

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6052 HOUSE RESOURCES

856

PROPOSED SUBSISTENCE LAW

FINDINGS

The Legislature finds and declares that -

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

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

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

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

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

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

POLICY

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

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

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

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

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

PREFERENCE FOR SUBSISTENCE USES

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

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

DEFINITIONS

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

For the purposes of this Act, the term -

(1) "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses -

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

(3) "rural" means any community whose population is customarily or traditionally dependent on the harvesting of fish and wildlife resources on federal lands with a population not greater than 2500 or as delineated by the US Census Bureau.

COOPERATIVE AGREEMENTS

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



ALASKA OUTDOOR COUNCIL, INC.

1730 MCOWELL BLVD JUNEAU AK 99801
(907) 784-4500

P.O. Box 34097
Juneau, Ak. 99803

Jan. 26, 1990

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

Dear Governor Cowper:

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

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

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

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

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

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

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

Sincerely Yours,



Ed Grasser, Director
Legislative Affairs

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

UNITED FISHERMEN OF ALASKA

TESTIMONY ON SUBSISTENCE

March 10, 1990

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

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

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

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

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

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

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

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

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

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

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

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

ALASKA FEDERATION OF NATIVES, INC.

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



February 6, 1990

Distinguished Members of the
Alaska State Legislature
Juneau, Alaska

Dear State Legislator:

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

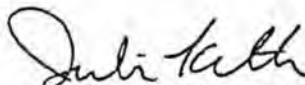
The Federation's position statement is the result of lengthy analysis and evaluation by the Native community of options available in response to the December, 1989 Alaska Supreme Court decision in McDowell v State of Alaska.

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

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

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

Sincerely,


Julie Kitka
President

ALASKA FEDERATION OF NATIVES, INC.



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

POSITION STATEMENT ON SUBSISTENCE

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

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

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

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

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

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

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

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

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

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

RURAL ALASKA RESOURCES ASSOCIATION

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

MEMBERS:

Aleutian/Pribilof
Islands Association, Inc.

Bristol Bay Native
Association

Central Council,
Tlingit & Haida

Copper River Native
Association

Kawerak, Inc.

Kodiak Area Native
Association

Maniilaq Association

The North Pacific Rim

North Slope Borough

Nunam
Kitlutsisti

Tanana Chiefs
Conference, Inc.

Tyonek,
Native Village of

ASSOCIATE MEMBERS:

Koyukon
Development Corporation

Bering Sea
Fishermen's Association

RURAL CAP STAFF:

Bob Polasky

February 20, 1990

RECEIVED FEB 21 1990

DEAR BUSH CAUCUS MEMBERS:

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

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


Sincerely,

RURAL ALASKA RESOURCES ASSOCIATION


Matthew Iya, Chairman

Enclosure

MI:ct


KAWERAK



RURAL ALASKA RESOURCES ASSOCIATION

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

MEMBERS:

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Kawarak, Inc.

Kodiak Area Native
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Tyonek,
Native Village of

ASSOCIATE MEMBERS:

Koyukon
Development Corporation

Bering Sea
Fishermen's Association

RURAL CAP STAFF:

Bob Polasky

RARA POSITION STATEMENT IN REGARDS TO THE MCDOWELL DECISION

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

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

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

[Handwritten signature]
BOB POLASKY





ALASKA OUTDOOR COUNCIL, INC.

RECEIVED

March 1, 1990

Rep. Cliff Davidson
Pouch V
Juneau, Alaska 99811

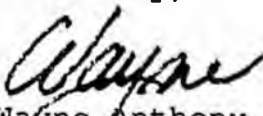
Dear Cliff:

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

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

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

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


Wayne Anthony Ross
Attorney at Law



ALASKA OUTDOOR COUNCIL, INC.

MEMORANDUM ON FISH AND WILDLIFE MANAGEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³ Subsistence is a misnomer; it is not a method for putting food on the table and has nothing to do with need. It is a chosen lifestyle. It is not the government's role to ~~preserve~~ any particular lifestyle. Instead the government should allow for individual choice and do nothing to discourage those lifestyle choices.

⁴ While there have been warnings concerning the amendment of ANILCA, it should be remembered that ANILCA has been amended nine (9) times since its enactment with no major problems.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁶ It should be remembered that Native people have been awarded 44,000,000 acres of land which is held in fee simple. Like any landowners Native people can and do refuse to allow others to hunt on, and fish on, their land during seasons established by the Department. This alone can serve as a way to limit competition for fish and game stocks, although it is recognized that at present, enforcement of trespass laws are difficult.

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

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

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

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



Alaska Professional Sportsmen's Association

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

March 1990

P.O. Box 190842 • Anchorage, Alaska 99518

Regular Meetings

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

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

The Great Alaska Sportsman Show begins that afternoon.

SPECIAL SUBSISTENCE ISSUE

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

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

Subsistence Under Federal Law

WHAT IS IT? WHAT ISN'T IT?

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

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

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

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

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

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

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

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

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

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

(continued on page 3)

MESSAGE FROM THE PRESIDENT

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

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

(continued on page 2)

Subsistence (continued from page 1)

What is the role of the Federal Agencies then?

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

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

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

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

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

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

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

What can I do to help?

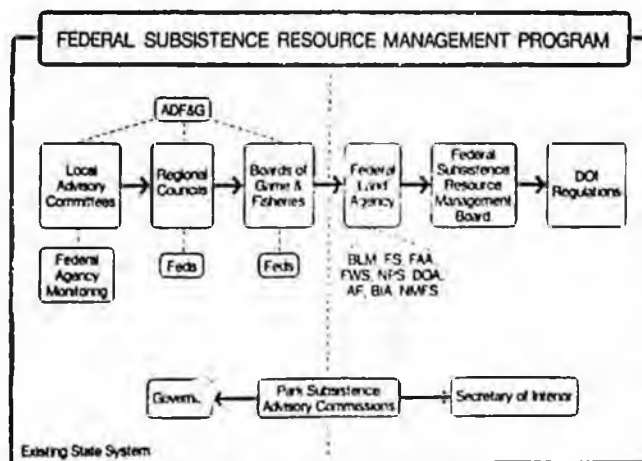
Every Alaskan, Native or non-Native, urban dweller or rural citizen, sportsperson or couch potato must DEMAND that the Federal agencies come out of the closet and sit down with State officials and cooperate. The problem was created by Congress, in a poorly worded, patchwork law that does not define "rural"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

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

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

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

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



CORRECTION

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



Alaska Professional Sportsmen's Association

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

March 1990

P.O. Box 190842 • Anchorage, Alaska 99518

Regular Meetings

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

The APSA Spring general membership meeting will be April 6, Friday 9 a.m. - 1:00 p.m. at the Clarion Hotel. The Great Alaska Sportsman Show begins that afternoon.

SPECIAL SUBSISTENCE ISSUE

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

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

Subsistence Under Federal Law

WHAT IS IT? WHAT ISN'T IT?

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

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

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

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

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

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

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

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

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

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

(continued on page 3)

MESSAGE FROM THE PRESIDENT

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

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

(continued on page 2)

President's Message (continued from page 1)

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

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

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

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

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

Nick Pierskalla

NEW GUIDE/OUTFITTER/TRANSPORTER LEGISLATION INTRODUCED

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

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

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

ALEX TARNAI WINS LAWSUIT

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

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

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

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

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

APSA JOINS INTERNATIONAL SHOOTING & HUNTING ALLIANCE

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

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

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

Subsistence (continued from page 1)

What is the role of the Federal Agencies then?

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

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

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

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

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

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

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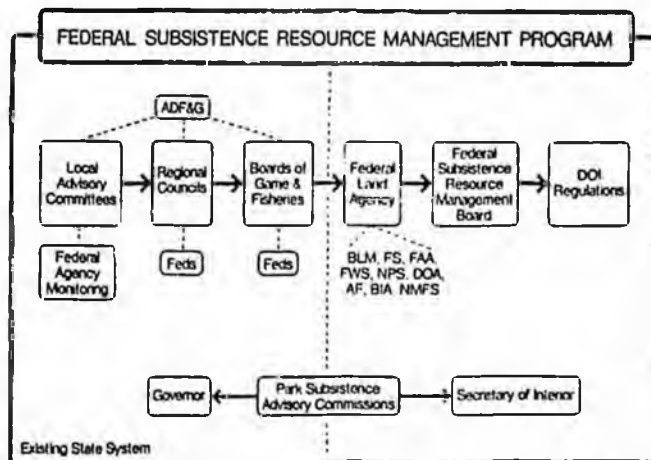
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1990 Membership Drive Underway

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

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

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

Worth & Whitney Appointed To State Big Game Commercial Services Board

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

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

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

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APSA Co-Council Program Growing Fast

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

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

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

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

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

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

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

Alaska Outdoor Council Requests Nominations

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

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

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

APSA Members Appointed to Bristol Bay Salmon Enhancement Association Board

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

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

Alaska Supreme Court decisions send message to native population

By John Shively

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(continued on page 6)

Alaska Supreme Court

(continued from page 5)

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

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

Reprinted courtesy of Anchorage Times, January 3, 1990.

Personal Property Taxes & Local Rural Residency

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

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

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

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

Communicating Effectively with Washington, DC

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

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

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

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

BE ACCURATE Tell them your side and substantiate it.

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

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

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

Addresses:

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

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

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

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

Subsistence issue needs final solution

by Clem Tillion

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

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

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

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

constitutional law until July 1.

