

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
6468 SENATE RESOURCES

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this would eliminate places like Barrow, Bethel, Nome, and Kotzebue from subsistence fishing and hunting. Clearly, these communities rely on subsistence. Instead, the state has defined "rural" in terms of the overall socioeconomic pattern in an area: "rural" was defined as places where "customary and traditional fishing and hunting was a principal component of the economy of the community or area". By this definition, most areas of the state qualified as rural, except Anchorage, Fairbanks, Juneau, Ketchikan, the Matsu Borough, the Kenai Peninsula, and a few communities like Valdez, Seward, and Big Delta. It is this approach that the court struck down.

The state's Governor's office and Washington legislators attempted to solve this problem by submitting an amendment to ANILCA, which would have defined "rural" in ANILCA by using the state's definition. This proposed amendment was blocked, primarily by an outcry of several Native organizations in the state, who were not consulted prior to the state taking this approach.

Currently, there has been no solution to these problems of how to define "rural" and how to allow the Kenaitze the opportunity to fish. Discussion is occurring between state agencies, the Kenaitze tribe, other Alaska Native groups, and other resource user groups on ways to try to solve them. There are no clear answers in sight. If the federal court steps in to decide these issues, the 2,500 population level is one possible definition the court would impose. This definition would eliminate as rural many places in Alaska which currently have rural status and subsistence opportunities.



# Alaska Fish & Game

November-December 1989

## Subsistence

*Adapting Ancient Ways to Modern Times*

# A Brief History

## *Why Alaska Has a Subsistence Law*

Alaska is unique among the states in giving subsistence a priority in wildlife management. This legal priority can be traced to Alaska's Native land claims movement, when oil development at Prudhoe Bay forced settlement of Native property rights.

The eventual settlement in 1971 recognized Native land claims, created and funded Native corporations, extinguished aboriginal hunting and fishing rights, and opened the way for North Slope oil development and the Trans Alaska Pipeline. Congress realized that although aboriginal hunting rights had been extinguished, tens of thousands of rural Alaskans — both Natives and non-Natives — depended on wildlife for subsistence. Except during the oil boom in the 1980s, rural Alaska has generally been cash-poor. Imported foods are expensive. Most rural Alaska communities would have a hard time without dependable access to wild foods.

When Congress passed the Alaska National Interest Lands Conservation Act in 1980, it included a subsistence priority on federal lands and allowed subsistence hunting on national interest lands. In 1978, in anticipation of ANILCA, the state also passed a subsistence priority law. The laws are a recognition of several conditions:

- Subsistence hunting, fishing and gathering are important to Alaska and the nation. Not only is subsistence the traditional way of life of Alaska Natives, non-Natives value the opportunity to choose a subsistence lifestyle. Neither law discriminates racially.
- American history clearly shows that without special protection for subsistence uses, commercial, agricultural, and industrial uses of land and wildlife eventually overwhelm subsistence uses. Both laws make subsistence the priority consumptive use of wildlife.

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*Subsistence has long played an essential role in the rural Alaskan economy*

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- There is not enough wildlife for every Alaskan to live off the land, especially near Alaska's urban centers. Those who do subsist need some assurance that their livelihood won't be undermined by competition.

Implementing the subsistence law is the responsibility of the Alaska Boards of Fisheries and Game, whose members rely on the ADI&G staff for information.

The Boards must decide which communities or areas qualify for subsistence, and which uses of wildlife are subsistence uses. In making these decisions, the Boards consider historical and contemporary information about wildlife harvests and use, as well as social and economic information.

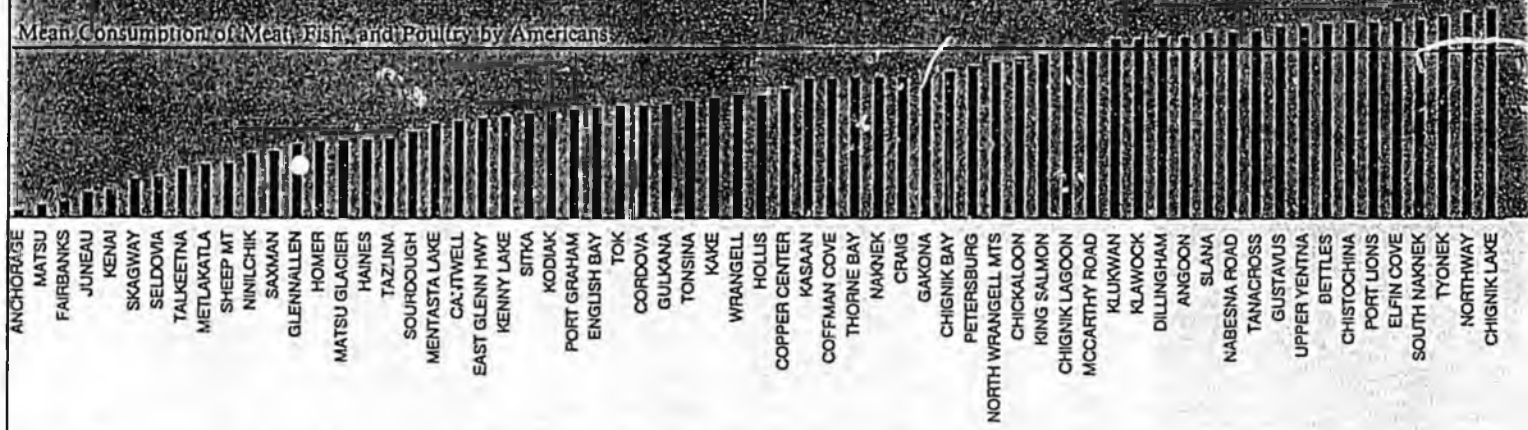
Since the subsistence law was passed, the Boards have adopted subsistence hunting and fishing regulations, just as they have adopted sport, personal use, and commercial regulations. Subsistence regulations can provide for longer seasons and larger bag limits than sport regulations.

