ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6050 HOUSE RESOURCES

454

No.	Vessel Name	Rating	Weight	Age	Hull
	ARCO MARINE				
1.	Mt. Cabrite	1	255 tons	18 years	Single
2.	Saint Lucia	1	255 tons	17 years	Single
3.	Seal Island	2	259 tons	16 years	Single
	ARCO TANKERS				
1.	Arco Alaska	3	188 tons	10 years	Double
2.	Arco Anchorage	3	120 tons	16 years	Single
3.	Arco California	4	189 tons	9 years	Double
4.	Arco Fairbanks	3	120 tons	15 years	Single
5.	Arco Independence	4	262 tons	12 years	Single
6.	Arco Juneau	3	120 tons	15 years	Single
7.	Arco Prudhoe Bay	2	70 tons	18 years	Single
8.	Arco Sag River	3	70 tons	17 years	Single
9.	Arco Spirit	3	262 tons	12 years	Single
10.	Arco Texas	3	90 tons	16 years	Single
	BAY TANKERS				
1.	Bay Ridge	1	228 tons	11 years	Single
2.	Stuyvesant	1	228 tons	12 years	Single
	CHEVRON SHIPPING				
1.	Chevron Arizona	3	39 tons	12 years	Double B&S
2.	Chevron California	3	70 tons	17 years	Single
3.	Chevron Colorado	3	39 tons	13 years	Double B&S
4.	Chevron Louisiana	3	39 tons	12 years	Double B&S
5.	Chevron Mississippi	3	70 tons	17 years	Single
6.	Chevron Oregon	3	150 tons	19 years	Double B&S
7.	Chevron Washington	4	39 tons	13 years	Double B&S
	COVE SHIPPING				
1.	Cove Liberty	1	69 tons	35 years	Single
2.	Cove Trader	1	50 tons	30 years	Single
	EXXON SHIPPING CO.				
1.	Exxon Baltimore	3	51 tons	29 years	Single
2.	Exxon Baton Rouge	3	76 tons	19 years	Single
3.	Exxon Baytown	4	58 tons	5 years	Double
4.	Exxon Benicia	3	173 tons	10 years	Single
5.	Exxon Boston	3	51 tons	29 years	Single
6.	Exxon Galveston	3	27 tons	19 years	Single
7.	Exxon Houston	2	73 tons	25 years	Single
8.	Exxon Jamestown	3	41 tons	32 years	Single
9.	Exxon Lexington	3	41 tons	31 years	Single
10	Exxon Long Beach	5	211 tons	2 years	Single
11	Exxon New Orleans	3	72 tons	24 years	Single
12.	Exxon North Slope	5	173 tons	10 years	Single
13.	Exxon Philadelphia	3	76 tons	19 years	Single
14.	Exxon Princeton	3	43 tons	7 years	Double
15.	Exxon San Francisco	3	76 tons	20 years	Single
16.	Exxon Valdez	5	211 tons	3 years	Single
17.	Exxon Washington	3	41 tons	32 years	Single
18.	Exxon Yorktown	5	43 tons	6 years	Double
	[illegible]				
1.	Brooks Range	3	176 tons	11 years	Single
2.	Thompson Pass	3	173 tons	11 years	Single
1.	Alaska Pass	2	176 tons	12 years	Single
2.	Chestnut Hill	1	91 tons	13 years	Double
3.	Golden Gate	1	82 tons	19 years	Single
4.	Kenai	3	123 tons	10 years	Double B&S
5.	Keystone Canyon	3	173 tons	11 years	Single
6.	Kittanning	1	91 tons	12 years	Double
7	Tonsina	3	123 tons	11 years	Double B&S
	[illegible]				
1.	Reunion				Single
	MOBIL SHIPPING				
1	Mobil Arctic	3	125 tons	17 years	Single
2.	Mobil Meridian	3	49 tons	28 years	Single
3.	Syosset	3	32 tons	31 years	Single
	OMI CORP.				
1.	OMI Columbia	2	136 tons	15 years	Single
2.	OMI Dynecham	4	51 tons	8 years	Double
	OVERSEAS SHIPPING				
1.	Eastern Lion	4	265 tons	16 years	Single
2.	Northern Lion	4	265 tons	15 years	Single
3.	Overseas Boston	3	122 tons	15 years	Single
4.	Overseas Chicago	4	92 tons	12 years	Double
5.	Overseas Juneau	3	120 tons	16 years	Single
6.	Overseas New York	3	90 tons	12 years	Double
7.	Overseas Ohio	4	91 tons	12 years	Double
8.	Overseas Washington	3	91 tons	11 years	Double
9.	Southern Lion	3	265 tons	14 years	Single
10.	Western Lion	4	265 tons	15 years	Single
	[illegible]				
1.	B.T. Alaska	2	182 tons	11 years	Double
2.	B.T. San Diego	3	182 tons	11 years	Double
	SUN TRANSPORT				
1.	American Sun	3	81 tons	20 years	Single
2.	New York Sun	4	34 tons	8 years	Single
3.	Nordic Sun	5	20 tons	8 years	Double*
4.	Philadelphia Sun	5	34 tons	8 years	Single
5.	Prince William Sound	3	124 tons	13 years	Double B&S
6.	Texas Sun	2	53 tons	29 years	Single
7.	Tropic Sun	2	35 tons	32 years	Single
8.	Western Sun				Single
	TEXACO INC.				
1.	Brooklyn	1	225 tons	15 years	Single
2.	Texaco California	2	39 tons	35 years	Single
3.	Texaco Connecticut	1	39 tons	36 years	Single
4.	Texaco Florida	3	39 tons	35 years	Single
5.	Texaco Georgia	3	26 tons	25 years	Single
6.	Texaco Mesa.	2	27 tons	26 years	Single
7.	Texaco Minnesota	3	27 tons	46 years	Single
8.	Texaco Montana	3	27 tons	24 years	Single
9.	Texaco New York	3	39 tons	36 years	Single
10.	Texaco Rhode Island	3	27 tons	25 years	Single
	TRANSCO CORP.				
1	Lion of California	2	16 tons	35 years	Single
	[illegible]				
1.	Admiralty Bay	1	81 tons	18 years	Single
2.	Aspen	1	82 tons	18 years	Single
3.	Glacier Bay	1	81 tons	19 years	Single
	[illegible]				
1.	Coast Range	4	40 tons	8 years	Double
2.	Sansinena II	3	265 tons	14 years	Single
3.	Sierra Madre	5	40 tons	6 years	Double

...and out. We cut back ... people here a few ... go ... and ... perhaps we should ... done that ...

— Vice Admiral Clyde Robbins

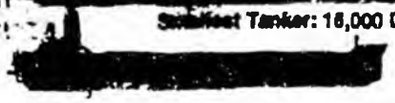
Radar Site

Valdez Tanker Fleet

Capacity

Largest Tankers: 265,000 Dead Weight Tons Eastern Lion, Southern Lion, Western

Smallest Tanker: 16,000 Dead Weight Tons Lion of California



Age

Oldest Tanker: 46 years Texaco Minn. Built 194

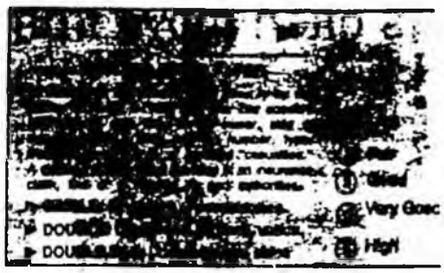
Average Age: 18 years

Newest Tanker: 2 years Exxon Long Beach Built 1987

Percent Double-Bottoms

93 tankers are registered for Alaska trade

Type of hull designs



A tanker loads oil at the Alyeska Marine Terminal in Valdez.

Anchorage Daily News via Associated Press

Anchorage Daily News file photo/Paul Souder

Bruce Blandford keeps watch in the Coast Guard's radar room in Valdez in a photo taken before the Exxon Valdez spill.

ANCHORAGE DAILY NEWS OCT 15, 1989

Regulators: serving public or industry?

By STAN JONES
Daily News reporter

If you tell an economist that the Coast Guard seems to have been captured by the industry it is supposed to regulate, he'll probably say, "Oh, sure, that's inevitable."

The Coast Guard's record on tanker safety — turning in a whistleblower, breaking promises of rough oversight and generally acting as the industry's partner — is typical in government regulation, according to people who study the subject.

"This is a real failure of democracy, and it's one that we've understood for a long, long time," said Peter Aranson, an Emory University economics professor and expert on the regulatory process.

The idea that agencies like the Coast Guard serve the industries they oversee, not the public they represent, may shock the layman. But economists and political scientists have long taken it for granted.

The Coast Guard has plenty of company in its coziness with the industry under its scrutiny, according to a national computer database of newspaper articles, and other sources. For example:

• According to the Washington Post, Nuclear Regulatory Commission documents alleging there were cracks in the floor of a containment facility at a Louisiana nuclear power plant were leaked to the plant's owner, apparently from the office of NRC Commissioner Thomas Roberts, who later tried to destroy evidence of the leak.

A commission investigator told Congress in 1987 he was ordered to turn over his notes and copies of the documents to Roberts.

"I saw no reason for them to continue to exist," Roberts told Congress when asked about it. "They were torn up and thrown in the wastebasket."

Later, however, copies of the documents were found in the files of the company that owned the plant. An accompanying note from a company vice president urged that the documents be kept confidential "to protect the source within the NRC."

• In 1970, the Ralph Nader organization studied the Interstate Commerce Commission, which at the time set interstate freight and passenger rates for truckers and railroads. Nader's group found that of 11 commissioners who left the ICC between 1958 and 1987, six wound up working for the rail or highway industries.

• In Alaska, at least three people who served on the Alaska Public Utilities Commission — Diana Snowden, Marvin Weatherly and Gordon Zerbetz — later worked for the conglomerate that owns Alascom Inc., the largest utility under the commission's oversight. Snowden also worked for the company that would become Alascom before she was appointed to the commission.

While outright venality — bribes or kickbacks — may go on at times, the experts say the explanation for the process of "industry capture" is usually much simpler.


Gordon Zerbetz


Marvin Weatherly

In a nutshell, the industry pays attention, and the rest of us don't.

An industry thinks and worries about its regulator constantly, while the public at large doesn't think about it at all, unless there's a catastrophe like this spring's Exxon oil spill.

The reason for this is that both parties — the public and the industry — are behaving rationally. In fact, Aranson calls it the problem of "rational ignorance."

Suppose, for example, the Coast Guard proposes to require double bottoms on oil tankers.

If the regulation passes, it will raise gas prices a half-cent a gallon, and reduce the amount of oil that gets into the oceans each year by a small percentage.

You — John or Jane Q. Public — may think the increase in environmental quality too modest to justify the cost and therefore oppose the idea.

Or you may think just the opposite — that the improvement in environmental quality is worth the cost — and support it.

But, either way, it's rational for you to stay ignorant. It's not worth your while to spend time on the issue. Your chances of making a difference are slight and the outcome probably won't affect your life much anyway. You won't bother to study the issue, write the Coast Guard or testify at a hearing.

You certainly won't hire an economist to analyze the costs and benefits of the regulation, or a naval architect to study whether double bottoms would be unsafe, or a law firm to tie up the matter in court.

Nor will you form a political action committee and hire a lobbyist to take your case — and your contributions — to key members of Congress. Neither will you offer Coast Guard officials nice offices and lucrative jobs after they retire.

But suppose you're the tanker industry. If you're rational, you'll do all that and more.

Double bottoms will cost you $6 million a ship, more if they have to be put on existing vessels. If you expect to buy 100 new ships over the next 10 years, the Coast Guard is about to raise your bill to $600 million. You may be able to kill or stall the proposal for a few hundred thousand dollars.

So you write letters and go to hearings; you hire economists, lobbyists, naval architects and every other kind of expert in sight; you incite friendly congressmen to denounce the proposal and threaten the agency's budget; you foment panic among unions whose members will lose jobs if oil shippers switch to lower-cost forms of transportation.

In short, a regulatory agency hears loudly and constantly from the industry it deals with, but weakly and rarely — if at all — from the public whose interest it is theoretically out to protect.