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

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

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

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

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

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

So what do we do?

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

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

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

(continued on page 7)

Subsistence issue

(continued from page 6)

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

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

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

Reprinted from the Anchorage Times 1/14/90

Subsistence ruling levels the playing field

By Wayne Ross

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

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

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

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

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

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

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

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

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

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

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

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

(continued on page 8)

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Subsistence ruling

(continued from page 7)

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

But what is the problem?

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

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

Everyone, Mr. Shively. Are you listening?

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

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Together we can make a difference.



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Special Subsistence Edition

March, 1990

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

My Story

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

By the time I reached 12, my great ambition was to have my very own .22 rifle.

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

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

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

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

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



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

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

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

Culture & Tradition

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

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

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

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



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

The Land

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

For European immigrants, on the other hand,

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

This is not to suggest that the Europeans simply occupied and appropriated the land of Native Americans. The Puritans, for example, believed that the confiscation of property was wrong whether boundary markers existed or not. Roger Williams, among others, proposed that the land be purchased from the Native Americans for a reasonable price. This approach, as much as his theological ideas, perhaps, contributed to his banishment from Plymouth! ³

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

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

ANCSA

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

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

Subsistence

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

ANILCA

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

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



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

Conclusions

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

To some extent, federal treaties and statutes have protected Alaska



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

Native subsistence interests.

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

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

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

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

As Representative Eileen Panigeo MacLean of Barrow wrote recently,

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

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

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

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

The Conflict

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

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

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

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

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

Is There A Solution?

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

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

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

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

Senator Stevens

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



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

Governor Cowper

Governor Steve Cowper has stated that,

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

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

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

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

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

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

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

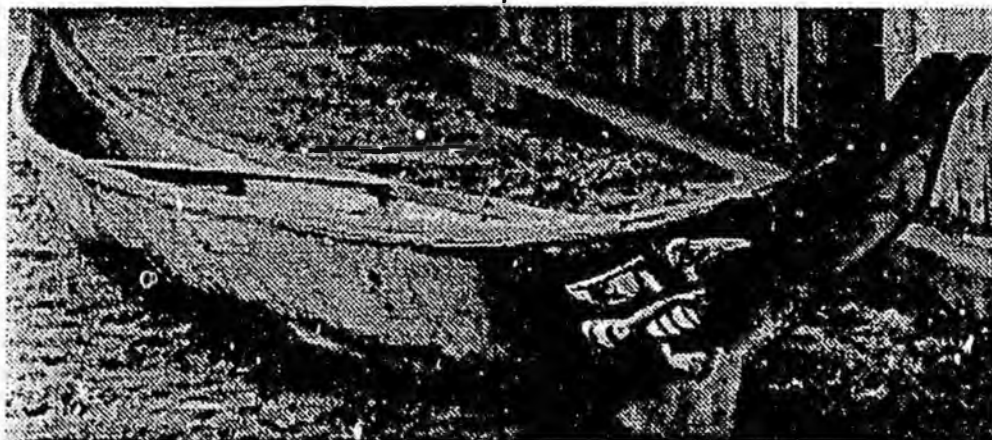
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Notes:

- ¹Village Journey, Thomas R. Berger, Hill & Wang, 1985, p. 52
- ²Indians and Other Americans, Fay A. McNickle, Harper, 1959, p. 28
- ³Behind the Trail of Broken Treaties, Vine Deloria, Delta, 1974, p. 95
- ⁴Alaska Natives & American Laws, David S. Case, U of A Press, 1984, p. 47
- ⁵Ibid., p. 47 ff.
- ⁶Senate Report 92-581, 92nd Congress; 1st Session, December 14, 1971 at 37
- ⁷Case, op. cit., p. 300
- ⁸Ibid., p. 303
- ⁹Ibid., pp. 313, 314
- ¹⁰"Tundra Times", January 29, 1990, p. 29
- ¹¹Case, op. cit., p. 477
- ¹²AFN Newsletter, Special Issue, February 1990, p. 7

Graphics courtesy of:

- Alaska Federation of Natives: Salmon Drying, page 1
- Doug Underland's Alaskan Sketchbook, Caribou & Walrus drawings, page 3
- Alaska Federation of Natives, Ice Fishing, page 3
- Bishop Museum Press, Halibut Hook, page 4
- Vancouver Art Gallery & University of British Columbia, Tinnet Canoe, page 4



HB-415.

page 2 - section 3 - new subsection (g)Delete Items

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

page 2 - section 4 - (29)

add/retain/put back in

[Gill Net, Seine] [Long line]

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

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

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

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

I sure don't envy your job -

Walter Brown



Alaska State Legislature

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

committee on HB-415/ HJR 88-74-90, dated March 10, 1990
bill/subject

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

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

For those reasons I am opposed to HJR* 88-74-90
OF these proposed resolutions/proposed constitutional amendment s - I find find HJR-74 most tolerable.

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

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

Signed: Walter Brown

Testifier

self

Representing (Optional)

P.O. Box 3502, Kenai AK 99611

Address

262-1908

Phone No.

DRAFT DRAFT DRAFT DRAFT
ALASKA SPORTFISHING ASSOCIATION

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

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

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

Our position is that:

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

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

April 3, 1990

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

House Interior Hearings, Part XII at 419.

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

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

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

advances what the Legislature determines is the highest public interest.

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

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

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

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

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

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

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

However, we do so with an important caveat.

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

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

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

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

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

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

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

"and members of such groups"

STATE OF ALASKA



LYMAN F. HOFFMAN
CO-CHAIRMAN
HOUSE FINANCE COMMITTEE

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

HOUSE OF REPRESENTATIVES

DISTRICT 25

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AKIAK
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KWETHLUK
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NAPASKIAK
NEWTOK
NIGHTMUTE
UNAPITCHUK
OSCARVILLE
PLATINUM
QUINHAGAK
TOKSOOK BAY
TUNTUTULIAK
TUNUNAK

April 21, 1990

THANK YOU MR. CHAIRMAN AND
COMMITTEE MEMBERS.

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

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

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

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

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

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

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

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

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

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

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

Testimony: House Resources 4/20/90

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

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

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

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

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

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

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

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

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

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

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

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

Permit issuance limited to issuance only in remote locations.

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

Thank you for the opportunity to testify.

ALASKA FEDERATION OF NATIVES, INC.

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



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

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

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

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

Integrity • Pride in Heritage • Progress

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. HOPSON SAID:

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

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

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

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

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

Public Law 96-487
96th Congress

An Act

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

Dec. 2, 1980
(H.R. 39)

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

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

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

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- Sec. 303. Additions to existing refuges.
- Sec. 304. Administration of refuges.
- Sec. 305. Prior authorities.
- Sec. 306. Special study.

TITLE IV—NATIONAL CONSERVATION AREA AND NATIONAL RECREATION AREA

- Sec. 401. Establishment of State National Conservation Area.
- Sec. 402. Administrative provisions.
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- Sec. 404. Rights of holders of unperfected mining claims.

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PART A—WILD AND SCENIC RIVERS WITHIN NATIONAL PARK SYSTEM

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- Sec. 1101. Findings.
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- Sec. 1103. Effect of title.
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TITLE XII—FEDERAL-STATE COOPERATION

- Sec. 1201. Alaska Land Use Council.
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TITLE XIII—ADMINISTRATIVE PROVISIONS

- Sec. 1301. Management plans.
- Sec. 1302. Land acquisition authority.
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- Sec. 1308. Local hire.
- Sec. 1309. Klondike Gold Rush National Historical Park.
- Sec. 1310. Navigation aids and other facilities.
- Sec. 1311. Scenic highway study.
- Sec. 1312. Administration of the White Mountains National Recreation Area.
- Sec. 1313. Administration of national preserves.
- Sec. 1314. Taking of fish and wildlife.
- Sec. 1315. Wilderness management.
- Sec. 1316. Allowed uses.
- Sec. 1317. General wilderness review provision.
- Sec. 1318. Statewide cultural assistance program.
- Sec. 1319. Effect on existing rights.
- Sec. 1320. Bureau of Land Management land reviews.
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- Sec. 1324. Yukon Flats National Wildlife Refuge agricultural use.
- Sec. 1325. Terror Lake Hydroelectric Project in Kodiak National Wildlife Refuge.
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TITLE XIV—AMENDMENTS TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT AND RELATED PROVISIONS

PART A—AMENDMENTS TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

- Sec. 1401. Stock alienation.
- Sec. 1402. Selection requirements.
- Sec. 1403. Retained mineral estate.
- Sec. 1404. Vesting date for reconveyances.