Rural designations, customary and traditional use designations, and other subsistence regulations can and do change over time. For example, certain communities that were not originally designated rural presented information to the Boards which persuaded the Boards to change their status. The Kenaitze Indian Tribe, whose members live in a non-rural area, recently sued the state. A federal court decided that the current definition of "rural" in the state subsistence law did not comply with the "plain language" of ANILCA. At this time, therefore, the state law is out of compliance with federal law. This will have to be rectified with refinements to state or federal statutes.

While the subsistence laws are important, subsistence existed long before the laws did. Subsistence has long played an essential role in Alaska's economy. Most Alaskans recognize this, and continue to support a legal system which does likewise.

# Alaskans' Per Capita Harvests

Mean Consumption of Meat, Fish, and Poultry by Americans



*Rural Alaskans Harvest More Wild Meat, Fish, and Fowl, on the Average, Than Most Americans Buy in the Grocery Store*

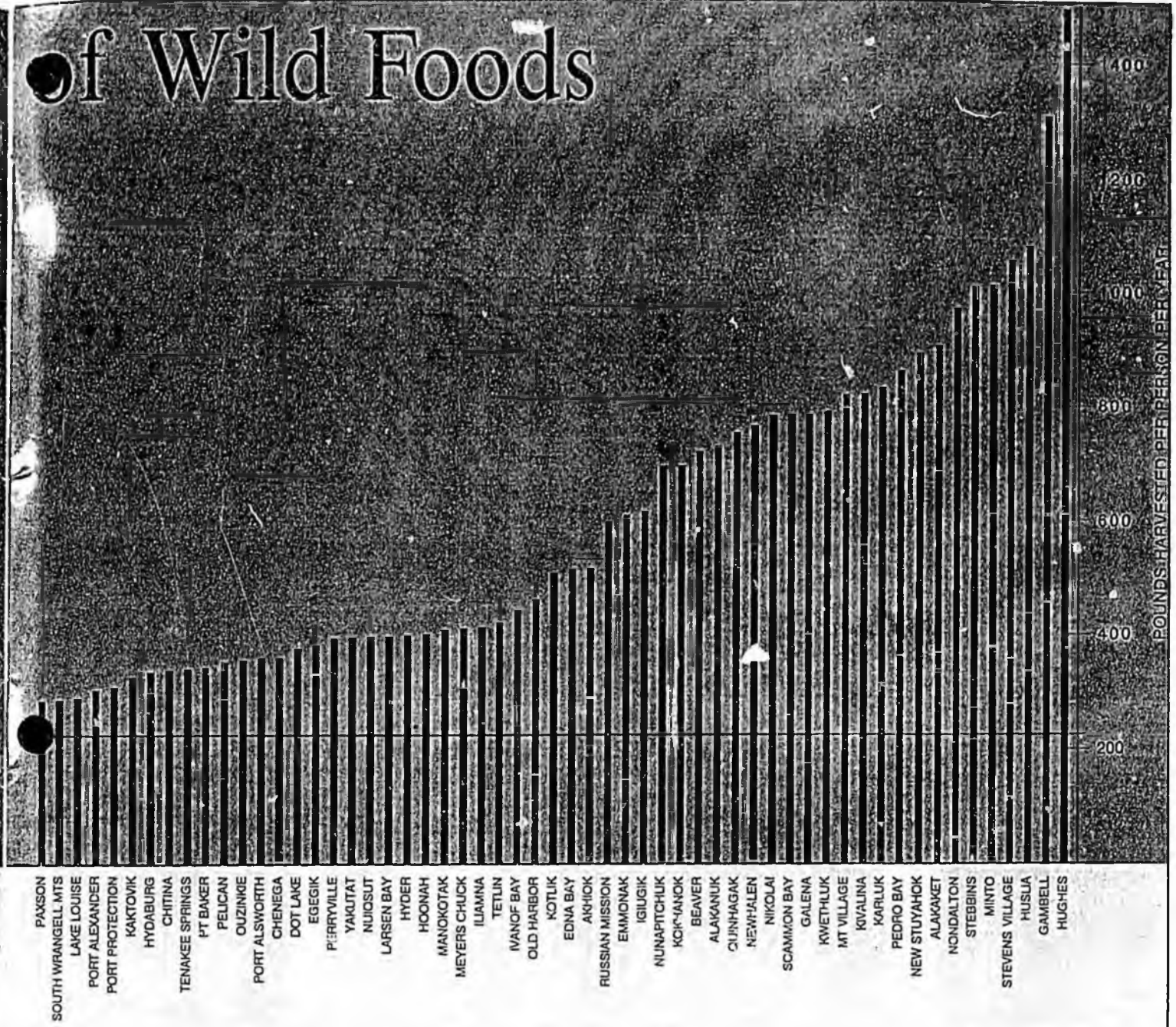
Alaskans use a lot of wild food. According to recent harvest surveys, many Alaskans harvest more wild meat and fish than the average American buys from the grocery store.