"Given that knowledge is power, one can understand how an industry will come to dominate those who regulate it, merely on the basis of the difference in attention levels," Aranson said. "Government ends up doing exactly what it's not supposed to do and not doing what it's supposed to do."

Industry capture is so well-understood that books have been written on it, including at least one that tells companies how to do it.

Called "The Regulatory Game — Strategic Use of the Administrative Process," it was published 11 years ago by two economists, Bruce Owen and Ronald Braeutigam.

"No industry offered the opportunity to be regulated should decline it," they counsel in the book's introduction.

They then explain how the regulatory process can be used to make sure that such sinister forces as competition, innovation and government oversight don't interfere too much with profits.

Some samples of their advice:

• On information management: "Agencies can be guided in the desired direction by making available carefully selected facts."

Or, if that fails, "delay can ... be achieved by over-response: flooding the agency with more information than it can absorb."

• On litigation: "The delay which can be purchased by litigation offers an opportunity to undertake other measures to reduce or eliminate the costs of an eventual adverse decision. ... If the administrative process goes on long enough, it is even possible to ask for a new hearing on the grounds that new and more accurate information may be available."

• On delay through innovation: "A well-timed announcement of an innovation or technological breakthrough can moot a difficult issue which threatens to go against the firm. At a minimum, the terms of the debate may change sufficiently to require to the decision process to begin anew."

• On lobbying: "An official contemplating a decision must be led to think of its impact in human terms, and not in institutional or organizational terms. Officials will be much less willing to hurt long time acquaintances than corporations."

• On experts who help shape policy: "Be prepared whenever possible to co-opt these experts. This is most effectively done by identifying the leading experts in each relevant field and hiring them as consultants or advisors, or giving them research grants and the like. ... It must not be too blatant, for the experts themselves must not recognize that they have lost their objectivity and freedom of action."

• On playing one agency against another: "The most common instance of this occurs with respect to geographic jurisdiction: state versus federal, or one state against another. The interests of these agencies often diverge, and one can court the assistance of one in dealing with another."

In time, according to the experts, the regulators take on the mindset of the industry that they deal with.

"It's very common to find the agency worrying about the economic health of the people they're regulating," said Bruce Owen, one of the authors of "The Regulation Game."

"What it comes down to is, they've simply identified with the industry," he said.

Owen now runs his own economic consulting firm in Washington, D.C., but does not, he said, have any clients in the oil or shipping industries.

Another well-documented facet of the regulation game is the ease and frequency with which employees in regulatory agencies end up working for the industries they oversee.

In the case of the Coast Guard, the traffic includes former Coast Guard Commandant Jack Hayes. Before running the Coast Guard from Washington, he ran its Alaska district from Juneau and was in charge when the tanker system was set up in Prince William Sound 12 years ago. After the spill, he did post-spill community relations work for Alyeska Pipeline Service Co.

The crossover from agency to industry is also all but inevitable, according to the experts.

"When you go to work for government and you become expert at regulating an industry, what you do is create a certain value for yourself which is very specific," Owen said. "Your skills are only worth something, outside the government, to that particular industry."

In Owen's view, the realities of regulatory politics make it unlikely the Coast Guard will ever, on its own, go against the industry on a major issue like double bottoms.

Only Congress can do it, he said.

"Big dramatic events like the Exxon Valdez are the focal points for exactly that kind of movement," Owen said. "If there is ever any hope of reforming the Coast Guard in the appropriate direction, it's on these occasions."

10-15-89 Anchorage Daily News

Alyeska whistleblower was left out on a limb

By STAN JONES
Daily News reporter

Berth operator Steve Eward was troubled by the oil slicks and sheens and dead fish and birds he kept seeing around the tanker terminal in Valdez, so he reported them to his bosses at Alyeska Pipeline Service Co.

The year was 1977 and the terminal, like the pipeline it serves, had only been in operation a few months. Alyeska didn't seem to want to do much about the problems.

"What I would see would be late response or no response or maybe one supervisor would come down, look it over, and say, 'Well, gee whiz, if we wait long enough the current will take it away,'" Eward said in an interview this summer.

He figured the Coast Guard would know what to do about the pollution, so he built a file.

"I started taking copies of the logbooks when we would have a spill or a sheen on the water," Eward said. "They would show the response time and what the response was ..."

When Eward thought he had enough information, he went to Homer Purdy, commander of the Coast Guard station in Valdez, turned over 40 pages of copies and sat through an hour-and-a-half tape-recorded interview.

When Eward went to work the next morning, his boss, Alyeska Marine Superintendent Bill Fisken, called him in. The evidence that Eward had given to Purdy

Please see A-11, EWARD

was spread out on Fisken's desk.

"Your days with Alyeska are numbered," Eward quoted Fisken as saying.

That day, Eward says, he was reassigned to what he describes as a "menial" pump-maintenance job.

"They were hoping it would discourage me and I might just want to resign," Eward said.

He didn't resign, but was fired in November 1978, after an altercation with an Alyeska security guard that both Eward and the company say wasn't serious.

Fisken has since died, but Paul Connors, who was working in the Coast Guard's Valdez station on the day Eward brought in his evidence and who sent him upstairs to see Purdy, confirms parts of Eward's account.

"I do recall that within a day or two of that meeting in the office, I was asked to take a rather large envelope over to Capt. Fisken (at Alyeska) and to make sure that I gave it to him directly," Connors said recently.

Connors didn't look in the envelope, but he said it could have contained the documents and tape recording of Eward's interview.

"I realize the guy [illegible] like somebody squealed on him, and they probably did in all reality," Connors said. "But you can't, because you're the regulatory agency, divorce yourself from sending information back and forth with the people you're regulating."

Homer Purdy, the Coast Guard official Eward says took his evidence, is retired and living in the Washington, D.C., area. He works for a company that maintains electronic gear under contract to the Coast Guard.

Purdy said in a recent interview he doesn't remember Eward coming to his office that day in 1977, or forwarding any evidence from Eward to Alyeska.

But he said that, if it did happen, it wasn't because he was trying to get a whistleblower fired.

"I would not hang somebody out to dry on purpose," Purdy said. "I personally resent the insinuation, if there is one, that I was in any way in collusion with Alyeska to go after this man or his job or that I wasn't doing my job up there in Alaska."

Purdy said the standard at the time was that an alleged pollution incident didn't amount to a case unless an investigator — either federal or state — actually saw oil on the water.

He said he might have forwarded reports of pollution to Fisken, along with a demand that Fisken check out the allegations and explain what was going on at the terminal.

"It may have been naive on my part, but my goal was to stop it, or would have been to stop it," Purdy said.

Alyeska spokesman George Jurkowich said company records and recollections seem to confirm that the Coast Guard sent over information on Eward.

"There is some memory of him having gone to the Coast Guard and the Coast Guard coming back to Alyeska," Jurkowich said.

Eward's information apparently did not lead to any enforcement action, according to Alyeska.

Eward now fishes commercially in Alaska in the summer, and deals in fishing permits and boats in the winter. He said he tries not to think of his experience with Purdy, Alyeska and the Coast Guard, but the memories are still sharp.

"The one incident that stands out strong in my mind is taking all that information to the Coast Guard and then having it turned over to my boss," Eward said.

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

ALASKA OIL SPILL COMMISSION

STEVE COWPER, GOVERNOR

707 A STREET, SUITE 202
ANCHORAGE, AK 99501
PHONE: (907) 258-6545
FAX: (907) 279-4302

January 30, 1990

Dear Mr. Ken Johnson:

During our phone conversation yesterday you requested additional information regarding the date of 1999 as a requirement for tankers serving in the Alaskan Trade be operating with double hulls.

This requirement was suggested as a practical solution for timely replacement of tankers serving Alaska given the consideration(s) of an ageing fleet, declining throughput of the Alyeska Pipeline and national shipbuilding capacity.

The 1999 date is an attempt to ensure the Alaskan Oil Trade will receive a premier role in achieving the standards being proposed for the nation -- the commission felt that as Alaska is the nation's number one oil producer with the highest resource risk it would be appropriate for tankers operating in Alaskan waters be assured a first right basis for limited ship building capacity.

I will be available for telephone conference if the Transportation Committee desires until 10:00 AM, January 30, 1990. My number is (907) 258-6545.

Sincerely,

Dennis M. Dooley

Dennis M. Dooley
Technical Coordinator

The following information was taken from:
An Assessment of Tanker Transportation Systems in Cook Inlet and Prince William Sound

Prepared for: Alaska Oil Spill Commission

Prepared by: Engineering Computer Optecnomics, Inc.

Section V.8 - Cost of Improved Tankers

Figure V - 6 illustrates the increased cost of improved tankers based on the improved 70,000 deadweight ton Cook Inlet crude carrier and the improved 250,000 deadweight ton Prince William Sound crude carrier. Both of these crude carriers incorporate the engineering subsystems discussed within this section, with cost data verified by U.S. shipyards, and are governed by the following factors:

- Single ship bid from U.S. shipyard (Nov. 1989) with a 1992 delivery;
- Service speed is 14 knots;
- Designed for ice operations in Cook Inlet/Prince William Sound;
- Main propulsion - diesel engine(s); and,
- Hydraulic unit for auxiliary thruster and cargo pumps.

Figure V - 6 also shows that the construction cost of a 70,000 deadweight ton, single hull tanker, is approximately 85 million dollars, whereas the cost of an improved B/15 double hull tanker (separation between the inner and outer hulls is the tanker's beam divided by 15), of the same deadweight, is 93 million dollars. This 8 million dollar increase in construction cost equates to a cost increase of 9.4 percent for the Cook Inlet crude carrier.

From the same graphic, it is shown that the cost of a 250,000 deadweight ton, single hull tanker, is approximately 175 million dollars, whereas the cost of an improved B/15 double hull tanker, of the same deadweight, is approximately 192 million dollars. The computed cost increase of 17.2 million dollars equates to a cost increase of 9.8 percent for the Prince William Sound crude carrier.