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- Sec. 1406. Conveyance of partial estates.
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- Sec. 1408. Basis in the land.
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- Sec. 1410. Interim conveyances and underdeedings.
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PART B—OTHER RELATED PROVISIONS

- Sec. 1413. Supplemental appropriation for Native Groups.
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- Sec. 1415. Relinquishment of selections partly within conservation units.
- Sec. 1416. Bristol Bay Group Corporation lands.
- Sec. 1417. Pribilof Islands acquisition authority.
- Sec. 1418. NANA/Cook Inlet Regional Corporations lands.
- Sec. 1419. Doyon Regional Corporation lands.
- Sec. 1420. Hothana River study area.
- Sec. 1421. Conveyance to the State of Alaska.
- Sec. 1422. Doyon and Fortymile River.
- Sec. 1423. Ahinsa Regional Corporation lands.
- Sec. 1424. Bering Straits Regional Corporation lands.
- Sec. 1425. Eklutna Village Corporation lands.
- Sec. 1426. Eklutna-State Anchorage agreement.
- Sec. 1427. Koniag Village and Regional Corporation lands.
- Sec. 1428. Chugach Village Corporation lands.
- Sec. 1429. Chugach Regional Corporation lands.
- Sec. 1430. Chugach region study.
- Sec. 1431. Arctic Slope Regional Corporation lands.
- Sec. 1432. Cook Inlet Village settlement.
- Sec. 1433. Bristol Bay Native Corporation lands.
- Sec. 1434. Sbes Atka-Charcoal and Alice Island conveyance.
- Sec. 1435. Amendment to Public Law 94-204.
- Sec. 1436. Inalik Native Corporation lands.
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TITLE XV—NATIONAL NEED MINERAL ACTIVITY RECOMMENDATION PROCESS

- Sec. 1501. Areas subject to the national need recommendation process.
- Sec. 1502. Recommendations of the President to Congress.
- Sec. 1503. Expedited congressional review.

TITLE I—PURPOSES, DEFINITIONS, AND MAPS

PURPOSES

16 USC 3101.

Sec. 101. (a) In order to preserve for the benefit, use, education, and inspiration of present and future generations certain lands and waters in the State of Alaska that contain nationally significant natural, scenic, historic, archeological, geological, scientific, wilderness, cultural, recreational, and wildlife values, the units described in the following titles are hereby established.

(b) It is the intent of Congress in this Act to preserve unrivaled scenic and geological values associated with natural landscapes; to provide for the maintenance of sound populations of, and habitat for, wildlife species of inestimable value to the citizens of Alaska and the Nation, including those species dependent on vast relatively undeveloped areas; to preserve in their natural state extensive unaltered arctic tundra, boreal forest, and coastal rainforest ecosystems; to protect the resources related to subsistence needs; to protect and preserve historic and archeological sites, rivers, and lands, and to preserve wilderness resource values and related recreational opportunities including but not limited to hiking, canoeing, fishing, and sport hunting, within large arctic and subarctic wildlands and on

freedflowing rivers; and to maintain opportunities for scientific research and undisturbed ecosystems.

(c) It is further the intent and purpose of this Act consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for which each conservation system unit is established, designated, or expanded by or pursuant to this Act, to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so.

(d) This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people; accordingly, the designation and disposition of the public lands in Alaska pursuant to this Act are found to represent a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition, and thus Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby.

DEFINITIONS

Sec. 102. As used in this Act (except that in titles IX and XIV the following terms shall have the same meaning as they have in the Alaska Native Claims Settlement Act, and the Alaska Statehood Act)—

(1) The term "land" means lands, waters, and interests therein.

(2) The term "Federal land" means lands the title to which is in the United States after the date of enactment of this Act.

(3) The term "public lands" means land situated in Alaska which, after the date of enactment of this Act, are Federal lands, except—

(A) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(B) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(C) lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

(4) The term "conservation system unit" means any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument including existing units, units established, designated, or expanded by or under the provisions of this Act, additions to such units, and any such unit established, designated, or expanded hereafter.

(5) The term "Alaska Native Claims Settlement Act" means "An Act to provide for the settlement of certain land claims of Alaska Natives, and for other purposes", approved December 18, 1971 (85 Stat. 688), as amended.

16 USC 3102.
Post. pp. 2430,
2491.
43 USC 1601
note.
48 USC note
prec. 21.

43 USC 1618.

43 USC 1601
note.

(6) The term "Native Corporation" means any Regional Corporation, any Village Corporation, any Urban Corporation, and any Native Group.

(7) The term "Regional Corporation" has the same meaning as such term has under section 3(g) of the Alaska Native Claims Settlement Act.

(8) The term "Village Corporation" has the same meaning as such term has under section 3(j) of the Alaska Native Claims Settlement Act.

(9) The term "Urban Corporation" means those Native entities which have incorporated pursuant to section 14(h)(3) of the Alaska Native Claims Settlement Act.

(10) The term "Native Group" has the same meaning as such term has under sections 3(d) and 14(h)(2) of the Alaska Native Claims Settlement Act.

(11) The term "Native land" means land owned by a Native Corporation or any Native Group and includes land which, as of the date of enactment of this Act, had been selected under the Alaska Native Claims Settlement Act by a Native Corporation or Native Group and had not been conveyed by the Secretary (except to the extent such selection is determined to be invalid or has been relinquished) and land referred to in section 19(b) of the Alaska Native Claims Settlement Act.

(12) The term "Secretary" means the Secretary of the Interior, except that when such term is used with respect to any unit of the National Forest System, such term means the Secretary of Agriculture.

(13) The terms "wilderness" and "National Wilderness Preservation System" have the same meaning as when used in the Wilderness Act (78 Stat. 890).

(14) The term "Alaska Statehood Act" means the Act entitled "An Act to provide for the admission of the State of Alaska into the Union", approved July 7, 1958 (72 Stat. 339), as amended.

(15) The term "State" means the State of Alaska.

(16) The term "Alaska Native" or "Native" has the same meaning as the term "Native" has in section 3(b) of the Alaska Native Claims Settlement Act.

(17) The term "fish and wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or part thereof.

(18) The term "take" or "taking" as used with respect to fish or wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

MAPS

Sec. 108. (a) The boundary maps described in this Act shall be on file and available for public inspection in the office of the Secretary or the Secretary of Agriculture with regard to the National Forest System. In the event of discrepancies between the acreages specified in this Act and those depicted on such maps, the maps shall be controlling, but the boundaries of areas added to the National Park, Wildlife Refuge and National Forest Systems shall, in coastal areas

43 USC 1602.

43 USC 1613.

43 USC 1601
note.

43 USC 1618.

16 USC 1131
note.
43 USC note
prec. 21.

43 USC 1602.

Public
inspection.
16 USC 3102.

not extend seaward beyond the mean high tide line to include lands owned by the State of Alaska unless the State shall have concurred in such boundary extension and such extension is accomplished under the notice and reporting requirements of this Act.

(b) As soon as practicable after enactment of this Act, a map and legal description of each change in land management status effected by this Act, including the National Wilderness Preservation System, shall be published in the Federal Register and filed with the Speaker of the House of Representatives and the President of the Senate, and each such description shall have the same force and effect as if included in this Act: *Provided, however,* That correction of clerical and typographical errors in each such legal description and map may be made. Each such map and legal description shall be on file and available for public inspection in the office of the Secretary. Whenever possible boundaries shall follow hydrographic divides or embrace other topographic or natural features. Following reasonable notice in writing to the Congress of his intention to do so the Secretary and the Secretary of Agriculture may make minor adjustments in the boundaries of the areas added to or established by this Act as units of National Park, Wildlife Refuge, Wild and Scenic Rivers, National Wilderness Preservation, and National Forest Systems and as national conservation areas and national recreation areas. For the purposes of this subsection, a minor boundary adjustment shall not increase or decrease the amount of land within any such area by more than 23,000 acres.

(c) Only those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such unit. No lands which, before, on, or after the date of enactment of this Act, are conveyed to the State, to any Native Corporation, or to any private party shall be subject to the regulations applicable solely to public lands within such units. If the State, a Native Corporation, or other owner desires to convey any such lands, the Secretary may acquire such lands in accordance with applicable law (including this Act), and any such lands shall become part of the unit, and be administered accordingly.

TITLE II—NATIONAL PARK SYSTEM

ESTABLISHMENT OF NEW AREAS

Sec. 201. The following areas are hereby established as units of the National Park System and shall be administered by the Secretary under the laws governing the administration of such lands and under the provisions of this Act:

(1) Aniakchak National Monument, containing approximately one hundred and thirty-eight thousand acres of public lands, and Aniakchak National Preserve, containing approximately three hundred and seventy-six thousand acres of public lands, as generally depicted on map numbered 'NIA-90,005, and dated October 1978. The monument and preserve shall be managed for the following purposes, among others: To maintain the caldera and its associated volcanic features and landscape, including the Aniakchak River and other lakes and streams, in their natural state; to study, interpret, and assure continuation of the natural process of biological succession; to protect habitat for, and populations of, fish and wildlife, including, but not limited to, brown/grizzly bears, moose, caribou, sea lions, seals, and other marine

Publication in Federal Register. Filing with Speaker of House and President of Senate.

Minor boundary adjustments. notification of Congress.

Administration by Interior Secretary. 16 USC 410hh.

Aniakchak National Monument. 16 USC 431 note.



Bering Land
Bridge National
Preserve.

mammals, geese, swans, and other waterfowl and in a manner consistent with the foregoing, to interpret geological and biological processes for visitors. Subsistence uses by local residents shall be permitted in the monument where such uses are traditional in accordance with the provisions of title VIII.