Since the Alaska subsistence law was adopted eleven years ago, the Division of Subsistence has compiled harvest data for more than 100 Alaska communities. They show that annual harvests vary from a low of 10 pounds per person (in Anchorage) to a high of 1,498 pounds per person (in Hughes). The median harvest is about 250 pounds.

The graph above shows harvests of fish, land mammals, marine mammals, and other wild resources in 122 Alaska communities. Harvest totals represent pounds dressed weight per person per year.

In approximately half of the sampled Alaska communities, wild food harvests are greater than the average 222 pounds per

# of Wild Foods



person of store-bought meat, fish, and poultry purchased by families in the western United States each year.

Harvests varied significantly by region. Harvests in northwest and Arctic Alaska are highest (610 pounds per capita), followed by the Aleutian and Pacific coasts (378 pounds), the subarctic interior (377 pounds), and southeast Alaska (212 pounds). Harvests in predominantly urban areas of Alaska (Anchorage, Fairbanks, Juneau, Matanuska-Susitna Borough, Kenai, Ninilchik, Homer, and Seldovia) are lowest (48 pounds).

Why are harvests so different in different communities? Non-Native settlement entry, personal income, and location are among the factors accounting for some of the variation. In general, Native communities harvest more wild foods than non-Native communities. Communities with greater mean taxable incomes tend to harvest less subsistence food. Community in-

come levels are strongly associated with settlement entry, so that statistically a community's non-Native population and mean income increase together.

In general, harvests increase as the distance from the road systems increases. In other words, the communities with the lowest subsistence harvests in the 1980s occur along the road, settled areas surrounding Anchorage and Fairbanks.

Why do some rural Alaskans use so much more meat, fish, and fowl than the most Americans? Alaskans substitute wild foods for milk products (the single largest item in the American diet), fruits, vegetables, and grains. In rural Alaska, such imported foods are expensive and not always available. Some of the subsistence harvest (dried fish in particular) also is used to feed dogs. Rural Alaskans' diet is quite different from the diet of most Americans, as it is loaded with nutritious foods.

# Myths

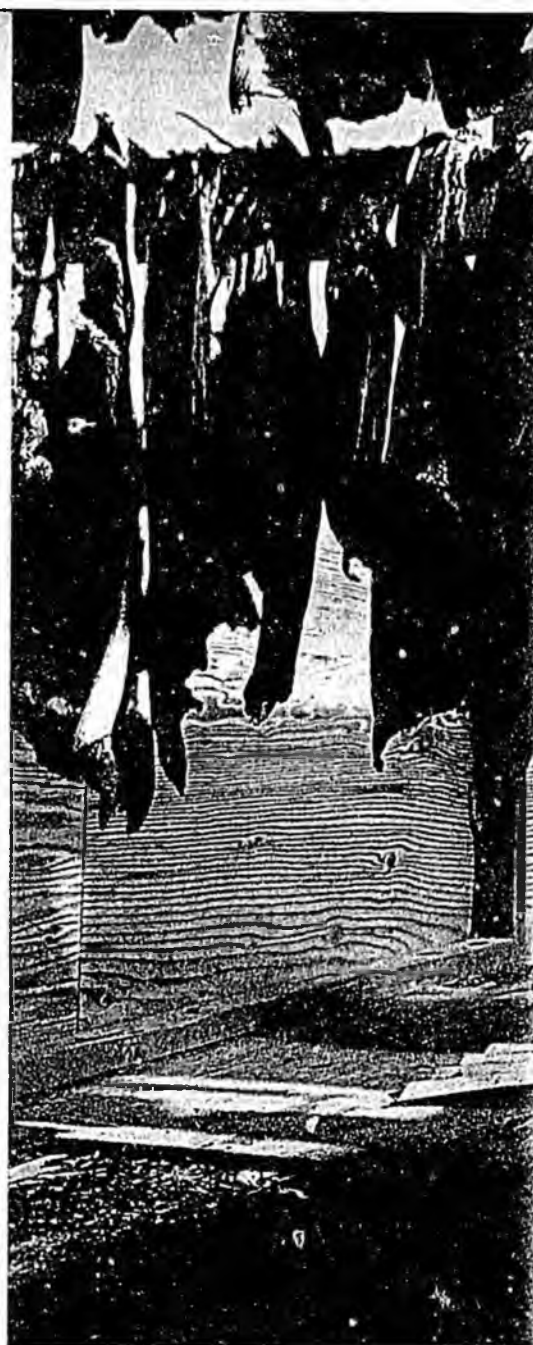
## *What Have You Heard?*

by Robert Wolfe

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*What have you heard about subsistence in Alaska? I have heard so many misconceptions about subsistence in casual conversation that I've begun to call them myths. I have heard people say, "Subsistence is for Natives only." "Subsistence takes most of the fish and game." "Subsistence is just welfare." "Subsistence is bad for wildlife conservation." "Subsistence is disappearing." In fact, the subsistence we know is very different. Here is a short quiz about subsistence in Alaska. See if what you have heard is fact or fancy.*