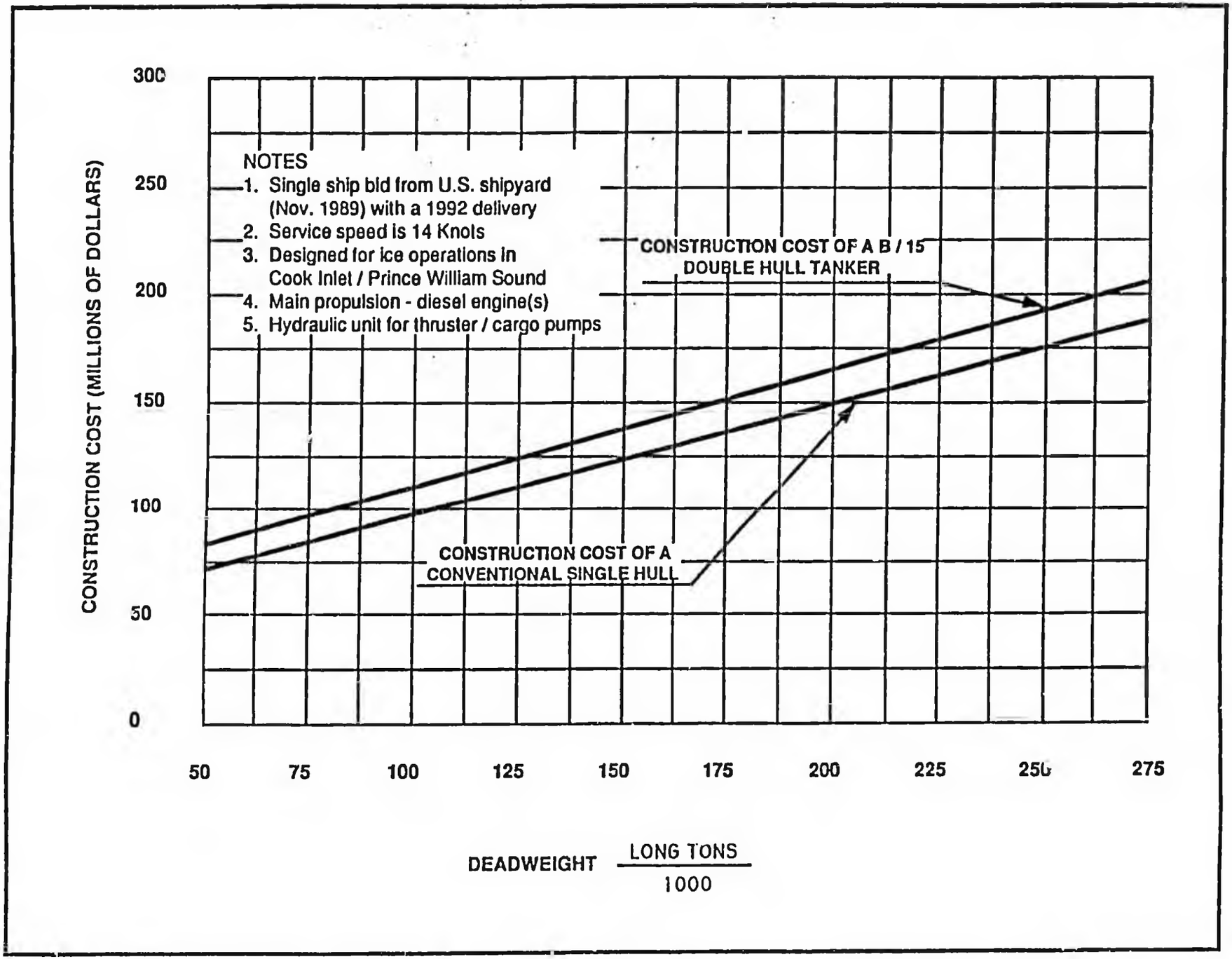

300
250
200
150
100
50
0
CONSTRUCTION COST (MILLIONS OF DOLLARS)
NOTES
1. Single ship bid from U.S. shipyard (Nov. 1989) with a 1992 delivery
2. Service speed is 14 Knots
3. Designed for ice operations in Cook Inlet / Prince William Sound
4. Main propulsion - diesel engine(s)
5. Hydraulic unit for thruster / cargo pumps
CONSTRUCTION COST OF A B / 15 DOUBLE HULL TANKER
CONSTRUCTION COST OF A CONVENTIONAL SINGLE HULL
50
75
100
125
150
175
200
225
250
275
DEADWEIGHT LONG TONS / 1000

FIGURE V - 6

Shipbuilders Council of America

1110 Vermont Avenue, N.W.
Washington, D.C. 20005-3553
202-775-9060

January 12, 1990

SHAN

To The Editor:

Your January 9 article, "Double Bottom Doubts" presents several arguments for why Congress should not mandate double bottoms and double hulls on oil tankers entering U.S. ports as a solution to preventing catastrophes such as the EXXON VALDEZ oil spill. Several of those arguments are based on incorrect facts and deserve to be clarified for your readers.

The article cautions Congress on not mandating a technological solution when there may be more cost-effective ways to deal with the problem of safety. Your example of a less costly alternative is to require tankers to have internal vacuum pumps that could hold oil in if the hull of a ship is ruptured. This option would certainly be cheap, and in fact, is the alternative strongly endorsed by the oil industry. The question is would it be an effective alternative.

Naval architects and other experts in the field of tanker designs have recommended vacuum pumps as an added safety feature, but they are by no means being recommended as a substitute or viable alternative to a double bottom or hull. In the case of a collision, a vacuum pump would provide no protection in reducing or preventing a spill. Any time a tank is ruptured on its side, the pump could not possibly maintain air tightness in the tank which is how this system works. It has been estimated that a vacuum pump would be effective in less than 10 percent of tanker accidents. By comparison, a double hull would be effective in 90 to 96 percent of all collision incidents and 70 to 96 percent of all groundings. No other technology or safety feature can provide anywhere near the protection of a double hull.

The Coast Guard conducted an analysis following the VALDEZ accident and concluded that as much as 60 percent of the oil spilled would have been prevented if the ship had a double bottom. That estimate is based strictly on actual tanks punctured. It does not take into account the amount of oil from those punctured tanks which would not have been lost because it would have been trapped in the empty space between the two hulls. Although your article referred to this study, it is troubling that a 60 percent reduction was treated as "no big deal". Sixty percent of 11 million gallons is 6.6 million gallons. I doubt very seriously that pollution prevention of 6.6 million gallons of oil would be considered a little thing by the people of Alaska and elsewhere who have witnessed the vast destruction to Alaska's wildlife, marine life, and its coastal waters. A spill of 6.6 million gallons would constitute the third largest oil spill disaster ever in American waters!

Eight of eleven oil tanks on the EXXON VALDEZ were punctured.

Since the Coast Guard study, naval architects and engineers have examined the actual ship and estimate that only three of the eleven tanks would have been punctured with a double bottom resulting in a 75 percent spill reduction. The reason for fewer tanks actually being punctured is based on the fact that a double bottom ship comes much harder aground which prevents ship movement resulting in additional tank damage after the initial impact. The oil industry has long argued that because a double bottom makes the ship ground firmer that it could cause the ship to capsize, or sink, or at a minimum make salvage more difficult. Studies, and actual case analysis, by the Coast Guard and Office of Technology Assessment have determined just the opposite. A firm grounding is beneficial in the salvage operation. Had the EXXON VALDEZ come off Bligh Reef, for example, it would have sunk according to the Coast Guard.

The less oil spilled and the slower the rate of discharge, the more time available for cleanup response. The VALDEZ lost its 11 million gallons of oil in five hours. If it had been a double hull ship, the actual oil lost would have occurred over a 12 to 24 hour time period. This would have allowed more time for response and would have reduced the overall cleanup effort by 75 percent.

The mere suggestion that mandating double hulls is premature ignores the benefits of double hulls, and the long history of this issue. Former President Jimmy Carter instructed the Coast Guard to make double bottoms mandatory in 1976 and to negotiate that requirement internationally. The International Maritime Organization, IMO, a United Nations affiliate, rejected the U.S. proposal because of oil industry opposition world wide. The same situation exists today. In 1978, the oil industry's more cost-effective alternative was to require segregated ballast tanks. Segregated ballast tanks only cover 40 percent of a ship's periphery. As the EXXON VALDEZ illustrated, segregated ballasts provide very little oil spill prevention in a grounding. In the case of a collision, they do provide some protection if the point of contact occurs in that 40 percent area where a ballast tank is located. Today, as in 1978, the oil industry is arguing that there is a better, more cost-effective solution - vacuum pumps. Even though vacuum pumps, as I mentioned earlier, are inexpensive and do provide some benefit, IMO rejected them two years ago as ineffective.

The Alaska Oil Spill Commission, in its December 8 report, recommends double hulls for tankers and several additional design upgrades such as auxiliary thrusters, a navigation display system, an automated cargo control system, and centralized bunker tanks. The Commission's analysis shows that with all of these features incorporated into tankers, the increase in capital construction cost would be ten percent. Over the fifteen year life of a 250,000 dwt tanker such as the VALDEZ, the increased capital cost would result in an increase in the cost of a gallon of gas at the tank of only $0.0013 or .1 percent of a penny.

This cost increase does not factor in the operational savings that would be realized with a double hull tanker. For example, the oil in the bottom of the cargo tanks on a single hull tanker cannot be pumped out for lack of pressure. This results in wasted cargo carrying capacity. With a double hull tanker, all the oil could be offloaded because the portion at the bottom would be drained from below in the space between the two hulls.

A double hull tanker would also lower the cost of vessel insurance.

Tanker safety and double hulls have been studied exhaustively. The argument to wait for the completion of yet another study by the National Academy of Sciences only postpones long overdue safety upgrades. Now is not the time for study, but for decisive concrete action. It is interesting to note that the Committee on Tank Vessel Design, which was formed to do the study for the National Academy of Sciences, does not even include a shipyard representative. One would think that a panel dedicated to the study of ship designs would benefit from the experience and expertise of a shipbuilder. The panel will, nevertheless, include at least two representatives from the oil industry.

Since the late 1970s, there have been no safety upgrades to oil tankers. This record clearly illustrates industry's lack of dedication to safety and its unwillingness to impose self-discipline. The only way to provide the maximum protection to our environment is for Congress to endorse the House passed version of the oil spill bill which mandates double bottoms and double hulls. Anything short of a legislative mandate will result in a less than acceptable alternative.

Sincerely,

John J. Stocker
President

Mr. Stanford Erickson
General Manager
THE JOURNAL OF COMMERCE
110 Wall Street
New York, NY 10005

Double Bottom Doubts

A STRONG BILL TO COVER THE COST OF cleaning p oil spills stands on the verge of congressional passage. he most controversial issue facing the House-Senate conference committee when it meets this week is whether nkers entering U.S. ports should be required to have ouble bottoms and, eventually, full double hulls. The need or greater tanker safety is unquestioned, but Congress hould be wary of mandating a specific technological solu-ion when there may be more cost-effective ways to deal ith the problem.

A double bottom is a second underside on a tanker, eparated from the outer hull by an air space as much as 9 feet thick. A double hull is an upward extension of this tructure to cover the entire hull. According to U.S. Coast Guard studies, double hulls help keep a vessel's oil tanks ntact even when its outer hull is ruptured in an accident, iminishing the size of oil spills and preventing many of hem.

When it approved the oil spill legislation last Novem-er, the House provided that all tankers entering U.S. ports must have double bottoms within seven years and the nore-costly double hulls within 15 years. The Senate man-dated that all new tankers be built with double hulls, unless he secretary of transportation determines that they will ot enhance safety, but it imposed no requirements on the stimated 3,800 tankers now in service around the world.

Just under 600 of those tankers now have double hulls; 12 of them operate under the U.S. flag.

The debate over the merits of double bottoms is an old one. Back in 1978, the United States pushed the Interna-tional Maritime Organization, a United Nations affiliate, to require all tankers to have them. When resistance from other countries killed that initiative, Congress backed off from requiring them on ships in U.S. waters, mandating ins ead that smaller tankers have either crude oil washing sy ems, which clean tanks in an environmentally safe manner, or segregated ballast tanks, which form a buffer between the cargo tanks and certain parts of the hull.

As international interest in enhancing tanker safety has increased over the last decade, other nations have taken the lead on double hulls. Scandinavian countries are considering requiring all tankers entering their ports to have double hulls. In an effort to achieve the same end through economic means, Finland, at year's end, started taxing single-hulled tankers calling at its ports 30 cents a barrel, while charging double-hulled tankers only a fraction as much.

Double hulls would help reduce the number of spills stemming from low-impact accidents. But they would not necessarily reduce the number of large-scale catastrophes. In the case of the Exxon Valdez, which spilled 11 million gallons of oil despite segregated ballasts, a full double hull would not have reduced the spill by more than half, accord-ing to a Coast Guard analysis.

And in some cases, double hulls actually may make spills worse. Flooded double bottoms make ships more dif cult to salvage. Seawater in between the hulls increases instability and weight, which under some circumstances causes a ship to capsize or sink. Vaporized oil between the hulls can pose a fire hazard to salvage workers' cutting torches.

The limited protection double hulls afford doesn't come cheap. Installing one adds from $6 million to $30 million to the $90 million cost of an average new tanker. The Coast Guard estimates the costs in the lower end of that range; tanker operators figure it to be near the high end.

Mandating double hulls is premature, because there may be more efficient ways of enhancing tanker safety. One alternative is to require tankers to have internal vacuum pumps that could hold oil in if the hull is ruptured. Another lower-cost alternative is to reduce current allow-able tanker loads by about 20% by limiting storage of oil above the waterline. This would reduce the internal pres-sure that forces oil into the water when the hull is rup-tured.

At the behest of the Coast Guard, a panel of the National Academy of Sciences is examining tanker safety. The interim report, due in June, is expected to yield information about the relative costs and benefits of double hulls and other alternatives.

Congress should not prejudge the results of that study by mandating double hulls at this time. In the wake of the disastrous Exxon Valdez spill, there is good reason to require enhanced safety features for oil tankers. But Con-gress should allow tanker operators to adopt or develop the most cost-effective technology to reduce spills, rather than mandating a specific technological fix.

