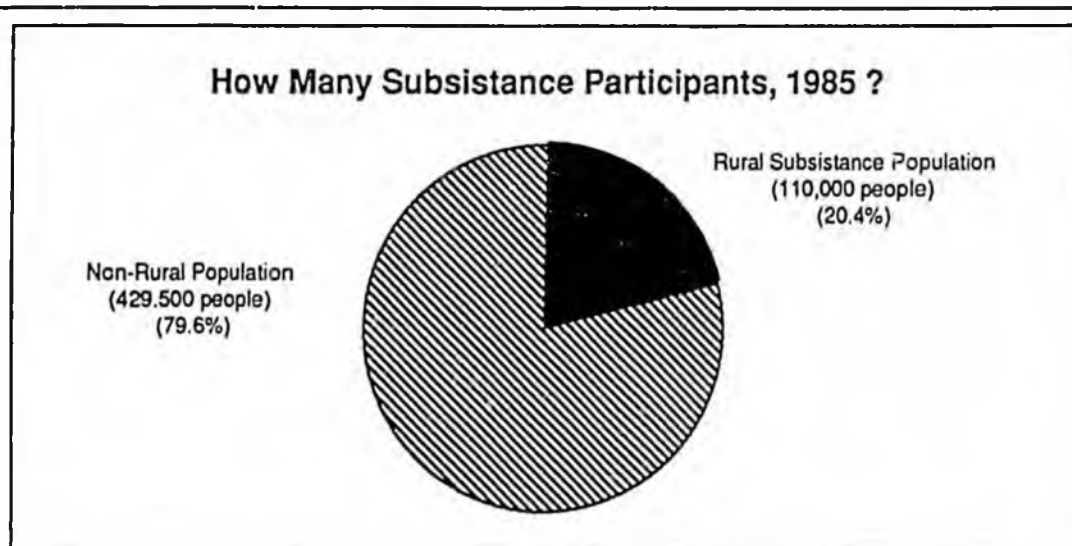
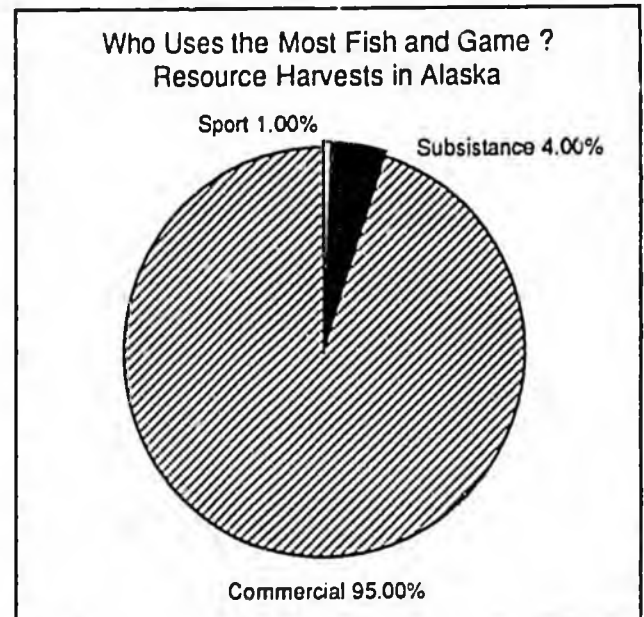
APPENDIX

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 908,500,000 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.