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### *Is subsistence for Natives only?*

No. Both Alaska Natives and non-Natives may hunt and fish for subsistence if they live in rural areas. Currently, more than half of the people who qualify for subsistence are non-Natives. In 1985, about 110,075 Alaskans lived in rural areas. Of these about 50,084 (45.5 percent) were Alaska Native and 59,991 (54.5 percent) were non-Natives.

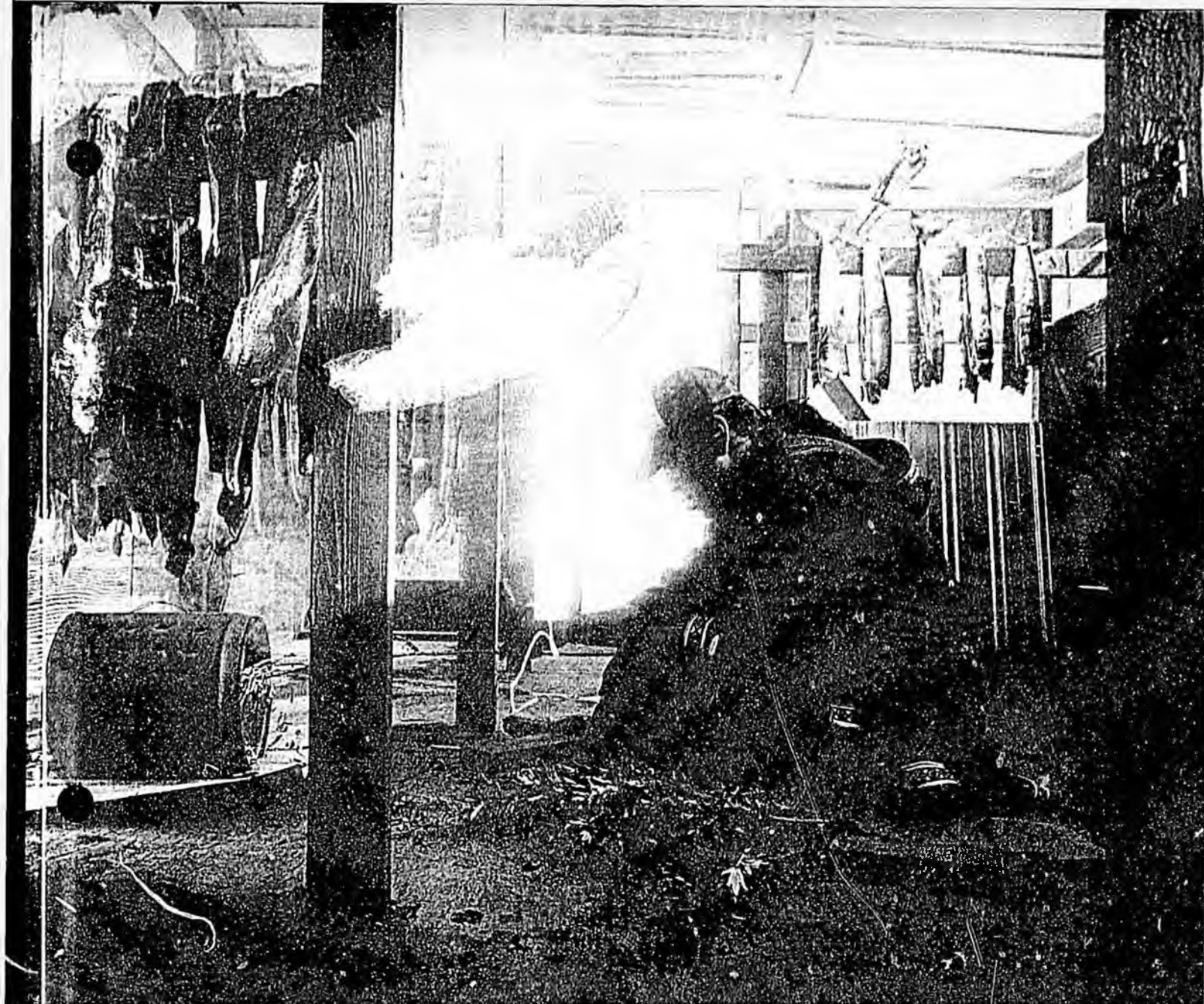
Subsistence has been legally defined to include the customary and traditional uses of fish and game in all of Alaska's rural areas. If a person moves into a rural area and adopts that way of living for their own, then that person, whether Alaska Native or non-Native, may legally fish and hunt for subsistence.