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(201) 228-9282

KEY ENVIRONMENTAL VOTE

January 23, 1990

Dear Colleague:

Soon the House will appoint conferees for the Oil Prevention, Response Liability and Compensation Act of 1989.

I intend to offer a motion to instruct the conferees to stand by the House's earlier vote that mandated the double hull/double bottom requirement on all tank vessels that use U.S. ports.

It is time the United States Congress take a step towards PREVENTION of these devastating oil spills. Double hulls give us that margin of prevention by as much as 90 percent in cases of tanker groundings. All other safety measures combined will not reduce the risk of massive oil spills as well as the double hull requirement.

Many studies have been done during the past 15 years of delay. The findings of the most recent study by the Alaskan Oil Spill Commission and earlier studies by the Coast Guard are conclusive -- double hulls prevent oil spills.

A requirement for double hulls has already been approved by the House and was only two votes short of approval in the Senate. So, I ask my colleagues to join me in sending a strong signal to the conferees that the House stands by its position -- the time to begin implementing this requirement is now, not later, and not after another disaster.

For further information, please call me or Ed Kranik of my staff at x55034.

Sincerely,

Dean Gallo

DEAN A. GALLO
Member of Congress

Congress of the United States (X)

Washington, DC 20515

January 25, 1990

Dear Colleague:

When the conferees for the Oil Prevention, Response Liability and Compensation Act are appointed, we plan to offer a motion to instruct the conferees to insist on the House's position that mandates the double hull/double bottom requirement. This vote could occur as early as next Tuesday. A vote in favor of instructing the conferees is a vote in favor of double hulls/double bottoms and a vote in favor of protecting our environment.

Since we debated this issue two months ago, the arguments in favor of the double hull/double bottom requirement have been further strengthened.

First, the Alaska Oil Spill Commission's report, released in early January, shows that the single most effective action that can be taken to minimize the potential for another Valdez disaster is to require double hulls/double bottoms on all tank vessels.

Second, there is a window of opportunity now that will not be open again for more than two decades. The world fleet is aging. By 1992, more that 40% of the current world fleet will be more than 20 years old and another 25% will be in the 15 to 19 year old range. So, a valuable opportunity will be lost if we allow the replacement of the fleet without double hulls/double bottoms.

Third, many argue that the cost would be too high if double hulls/double bottoms were required. When calculated over the 15 year lifetime of a tanker, the cost for double hulls is less than one tenth of one cent per gallon.

Lastly, the Senate version of the bill calls for yet another study. The Senate vote to mandate double hulls fell short by only two votes. Fifteen years ago, Congress debated this same issue and was given assurances that double hulls would be required on tankers carrying Alaskan oil, but again the regulations failed to mandate them. We cannot wait another fifteen years. The time has come to PREVENT oil spills.

We urge you to support the motion to instuct the conferees. Again, a vote in favor of instructing the conferees is a vote in favor of double hulls/double bottoms and a vote in favor of protecting our environment.

Sincerely,

DEAN A. GALLO

ROBERT TORRICELLI

STEVE GUNDERSON

JIM MCDERMOTT

DUNCAN HUNTER

GEORGE MILLER

(X)

Congress of the United States

Washington, DC 20515

CONTACT: Bob LeGrand
(202) 225-5034
Rick Frost
(202) 225-5061

January 18, 1990

TWO N.J. CONGRESSMEN CITE NEW EVIDENCE THAT TANKER SPILL IN NEW YORK HARBOR WOULD BE DEVASTATING; RENEW CALL FOR SAFETY HULLS

WASHINGTON -- Two New Jersey Congressmen today released new evidence that a major tanker spill in New York harbor would devastate the entire bay area, including the Hudson and East Rivers within 48 hours of the accident.

Congressmen Dean Gallo and Robert Torricelli, who led the fight for double hulled and bottomed vessels during last years' House debate on oil spill legislation, said today that a computer model developed by a consultant for the Alaska Oil Spill Commission provides graphic proof that a tanker accident would immediately lead to disaster.

"After reviewing this new evidence, as well as the findings of the Alaska Oil Spill Commission, there should be no doubt in anyone's mind that we must fight to keep double hull and double bottom requirements in the oil spill act," said Gallo, R-NJ 11th.

"These safety measures would provide a substantial measure of protection for the environment since groundings and collisions are the most frequent causes of oil spills," said Torricelli, D-NJ 9th. "A Coast Guard report has shown that double bottoms alone would have been effective in 96 percent of oil tanker accidents studied."

"In highway safety, we require seat belts to save lives. Double hulls and double bottoms on tankers provide similar protection for our environment," said Gallo, who amended the oil spill bill in the House to require double hulls on all tankers within 15 years.

"If oil spill legislation is going to work, prevention must be an integral part of it," said Torricelli, who amended the oil spill bill in the House to require double bottoms within 7 years.

"Even the most sophisticated oil spill response equipment would pick up only five percent of the oil spilled in the fast-moving currents of New York Harbor and other, similar harbors. Once the oil leaks from the tanker, the damage is done. The idea is to do all we can to foreclose that possibility," Torricelli said.

"In the near future, a Conference Committee will decide whether to accept our requirements, contained in the House bill, or go back to Senate language that calls for yet another study of the question. That is where Congress dropped this question 15 years ago. We have studied this to death. We can't afford to wait until the nightmare of another tanker spill becomes reality, as this computer model clearly shows," Gallo said.

The computer model, developed by a Maryland firm who provided supporting materials for the recent report issued by the Alaska Oil Spill Commission, assumed a spill the size of the Valdez disaster resulting from a tanker striking the Verrazano Narrows Bridge, spilling 11 million gallons of crude oil.

"The most disturbing aspect of this model to me is the finding of total devastation in less than 48 hours.

"Normally, these models are based on a one-week projection, but the consultant stopped the model before the 48 hour point, because the devastation was already total. That is a frightening thought, when you consider that even the fastest spill response teams would need six to twelve hours to be fully operational," Gallo said.

"The cost of requiring double hulls and double bottoms pales in comparison to the cost of doing without them," Torricelli said.

"According to figures provided in the Alaska Oil Spill Commission report, the cost of a double hull would add less than a tenth of a cent to every gallon of oil a tanker would carry over its lifetime. The cost of not building double bottoms and double hulls, however, can be seen on the shores of Prince William Sound. That is not a price the people of New Jersey should have to pay," Torricelli said.

New Jersey's tourism and fishing industries, with annual revenues of more than $3 billion would also be devastated by a major spill, according to the Congressmen.

They also indicated that area refineries receive 39 million metric tons of crude and refined petroleum products annually valued at $4.5 billion, most of which travels in and out of New York and northern New Jersey deep ports.

The Alaska Oil Spill Commission strongly recommended double hull and double bottom requirements to provide an added measure of safety in tanker accidents.

HJR 74

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSHJR 74 (Res)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No FY 90 impact.

Prepared by: Molly McCammon
Phone: 465-4100
Division: Commissioner's Office
Date: 4/21/90

Approved by Commissioner: Wm W. Wilson
Date: 4/23/90
Agency: Fish and Game

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

STATE OF ALASKA

LYMAN F. HOFFMAN
CO-CHAIRMAN
HOUSE FINANCE COMMITTEE

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(907) 465-3706

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TUNUNAK

AMENDMENT

OFFERED IN THE HOUSE

TO: HJR 74

Page 1, lines 5 - 24:

Delete all material and insert:

"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 for the amendment.

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 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. 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.

* Sec. 3. The amendment proposed by this resolution is effective immediately upon certification of the election returns by the lieutenant governor."

P.O. Box 763 BETHEL, ALASKA 99559 (907) 543-3543

Alaska State Legislature

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

SUBSISTENCE LEGISLATION PACKET:

-HJR 74
-Sectional summary of HJR 74
-HJR 88
-FIscal Note for HJR 88
-Transmittal letter for HJR 88
-Press release for HJR 88
-Administration background paper on HJR 88
-HJR 90
-Sectional summary of HJR 90
-Draft resolution by Representative Goll
-Article VIII of Alaska Constitution
-Alaska National Interest Lands and Conservation ACT (ANILCA)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM Feburary 1, 1990

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

TO: Representative George Jacko

FROM: George Utermohle GU
Legislative Counsel

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

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

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

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

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

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

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

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

GU:pl
WKP1/076

Introduced: 3/2/90
Referred: Resources, and Judiciary

go00450h

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

IN THE HOUSE

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,

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HJR 88 No. 1
PUBLISH DATE: HOUSE 3/2/90

FISCAL NOTE

REQUEST:

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No FY 90 impact.

Prepared by: Molly McCammon
Phone: 465-4100
Division: Commissioner's Office
Date: 3/1/90

Approved by Commissioner: [signature]
Date: 2 28 90
Agency:

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

(4)

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

3 tab 88

March 2, 1990

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

Dear Mr. Speaker:

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

In Title VIII of the Alaska National Interest Lands Conservation Act ("ANILCA"), P.L. 96-487, 94 Stat. 2371, 2422 (1980), the United States Congress established a priority for subsistence uses of fish and wildlife by rural residents on federal land, and provided that the priority would be implemented by the secretaries of interior and agriculture unless the state enacted legislation affording the same priority. In ch. 52, SLA 1985, the legislature gave rural residents a priority for subsistence uses of fish and wildlife. The legislature enacted ch. 52, in part, to prevent a federal takeover of fish and wildlife management on federal land, an action with which I wholeheartedly agree.

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

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

(2)

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

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

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

I urge your prompt and favorable action on this measure.

Sincerely,

Steve Cowper
Governor

NEWS RELEASE

STATE OF ALASKA

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

STEVE COWPER,
GOVERNOR

FOR INFORMATION CONTACT

DAVID RAMSEUR
PRESS SECRETARY

TERRENCE O'MALLEY
DEPUTY PRESS SECRETARY

(907) 465-3500

FOR IMMEDIATE RELEASE
March 2, 1990
90-40

COWPER INTRODUCES SUBSISTENCE CONSTITUTIONAL AMENDMENT

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

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

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

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

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

-MORE-

(5)

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

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

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

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

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

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

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

A CONSTITUTIONAL AMENDMENT ESTABLISHING A SUBSISTENCE PRIORITY FOR RURAL ALASKANS

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

March 7, 1990

I. The problem

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

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

II. Objectives to be achieved in any solution

We believe that any solution must meet the following objectives:

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

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

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

III. **Review process**

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

IV. **Options suggested**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The same position as above applies to this option.

V. The administration's preferred approach

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

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

VI. Further Discussion and Considerations

A. The amendment and its effect

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

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

a fish or game population as the mainstay of livelihood.

The wording of the proposed resolution makes clear that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Severability

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

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

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

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

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

Introduced: 3/7/90
Referred: Resources, and Judiciary

6-2324E

BY THE TRANSPORTATION COMMITTEE

IN THE HOUSE

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 Alaska Native residents and 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 to Alaska Native residents and rural residents, and from providing for the allocation of that taking among Alaska Native residents and rural residents on the basis of local or community residence, availability of alternative resources, cultural, traditional, and customary uses of plants, fish, or wildlife, or dependence on plants or a fish or wildlife population as the mainstay of livelihood.

* 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.

MAR 15 RECD

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3850

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM March 15, 1990

SUBJECT: Sectional Summary of House Joint Resolution 90; Proposing an amendment to the Constitution of the State of Alaska relating to subsistence uses of plants, fish, and wildlife by Alaska Native residents and rural residents

TO: Representative Kay Wallis

FROM: George Utermohle GU
Legislative Counsel

This memorandum is a sectional summary of HJR 90.

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

Section 1 of the resolution amends the Natural Resources Article, Article VIII, of the Alaska State Constitution by adding a new section 19 entitled: Subsistence Uses of Plants, Fish, and Wildlife.

The legislature is specifically authorized to limit the taking of plants, fish, and wildlife for subsistence uses to residents of the state who are Alaska Natives or who reside in rural areas. The legislature may further restrict subsistence uses of plants, fish, and wildlife by Alaska Natives and rural residents on the basis of local or community residence, availability of alternative resources, cultural, traditional, and customary uses of plants, fish, or wildlife, or dependence on plants or a fish or wildlife population as a mainstay of livelihood.