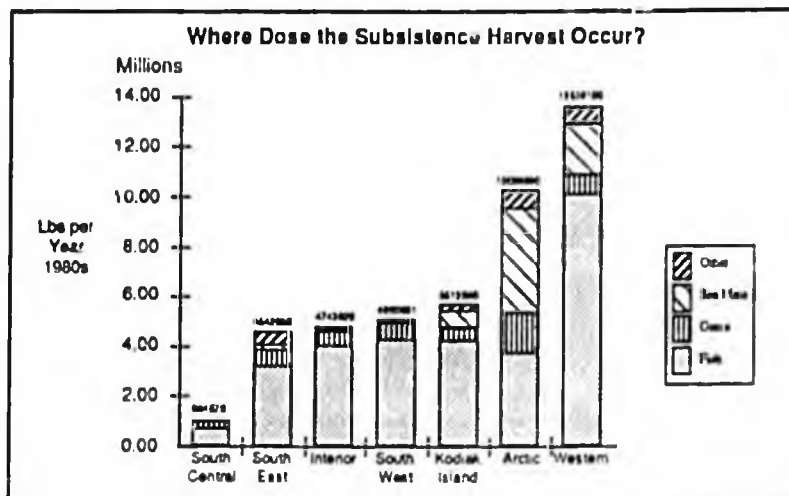


How many people participate in subsistence? " During the 1980s, our best estimate is that there were about 110,075 people in about 225 communities who participated in subsistence practices to some degree. Of these, about 50,000 were Alaska Native, and about 60,000 were not Alaska Native.

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.