Of course, there is always an exception. Marine mammal hunting is regulated by international treaty and the Marine Mammal Protection Act. Only Alaska Natives may hunt marine mammals, such as seals, whales, polar bears, and sea otters.

### *Does "subsistence" mean hunting and fishing for food?*

Certainly food is one of the most important subsistence uses of wild resources. The current rural subsistence harvest is about 354 pounds of food per person per year. That is more than the U.S. average consumption of 255 pounds of domestic meat, fish, and poultry per year. (The average American uses a total of 1,371 pounds of all foods a year.) However, there are other important uses of subsistence products, such as:

- **Clothing:** Wild furs and hides are still the best materials for ruffs (wind guards), mitts, parkas, kuspuks, clothes lining, and mukluks (winter boots) in many regions.
- **Fuel:** Wood is a major source of energy in rural homes, and is used for smoking and preserving fish and meat.
- **Transportation:** Fish, seals, and other products are used to feed dog teams.
- **Construction:** Spruce, birch, hemlock, willow, and cotton-



JIM MAGDANZ

wood are used for house logs, sleds, fish racks, and innumerable other items.

- Home goods: Hides are used as sleeping mats. Seal skins are used as pokes to store food. Wild grasses are made into baskets and mats.
- Sharing: Fish and wildlife are widely given out to support neighbors who cannot harvest for themselves because of age, disability, or other circumstances.
- Customary trade: Specialized products like seal oil are bartered and exchanged in traditional trade networks between communities. Furs sold to outside markets provide an important source of income to many rural areas.
- Ceremony: Traditional products are used in funerals, potlatches, marriages, Native dances, and other ceremonial occasions.
- Art and Crafts: Ivory, grass, wood, skins, and furs are crafted into beautiful items for use and sale.

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All these uses of wild resources are recognized and protected in law. Subsistence is a rich pattern of living, of which food is but one important part.

*Is big game (like moose or caribou) the main subsistence food?*

As a general rule, no. The main subsistence food is fish. About 65 percent of the state's subsistence harvest by weight is fish, including salmon, halibut, herring, whitefish, cod, and Arctic char-Dolly Varden, among others. Land mammals are only about 18.5 percent of the state's subsistence catch. Marine mammals are 9.7 percent of the catch, and "other resources" are 6.4 percent (mostly clams, crabs, birds, berries, and plants).

Of course, the types of foods people eat vary from place to place. Fish is a smaller item in the extreme coastal arctic areas, where caribou, seal, whale, and walrus are major subsistence resources.

### *Does subsistence take most of the fish and game?*

Again, as a general rule, no. Commercial fishing outstrips subsistence many times. In Alaska in 1985, commercial fisheries harvested about 908,500,000 lbs. of salmon, halibut, herring, and hellfish (there was an additional commercial groundfish harvest of 2,995,200,000 lbs.). This compares with a harvest of 40,305,449 lbs. of subsistence foods and 7,072,046 of sport-caught fish and game. Thus, commercial fish took 95 percent, subsistence took four percent, and sport took one percent of the total statewide harvest (excluding commercial groundfish).

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

### *Does subsistence involve money?*

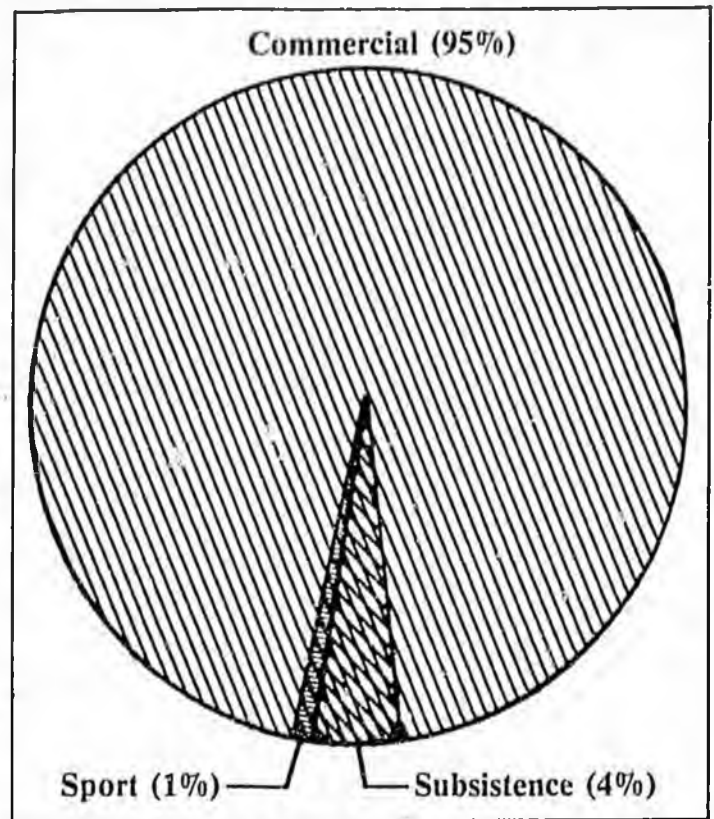
Yes. Rural families use money in order to purchase basic goods and services: fuel oil and electricity for heat, light, and power; family goods like clothing and shelter; subsistence equipment like guns, ammunition, fishing nets, power motors, gasoline, rain gear, and so forth. Money is used to invest in the tools for hunting, fishing, and gathering.