This section exempts the legislature from those provisions of the Alaska Constitution that would otherwise prohibit it from limiting subsistence rights to certain classes of persons.

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

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DRAFT 3

HOUSE JOINT RESOLUTION

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

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 AND RENEWABLE NATURAL RESOURCES. Subsistence uses of fish and wildlife and renewable natural resources owned by the state are the customary and traditional, non-wasteful, non-commercial uses of those resources available in the area where a resident resides, taken and used by a resident for personal or family consumption or for traditional trade. Nothing in this Constitution prohibits the legislature from granting a preference for subsistence uses of fish and wildlife and renewable resources in rural areas of the state or from allocating subsistence resources among users.

THE

CONSTITUTION

OF THE

STATE OF

ALASKA

Stephen McAlpine

Lieutenant Governor

Article VIII

Natural Resources

Section 1 - Statement of Policy.

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

Section 2 - General Authority.

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

Section 3 - Common Use.

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

Section 4 - Sustained Yield.

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

Section 5 - Facilities and Improvements.

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

Section 6 - State Public Domain.

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

Section 7 - Special Purpose Sites.

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

Section 8 - Leases.

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

Section 9 - Sales and Grants.

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

Section 10 - Public Notice.

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

Section 11 - Mineral Rights.

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

Section 12 - Mineral Leases and Permits.

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

Section 13 - Water Rights.

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

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

Section 14 - Access to Navigable Waters.

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

Section 15 - No Exclusive Right of Fishery.

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

Section 16 - Protection of Rights.

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

Section 17 - Uniform Application.

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

Section 18 - Private Ways of Necessity.

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

Introduced: 1/22/90
Referred: Resources, and Judiciary

6-1892E

BY REP. BARNES, Furnace, Hanley, Martin, Zawacki

IN THE HOUSE

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 determined to exist under (b)(1) of this section. If the harvestable portion is not sufficient to accommodate all consumptive uses of the stock or population, but is sufficient to accommodate subsistence uses of the stock or population, then nonwasteful subsistence uses shall be accorded a preference over other consumptive uses, and the regulations shall provide a reasonable opportunity to satisfy the subsistence uses. If the 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 <u>on the basis of their</u> [, BY APPLYING THE FOLLOWING CRITERIA:

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, and for the customary trade, barter, or sharing for personal or family consumption; in this paragraph, "family" means persons related by blood, marriage, or adoption <u>living in the same household</u>, and a person living in the household on a permanent basis;

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

House of Representatives

While in Session:
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Chair
Special Committee on Foreign Trac
Vice Chair
Resources Committee
Member
Health, Education &
Social Services Committee

Rep. George Jacko, Jr.

M E M O R A N D U M

TO: All Legislators

FROM: Representative George Jacko, Jr.

DATE: April 3, 1990

SUBJECT: HJR 74 (Constitutional Amendment for Subsistence)

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

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

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

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

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

Thanks for your support.

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

DEMOGRAPHICS	UNSURE	SUPPORT	OPPOSE
TOTAL.....	15%	51%	34%
LOCATION			
RURAL.....	12%	69%	20%
CENTRAL.....	6%	47%	46%
SOUTHCENTRAL....	21%	47%	33%
ANCHORAGE.....	14%	47%	38%
SOUTHEAST.....	22%	55%	23%
AGE			
18-24 YRS OF AGE	22%	47%	31%
25-40.....	14%	56%	30%
41-55.....	12%	48%	41%
56+ YEARS OF AGE	22%	41%	36%
SEX			
MALE.....	13%	47%	39%
FEMALE.....	17%	54%	29%
INCOME			
NO RESPONSE.....	33%	48%	18%
TO 20,000 INCOME	17%	51%	32%
$20-40,000.....	19%	46%	34%
$40-60,000.....	10%	55%	35%
$60,000+.....	10%	51%	39%
DO YOU WORK FOR			
FEDERAL GOVT....	9%	59%	32%
STATE GOVT.....	8%	60%	32%
LOCAL GOVT.....	13%	57%	30%
PRIVATE SECTOR..	16%	50%	34%
NOT IN WORKFORCE	18%	42%	40%
VOTER REGISTRATION			
DEMOCRAT.....	14%	58%	28%
REPUBLICAN.....	13%	45%	43%
NON-PARTISAN....	15%	49%	35%
NOT REGISTERED..	21%	54%	24%
TIME IN ALASKA			
UNDER1YR IN COMM	0%	42%	58%
1-4 YEARS.....	10%	62%	27%
5-9 YEARS.....	13%	55%	32%
10-14 YEARS.....	15%	52%	34%
15+ YEARS.....	17%	47%	36%

DITTMAN RESEARCH CORPORATION MARCH 1990 n=547

Poll finds support for amendment

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

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

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

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

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

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

(See POLL, Page A-7)

POLL: 51 percent favor rural preference

(Continued from Page A-1)

subsistence question, Dittman said.

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

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

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

Cowper reacted cautiously to the poll results.

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

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

"I'm actually thrilled," he said. "The numbers look good. The next thing to do is to get the resolution out of the House."

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

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

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

Two factors may have affected the poll's results.

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

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

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

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

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

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

SUBSISTENCE TIME TABLE

1959 Alaska becomes a state and for the first time assumes management authority of her fish and game resources. The new constitution abolishes fish traps and specifies that fish and game shall be managed on a sustained yield basis for the common good.

1968 The discovery of oil at Prudhoe Bay and subsequent need for a pipeline to the ice free port of Valdez forces the resolution of aboriginal land claims.

1971 Alaska Native Claims Settlement Act brings wealth and technology to the bush. This Act extinguishes aboriginal claims to fish and game.

1972 Due to circumstance unrelated to Alaska, Congress passes The Marine Mammals Protection Act, seizing management authority of ten species of marine mammals from states and establishing federal Native subsistence policy. Alaska is forced to abandon her extensive conservation programs and the federal government refuses to fund any replacement programs.

1974 Construction of the Trans-Alaska Pipeline brings wealth and population growth to urban centers. Increased access to transportation technology fuels tension between urban and rural Alaskans competing for fish and game.

1978 Seeing the need to protect subsistence users and fearing federal intervention, Alaska's legislature establishes two tiered subsistence criteria when stocks are low: 1) Subsistence gains priority over other uses 2) when stocks are too low for all subsistence uses, priority is based on A. customary and direct dependence on the stock as a mainstay of livelihood, B. local residency, C. availability of alternate resources.

1980 Alaska National Interest Lands Conservation Act designates over one hundred million acres of land as federal preserves and sets "rural" as a requirement for subsistence use on all federal land. The Alaska boards of fish and game adopt rural priority regulations to comply with federal standards and maintain control on federal lands.

1982 Voters reject initiative to repeal rural priority At this time urban residents were still eligible for subsistence as first tier users.

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

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

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

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

Alaska House Of Representatives

Resource Committee

Subsistence Hearings

March 10, 1990

Dear Representatives

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

In 1989, The Alaska Supreme Court ruled rural priority unconstitutional. The court ruling states "One purpose of the 1986 act (like the 1978 act) is to ensure that those Alaskans who need to engage in subsistence hunting and fishing in order to provide for their basic necessities are able to do so." It also states that "many people living in urban areas have legitimate claims as subsistence users, while many people living in rural areas have no legitimate claims." This ruling upholds the right of the State to regulate subsistence but declares that the urban rural distinction is to "crude" a test to determine the actual needs of the people of Alaska.

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

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

It is my opinion that the State's original 1978 statute stressing local priority came closest to the ideal of protecting the individual rights of Alaskans who depend on wild resources. It is the federal government with the enactment of ANILCA, that imposed rural priority over local priority---and it is the federal law not the constitution of Alaska that needs to change; anything short of this, will be a cop-out!

Sincerely

Rick Bierman and family

P.O. Box 120166

Auke Bay, Alaska 99821

Rick Bierman

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

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

Craig-Fred Hamilton-755-2394- listen only

Edna Bay
Elfin Cove
Gustavus

Haines-Marilyn Wilson-766-2211

Hoonah-Wanda Culp -945-3557

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

Kake-Marvin Kadake-785-3804

Kasaan

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

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

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

Pelican-Jim Phillips

Port Protection

Tenakee-Ray Paddock

Saxman-Matilda Kushnik -225-2058

Skagway- Minnie Stevens-983-2885

Wrangell-John Feller-874-3261

Yakutat-Hank Porter-784-3250

10 minute break

7:35-8:30 Southcentral:

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

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

Chickaloon

Chignik-Ron Bowers/749-2280

Glacier View

Karluk-Mary Reft/241-2214

Larsen Bay-

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

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

Perryville-Boris Kosbruk/853-2211

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

Talkeetna

Tatitlek

Trapper Creek

Talkeetna

Skwentna

Sutton

Willow

10 minute break

8:40-9:30 Southwest:

Aleknagik-842-5953

Clarks Point-236-1221

Egegik-233-2231

Ekwok-464-3311

Levelock-287-3030

Manokotak-289-1027

Naknek (Bristol Bay Borough)-246-4224

New Halen-571-1226

New Stuyahok-693-3111

Nondalton-294-2210

Manokotak-289-1027

Pilot Point-797-2205 (Janice Ball)

St. Paul - 546-2331

Togiak-493-5820

Unalaska-581-1251

end

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MEMORANDUM

TO: Senator Bettye Fahrenkamp

FROM: William P. Horn WPH — **VIA TELECOPY**

DATE: March 19, 1990

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

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

DRAFT ONE

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

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

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

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

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

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

DRAFT TWO

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

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

DRAFT THREE

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

BIRCH, HORTON, BITTNER AND CHEROT
A PROFESSIONAL CORPORATION

CONCLUSION

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

> SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE AND RENEWABLE NATURAL RESOURCES. Subsistence uses of fish and wildlife and renewable natural resources are the customary and traditional, non-wasteful, non-commercial uses of these resources, taken by a resident in the area where the resident resides for personal or family consumption, for barter or sharing for personal or family consumption, or for customary trade.
>
> The legislature may grant a preference for subsistence uses of fish and wildlife and renewable resources in rural areas of the State and may allocate subsistence resources among users.

WPH:jap
WPH221H.ASR

Attachment

Proposed New § 19 of Art VIII

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

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

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

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

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

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

HOUSE COMMITTEE REPORT

(9)
Date Referred: January 31, 1990 FURTHER REFERRALS:
JUDICIARY

Date of Committee Action: April 21, 1990

The RESOURCES Committee considered: HJR 74

HOUSE JOINT RES. NO. 74 CONST. AMDT: SUBSISTENCE PREFERENCE

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

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact _____
[ ] zero fiscal note _____
[ ] zero with analysis _____

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____
[ ] zero fn/analysis _____

SIGNING DO PASS:

DAVIDSON
FOSTER
JACKO

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
MEIBARD		X	
HUDSON		✓	
SHARP		✓	

Chairman's Signature

NATIONAL RIFLE ASSOCIATION OF AMERICA

Publishers of THE AMERICAN RIFLEMAN
AND
THE AMERICAN HUNTER

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

8 March 1990

Rep. Cliff Davidson
Pouch V
Juneau, Alaska 99811

Dear Cliff:

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

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

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

I urge you to support this position.

Thank you for your attention to this matter.

I am,
Sincerely,

WAYNE ANTHONY ROSS
Second Vice President, NRA

LAW OFFICES OF
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ATTORNEY AT LAW

FROM THE ARENA
Column for Anchorage Times
for Sunday, 11 March 1990

Fifty years after the start of World War II, we still look back on that long, hot summer of 1939, when war clouds were gathering on the horizon, and wonder why the world leaders couldn't see it coming, and why they didn't take steps to avoid that costly conflict.

Today, war clouds of a different nature are gathering on Alaska's horizon. The threatened conflict won't be one involving bullets and bombs. Instead, it will involve words and ballots. But, this war, too, will be costly. It will not cause the deaths of millions of people. It will, however, cause the death of the unity and pride we Alaskans have with and in each other.