(2) Bering Land Bridge National Preserve, containing approximately two million four hundred and fifty-seven thousand acres of public land, as generally depicted on map numbered BELA-90,006, and dated October 1978. The preserve shall be managed for the following purposes, among others: To protect and interpret examples of arctic plant communities, volcanic lava flows, ash explosions, coastal formations, and other geologic processes; to protect habitat for internationally significant populations of migratory birds; to provide for archeological and paleontological study, in cooperation with Native Alaskans, of the process of plant and animal migration, including man, between North America and the Asian Continent; to protect habitat for, and populations of, fish and wildlife including, but not limited to, marine mammals, brown/grizzly bears, moose, and wolves; subject to such reasonable regulations as the Secretary may prescribe, to continue reindeer grazing use, including necessary facilities and equipment, within the areas which on January 1, 1976, were subject to reindeer grazing permits, in accordance with sound range management practices; to protect the viability of subsistence resources; and in a manner consistent with the foregoing, to provide for outdoor recreation and environmental education activities including public access for recreational purposes to the Serpentine Hot Springs area. The Secretary shall permit the continuation of customary patterns and modes of travel during periods of adequate snow cover within a one-hundred-foot right-of-way along either side of an existing route from Deering to the Taylor Highway, subject to such reasonable regulations as the Secretary may promulgate to assure that such travel is consistent with the foregoing purposes.

(3) Cape Krusenstern National Monument, containing approximately five hundred and sixty thousand acres of public lands, as generally depicted on map numbered CAKR-90,007, and dated October 1979. The monument shall be managed for the following purposes, among others: To protect and interpret a series of archeological sites depicting every known cultural period in arctic Alaska; to provide for scientific study of the process of human population of the area from the Asian Continent; in cooperation with Native Alaskans, to preserve and interpret evidence of prehistoric and historic Native cultures; to protect habitat for seals and other marine mammals; to protect habitat for and populations of, birds, and other wildlife, and fish resources; and to protect the viability of subsistence resources. Subsistence uses by local residents shall be permitted in the monument in accordance with the provisions of title VIII.

(4)(a) Gates of the Arctic National Park, containing approximately seven million fifty-two thousand acres of public lands, Gates of the Arctic National Preserve, containing approximately nine hundred thousand acres of Federal lands, as generally depicted on map numbered GAAR-90,011, and dated July 1980. The park and preserve shall be managed for the following purposes, among others: To maintain the wild and undeveloped character of the area, including opportunities for visitors to experience solitude, and the natural environmental integrity

Cape
Krusenstern
National
Monument.
16 USC 431 note.

Gates of the
Arctic National
Park.



and scenic beauty of the mountains, forelands, rivers, lakes, and other natural features; to provide continued opportunities, including reasonable access, for mountain climbing, mountaineering, and other wilderness recreational activities; and to protect habitat for and the populations of, fish and wildlife, including, but not limited to, caribou, grizzly bears, Dall sheep, moose, wolves, and raptorial birds. Subsistence uses by local residents shall be permitted in the park, where such uses are traditional, in accordance with the provisions of title VIII.

Post, p. 2422.

(b) Congress finds that there is a need for access for surface transportation purposes across the Western (Kobuk River) unit of the Gates of the Arctic National Preserve (from the Ambler Mining District to the Alaska Pipeline Haul Road) and the Secretary shall permit such access in accordance with the provisions of this subsection.

Publication in Federal Register

(c) Upon the filing of an application pursuant to section 1104 (b), and (c) of this Act for a right-of-way across the Western (Kobuk River) unit of the preserve, including the Kobuk Wild and Scenic River, the Secretary shall give notice in the Federal Register of a thirty-day period for other applicants to apply for access.

Environmental and economic analysis.

(d) The Secretary and the Secretary of Transportation shall jointly prepare an environmental and economic analysis solely for the purpose of determining the most desirable route for the right-of-way and terms and conditions which may be required for the issuance of that right-of-way. This analysis shall be completed within one year and the draft thereof within nine months of the receipt of the application and shall be prepared in lieu of an environmental impact statement which would otherwise be required under section 102(2)(C) of the National Environmental Policy Act. Such analysis shall be deemed to satisfy all requirements of that Act and shall not be subject to judicial review. Such environmental and economic analysis shall be prepared in accordance with the procedural requirements of section 1104(e). The Secretaries in preparing the analysis shall consider the following—

42 USC 4332.

Post, p. 2459.

(i) Alternative routes including the consideration of economically feasible and prudent alternative routes across the preserve which would result in fewer or less severe adverse impacts upon the preserve.

(ii) The environmental and economic impact of the right-of-way including impact upon wildlife, fish, and their habitat, and rural and traditional lifestyles including subsistence activities, and measures which should be instituted to avoid or minimize negative impacts and enhance positive impacts.

(e) Within 60 days of the completion of the environmental and economic analysis, the Secretaries shall jointly agree upon a route for issuance of the right-of-way across the preserve. Such right-of-way shall be issued in accordance with the provisions of section 1107 of this Act.

(5) Kenai Fjords National Park, containing approximately five hundred and sixty-seven thousand acres of public lands, as generally depicted on map numbered KEFJ-90,007, and dated October 1978. The park shall be managed for the following purposes, among others: To maintain unimpaired the scenic and environmental integrity of the Harding Icefield, its outflowing glaciers, and coastal fjords and islands in their natural state; and

Kenai Fjords National Park.



Kobuk Valley
National Park.

Post, p. 2422.

Lake Clark
National Park.

Post, p. 2422.

Noatak National
Preserve.



to protect seals, sea lions, other marine mammals, and marine and other birds and to maintain their hauling and breeding areas in their natural state, free of human activity which is disruptive to their natural processes. In a manner consistent with the foregoing, the Secretary is authorized to develop access to the Harding Icefield and to allow use of mechanized equipment on the icefield for recreation.

(6) Kobuk Valley National Park, containing approximately one million seven hundred and ten thousand acres of public lands as generally depicted on map numbered KOVA-90,009, and dated October 1979. The park shall be managed for the following purposes, among others: To maintain the environmental integrity of the natural features of the Kobuk River Valley, including the Kobuk, Salmon, and other rivers, the boreal forest, and the Great Kobuk Sand Dunes, in an undeveloped state; to protect and interpret, in cooperation with Native Alaskans, archeological sites associated with Native cultures; to protect migration routes for the Arctic caribou herd; to protect habitat for, and populations of, fish and wildlife including but not limited to caribou, moose, black and grizzly bears, wolves, and waterfowl; and to protect the viability of subsistence resources. Subsistence uses by local residents shall be permitted in the park in accordance with the provisions of title VIII. Except at such times when, and locations where, to do so would be inconsistent with the purposes of the park, the Secretary shall permit aircraft to continue to land at sites in the upper Salmon River watershed.

(7)(a) Lake Clark National Park, containing approximately two million four hundred thirty-nine thousand acres of public lands, and Lake Clark National Preserve, containing approximately one million two hundred and fourteen thousand acres of public lands, as generally depicted on map numbered LACL-90,008, and dated October 1978. The park and preserve shall be managed for the following purposes, among others: To protect the watershed necessary for perpetuation of the red salmon fishery in Bristol Bay; to maintain unimpaired the scenic beauty and quality of portions of the Alaska Range and the Aleutian Range, including active volcanoes, glaciers, wild rivers, lakes, waterfalls, and alpine meadows in their natural state; and to protect habitat for and populations of fish and wildlife including but not limited to caribou, Dall sheep, brown/grizzly bears, bald eagles, and peregrine falcons.

(b) No lands conveyed to the Nondalton Village Corporation shall be considered to be within the boundaries of the park or preserve; if the corporation desires to convey any such lands, the Secretary may acquire such lands with the consent of the owner, and any such lands so acquired shall become part of the park or preserve, as appropriate. Subsistence uses by local residents shall be permitted in the park where such uses are traditional in accordance with the provisions of title VIII.

(8)(a) Noatak National Preserve, containing approximately six million four hundred and sixty thousand acres of public lands, as generally depicted on map numbered NOAT-90,004, and dated July 1980. The preserve shall be managed for the following purposes, among others: To maintain the environmental integrity of the Noatak River and adjacent uplands within the preserve in such a manner as to assure the continuation of geological and biological processes unimpaired by adverse human activity; to protect habitat for, and populations of, fish

and wildlife, including but not limited to caribou, grizzly bears, Dall sheep, moose, wolves, and for waterfowl, raptors, and other species of birds; to protect archeological resources; and in a manner consistent with the foregoing, to provide opportunities for scientific research. The Secretary may establish a board consisting of scientists and other experts in the field of arctic research in order to assist him in the encouragement and administration of research efforts within the preserve.

(b) All lands located east of centerline of the main channel of the Noatak River which are—

(1) within

(A) any area withdrawn under the Alaska Native Claims Settlement Act for selection by the village of Noatak, and

42 USC 1601
note.

(B) any village deficiency withdrawal under section 11(a)(3)(A) of such Act which is adjacent to the area described in subparagraph (1) of this paragraph,

43 USC 1610.

(2) adjacent to public lands within a unit of the National Park System as designated under this Act, and

(3) not conveyed to such Village or other Native Corporation before the final conveyance date, shall, on such final conveyance date, be added to and included within, the adjacent unit of the National Park System (notwithstanding the applicable acreage specified in this paragraph) and managed in the manner provided in the foregoing provisions of this paragraph. For purposes of the preceding sentence the term "final conveyance date" means the date of the conveyance of lands under the Alaska Native Claims Settlement Act, or by operation of this Act, to the Village of Noatak, or to any other Native Corporation which completes the entitlement of such Village or other Corporation to conveyance of lands from the withdrawals referred to in subparagraph (1).