It is a common misconception that there is no money in traditional subsistence economies. However, trade and commerce have always been part of subsistence systems. Goods have been traded for thousands of years in Alaska. The commercial fur trade with European markets began about 300 years ago, bringing European currencies and goods into Alaska. So commercial enterprise and money have been part of traditional subsistence economies for a long time.

Rural Alaska's economies do operate differently from urban economies, however. In Alaska today, the rural economies are "mixed economies," where families and communities live by combining wild resource harvests with commercial-wage employment. Monetary jobs tend to be few and unstable. Monetary incomes tend to be small and insecure. Economic activity tends to occur in family groups, rather than business firms. Economic ventures tend to be small scale. Economic goals tend to be for the benefit of family groups, rather than monetary profits for business firms. These are major differences. Because of this, Alaska is a pluralistic society, with "mixed subsistence-cash economies" existing side-by-side with the "industrial capital economy" of the large population centers of Anchorage and Fairbanks.

### *Is subsistence compatible with wildlife conservation?*

Rural communities depend on the land for subsistence. It is to their advantage to maintain undamaged land and ecosystems, so wildlife are abundant. Most subsistence communities have customary rules for treating the land and the ecosystem. These rules have been passed on through the generations: "Do not waste," "Take only what is needed," "Treat



### *Who uses the most fish and game in Alaska?*

the animals with respect," "Do not damage the land without cause," among others. It is believed that if the rules are followed, then the land will continue to provide. Subsistence peoples are the original conservationists, although they may not use that word, because their very lives depend on it.

This is not to say there is perfect compliance with customary rules, as with any group of people. However, today most people still comply with the traditional rules and practices. They comply, even when there are additional government rules and regulations governing land and resource uses. In fact, rural areas commonly must obey two sets of laws — those from the state-federal administration, and those handed down from their forefathers as customary law.

Federal law recognizes the compatibility of subsistence and wilderness values. The law protects subsistence uses in the new parklands, national refuges, and wilderness areas. Subsistence peoples and traditional uses are part of the natural ecosystem and have helped to maintain it for generations.

### *Is subsistence compatible with wilderness?*

Yes. Most areas designated as "wilderness" today are the traditional homelands of subsistence peoples. Alaskans have been living in and using these areas for thousands of years, and continue to do so. These areas would not appear pristine and undamaged today — so they could be classified as wilderness — if rural Alaskans had not treated the lands and wildlife well. The lands are wilderness now, because subsistence is compatible with wilderness.

*Is subsistence a type of welfare for families with low incomes?*

No. Subsistence is not a welfare system for people with low incomes. In fact, households with the highest incomes in rural communities usually produce the most subsistence foods. Households with the lowest incomes usually produce less subsistence foods.

This makes sense if subsistence is seen as a family enterprise. Households with the lowest incomes in a community are commonly the very elderly, single mothers with young dependent children, and young single persons or young couples who are just getting started. These households also very likely cannot subsistence fish and hunt very well. They often lack the time, the labor, and the equipment to harvest effectively. They usually eat subsistence foods produced by other households in the community.

The households who produce the most subsistence foods in a community are usually households with large, mature labor

forces which have equipment for hunting and fishing. Usually, these are households with mature parents and several mature children. They have the labor and the equipment to harvest wild foods. They typically produce extra subsistence food to share with elderly relatives, the less fortunate, and young adults. The mature households also usually have greater monetary incomes because there may be several household members with jobs.

Because of this, rural communities would suffer extreme hardships if subsistence hunting and fishing were limited to only households with low incomes. This would cut out the most productive households in the community.

*Why don't subsistence hunters use bows and arrows?*

Subsistence requires equipment that works, is safe, and is sustainable with ecological and economic conditions over the long term. Most people stopped using bows and arrows over a century ago in Alaska. Rural Alaska has been using guns for hunting longer than America has been using automobiles for transportation, since the 1860s in most areas.

Subsistence equipment is usually small scale, appropriate technology. It is efficient and modern. Equipment commonly includes fish nets, fish wheels, aluminum skiffs with small outboards, snowmachines, binoculars, and citizens band radios. These may be used alongside dog teams, skin boats, smoke houses, and fish traps, depending upon the area and conditions.

*Is subsistence disappearing?*

Subsistence is constantly changing, but as a whole, there is little evidence that it is disappearing as a way of life in Alaska. In rural Alaska, subsistence activities are among the most highly valued parts of the culture. Subsistence harvests still are essential parts of the rural economy. In most rural places, children continue to learn how to capture wild foods and prepare them for use by the family and community.