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

AFN NEWSLETTER

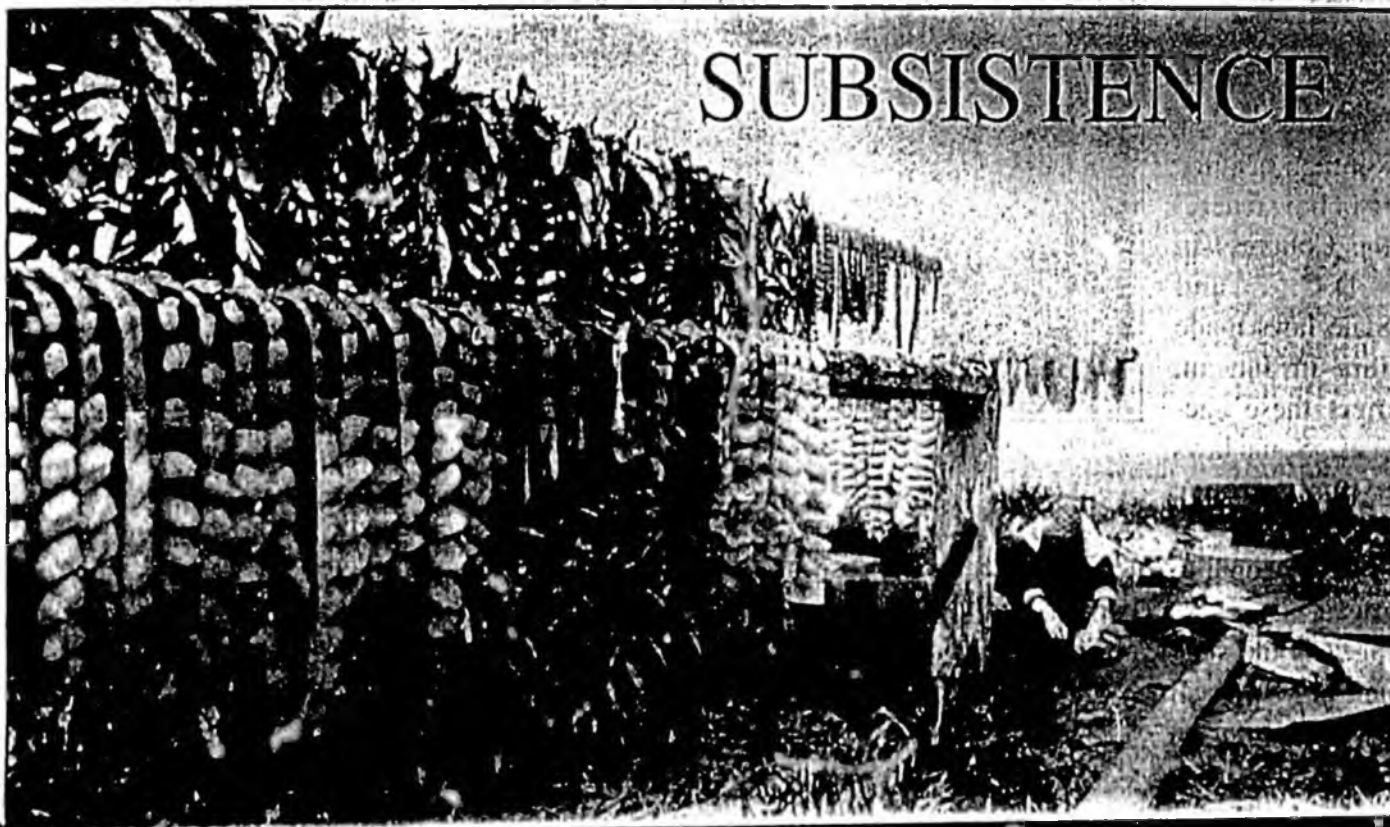
SPECIAL ISSUE



Volume VIII, Number 2

Alaska Federation of Natives

February 1990



HJR

78

HOUSE COMMITTEE REPORT

3/21

(9)

Date Referred: February 9, 1990

FURTHER REFERRALS:

Date of Committee Action: 3/16/90.

JUDICIARY
FINANCE

The RESOURCES Committee considered:

HJR 78

HOUSE JOINT RES. NO. 78

CREATE ALASKA ENVIRONMENTAL TRUST FUND

Proposing amendments to the Constitution of the State of Alaska to establish an Alaska environmental trust fund.

RECOMMENDATIONS:

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [] fiscal impact _____
- [X] zero fiscal note DEC
- [] zero with analysis _____

- [] fiscal note(s) _____
- [] zero fiscal note(s) _____
- [] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not
PASS No Rec Amend

<u>[Signature]</u> MENARD	<u>[Signature]</u> SHARP		X	
<u>[Signature]</u> NAVARRE	<u>[Signature]</u> FURNACE		X	
<u>[Signature]</u> HUDSON				

[Signature]
C.O. - Chairman's Signature



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907-463-3366

AEL ISSUE PAPER - HJR 78 ALASKA ENVIRONMENTAL TRUST FUND

The Alaska Environmental Lobby strongly supports this legislation.

- It is appropriate that funds recovered by the State from claims relating to the Exxon Valdez oil spill in excess of legislative appropriations for cleanup be set aside for legislative appropriation in the event of future environmental disasters. Obviously, it is everyone's hope that there will never be cause to tap this fund!
- Allowing for legislative appropriation of the real income from the trust fund for environmental protection, enhancement, and management is also positive and appropriate.
- We applaud this type of creative and forward-thinking legislation.

April 9, 1990
Ellen Wolf
Volunteer Lobbyist

CLEAN AIR COALITION • PRINCE WILLIAM SOUND CONSERVATION ALLIANCE • ALASKA CENTER FOR THE ENVIRONMENT
ALASKA CHAPTER SIERRA CLUB • JUNEAU GROUP SIERRA CLUB • KNIK GROUP SIERRA CLUB • DENALI GROUP SIERRA CLUB
ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY • DENALI CITIZENS COUNCIL • ALASKA FRIENDS OF THE EARTH
JUNEAU AUDUBON SOCIETY • KACHEMAK BAY CONSERVATION SOCIETY • KENAI PENINSULA AUDUBON SOCIETY • KODIAK AUDUBON SOCIETY
LYNN CANAL CONSERVATION • SITKA CONSERVATION SOCIETY • NORTHERN ALASKA ENVIRONMENTAL CENTER
SOUTHEAST ALASKA CONSERVATION COUNCIL • KNIK CANOERS AND KAYAKERS

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Proposing Amendment to Constitution to Establish an Alaska Environmental Trust Fund
Sponsor: Hudson & Ulmer
Requestor: Resources, Judiciary, & Finance

Agency Affected: Department of Revenue
BRU: Treasury

Components: See Analysis

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Zero fiscal effect to General Fund. Amounts deposited in the Alaska Environmental Trust Fund cannot be currently estimated since claim amounts are unknown.