(9) Wrangell-Saint Elias National Park, containing approximately eight million one hundred and forty-seven thousand acres of public lands, and Wrangell-Saint Elias National Preserve, containing approximately four million one hundred and seventy-one thousand acres of public lands, as generally depicted on map numbered WRST-90,007, and dated August 1980. The park and preserve shall be managed for the following purposes, among others: To maintain unimpaired the scenic beauty and quality of high mountain peaks, foothills, glacial systems, lakes, and streams, valleys, and coastal landscapes in their natural state; to protect habitat for, and populations of, fish and wildlife including but not limited to caribou, brown/grizzly bears, Dall sheep, moose, wolves, trumpeter swans and other waterfowl, and marine mammals; and to provide continued opportunities, including reasonable access for mountain climbing, mountaineering, and other wilderness recreational activities. Subsistence uses by local residents shall be permitted in the park, where such uses are traditional, in accordance with the provisions of title VIII.

Wrangell-Saint
Elias National
Park.

(10) Yukon-Charley Rivers National Preserve, containing approximately one million seven hundred and thirteen thousand acres of public lands, as generally depicted on map numbered YUCH-90,008, and dated October 1978. The preserve shall be managed for the following purposes, among others: To maintain the environmental integrity of the entire Charley River basin,

Post, p. 2422.

Yukon-Charley
Rivers National
Preserve.

including streams, lakes and other natural features, in its undeveloped natural condition for public benefit and scientific study; to protect habitat for, and populations of, fish and wildlife, including but not limited to the peregrine falcons and other raptorial birds, caribou, moose, Dall sheep, grizzly bears, and wolves; and in a manner consistent with the foregoing, to protect and interpret historical sites and events associated with the gold rush on the Yukon River and the geological and paleontological history and cultural prehistory of the area. Except at such times when and locations where to do so would be inconsistent with the purposes of the preserve, the Secretary shall permit aircraft to continue to land at sites in the Upper Charley River watershed.

ADDITIONS TO EXISTING AREAS

16 USC 610hh-1.

Sec. 202. The following units of the National Park System are hereby expanded:

Glacier Bay
National
Monument.

(1) Glacier Bay National Monument, by the addition of an area containing approximately five hundred and twenty-three thousand acres of Federal land. Approximately fifty-seven thousand acres of additional public land is hereby established as Glacier Bay National Preserve, both as generally depicted on map numbered GLBA-90,004, and dated October 1978; furthermore, the monument is hereby redesignated as "Glacier Bay National Park". The monument addition and preserve shall be managed for the following purposes, among others: To protect a segment of the Alsek River, fish and wildlife habitats and migration routes, and a portion of the Fairweather Range including the northwest slope of Mount Fairweather. Lands, waters, and interests therein within the boundary of the park and preserve which were within the boundary of any national forest are hereby excluded from such national forest and the boundary of such national forest is hereby revised accordingly.

Katmai National
Monument.

(2) Katmai National Monument, by the addition of an area containing approximately one million and thirty-seven thousand acres of public land. Approximately three hundred and eight thousand acres of additional public land is hereby established as Katmai National Preserve, both as generally depicted on map numbered 90,007, and dated July 1980; furthermore, the monument is hereby redesignated as "Katmai National Park". The monument addition and preserve shall be managed for the following purposes, among others: To protect habitats for, and populations of, fish and wildlife including, but not limited to, high concentrations of brown/grizzly bears and their denning areas; to maintain unimpaired the water habitat for significant salmon populations; and to protect scenic, geological, cultural and recreational features.

Mount McKinley
National Park.

(3)(a) Mount McKinley National Park, by the addition of an area containing approximately two million four hundred and twenty-six thousand acres of public land, and approximately one million three hundred and thirty thousand acres of additional public land is hereby established as Denali National Preserve, both as generally depicted on map numbered DENA-90,007, and dated July 1980 and the whole is hereby redesignated as Denali National Park and Preserve. The park additions and preserve shall be managed for the following purposes, among others: To protect and interpret the entire mountain massif, and additional scenic mountain peaks and formations; and to protect habitat

for, and populations of fish and wildlife including, but not limited to, brown/grizzly bears, moose, caribou, Dall sheep, wolves, swans and other waterfowl; and to provide continued opportunities, including reasonable access, for mountain climbing, mountaineering and other wilderness recreational activities. That portion of the Alaska Railroad right-of-way within the park shall be subject to such laws and regulations applicable to the protection of fish and wildlife and other park values as the Secretary, with the concurrence of the Secretary of Transportation, may determine. Subsistence uses by local residents shall be permitted in the additions to the park where such uses are traditional in accordance with the provisions in title VIII.

(b) The Alaska Land Use Council shall, in cooperation with the Secretary, conduct a study of the Kantishna Hills and Dunkle Mine areas of the park as generally depicted on a map entitled "Kantishna Hills/Dunkle Mine Study Area", dated October 1979, and report thereon to the Congress not later than three years from the date of enactment of this Act. The study and report shall evaluate the resources of the area, including but not limited to, fish and wildlife, public recreation opportunities, wilderness potential, historic resources, and minerals, and shall include those recommendations respecting resources and other relevant matters which the Council determines are necessary. In conjunction with the study required by this section, the Council, in consultation with the Secretary, shall compile information relating to the mineral potential of the areas encompassed within the study, the estimated cost of acquiring mining properties, and the environmental consequences of further mineral development.

(c) During the period of the study, no acquisition of privately owned land shall be permitted within the study area, except with the consent of the owner, and the holders of valid mining claims shall be permitted to operate on their claims, subject to reasonable regulations designed to minimize damage to the environment: *Provided, however*, That such lands or claims shall be subject to acquisition without the consent of the owner or holder if the Secretary determines, after notice and opportunity for hearing, if such notice and hearing are not otherwise required by applicable law or regulation, that activities on such lands or claims will significantly impair important scenic, wildlife, or recreational values of the public lands which are the subject of the study.

GENERAL ADMINISTRATION

Sec. 203. Subject to valid existing rights, the Secretary shall administer the lands, waters, and interests therein added to existing areas or established by the foregoing sections of this title as new areas of the National Park System, pursuant to the provisions of the Act of August 25, 1916 (39 Stat. 535), as amended and supplemented (16 U.S.C. 1 et seq.), and, as appropriate, under section 1313 and the other applicable provisions of this Act: *Provided, however*, That hunting shall be permitted in areas designated as national preserves under the provisions of this Act. Subsistence uses by local residents shall be allowed in national preserves and, where specifically permitted by this Act, in national monuments and parks. Lands, waters, and interests therein withdrawn or reserved for the former Katmai and Glacier Bay National Monuments are hereby incorporated within and made a part of Katmai National Park or Glacier Bay National

Post, p. 2422.
Study.
Report to
Congress.

Land
acquisition,
notice and
hearing.

16 USC 410hh-2

Post, p. 2483.

Park, as appropriate. Any funds available for the purposes of such monuments are hereby made available for the purposes of Katmai National Park and Preserve or Glacier Bay National Park and Preserve, as appropriate. Notwithstanding any other provision of law, no fees shall be charged for entrance or admission to any unit of the National Park System located in Alaska.

NATIVE SELECTIONS

16 USC 410hh-3.
43 USC 1616.
43 USC 1601
note.

Sec. 204. Valid Native Corporation selections, or lands identified for selection by Regional Corporations pursuant to section 17(d)(2)(E) of the Alaska Native Claims Settlement Act, within the boundaries of the Wrangell-Saint Elias National Park and Preserve as established under this Act, are hereby recognized and shall be honored and conveyed by the Secretary in accordance with the Alaska Native Claims Settlement Act and this Act.

COMMERCIAL FISHING

16 USC 410hh-4.

Sec. 205. With respect to the Cape Krusenstern National Monument, the Malaspina Glacier Forelands area of Wrangell-Saint Elias National Preserve and the Dry Bay area of Glacier Bay National Preserve, the Secretary may take no action to restrict unreasonably the exercise of valid commercial fishing rights or privileges obtained pursuant to existing law, including the use of public lands for campsites, cabins, motorized vehicles, and aircraft landings on existing airstrips, directly incident to the exercise of such rights or privileges, except that this prohibition shall not apply to activities which the Secretary, after conducting a public hearing in the affected locality, finds constitute a significant expansion of the use of park lands beyond the level of such use during 1979.

WITHDRAWAL FROM MINING

16 USC 410hh-8.

Sec. 206. Subject to valid existing rights, and except as explicitly provided otherwise in this Act, the Federal lands within units of the National Park System established or expanded by or pursuant to this Act are hereby withdrawn from all forms of appropriation or disposal under the public land laws, including location, entry, and patent under the United States mining laws, disposition under the mineral leasing laws, and from future selections by the State of Alaska and Native Corporations.

TITLE III—NATIONAL WILDLIFE REFUGE SYSTEM

DEFINITIONS

Sec. 301. For purposes of this title—

(1) The term "existing", if used in referring to any unit of the National Wildlife Refuge System in the State, means the unit as it existed on the day before the date of enactment of the Alaska Native Claims Settlement Act except as specifically modified by section 12(b)(1) of Public Law 94-204 and section 1432(c) of this Act.

(2) The term "refuge" means—

(A) any unit of the National Wildlife Refuge System established by section 302 or 303 of this Act;

43 USC 1601
note.
43 USC 1611
note.
Post, p. 2543.

(B) any existing unit of the National Wildlife Refuge System in Alaska not included within any unit referred to in subparagraph (A);

(C) any unit of the National Wildlife Refuge System established in Alaska after the date of the enactment of this Act; or

(D) any addition to any unit described in subparagraphs (A), (B), or (C) above.