Recently, the Alaska Supreme Court ruled in the case of McDowell v. State, that the provision in Alaska's Constitution requiring that all fish and wildlife resources be managed for "common use" is an important constitutional right for all Alaskans. The plaintiffs in the McDowell case had sought the Court's assistance in obtaining the same Subsistence rights as other Alaskans to participate in the taking of wild game and fish. Before the McDowell decision, those people who lived in parts of the State which had been designated "rural", had a preference to take fish and wildlife for Subsistence over other Alaskan citizens who lived in parts of the State designated "urban". Since the McDowell decision, all Alaskans now have equal Subsistence rights.

The only fly in the ointment, however, comes as a result of Federal law. The Alaska National Interest Lands Conservation Act [ANILCA] requires that Subsistence rights be granted only to "rural" Alaskan residents. This directly conflicts with Alaska's Constitution. Title VIII of ANILCA mandates Federal management of fish and wildlife resources on Federal lands in Alaska if Alaska's Subsistence law does not conform with the provisions of ANILCA. Since our Supreme Court has said that a "rural" preference is unconstitutional under Alaskan law, it is clear that our Subsistence law does not conform with ANILCA.

"Urban" residents have fought for years to overturn the discriminatory Alaskan law denying them the same rights as "rural" Alaskans. Now that "urban" Alaskans have now achieved equality with their "rural" cousins, the next step on the road to equal rights should be to overturn the Federal law on Subsistence. After

all, any thinking person has to realize that the rural preference mandated by ANILCA is also discriminatory, just like Alaska's Subsistence law was, prior to McDowell.

So...What does Alaska's Governor propose to do about the Federal law which makes "urban" Alaskans second class citizens, compared to "rural" Alaskans?

Does he request our Congressional delegation to amend the Federal law to allow Alaskans to manage the fish and wildlife of this State without Federal interference? No.

Does he direct the Attorney General to file a lawsuit, seeking to overturn the discriminatory Federal law? No.

Instead, Governor Cowper proposes amending Alaska's Constitution so that, once again, "rural" Alaskan residents will have priority Subsistence rights over "urban" Alaskans.

What Governor Cowper proposes, for a solution, is that we hold a war. "Let's see who wins", he is saying. "We'll let the 'urbans' fight the 'rurals' at the ballot box next November...winner take all".

Unfortunately, in such a divisive war pitting Alaskan against Alaskan, there will be no winner. Instead, we will all be losers. And what happens if the Constitutional Amendment fails to obtain voter approval? We will be another year behind in settling the Subsistence problem, and more divided than we are now.

Already, battle lines are being drawn. Reinforcements are being summoned. A group from Wisconsin that opposes Indian treaty rights intends to become involved if a state constitutional amendment goes to the voters in November. On the other side, the AFN, turning its back on all Natives who live in "urban" areas, has indicated it supports a Constitutional Amendment giving a "rural" priority in Subsistence. Other Lower 48 hunting, fishing, and outdoors organizations are looking towards getting involved in the coming battle in Alaska.

It still is not too late, however, to stop this war before it starts. Alaskans need not battle one another in a ballot box version of the Civil War. Reasoned minds can still prevail.

What is necessary, of course, to prevent this divisive war this Fall, is for the Alaska Legislature to reject the Governor's call for legislation calling for a Constitutional Amendment. Instead, the Legislature should take the necessary steps to amend

in Congress, or challenge in court, Title VIII of ANILCA.

We need not embark upon a course that will pit Alaskan against Alaskan.

Instead, we should agree to work together, as neighbors and friends, to solve the problems caused by the present Federal law. If we don't start to do so soon, future generations will ask why our leaders didn't take steps to avoid a costly and divisive war over Subsistence.

RECEIVED MAR 12 1990

February 20, 1990

David Jurco
HC-89 Box 8101
Talkeetna, Alaska 99676

733-1049

Re: Subsistence Issue

To: Cliff Davidson

Per our telecom this date, please find enclosed an interesting, apparently original solution to our subsistence problem.

The State of Alaska is the second youngest state in the Union. As such, our laws, regulations, etc., etc., are constantly challenged as being not in conformance with our constitution, and, in many cases, either altered, amended, and/or invalidated by our state and federal courts. One issue which has received virtually perpetual attention in the last decade, and one which I have followed with great interest, is that of subsistence rights to the harvest of our states' fish and game resources. As this is the only state that enjoys an official recognition of those rights, we are forced to set precedents, whether we like it or not.

Without exception, all court decisions to date attest to the states' ineptitude in regulating our fish and game resources consistent with our constitution and laws. All imaginative solutions to the probelem have been deemed unfeasible, unconstitutional, and/or illegal. Whosever idea it was to label the Kenai Peninsula as non-rural had to have been born, raised, and residing in the bush. He/she should experience life in New York, Los Angeles, Chicago, or even Seattle prior to making an official distinction between urban and rural. Likewise, whosever idea it was to exclude <u>any</u> Alaska resident from harvest of our fish and game resources failed to read our brief 14,000 word Constitution, which is "one of the best, if not the best, state constitutions ever written".

All this infighting and legal wrangling has effectively eliminated

all but three possible solutions to this apparently insurmountable problem; the light at the end of the tunnel is growing brighter. Solution #1 requires amendment of the Alaska National Interest Lands Conservation Act (ANILCA) so as to conform with state law. As Senator Stevens has stated that he will not introduce legislation aimed at this goal, this solution does not appear feasible. More likely than not, it's impossible. In being the only one of its' kind, that peice of federal legislation enjoyed an abnormally large amount of debate and consideration, from a large number ofinterest groups, prior to becoming law. It is highly unlikely that it would be amended by any less, if at all.

Solution #2 is one that few Alaskans would condone, but has been threatened if our state officials fail to act in an appropriate manner. Just about anyone who is in touch with any form of news media recalls the fiasco on the Kenai River this past summer. That situation was created by Federal Judge Russell Hollands' order, albeit inadvertently, requiring the state to allow the Kenaitzes' a subsistence fishery for the 1989 summer season. Although that probably won't happen again this summer, Judge Holland has threatened to turn all fish and game resource management on federally owned lands over to the U.S. Fish and Wildlife Service if the state fails to permenantly correct the problem. As he has all the power needed to fulfill this promise, it should not be taken lightly. As a large percentage of the land in Alaska is owned by the federal goverment, this would effectively divest the state of managing its' own resources, and should not be considered as even the remotest of possibilities by our state officials.

Solution #3 is the only acceptable solution to the problem. Whether our politicians like it or not is immaterial, although it may mean a radical alteration of their priorities. This solution requires amendment of state law so as to conform with the legal definition of rural, as required by the Kenaitze decision, AND alimination of the states unequal granting of rights and opportunities, as required by the McDowell decision. Federal law (ANILCA) requires granting of a priority right to subsistence harvesters of our fish and game resources, and our state constitution is dedicated to the principle that all res-

idents are equally entitled to this right. Therefore, if all residents of our state were granted the right to harvest as much fish and game as they needed for subsistence purposes, no conflict would exist between the state and federal requirements. However, there would be created a conflict between the various user groups, and it is this inevitable conflict that so distresses our politicians; as well it should. As this concept of resource management has never before been implemented, the ramifications cannot be fully understood, or even contemplated, at this time. Although this would not give rural residents any priority, it would establish subsistence use as a priority over all other uses. This would certainly appease the Kenaitzes', McDowells', Natives, and any other subsistence users.

Although this solution may not be perfect, somebodys' bound to bitch about it, it is the only one in sight. Until a better one can be found, or created by Judge Holland, it should be implemented as expediently as possible.

Sincerely,

David Jurco

cc: Steve Cowper
Sam Cotten
Tim Kelly
Bethye Fahrenkamp
Lennie. Boston-Gorsuch
Micheal Crary
Richard Foster
Kay Wallis
George Jacko
Dick Eliason
Johne Binkley
Cliff Davidson

Editor
Juneau Empire
Juneau, Alaska

Dear Editor:

Your March 1990 editorial in support of a Constitutional Amendment to permanently segregate Alaska's citizens into urban and rural factions deserves a response.

The issue, how to legally discriminate against the majority of Alaska's residents in the allocation of fish and game, has received considerable attention from the news media, current and past state administrations, legislatures, legislators, Native organizations, organized recreational groups and individuals. It promises to become the dominate theme of the 1990 elections for Governor, State Senators, Representatives and, hopefully, for the U.S. Senator and Representative.

Alaska has struggled without success to find a legal means to discriminate against the majority while the Native element of the minority has largely been successful in gaining exclusive or preferential access to fish and game resources. Prior to the Native Claims Settlement Act of 1971, in which Alaska Natives (persons of ¼ or more Native blood) received 44,000,000 acres of land and $960,000,000 from the federal and state governments in exchange for abolition of all Native aboriginal claims to fish and game, among other items, allocation of fish and game was accomplished through seasons and bag limits, methods and means of take and time and area zones. While not a perfect system, conflicts among users were minimal, the resources were thriving and no one starved though the mental state of cultural well-being could not be measured then as it cannot now.

The Native quest for supremacy over fish and game started immediately after accepting the ANCSA settlement. Perhaps it never stopped. As mentioned earlier they have been extremely successful largely because of consistently supportive state administrations from 1974 onward and a congressional delegation that has yet to see a Native bill they could not embrace. The Native communities, especially the smaller and more remote ones clearly had and have social problems. Alcoholism, drugs, suicide, inadequate education, excessively high birth rates, fetal alcohol syndrome, village locations that preclude economic success and Native corporations created by ANCSA that do not seem to have vision beyond the ends of their well polished desks and Gucci loafers. The leaders cannot see the villages' problems except in terms of what the state and federal governments should do for their less fortunate relatives. The state has responded by pouring billions of dollars into rural areas only to find that these well intended efforts may have worsened the problems.

The reconquest of aboriginal hunting and fishing "rights" received a big impetus in 1972 when Congress enacted the Marine Mammal Protection Act (MMPA). This act usurped all state authority for the management of marine mammals while according all Natives unlimited access to the resource without restriction, except for those of international treaties. The next milestone came from the Hammond administration which clearly was allied to the Native vote. He pushed for federal intervention on federal lands and also pushed for enactment of a

rural subsistence law. He succeeded in 1978 with the passage of Alaska's first comprehensive discriminatory subsistence law. In 1980 the Hammond administration along with the Alaska Congressional Delegation succeeded in including a mandatory rural preference in the allocation of fish and game on federal lands in the Alaska National Interest Lands Act (ANILCA). Since then ANILCA has become the focal point of the fish and game allocation problem. It requires the state to accord a preference to rural Alaska. If the state does not comply the federal government will take over management of subsistence on federal lands. This threat has been used successfully time and time again to coerce the Alaska legislature into passing legislation that illegally discriminates against the majority of citizens. It has also been used successfully in other venues such as the 1982 referendum to repeal the state's "subsistence" statute which was defeated. The threat of federal intervention did not, however, deter the Alaska Supreme Court in 1989 from finding unconstitutional the state subsistence statute. Once again the Governor, this newspaper, the AFN and Native spokesmen all are calling for discriminatory and probably unconstitutional amendments to our constitution in order to keep out the Feds.

How bad are the Feds: bad, but not all bad! They have been an ever increasing presence since statehood. Statehood is an effective milestone by which the refederalization of Alaska can be charted.

Statehood, ANCSA and ANILCA pretty much completed the task of butchering the 363,000,000 acres of land we know as Alaska. Prior to statehood some national forests, military bases, national parks and monuments had been created. Designating land areas as state, Native (private fee simple) and federal special categories inevitably set into motion conflicting goals and objectives for the use and development of the assigned land masses.

The federal government has allocated nearly 130,000,000 acres for national parks, park preserves, monuments and refuges. These are designations on which the federal government has traditionally, probably with adequate legal bases, exerted considerable if not complete control over the allocation of fish and game resources. Another 110 million acres went to the Bureau of Land Management, Forest Service and military. These areas generally are managed by the states in which they are located.