Prepared By: Bob Elliott *BE*
Division: Treasury

Phone: 465-2350
Date: March 21, 1990

Approved by Commissioner: [Signature]
Agency: Department of Revenue

Date: 3/21/90

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



Alaska State Legislature

REPRESENTATIVE BILL HUDSON

P.O. BOX V
Juneau, Alaska
99811
(907)465-3744 or 4991

COMMITTEES:

Transportation
Resources
Foreign Trade

FINANCE SUBCOMMITTEES

DO/PP
C & RA

March 8, 1990

Representative Curt Menard
and
Representative Cliff Davidson
Co-Chairmen - House Resources Committee
Alaska State Legislature
Juneau, Alaska

Dear Mr. Co-Chairmen:

Cliff + Curt

Thank you for the recent hearing in the House Resources Committee in which consideration was given HJR 78, which proposes amendments to the Constitution of the State of Alaska to establish an Alaska environmental trust fund.

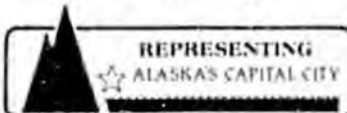
At that same meeting consideration was also given HJR 50.

Both resolutions have merit, but both are entirely different in their approach. HJR 50 proposes a dedicated tax; my bill, HJR 78 does not.

As we continue to sort out the many horrendous impacts of the EXXON Valdez oil spill last year, it becomes more and more critical that we make sure Alaska is financially ready to respond to environmental disasters.

Imagine the scenario if the spill had been caused by a ship operated by a less financially solvent corporation. It strikes fear to wonder how the State of Alaska could have paid for the clean up effort of last spring, summer and fall, and again this spring, and still finance schools and other basic and essential services to Alaskans. Would we have had to raid the Permanent Fund? Would there be a Railbelt Energy Fund left today?

The trust fund proposed in HJR 78 will create the necessary financial security that all Alaskans now realize we must have when and if we are ever again faced with such a disaster. The interest from the trust fund will be available for the legislature's appropriation for the protection, management and enhancement of Alaska's environment.



HJR 50 and HJR 78 are completely separate issues as well as approaches; they should not be incorporated into one resolution.

Your favorable consideration to schedule HJR 78 for further hearing and reporting to the next committee of referral will be very much appreciated.

Respectfully,

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

Bill Hudson

BH:lh

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

1st NATIONAL CENTER
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

April 6, 1990

Hon. Peter Goll, Co-chairs
Hon. Max Gruenberg
House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: HJR 78 -- Environmental Trust
Fund

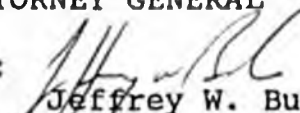
Dear Representatives Goll and Gruenberg:

The Department of Law is concerned about the current version of House Joint Resolution 78, which proposes to amend the Alaska Constitution to establish an Environmental Trust Fund. Under the proposal, all recoveries by the state as a result of the Exxon Valdez spill over and above incurred expenses would be placed in this fund. Fund principal could only be used to respond to a declared disaster, while fund interest could be used for environmental protection, enhancement and management. The use of both principal and interest would be subject to legislative appropriation.

This department's principal concern is that this proposed restriction on the use of Exxon Valdez recoveries would severely and negatively impact the ability of this department to work in concert with the federal government in the current litigation against Exxon. We therefore strongly urge the committee to consider a committee substitute along the lines of the enclosed; we have made a similar request of the Senate Finance Committee, which is considering SJR 70. I will be available to discuss this matter further with individual committee members or with the entire committee when this resolution is next scheduled for hearing.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
Jeffrey W. Bush
Assistant Attorney General