ESTABLISHMENT OF NEW REFUGES

Sec. 302. The following are established as units of the National Wildlife Refuge System:

(1) **ALASKA PENINSULA NATIONAL WILDLIFE REFUGE.**—(A) The Alaska Peninsula National Wildlife Refuge shall consist of the approximately three million five hundred thousand acres of public lands as generally depicted on the map entitled "Alaska Peninsula National Wildlife Refuge", dated October 1979 and shall include the lands on the Alaska Peninsula transferred to and made part of the refuge pursuant to section 1427 of this Act.

16 USC 668dd
note.

(B) The purposes for which the Alaska Peninsula National Wildlife Refuge is established and shall be managed include—

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, brown bears, the Alaska Peninsula caribou herd, moose, sea otters and other marine mammals, shorebirds and other migratory birds, raptors, including bald eagles and peregrine falcons, and salmonoids and other fish;

(ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii) above, the opportunity for continued subsistence uses by local residents; and

(iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge.

(2) **BECHAROF NATIONAL WILDLIFE REFUGE.**—(A) The Becharof National Wildlife Refuge shall consist of the approximately one million two hundred thousand acres of public lands generally depicted on the map entitled "Becharof National Wildlife Refuge", dated July 1980.

16 USC 668dd
note.

(B) The purposes for which the Becharof National Wildlife Refuge is established and shall be managed include—

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, brown bears, salmon, migratory birds, the Alaskan Peninsula caribou herd and marine birds and mammals;

(ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents; and

(iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph



16 USC 668dd
note.

(l), water quality and necessary water quantity within the refuge.

(3) **INNOKO NATIONAL WILDLIFE REFUGE.**—(A) The Innoko National Wildlife Refuge shall consist of the approximately three million eight hundred and fifty thousand acres of public lands generally depicted on the map entitled "Innoko National Wildlife Refuge", dated October 1978.

(B) The purposes for which the Innoko National Wildlife Refuge is established and shall be managed include—

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, waterfowl, peregrine falcons, other migratory birds, black bear, moose, furbearers, and other mammals and salmon;

(ii) to fulfill international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents; and

(iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (l), water quality and necessary water quantity within the refuge.

16 USC 668dd
note.

(4) **KANUTI NATIONAL WILDLIFE REFUGE.**—(A) The Kanuti National Wildlife Refuge shall consist of the approximately one million four hundred and thirty thousand acres of public lands generally depicted on the map entitled "Kanuti National Wildlife Refuge", dated July 1980.

(B) The purposes for which the Kanuti National Wildlife Refuge is established and shall be managed include—

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, white-fronted geese and other waterfowl and migratory birds, moose, caribou (including participation in coordinated ecological studies and management of the Western Arctic caribou herd), and furbearers;

(ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents; and

(iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (l), water quality and necessary water quantity within the refuge.

16 USC 668dd
note.

(5) **KOYUKUK NATIONAL WILDLIFE REFUGE.**—(A) The Koyukuk National Wildlife Refuge shall consist of the approximately three million five hundred and fifty thousand acres of public lands generally depicted on the map entitled "Koyukuk National Wildlife Refuge", dated July 1980.

(B) The purposes for which the Koyukuk National Wildlife Refuge is established and shall be managed include—

(i) to conserve the fish and wildlife populations and habitats in their natural diversity including, but not limited to, waterfowl and other migratory birds, moose, caribou (including participation in coordinated ecological studies and management of the Western Arctic caribou herd), furbearers, and salmon;



(ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents; and

(iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge.

(6) **NOWITNA NATIONAL WILDLIFE REFUGE.**—(A) The Nowitna National Wildlife Refuge shall consist of the approximately one million five hundred and sixty thousand acres of public lands generally depicted on a map entitled "Nowitna National Wildlife Refuge", dated July 1980.

16 USC 668dd
note.

(B) The purposes for which the Nowitna National Wildlife Refuge is established and shall be managed include—

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, trumpeter swans, white-fronted geese, canvasbacks and other waterfowl and migratory birds, moose, caribou, martons, wolverines and other furbearers, salmon, sheefish, and northern pike;

(ii) to fulfill international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents; and

(iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge.

(7) **SELAWIK NATIONAL WILDLIFE REFUGE.**—(A) The Selawik National Wildlife Refuge shall consist of the approximately two million one hundred and fifty thousand acres of public land generally depicted on the map entitled "Selawik National Wildlife Refuge", dated July 1980. No lands conveyed to any Native Corporation shall be considered to be within the boundaries of the refuge; except that if any such corporation desires to convey any such lands, the Secretary may acquire such lands with the consent of the owner and any such acquired lands shall become public lands of the refuge.

16 USC 668dd
note.

(B) The purposes for which the Selawik National Wildlife Refuge is established and shall be managed include—

(i) to conserve the fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Western Arctic caribou herd (including participation in coordinated ecological studies and management of these caribou), waterfowl, shorebirds and other migratory birds, and salmon and sheefish;

(ii) to fulfill international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents; and

(iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph

(l), water quality and necessary water quantity within the refuge.

(C) The Secretary shall administer the refuge in such a manner as will permit reindeer grazing uses, including the construction and maintenance of necessary facilities and equipment within the areas, which on January 1, 1976, were subject to reindeer grazing permits.

(8) **TETLIN NATIONAL WILDLIFE REFUGE.**—(A) The Tetlin National Wildlife Refuge shall consist of the approximately seven hundred thousand acres of public land as generally depicted on a map entitled "Tetlin National Wildlife Refuge", dated July 1980. The northern boundary of the refuge shall be a line parallel to, and three hundred feet south, of the centerline of the Alaska Highway.

(B) The purposes for which the Tetlin National Wildlife Refuge is established and shall be managed include—

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, waterfowl, raptors and other migratory birds, furbearers, moose, caribou (including participation in coordinated ecological studies and management of the Chisana caribou herd), salmon and Dolly Varden;

(ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents;

(iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge; and

(v) to provide, in a manner consistent with subparagraphs (i) and (ii), opportunities for interpretation and environmental education, particularly in conjunction with any adjacent State visitor facilities.

(9) **YUKON FLATS NATIONAL WILDLIFE REFUGE.**—(A) The Yukon Flats National Wildlife Refuge shall consist of approximately eight million six hundred and thirty thousand acres of public lands as generally depicted on the map entitled "Yukon Flats National Wildlife Refuge", dated July 1980.

(B) The purposes for which the Yukon Flats National Wildlife Refuge is established and shall be managed include—

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, canvasbacks and other migratory birds, Dall sheep, bears, moose, wolves, wolverines and other furbearers, caribou (including participation in coordinated ecological studies and management of the Porcupine and Fortymile caribou herds) and salmon;

(ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents; and

(iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph

16 USC 668dd
note.

16 USC 668dd
note.

(1), water quality and necessary water quantity within the refuge.

ADDITIONS TO EXISTING REFUGES

Sec. 308. The following areas, consisting of existing refuges and the additions made thereto, are established or redesignated as units of the National Wildlife Refuge System:

(1) ALASKA MARITIME NATIONAL WILDLIFE REFUGE.—(A) The Alaska Maritime National Wildlife Refuge shall consist of eleven existing refuges, including all lands (including submerged lands), waters and interests therein which were a part of such refuges and are hereby redesignated as subunits of the Alaska Maritime National Wildlife Refuge; approximately four hundred and sixty thousand acres of additional public lands on islands, islets, rocks, reefs, spires and designated capes and headlands in the coastal areas and adjacent seas of Alaska, and an undetermined quantity of submerged lands, if any, retained in Federal ownership at the time of statehood around Kodiak and Afognak Islands, as generally depicted on the map entitled "Alaska Maritime National Wildlife Refuge", dated October 1979, including the—

16 USC 668dd
note.

(i) Chukchi Sea Unit—including Cape Lisburne, Cape Thompson, the existing Chamisso National Wildlife Refuge, and all other public lands on islands, islets, rocks, reefs, spires, and designated capes and headlands in the Chukchi Sea, but excluding such other offshore public lands within the Bering Land Bridge National Preserve. That portion of the public lands on Cape Lisburne shall be named and appropriately identified as the "Ann Stevens-Cape Lisburne" subunit of the Chukchi Sea Unit;

Chukchi Sea
Unit.

(ii) Bering Sea Unit—including the existing Bering Sea and Pribilof (Walrus and Otter Islands) National Wildlife Refuges, Hagemester Island, Fairway Rock, Sledge Island, Bluff Unit, Besboro Island, Pujuk Islands, Egg Island, King Island, and all other public lands on islands, islets, rocks, reefs, spires and designated capes and headlands in the Bering Sea;

Bering Sea Unit

(iii) Aleutian Islands Unit—including the existing Aleutian Islands and Bogoslof National Wildlife Refuges, and all other public lands in the Aleutian Islands;

Aleutian Islands
Unit.

(iv) Alaska Peninsula Unit—including the existing Simeonof and Semidi National Wildlife Refuges, the Shumagin Islands, Sutwik Island, the islands and headlands of Puale Bay, and all other public lands on islands, islets, rocks, reefs, spires and designated capes and headlands south of the Alaska Peninsula from Katmai National Park to False Pass including such offshore lands incorporated in this unit under section 1427; and

Alaska
Peninsula Unit.