Nevertheless, some things do threaten subsistence. Roads into rural areas usually result in declines in the subsistence way of living. Roads bring about ecological change, increased competition for wild resources, and in-migration of cultural groups that do not hunt and fish for subsistence. Unregulated commercial harvesting that depletes stocks and game populations have resulted in declines in subsistence in certain areas in Alaska. Examples of this include commercial whaling and commercial walrus hunting in the arctic, and commercial salmon traps in southeast Alaska. Unreasonably restrictive rules which limit access to traditional harvest areas or species may threaten subsistence over time. The new state and federal subsistence laws were intended to help bring about regulations beneficial to the subsistence way of life. In general, any change that depletes wild resources, reduces access to wild areas and resources, or increases competition between user groups can create problems for subsistence.

*Robert Wolfe serves as Research Director for ADF&G's Division of Subsistence in Juneau.*



JIM MAGDAF, Z

Rural families use money to purchase tools and supplies.

# Alaska State Legislature

Legislative Research Agency



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February 21, 1990

## MEMORANDUM

TO: Representative Sam Cotten

FROM: Maria Gladziszewski *MG*  
Legislative Analyst

RE: Subsistence Law in Alaska: 1960 to 1990  
Research Request 90.166

You asked us for an overview of Alaska's subsistence law. In particular, you asked for a discussion of 1) the history of Alaska's subsistence law; 2) subsistence provisions in federal law (Title VIII of the Alaska National Interest Lands Conservation Act--ANILCA); 3) conflicts between state and federal subsistence law (including the reasons given by the Alaska Supreme Court in December 1989 for declaring Alaska's 1986 subsistence law unconstitutional); and 4) possible proposals for the resolution of conflict between subsistence provisions in ANILCA and state law (including what might be done to change ANILCA, to amend Alaska's constitution, or to formulate laws that could be passed by the legislature).

Table 1 presents a chronology of the development of Alaska's subsistence law. Below is a summary of the main points of the memorandum. A discussion of the three remaining questions follows the summary and Table 1.

## SUMMARY

In 1978, Alaska's first law granting subsistence uses a priority over other consumptive uses of fish and wildlife passed the legislature.

In 1980, the U.S. Congress mandated that subsistence uses be accorded priority over the taking of fish and wildlife for other purposes on public lands. The definition of subsistence in ANILCA is nearly identical to the definition of subsistence in Alaska's 1978 law with one exception: subsistence as defined in ANILCA applies to "rural Alaska residents..."

In 1981, the Joint Boards of Fisheries and Game include the phrase "rural Alaska residents" in published regulations regarding subsistence.

In 1985, the Alaska Supreme Court determined (in the *Madison* decision) that the Joint Boards of Fisheries and Game did not have the statutory authority to identify subsistence uses as rural.

Because ANILCA mandated that subsistence uses were conducted by "rural Alaska residents," and the 1985 court decision meant that the Joint Boards of Fisheries and Game did not have the statutory authority to include a distinction between rural and nonrural residents in regulation, the State of Alaska was notified in the fall of 1985 by the Department of the Interior that it was out of compliance with federal law; federal officials threatened takeover of the management of subsistence resources on public lands in Alaska.

Responding to the situation created by the 1985 court decision that threatened Alaska's ability to manage its fish and wildlife resources, the Alaska legislature passed Alaska's current subsistence law in 1986.

In 1988, the U.S. Ninth Circuit Court ruled (in the *Kenaitze* decision) that the state definition of "rural area" in the 1986 subsistence law was inconsistent with the meaning of the term "rural" in ANILCA; the court found that Congress used rural to refer to areas that were "sparsely populated." Alaska subsistence law was again found to be out of compliance with federal law.

In 1989, the Alaska Supreme Court ruled (in the *McDowell* decision) that Alaska's current subsistence law was unconstitutional because it violated Article VIII, Sections 3, 15, and 17 of the Alaska Constitution (i.e., a rural preference for subsistence users is a special privilege to take fish and wildlife that is prohibited by the Alaska Constitution).

The legal questions raised by *Kenaitze* (a dispute over the definition of "rural") are overshadowed by the constitutional questions of *McDowell* (it doesn't matter how "rural" is defined, making such a distinction violates the Alaska Constitution).

In January 1990, the chief justice of the Alaska Supreme Court granted the state a stay of the effect of the *McDowell* decision with respect to existing hunting and fishing regulations; existing regulations remain in effect until July 1, 1990.

On February 9, 1990, the State of Alaska and the Alaska Federation of Natives petitioned the court requesting reconsideration of the *McDowell* decision.

Questions remain regarding whether or not a priority for subsistence still exists in state law. Alaska Superior Court will rule on whether the "rural" part of the 1986 law is severable from the other parts to determine if the remaining parts of the law are still in effect (i.e., do subsistence uses still have priority over other uses or is Alaska without a subsistence priority law altogether). State officials have not determined whether it is desirable for the law

Representative Cotten  
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to be severable or not; the governor, therefore, has not yet directed the attorney general which way to argue the severability question. As of today, a superior court judge has not yet been assigned to the case.