In addition the federal government has primary control over all marine mammals, all migratory birds, high seas fishery management with direct and sometimes beneficial implications to salmon, pollack, crab, etc. and control of all species subjected to international treaties and certain other federal acts, i.e., Rare and Endangered species. At present the state manages indigenous (non-migrating) game on state lands, private (largely Native lands), BLM and Forest Service lands. Often with few federal/state conflicts. The state attempts to co-manage park preserves and refuges but conflicts with their federal counterparts are frequent, i.e., wolf management on park preserves and refuges, moose and furbearer management on the Kenai National Moose Range, etc. No state or federal management occurs in national parks, at least none worthy of the term.

The federal management scorecard in some instances is dismal. Marine mammals are essentially unmanaged. Natives slaughter and waste walrus by the thousands with only the ivory and oosik (Ospenis) removed (Feds finally made a significant case last year). They take polar bear indiscriminately with a preponderance of the take being young and females. Sea lion populations have crashed in portions of Alaska for unknown reasons. Harbor seals and sea otters whose numbers are unregulated and unutilized in many areas are creating serious impacts on local fisheries, especially on stocks of crabs, abalones and salmon.

The jury is still out on federal management of bottom fish stocks but my guess is that pollock and halibut have been adversely impacted.

But perhaps their greatest failure has been waterfowl management. The Alaska Outdoor Council successfully sued the federal government over the illegal mismanagement of cackling Canada and Emperor geese. But upon losing the federal government immediately continued their prior management practices. These include a closed season for everyone except the Natives of the Yukon-Kuskokwim Delta who caused the problem in the first place. These people take the birds in the spring (breeding pairs), summer (eggs and flightless young and moulting adults), fall prior to migration. All of this harvest is illegal yet the federal government has entered into agreements allowing for the continued slaughter in the face of a lost lawsuit and in violation of migratory bird treaties!

The federal record in Alaska at least on marine mammals and migratory birds has been one of arrogance and lawlessness. Many people don't realize that no one, not even the courts, can force the federal government to enforce conservation laws.

Obviously, I am not enthusiastic about federal management of fish or game but it is a fact that they already play a major role in the management of the fish and game resource in Alaska.

While the Governor claims to have introduced a proposal to amend the Constitution because he opposes federal intervention in the management of fish and wildlife in fact his administration is actively working at this very moment to expand federal control of game in a racially biased manner.

The state administration is supporting a U.S./Canada treaty to manage the Porcupine caribou herd, our second largest, at this time. The treaty will give the federal government and Natives control of the herd.

The state is also supporting amendments to the U.S./Canada Migratory Bird Treaty to legalize presently illegal spring and summer destruction of waterfowl by Natives.

Ironically, the beneficiaries, Natives, are the major cause of the present depleted status of several species and they are making inroads into other species. For example last spring they killed 40 tons of whistling swans--5,000-8,000 birds. A species no one can legally hunt in Alaska.

One wonders if the Governor remembers that he took an oath to uphold the laws of Alaska for all citizens. Why hasn't the state enforced

its regulations against illegal take of waterfowl in selected portions of the state? A touch of racism by the Governor?

In the few days that have elapsed since your editorial appeared the picture has become quite clear. The Natives have finally revealed their plan for a racial solution to the problem---All Natives should be accorded first priority of use of fish and game---because of cultural needs. This utterly racist viewpoint was most recently put forth by the representatives of 23 communities in Southeast Alaska and placed in concrete when Rep. Wallis of Ft. Yukon put forth a proposed Constitutional Amendment to accomplish apartheid in Alaska. Their recent actions are consistent with the expressed desires of various Native groups during the 1970's, the 1980 debate on ANILCA, the 1982 referendum on subsistence and throughout the McDowell vs. State lawsuit, to mention a few of their activities.

My proposed resolution to the "subsistence" issue follows:

1. Abolish the term "subsistence" from the fish and game regulations as it is no longer pertinent.

2. Manage the fish and game resource so as to perpetuate it using seasons and bag limits, methods and means and time and area zoning. These basic tools provide sufficient flexibility to adequately provide for the complex needs and desires of Alaska's citizenry regardless of their geographic location or ethnic heritage.

3. The legislature should by resolution, and other political means, if necessary, urge the Governor to immediately challenge, in federal court, the offending portions of ANILCA. There is every likelihood that the congressionally mandated urban vs. rural classification of U.S. citizens violates the federal constitution.

4. Concurrent to 3 above, petition our Congressional Delegation to seek immediate amendment to ANILCA by removing the offending language. ANILCA has been amended on the average of once a year since enactment. I realize Senator Stevens opposes such an amendment but he also is responsible to the state.

5. The legislature should reject all resolutions aimed at amending the Constitution to institutionalize classes of citizens for the purpose of allocating fish and game resources.

I recommend that each legislator reread Article I, Sec. I of the Alaska Constitution and the Supreme Court decision, McDowell vs. State Supreme Court, file No. S-2732. Justice Moore comments on page 32---"This is an equal protection case, and an easy one at that." The equal protection section referred to states in part "all persons are...entitled to equal rights, opportunities, and protection under the law..."

While the case under discussion was decided short of invoking the equal protection clause subsequent decisions will necessarily involve Article I, Section I.

Is the legislature seriously contemplating amendments that would establish statewide preferences on a racial or urban vs. rural basis

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

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

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

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

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789-3764

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March 10, 1990

SUBSISTENCE

This is a statement from the Tongass Tribe member, Donald F. Hoff,Jr. In order to speak on the important issue of subsistence youmust understand our history of my Tribe. The history that I will speak of, was research by my Eagle/Bear brother Richard Jackson.

Tongass Tribe is one of the 13 geographical divisions of the Tlingit Nation.

Ketchikan is the first town on the panhandle of Southeastern Alaska. It was first settled by the Tongass Tribe, traditionally known as the Taantakwan (the sea lion people), in the middle 1800's it was a properous village that flourished near the mouth of a creek. This creek was famous for its runs of hump-back salmon.

The creek and its immediate area were given to the Drifting Ashore House Group, a sub-division of the Gaanax a'di Clan of the Tongass Tribe, by a Sanya man (Cape fox people) in honor of the wife who had been from the Tongass Gaanax a'di Clan.

As migration of early pioneers to Alaska occurred, settlers increasingly attracted to the richness of the land, encroached on Tongass Land with total disregard to the Tongass Tribe. Natives were looked upon as less than human having little or no intellect.

Time went by and commercial businesses displaced the natives as land became more incresingly valuable to the town. Ultimately a central business district developed. This district completely surrounded the Tongass Tribe Village.

The Tongass Tribe has diminished in size due to the loss of a historical land base. With the loss of land the continuity of the social economy was forever interrupted.

The natives called the village "Kichxaan". Many transalations have been recored by the Tribe's is "under the wings of a eagle". This name came because of a big rock in the creek that sprayed like wings when the creek roared with rain water. The name was changed to Ketchikan by the whites after they incorporated and seized most of the land.

According to TLINGIT GENEALOGY, NOTES AND INFORMATION (SHORTRIDGE,LOUIS 1915-1926) clan houses (HIT) of the Taanta-kwaan in Ketchikan on May 8,1916 include:

Raven Gaanaxa a'di Clan	Eagle Tolkweidei' Clan
(Raven) Yei'l Hit	(Ravine) Shaan'ax Hit
(Moose) Xaas Hit	(Bear) Xutz Hit
(Over the Istmus) X'agoon Hit	(Man who married the Brown Bear) Kaats' Hit
(Golden Eagle) Gidjook Hit	(Around the Eagle) Wandaa Hit
(Ground Squirrel or Marmot) S'aax Hit	

Today because of assimitlation and disconnection to oulturalheritage due to the lack of a land base the Tongass Tribe's Matrilineal Moietie have only one known house group apiece. The Gaanax a'di have only the Yie'l Hit and the Teikweidei have only the Kaats Hit house. Today the Tongass Tribe is only a breath away from extinction if there is not any attempts to restore some semblance of the social economy that once exsisted.

As of now the Tongass Tribe number approximately 300. They live for the most part in urban locations with a large concentration in the Ketchikan area.

Now here we are fighting for subsistence rights of my people and native people in Alaska. We are talking about "Inherent Rights!" the right to subsist as we did for 10,000 years and before.

I am part of the Tlingit Nation and proud of my Cultural Heritage. What right does the State of Alaska or the Federal Government or any one person have to decide whether I can subsist for traditional foods. Anyone is to blame, it has been the exploitation by rapists, capitalists opportunists. The laws are created for further exploitation of all our natural resources.

Prime examples, fish and wildlife game,abalone, sea-cucumber,herring roe, seaweed, shelfish and the list goes on and on. State of Alaska has over regulated.

An article written by Ketchikan Daily News, Friday,March 9,1990 on Subsistence: Native Preference Proposed. Rep.Kay Wallis,D-Fort Yukon, said that falls short of protecting the native culture. Rep.Wallis introduced a measure that would amend the State Constitution to limit subsistence rights to natives and rural residents. A vote againstthis amendment is disorimation againstthe Native People in Alaska. Another form of this Disorimation is the States stand that they don't recognize Indian Tribes in Alaska. I don't know what else to call it.

To be real frank, Alaska Federation of Natives that supports the rural defination amendment do not have the right to speak or represent me nor our Tribe because we live in a urban setting. We can't understand their logic. Ketchikan is a Village and our sea has been an unlimited resource for food and economic exchange for thousands of uninterrupted years until now. You take away our subsistence, you will certainly kill my people. You have rocked the "Gum-boot Boat!"

The imposition of State regulatory Subsistence laws on a people who heretofore have never been denied or denied anyone the inherent right to provide for their families. In a few basic words, that is called human rights. Human Rights do not exist if someone or body is a racist. To me the answer is sample, let people subsist. Respectfully submitted for the record.

Aan Kadax Tseen (my Indian name)
Gaanax a'di Clan
Yei'l Hit
Taantakwan Tribe

Donald F. Hoff, Jr.

RIC DAVIDGE
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SUBSISTENCE - FACT AND FICTION

Why should the State of Alaska amend its constitution, altering fundamental principles of the founding fathers of our state that all fish, wildlife and waters are held for the common use of Alaskans - that there will be no exclusive right of fishery - that the laws of the land will be uniformly applied - that its citizens will have equal rights and that there is a Constitutional right to due process?

Why should the State of Alaska amend its constitution to comply with a federal law, which most Alaskans objected to when passed by Congress, that applies only to federal lands - federal lands that have, as a matter of law, been under federal management since the acquisition of Alaska from Russia?.

Why should the State of Alaska amend its constitution and change the management of STATE lands to comply with a federal law that only applies to Federal lands?

As most of you know I served with the Department of Interior from 1980 to 1986 in a number of capacities. I was an Alaskan before I went to Washington, DC and, unlike some, I returned to Alaska.

While serving as the Assistant to the Director of the US Fish and Wildlife Service one of my responsibilities in 1986 was to Chair a Federal multi-agency task force charged with DRAFTING the Federal Subsistence Resource Management Program. Last month at the request of the Senate I testified before the Senate Resources Committee on that program and have attempted since my departure from the Federal Government (in 1986) to have this regulatory program released to the Alaska public for review and comment. Not because I believe it is the answer to the question of subsistence resource management but because I believe Alaskans have the right, under federal law, to review, comment and have those comments considered BEFORE that program or any other such program is put into place.

Why has our Congressional Delegation not insisted that the federal plan be released? Why have the so called "friends of Alaska" that serve in the Department of Interior not insisted that this program be released? Why have the Alaska Federation of Natives and the Native Village or Regional Corporations not insisted that this program be released? Why has the State

Legislature and our Governor not demanded that this program be released?

FACT - Title VIII of ANILCA only applies to federal lands.

FACT - Congress found that the State of Alaska was competent to manage the fish and game resources on federal lands - however such management is subject to Federal law, management cooperation and ultimate approval. Federal agencies manage the habitat.

FACT - If the State Fish and Game Boards made an allocation decision of fish and game resources on Federal lands that federal agencies did not agree with - it would not be approved. The Federal agencies hold the authority under federal law to approve or deny allocation decisions within federal boundaries.

FACT - Title VIII of ANILCA does not apply to State lands but an amendment of our State Constitution would.

FACT - Title VIII of ANILCA discriminates on the basis of residency.