(v) Gulf of Alaska Unit—including the existing Forrester Island, Hazy Islands, Saint Lazarus and Tuxedni National Wildlife Refuges, the Barren Islands, Latax Rocks, Harbor Island, Pye and Chiswell Islands, Ragged, Natoo, Chat, Chevel, Granite and Middleton Islands, the Trinity Islands, all named and unnamed islands, islets, rocks, reefs, spires, and whatever submerged lands, if any, were retained in Federal ownership at the time of statehood surrounding Kodiak and Afognak Islands and all other such public lands on islands, islets, rocks, reefs, spires and designated capes and headlands within the Gulf of Alaska, but excluding such

Gulf of Alaska
Unit.



lands within existing units of the National Park System, Nuka Island and lands within the National Forest System except as provided in section 1427 of this Act.

(B) The purposes for which the Alaska Maritime National Wildlife Refuge is established and shall be managed include—

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to marine mammals, marine birds and other migratory birds, the marine resources upon which they rely, bears, caribou and other mammals;

(ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents;

(iv) to provide, in a manner consistent with subparagraphs (i) and (ii), a program of national and international scientific research on marine resources; and

(v) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge.

(C) Any lands acquired pursuant to section 1417 of this Act shall be included as public lands of the Alaska Maritime National Wildlife Refuge.

16 USC 668dd
note.

(2) **ARCTIC NATIONAL WILDLIFE REFUGE.**—(A) The Arctic National Wildlife Refuge shall consist of the existing Arctic National Wildlife Range including lands, waters, interests, and whatever submerged lands, if any, were retained in Federal ownership at the time of statehood and an addition of approximately nine million one hundred and sixty thousand acres of public lands, as generally depicted on a map entitled "Arctic National Wildlife Refuge", dated August 1980.

(B) The purposes for which the Arctic National Wildlife Refuge is established and shall be managed include—

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char and grayling;

(ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents; and

(iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge.

16 USC 668dd
note.

(3) **IZEMBEK NATIONAL WILDLIFE REFUGE.**—(A) The existing Izembek National Wildlife Range including the lands, waters and interests of that unit which shall be redesignated as the Izembek National Wildlife Refuge.



(B) The purposes for which the Isambek National Wildlife Refuge is established and shall be managed include—

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, waterfowl, shorebirds and other migratory birds, brown bears and salmonoids;

(ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents; and

(iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge.

(4) **KENAI NATIONAL WILDLIFE REFUGE.**—(A) The Kenai National Wildlife Refuge shall consist of the existing Kenai National Moose Range, including lands, waters, interests, and whatever submerged lands, if any, were retained in Federal ownership at the time of statehood, which shall be redesignated as the Kenai National Wildlife Refuge, and an addition of approximately two hundred and forty thousand acres of public lands as generally depicted on the map entitled "Kenai National Wildlife Refuge", dated October 1978, excluding lands described in P.L.O. 3953, March 21, 1966, and P.L.O. 4056, July 22, 1966, withdrawing lands for the Bradley Lake Hydroelectric Project.

16 USC 568dd
note.

(B) The purposes for which the Kenai National Wildlife Refuge is established and shall be managed, include—

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, moose, bears, mountain goats, Dall sheep, wolves and other furbearers, salmonoids and other fish, waterfowl and other migratory and nonmigratory birds;

(ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge;

(iv) to provide in a manner consistent with subparagraphs (i) and (ii), opportunities for scientific research, interpretation, environmental education, and land management training; and

(v) to provide, in a manner compatible with these purposes, opportunities for fish and wildlife-oriented recreation.

(5) **KODIAK NATIONAL WILDLIFE REFUGE.**—(A) The Kodiak National Wildlife Refuge shall consist of the existing Kodiak National Wildlife Refuge, including lands, waters, interests, and whatever submerged lands, if any, were retained in Federal ownership at the time of statehood, which is redesignated as the Kodiak Island Unit of the Kodiak National Wildlife Refuge, and the addition of all public lands on Afognak and Ban Islands of approximately fifty thousand acres as generally depicted on the map entitled "Kodiak National Wildlife Refuge", dated October 1978. The described public lands on Afognak Island are those incorporated in this refuge from section 1427 of this Act.

16 USC 568dd
note.

(B) The purposes for which the Kodiak National Wildlife Refuge is established and shall be managed include—

(i) to conserve fish and wildlife populations habitats in their natural diversity including, but not limited to, Kodiak brown bears, salmonoids, sea otters, sea lions and other marine mammals and migratory birds;

(ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents; and

(iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge.

16 USC 668dd
note.

(6) **TOGIAK NATIONAL WILDLIFE REFUGE.**—(A) The Togiak National Wildlife Refuge shall consist of the existing Cape Newenham National Wildlife Refuge, including lands, waters, and interests therein, which shall be redesignated as a unit of the Togiak National Wildlife Refuge, and an addition of approximately three million eight hundred and forty thousand acres of public lands, as generally depicted on the map entitled "Togiak National Wildlife Refuge", dated April 1980.

(B) The purposes for which the Togiak National Wildlife Refuge is established and shall be managed include—

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, salmonoids, marine birds and mammals, migratory birds and large mammals (including their restoration to historic levels);

(ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents; and

(iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge.

16 USC 668dd
note.

(7) **YUKON DELTA NATIONAL WILDLIFE REFUGE.**—(A) The Yukon Delta National Wildlife Refuge shall consist of the existing Clarence Rhode National Wildlife Range, Hazen Bay National Wildlife Refuge, and Nunivak National Wildlife Refuge, including lands, waters, interests, and whatever submerged lands, if any, were retained in Federal ownership at the time of statehood, which shall be redesignated as units of the Yukon Delta National Wildlife Refuge and the addition of approximately thirteen million four hundred thousand acres of public lands, as generally depicted on the map entitled "Yukon Delta National Wildlife Refuge", dated April 1980.

(B) The purposes for which the Yukon Delta National Wildlife Refuge is established and shall be managed include—

(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, shorebirds, seabirds, whistling swans, emperor, white-fronted and Canada geese, black brant and other migratory birds, salmon, muskox, and marine mammals;

(ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents; and

(iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge.

(C) Subject to such reasonable regulations as the Secretary may prescribe, reindeer grazing, including necessary facilities and equipment, shall be permitted within areas where such use is, and in a manner which is, compatible with the purposes of this refuge.

(D) Subject to reasonable regulation, the Secretary shall administer the refuge so as to not impede the passage of navigation and access by boat on the Yukon and Kuukokwim Rivers.

ADMINISTRATION OF REFUGES

Sec. 304. (a) Each refuge shall be administered by the Secretary, subject to valid existing rights, in accordance with the laws governing the administration of units of the National Wildlife Refuge System, and this Act.

(b) In applying section 4(d) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd) with respect to each refuge, the Secretary may not permit any use, or grant easements for any purpose described in such section 4(d) unless such use (including but not limited to any oil and gas leasing permitted under paragraph (2)) or purpose is compatible with the purposes of the refuge. The Secretary shall prescribe such regulations and impose such terms and conditions as may be necessary and appropriate to ensure that activities carried out under any use or easement granted under any authority are so compatible.

Refuge use or easements.

Regulations.

(c) All public lands (including whatever submerged lands, if any, beneath navigable waters of the United States (as that term is defined in section 1301(a) of title 43, United States Code) were retained in Federal ownership at the time of statehood) in each National Wildlife Refuge and any other National Wildlife Refuge System unit in Alaska are hereby withdrawn, subject to valid existing rights, from future selections by the State of Alaska and Native Corporations, from all forms of appropriation or disposal under the public land laws, including location, entry and patent under the mining laws but not from operation of mineral leasing laws.

(d) The Secretary shall permit within units of the National Wildlife Refuge System designated, established, or enlarged by this Act, the exercise of valid commercial fishing rights or privileges obtained pursuant to existing law and the use of Federal lands, subject to reasonable regulation, for campsites, cabins, motorized vehicles, and aircraft landings directly incident to the exercise of such rights or privileges: *Provided*, That nothing in this section shall require the Secretary to permit the exercise of rights or privileges or uses of the Federal lands directly incident to such exercise, which he determines, after conducting a public hearing in the affected locality, to be inconsistent with the purposes of a unit of the National Wildlife Refuge System as described in this section and to be a significant

Commercial fishing rights or privileges.

expansion of commercial fishing activities within such unit beyond the level of such activities during 1979.

(e) Where compatible with the purposes of the refuge unit, the Secretary may permit, subject to reasonable regulations and in accord with sound fisheries management principles, scientifically acceptable means of maintaining, enhancing, and rehabilitating fish stock.

(f)(1) The Secretary is authorized to enter into cooperative management agreements with any Native Corporation, the State, any political subdivision of the State, or any other person owning or occupying land which is located within, or adjacent or near to, any national wildlife refuge. Each cooperative management agreement (hereinafter in this section referred to as an "agreement") shall provide that the land subject to the agreement shall be managed by the owner or occupant in a manner compatible with the major purposes of the refuge to which such land pertains including the opportunity for continuation of subsistence uses by local rural residents.

(2) Each agreement shall—

(A) set forth such uses of the land subject to the agreement which are compatible with the management goals set forth in subsection (f)(1);

(B) permit the Secretary reasonable access to such land for purposes relating to the administration of the refuge and to carry out the obligations of the Secretary under the agreement;

(C) permit reasonable access to such land by officers of the State for purposes of conserving fish and wildlife;

(D) set forth those services or other consideration which the Secretary agrees to provide the owner or occupant in return for the owner or occupant entering into the agreement, which services may include technical and other assistance with respect to fire control, trespass control, law enforcement, resource and land use planning, the conserving of fish and wildlife and the protection, maintenance and enhancement of any special values of the land subject to the agreement;

(E) set forth such additional terms and conditions as the Secretary and the owner or occupant may agree to as being necessary and appropriate to carry out the management goals as set forth in subsection (f)(1); and

(F) specify the effective period of the agreement.