Hon. Peter Goll, Co-chairs
Hon. Max Gruenberg
House Judiciary Committee

April 6, 1990

JWB:jf

cc: Representative Bill Hudson

Barbara Herman
Assistant Attorney General
Anchorage

Proposed revision to Section 2 of HJR 78

* Sec. 2. Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 17. ALASKA ENVIRONMENTAL TRUST FUND. A. Except as otherwise required by the laws of the United States, amounts recovered by the State for natural resource damage claims relating to the discharge of crude oil or a hazardous substance that exceed by at least \$_____ the unreimbursed amounts expended by the State in connection with the discharge, including, without limitation, expenses for containment, cleanup, damage assessment, and restoration, shall be placed in an Alaska Environmental Trust Fund. The principal of the Alaska Environmental Trust Fund shall be managed in the manner authorized for management of the Alaska permanent fund by Section 15 of this article, and may be appropriated by the legislature only to meet the cleanup and restoration costs of a declared environmental disaster. The real income of the Alaska Environmental Trust Fund may be appropriated by the legislature for environmental protection or enhancement, as defined by law, but the real income that is not so appropriated shall be deposited annually into the trust fund. An appropriation may be made under this section only if the appropriation is approved by three-fourths of the membership of each house of the legislature. The legislature shall implement this section.

B. Notwithstanding section A., those recoveries described in A. may be placed in a trust fund established by court

order or by an agreement entered into between the State and any other government asserting trusteeship over natural resources damaged by such a discharge. The principal of and the income from such trust fund shall be managed as provided in the court order or agreement.

Original sponsor(s): SEN. HALFORD, Eliason, Coghill, Jones, Zharoff,
Rodey, Karttula, Fischer, Duncan, Kelly, Pearce, Frank, Sturgulewski

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE JOINT RESOLUTION NO. 70 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 Proposing amendments to the Constitution
6 of the State of Alaska to establish an
7 Alaska environmental trust fund.

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

9 * Section 1. Article II, sec. 14, Constitution of the State of Alaska,
10 is amended to read:

11 SECTION 14. PASSAGE OF BILLS. The legislature shall establish
12 the procedure for enactment of bills into law. No bill may become law
13 unless it has passed three readings in each house on three separate
14 days, except that any bill may be advanced from second to third read-
15 ing on the same day by concurrence of three-fourths of the house
16 considering it. Except for appropriations of the principal and real
17 income of the Alaska environmental trust fund under Article IX,
18 Section 17, no [NO] bill may become law without an affirmative vote of
19 a majority of the membership of each house. The yeas and nays on
20 final passage shall be entered in the journal.

21 * Sec. 2. Article IX, sec. 7, Constitution of the State of Alaska, is
22 repealed and readopted to read:

23 SECTION 7. DEDICATED FUNDS PROHIBITED. The proceeds of any
24 State tax or license shall not be dedicated to any special purpose.
25 This provision shall not prohibit the continuance of any dedication
26 for special purposes existing on April 24, 1956, and shall not pro-
27 hibit the dedication of revenue under Sections 15 and 17 of this
28 article or when required by the federal government for State par-
29 ticipation in federal programs.

1 * Sec. 3. Article IX, Constitution of the State of Alaska, is amended
2 by adding a new section to read:

3 SECTION 17. ALASKA ENVIRONMENTAL TRUST FUND. Amounts recovered
4 by the State from claims relating to the discharge of crude oil or a
5 hazardous substance that exceed by at least \$25,000,000 the amounts
6 appropriated by the legislature for expenses of containment and clean-
7 up of the discharge on which the claims were made shall be placed in
8 an Alaska environmental trust fund. The principal of the trust fund
9 shall be managed in the manner authorized for management of the Alaska
10 permanent fund by Section 15 of this article, and may be appropriated
11 by the legislature only to meet the cleanup and restoration costs of a
12 declared environmental disaster. The real income of the trust fund
13 may be appropriated by the legislature for environmental protection or
14 enhancement, as defined by law, but the real income that is not so
15 appropriated shall be deposited annually into the trust fund. An
16 appropriation may be made under this section only if the appropriation
17 is approved by three-fourths of the membership of each house of the
18 legislature. The legislature shall implement this section.

19 * Sec. 4. The amendments proposed by this resolution shall be placed
20 before the voters of the state at the next general election in conformity
21 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
22 tion laws of the state.

HJR

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