FACT - A number of Constitutional lawyers including government Solicitors believe that Title VIII is unconstitutional. Why hasn't the State of Alaska challenged its application?

FACT - The Master Memorandum of Agreement on the Management of Fish and Game in Alaska signed by Secretary of Interior Watt and Governor Hammond is ignored by federal agencies. It is an Informal regulation that did not comply with federal or state administrative procedural laws. It is in all respects invalid.

FACT - Under federal law the subsistence preference is granted to rural communities who subsist on federal lands (not state or private lands) and this subsistence preference may be lost or regained based on the delineation of a community as "rural".

FACT - Title VIII of ANILCA and its legislative history provides no definition of "rural".

FACT - The only Federal definition of Rural to be found is the one used by the US Census Bureau. A community of 2,500 or less is classified as rural. Any community with a population above 2,500 is classified as urban.

FACT - The Subsistence preference granted by Title VIII is not a property right. The legislative history makes this very clear.

FACT - The Subsistence preference granted by Title VIII is not granted in perpetuity

FACT - The Subsistence preference granted by Title VIII is not granted to Native people but to persons who reside in rural communities.

FACT - The requirement under Title VIII of ANILCA and the Constitutional amendments being considered grant a preference. In order to implement that preference one must ensure that the allocation can be reasonably received by those granted the allocation. How can the State of Alaska or the Federal government ensure a subsistence PREFERENCE allocation of salmon (better than 90% of all the subsistence resources taken) to a small native village at the boarder of Alaska on the Yukon River when the commercial fishing industry will intercept those same runs of salmon in the open ocean?

FACT - A law suit challenging the allocation decisions of the State and/or the Federal agencies - that they do not adequately protect the subsistence preference of rural communities could radically impact Alaska's commercial fishing industry.

FACT - The Department of the Interior is not paying the State of Alaska the funds necessary for the State to manage subsistence resources on federal lands. Since passage of ANILCA in 1980 the federal government has only paid the state about $1 Million a year. The State expends more than $5 Million a year on the program.

FACT - The State Supreme Court decision does not apply to Federal lands. Title VIII of ANILCA is still in effect and subsistence preferences will be met on federal lands.

FACT - The assertion by some in Washington and in Juneau that it is impossible to manage Alaska's fish and game resources unless it is done by the State is inconsistent with the history of fish and game management in all other states. Alaska is one fifth the size of the contiguous states. That means that a grouping of states equals the land mass of Alaska. Each of these states manage their fish and game resources quite well and many states have federal areas within their boundaries which are under EXCLUSIVE FEDERAL JURISDICTION meaning the state has no legislative or regulatory authority within the federal boundary.

This management is accomplished through cooperative management agreements between states and federal agencies.

FACT - The trend in the lower 48 is that Federal Courts are reversing previous decisions granting special privileges to Indians off of "Indian lands".

FACT - ANCSA provided federal and state compensation to Alaska Natives for aboriginal rights to land and their resources for the purpose of settling such claims. This compensation took the form of cash and lands which were extended, received and accepted.

FACT - The problem Alaska is facing was created by, what our Supreme Court referred to as a "crude" attempt to solve a complex

allocation question, . . . was created by Congress - NOT BY THE STATE OF ALASKA.

FACT - Federal management of subsistence resources on federal lands is subject to federal law. The preference must be granted. The allocation must be based on sound wildlife management principles. Federal management of subsistence resources is subject to public review and comment.

FACT - The Fish and Wildlife Service must prepare an Environmental Impact Statement before it can implement a Subsistence Resource Management Program. This EIS is also subject to public review and comment.

FACT - Significant portions of federal lands are not open to subsistence hunting or fishing. The people in Glacier Bay National Park have just come to realize that.

I submit to you, as an Alaskan with some knowledge of federal agencies and subsistence law, that federal management of subsistence resources on federal lands will not significantly alter the allocation of fish and game resources as such allocations are already constrained by federal law.

I submit that the management of fish and game resources in the State will not significantly change, as federal and state agencies will enter into cooperative agreements regarding such resources to ensure proper management consistent with state and federal law.

I submit that the federal agencies will be more directly responsible for paying the costs of such management. A cost now unfairly placed on the state budget.

And I submit to you that such an action will isolate those in Washington DC and in Juneau that have personal agendas that are facilitated by conflict - be it racial or political.

Why should the State of Alaska amend its Constitution, one built on the lessons learned from the mistakes of other States, to comply with a federal law that many believe unconstitutional and that only applies to federal lands within which the state has little jurisdiction anyway?

I must conclude that the best solution is to let the federal agencies manage subsistence resources on federal lands, do not amend our State Constitution, and have the State join with private efforts - well underway - to challenge the constitutionality of Title VIII of ANILCA.

P. O. Box 1410
Petersburg, Alaska 99833

March 6,1990

Dear Representative Menard,

We are on the brink of losing the two most dominant issues over which the struggle for statehood was fought; the domination of our lives by the federal government, and the exclusive and privileged use of our fish and game resources.

The fraud the federal government has imposed upon us under terms of the Alaska National Interest Lands Conservation Act (ANILCA) must not go unchallenged. The "Subsistence" problem and its implications have created the single most divisive issue between Alaskans since statehood. We simply cannot afford any further institutionalization of racial government privilege.

In negotations for construction of the trans-Alaska pipeline the federal government, the state, the native community and the environmental interests agreed to terms of the Alaska Native Claims Settlement Act (ANCSA). This federal legislation provided that for the payment of nearly one billion dollars and the private ownership of forty million acres that "any aboriginal rights, if they ever existed, are hereby extinguished" All parties understood and accepted these terms.

The subsistence section of ANILCA is the attempt to regain those exclusive and privileged rights which were extinguished under ANCSA. The U.S. Circuit court, in 1980, ruled that "All claims by Alaska Natives against the United States, the State and other persons based on claims of aboriginal right, or based on statute or treaty relating to Native possession, were extinguished".

ANILCA further compounded its problems by including all persons residing in rural Alaska and by defining subsistence in terms which are far beyond that which is commonly used. A "means of support or livelihood". It then threatens to usurp management of our fish and game resources if we fail to comply with all of their demands!

The U. S. Congress deviated from the usual pattern of Indian settlement in drafting the provisions of ANCSA. In addition to the granting of financial aid and title to land, Congress established thirteen Regional Corporations and Village Corporations in a planned effort to bring the Alaskan Indians into the mainstream of moodern life both financially and culturally as rapidly and painlessly as possible. For some of the Corporations, that road has been filled with obstacles, but

some of them are prospering. Figures recently released by the U. S. Census Bureau show that the Tlingits of S. E. Alaska now have the highest annual family income of all American natives, and also exceed that of all American families by several hunderd dollars a year. By promoting subsistsence in a "Customary and Traditional manner", ANILCA contravenes this expressed intent of ANSCA.

ANILCA and our state constitution are not compatible. We must not abandon those principles we fought so hard and long for at the time of statehood by amending our constitution.

We can extricate ourselves from this untenable situation only by being positive in our goals and assertive and aggressive in pursuing them. We cannot please everyone, we must chart a course which is fair and equitable to all and protects the resource from abuse.

We must demand that our Congressional delegation immediately take steps which will lead to changes in the subsistence sections of ANILCA, at the same time our Legislature must amend the state subsistence statute based upon individual characteristics of need.

In its recent decision in which they declared the rural portion of the state subsistence statute to be unconstitutional, the Supreme Court took great pains to point the direction for us to follow when they said....

"a law providing for individual determination eligibility to engage in subsistence taking of fish and game could be sufficiently tailored to the states interest to be constitutional"

In summary:

It is my belief, based upon the history and provisions of our Constitution, ANCSA and ANILCA that:

Any alteration of Article VIII, Sections 3, 15 or 17 of our State Constitution will place Alaskas number two industry, commercial fishing, in jeopardy and could be detrimental to our game resources as well.

All aboriginal titles, including aboriginal hunting or fishing rights, were extinguished. The basis for hunting and fishing rights for Alaska Natives is presently by treaty or statute only.

As the supreme court observed, " There are a substantial number of Alaskan residents residing in areas designated as urban who have legitimate claims as subsistence users. Likewise, there are substantial numbers of Alaskans living in areas designated as rural who have no legitimate claim" They must all be treated equally.

The Federal Government erred in not recognizing that the Alaskan Natives forfeited any aboriginal rights they may have had under terms of ANCSA. This should be challenged in the highest court of the land, and our congressional delegation must begin immediately working toward a revisions of that flawed federal statute.

A law providing for subsistence based upon individual determination of need would be fair, equitable and could be molded to be in compliance with our constitution.

This has become such an emotional issue that many, either believe, or would like us to believe, that if they are not granted "subsistence rights" they are being denied a share of the resource. Fortunately, at the present time, the status of our fish and game resources, in general, are such that our liberal seasons and bag limits provide for the physical, spiritual and cultural needs of the preponderance of present day Alaskans. For those who need or want additional, Personal Use regulations are more than adequate.

Please do your utmost to correct this extremely serious problem in favor of all Alaskans and the fish and game resources of our beutiful and bountiful state.

Sincerely yours,

Loren Croxton

2-90 Conservation Utilize - Preservation 82/2

Concerning the Trapping and subsistance es
First, wild animals do not belong to the sta
Wild life, land, water and all resources bel
to the people. State ownership only exists und
Socialism, Communism, Monarchies, and
other Totalitarians. A Constitutional Republic
Article 4, Section 4, guarantees the unalienable
Rights of the people as expressed in the Decla
tion of Independence, and secured by the bl
of patriots. Rights aren't based on race, co
male, female, city or rural. All live with
unalienable Rights. No privileged nobility.
one immune from greed, regardless of age, sex,
nationality or location. Which brings us to the on
purpose of government. A Constitutional Repu
was created to secure our unalienable God
given Rights. The Declaration of Independence
states this and the Revolutionary War fought t
demand them. Individual Liberty, and
to the wildlife, forests, and rivers was
purpose of the Magna Carta. No longer, the K
deer, the Kings fish or the Kings forest. This is
a new issue. If the people are to retain Liberty,
must educate themselves with the mentioned
documents and The Federalist Papers, recogni

(1)

by our U.S. Supreme Court as authority on the Constitution. Individual Rights to land, animals, fish and other resources have been usurped. Harvesting renewable resources based on ~~sustained~~ sustained yield is only common sense. Beetle infested timber on the Kenai Peninsula shows fallacy of preservation. A waste and a fire hazard. Much of this timber is rotten. Nothing lives forever. Conservation Utilizes. Preservation wastes. To utilize any resource, directly or indirectly to support oneself is a basic Right.

Seymour Mills
262-9289
Sterling, Alaska

UNITEDFISHERMENOFALASKA

TESTIMONYONSUBSISTENCE

March10,1990

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

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

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

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

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

- The federal government's jurisdiction over fish and game populations both on federal lands and state lands and waters needs to be clearly defined. For example, does the state or the federal government have jurisdiction over anadromous fish harvested in state waters but spawning within federal areas?

- The consequences or benefits of a "federal" takeover for subsistence management need to be delineated for the public. The public should not be forced to stand in fear of a concept they do not understand.

- The legislature must consider that "rural" will still not be defined in the adoption of the proposed constitutional amendments. There will be no federal definition for rural.

- How will the state handle the Ninth Circuit's ruling relative to the Kenaitzes and its subsequent classification of the Kenai area as rural?

- More clear policy guidance must be provided for the Boards of Fisheries and Game and other regulatory agencies creating subsistence regulations.

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

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

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

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

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

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

Alaska House Of Representatives

Resource Committee

Subsistence Hearings

March 10, 1990

Dear Representatives

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

In 1989, The Alaska Supreme Court ruled rural priority unconstitutional. The court ruling states "One purpose of the 1986 act (like the 1978 act) is to ensure that those Alaskans who need to engage in subsistence hunting and fishing in order to provide for their basic necessities are able to do so." It also states that "many people living in urban areas have legitimate claims as subsistence users, while many people living in rural areas have no legitimate claims." This ruling upholds the right of the State to regulate subsistence but declares that the urban rural distinction is to "crude" a test to determine the actual needs of the people of Alaska.