(g)(1) The Secretary shall prepare, and from time to time, revise, a comprehensive conservation plan (hereinafter in this subsection referred to as the "plan") for each refuge.

(2) Before developing a plan for each refuge, the Secretary shall identify and describe—

(A) the populations and habitats of the fish and wildlife resources of the refuge;

(B) the special values of the refuge, as well as any other archeological, cultural, ecological, geological, historical, paleontological, scenic, or wilderness value of the refuge;

(C) areas within the refuge that are suitable for use as administrative sites or visitor facilities, or for visitor services, as provided for in sections 1305 and 1306 of this Act;

(D) present and potential requirements for access with respect to the refuge, as provided for in title XI; and

(E) significant problems which may adversely affect the populations and habitats of fish and wildlife identified and described under subparagraph (A).

(3) Each plan shall—



Cooperative
management
agreements.

Comprehensive
conservation
plan.



Foot, p. 2487.

(A) be based upon the identifications and the descriptions required to be made under paragraph (2)—

(i) designate areas within the refuge according to their respective resources and values;

(ii) specify the programs for conserving fish and wildlife and the programs relating to maintaining the values referred to in paragraph (2)(B), proposed to be implemented within each such area; and

(iii) specify the uses within each such area which may be compatible with the major purposes of the refuge; and

(B) set forth those opportunities which will be provided within the refuge for fish and wildlife-oriented recreation, ecological research, environmental education and interpretation of refuge resources and values, if such recreation, research, education, and interpretation is compatible with the purposes of the refuge.

(4) In preparing each plan and revisions thereto, the Secretary shall consult with the appropriate State agencies and Native Corporations, and shall hold public hearings in such locations in the State as may be appropriate to insure that residents of local villages and political subdivisions of the State which will be primarily affected by the administration of the refuge concerned have opportunity to present their views with respect to the plan or revisions.

Public hearings.

(5) Before adopting a plan for any refuge, the Secretary shall issue public notice of the proposed plan in the Federal Register, make copies of the plan available at each regional office of the United States Fish and Wildlife Service and provide opportunity for public views and comment on the plan.

Publication in Federal Register.

(6) With respect to refuges established, redesignated, or expanded by section 302 or 303 the Secretary shall prepare plans for—

(A) not less than five refuges within three years after the date of the enactment of this Act;

(B) not less than ten refuges within five years after such date;

(C) all refuges within seven years after such date. With respect to any refuge established in the State after the date of the enactment of this Act, the Secretary shall prepare a plan for the refuge within two years after the date of its establishment; and

(D) in the case of any refuge established, redesignated, or expanded by this title with respect to which a wilderness review is required under this Act, at the same time the President submits his recommendation concerning such unit under such section to the Congress, the Secretary shall submit to the appropriate committees of the Congress the conservation plan for that unit.

Conservation plan, submittal to congressional committees.

PRIOR AUTHORITIES

Sec. 305. All proclamations, Executive orders, public land orders, and other administrative actions in effect on the day before the date of the enactment of this Act with respect to units of the National Wildlife Refuge System in the State shall remain in force and effect except to the extent that they are inconsistent with this Act or the Alaska Native Claims Settlement Act and, in any such case, the provisions of such Acts shall prevail. All land within the boundaries described or depicted in any such action shall, if the unit of the National Wildlife Refuge System concerned is incorporated within any refuge established or redesignated by or described in section 302 or 303, be included within such refuge. All funds available on such date of enactment for administration of any refuge shall remain available for the administration of such refuge.

43 USC 1601 note.

SPECIAL STUDY

Caribou.
16 USC 3145
note.

Sec. 306. (a) The Congress finds that the barren-ground caribou are a migratory species deserving of careful study and special protection, and that the Western Arctic and the Porcupine herds of such caribou are of national and international significance.

(b) The Secretary of the Interior shall conduct, and the Governor of Alaska is urged to cooperate with the Secretary in conducting, an ecological study of the barren-ground caribou herds north of the Yukon River and the herds that have been known to migrate between the United States and Canada, including, but not limited to, a determination of the seasonal migration patterns, reproduction and mortality rates, composition and age structure, behavioral characteristics, habitats (including but not limited to calving, feeding, summering and wintering areas, and key migration routes) that are critical to their natural stability and productivity and the effects on the herds of development by man, predation, and disease. In conducting this study the Secretary shall review the experience of other Arctic circumpolar countries with caribou and is authorized to enter into such contracts as he deems necessary to carry out portions or all of this study.

Review.
Contracts.

TITLE IV—NATIONAL CONSERVATION AREA AND NATIONAL RECREATION AREA

ESTABLISHMENT OF STEESE NATIONAL CONSERVATION AREA

16 USC 460mm.

Sec. 401. (a) In order to provide for the immediate and future protection of the lands in Federal ownership within the framework of a program of multiple use and sustained yield and for the maintenance of environmental quality, the Steese National Conservation Area is hereby established.

(b) The Steese National Conservation Area shall include approximately one million two hundred twenty thousand acres of public lands, as generally depicted on the map entitled "Steese National Conservation Area—proposed", and dated October 1978. Special values to be considered in planning and management of the area are: caribou range and Birch Creek.

ADMINISTRATIVE PROVISIONS

Land use plan,
development.
16 USC
460mm-1.

Sec. 402. (a) Subject to valid existing rights, the Secretary, through the Bureau of Land Management, shall administer the Steese National Conservation Area established in section 401 pursuant to the applicable provisions of the Federal Land Policy and Management Act of 1976 dealing with the management and use of land in Federal ownership, and shall, within five years of the date of enactment of this Act, develop a land use plan for each such area, and for the area established in section 403.

43 USC 1701
note.

(b) No public lands within the national conservation area shall be transferred out of Federal ownership except by exchange pursuant to section 206 of the Federal Land Policy and Management Act. Where consistent with the land use plans for the area, mineral development may be permitted pursuant to the Mineral Leasing Act of 1920, as amended, and supplemented (30 U.S.C. 181-287) or the Materials Act of 1947, as amended (30 U.S.C. 601-608). Subject to valid existing rights, the minerals in Federal lands within national conservation areas are hereby withdrawn from location, entry, and patent under the United States mining laws (30 U.S.C. 22-54). Where consistent

43 USC 1718.

with the land use plan for the area, the Secretary may classify lands within national conservation areas as suitable for locatable mineral exploration and development and open such lands to entry, location, and patent under the United States mining laws (30 U.S.C. 22-64).

(c) Subject to valid existing rights, all mining claims located within any such unit shall be subject to such reasonable regulations as the Secretary may prescribe to assure that mining will, to the maximum extent practicable, be consistent with protection of the scenic, scientific, cultural, and other resources of the area and any patent issued after the date of enactment of this Act shall convey title only to the minerals together with the right to use the surface of lands for mining purposes subject to such reasonable regulations as the Secretary may prescribe as aforesaid.

ESTABLISHMENT OF WHITE MOUNTAINS NATIONAL RECREATION AREA

Sec. 403. There is hereby established the White Mountains National Recreation Area containing approximately one million acres of public lands, as generally depicted on the map entitled "White Mountains National Recreation Area—proposed", and dated October 1978. Subject to valid existing rights, the Secretary shall administer the area in accordance with the provisions of section 1312 and other applicable provisions of this Act, the Federal Land Policy and Management Act of 1976, and other applicable law. In planning for the recreational use and management of this area, the Secretary shall work closely with the State of Alaska.

16 USC
160mm-2.

Post. p. 2483.

43 USC 1716.

RIGHTS OF HOLDERS OF UNPERFECTED MINING CLAIMS

Sec. 404. (a) The term "unperfected mining claim" as used in this section, means a mining claim which is located on lands within the boundaries of the White Mountains National Recreation Area or Steese National Conservation Area established pursuant to this title with respect to which a valid mineral discovery within the meaning of the mining laws of the United States, was not made as of the date of the withdrawal of such area from further appropriation under the mining laws of the United States.

"Unperfected
mining claim."
16 USC 160
mm-3.

(b) **MORATORIUM ON CONTEST PROCEEDINGS.**—Any holder of an unperfected mining claim seeking to protect such claim pursuant to this section must have maintained and must continue to maintain such claim in compliance with applicable Federal and State laws, and where applicable, must have obtained and complied with any mining access permit requirements imposed by the Department of the Interior during the 1979 mining season. Prior to September 30, 1982, no unperfected mining claim which has been maintained in accordance with this subsection shall be contested by the United States for failure to have made a valid mineral discovery within the meaning of the mining laws of the United States: *Provided*, That such claim shall be diligently prosecuted during this moratorium on contest proceedings as a condition for the moratorium. Any mining operation undertaken pursuant to this subsection, including but not limited to exploration, development, and extraction, shall be subject to such reasonable regulations as the Secretary may prescribe to assure that such operations will, to the maximum extent practicable, be consistent with protection of the scenic, scientific, cultural, and other resources of the Steese National Conservation Area or the White Mountains National Recreation Area or any affected conservation system units established or expanded by this Act.