Federal authority to manage subsistence resources is unclear; courts have never ruled on the extent of federal authority to manage subsistence resources in Alaska. Questions remain regarding the lands to which federal authority extends; does federal authority extend only to "public lands" in Alaska or to any nonfederal lands upon which fish and wildlife resources used for subsistence depend? In addition, the question of federal powers has not been resolved; can federal officials merely exercise closure authority or do they have the authority to set seasons and bag-limits as well as other administrative authority?

Officials from the Office of the Governor, the Department of Law, and the Department of Fish and Game are exploring several options to resolve the conflict between ANILCA and Alaska's Constitution. Officials are not predicting exactly when the administration's preferred option will be announced.

**TABLE 1  
EVOLUTION OF ALASKA'S SUBSISTENCE LAW**

SOURCE	ACTION	DEFINITION OF SUBSISTENCE
Ch 131, SLA 1960	Required a \$1 license for those engaging in subsistence fishing; a license could not be issued to non-residents or to residents with annual gross incomes exceeding \$4,000; persons holding resident commercial fishing licenses could engage in subsistence fishing.	Subsistence fishing is "[t]he taking, fishing for or possession of fish...for personal use and not for sale or barter, with gillnet, seine, fish wheel, long line, or other means defined by the Board."
Ch 199, SLA 1975 [AS 16.05.255(b)] [repealed by Ch 52, SLA 1986]	Added a subsistence hunting section to statute; authorized the Board of Game to establish subsistence hunting areas.	"subsistence hunting means the taking of game animals by a state resident for food or clothing for personal or immediate family use;"
Ch 269, SLA 1976 [AS 16.05.257] [repealed by Ch 52, SLA 1986]	Added language regarding subsistence hunting; provided for local participation in the process used to establish subsistence hunting areas.	"subsistence hunting means the taking of game animals by a state resident for food or clothing for personal or immediate family use;"
Superior court decision, (April 1977)	In Tanana Valley Sportsmen's Association v. Alaska, the superior court ruled that the Department of Fish & Game could not issue caribou permits on the basis of need; this ruling helped prompt the passage of the 1978 subsistence law; criteria originally used by the Board of Game for emergency caribou hunting regulations included dependence on the resource, proximity to the resource, and availability of alternative resources.	
Ch 151, SLA 1978	Established for the first time subsistence use as a priority use of Alaska's fish and wildlife resources; mandated that "whenever it is necessary to restrict the taking of [fish and game] to assure the maintenance of [fish and game] stocks...subsistence use shall be the priority use." If further restriction is necessary, priorities were to be set based on the second tier criteria of "customary and direct dependence upon the resource," "local residency," and "availability of alternative resources." Established a section of subsistence hunting and fishing within the Department of Fish & Game.	"... 'subsistence uses' means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handcraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption, and for customary trade, barter or sharing for personal or family consumption;"

TABLE 1 (Continued)  
EVOLUTION OF ALASKA'S SUBSISTENCE LAW

SOURCE	ACTION	DEFINITION OF SUBSISTENCE
P.L. 96-487 ANILCA (1980)	Title VIII mandates that "the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes." Includes "rural" as part of the definition of subsistence but does not define rural; allows the state to maintain management over public lands if "...the State enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in, sections 803, 804, and 805..."	"... '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."
5 AAC 01.597 (drafted in December 1980) [repealed 5/11/85, after Madison and initial Eluska rulings]	Board of Fisheries publishes "characteristics of subsistence fisheries;" states that ten characteristics should be applied "...to the communities and to subcommunities, groups and individuals within the communities to determine which uses are customary and traditional and therefore, which communities are eligible for the subsistence priority." Characteristic (5) is "a use pattern occurring in reasonable geographic proximity to the primary residence of the community, group or individual;"	"The Board of Fisheries finds that certain customary and traditional practices and procedures associated with the utilization of fish in the Cook Inlet Area can be used to identify subsistence uses."
5 AAC 99.010 (drafted in December 1981)	Joint Boards of Fisheries and Game publish subsistence procedures mandating that "customary and traditional subsistence uses by rural Alaska residents will be identified by the use of [eight criteria]..." Criteria (4) is "the consistent harvest and use of fish or game which is near, or reasonably accessible from, the user's residence;"	"...subsistence uses are customary and traditional uses by rural Alaska residents for food, shelter, fuel, clothing, tools, transportation, making of handicrafts, customary trade, barter and sharing."
Findings of Fact (April 1981)	Board of Fisheries applies ten criteria of 5 AAC 01.597 to net fisheries of Cook Inlet and determines that the fisheries of Tyonek, English Bay and Port Graham qualify as customary and traditional uses by satisfying all ten criteria. The majority of those who fish with nets in Cook Inlet do not qualify for the subsistence priority.	"The Board of Fisheries finds that certain customary and traditional practices and procedures associated with the utilization of fish in the Cook Inlet Area can be used to identify subsistence uses."
Letter to the Governor of Alaska (May 1982)	Secretary of the Interior certifies that the state legislative program regarding subsistence is in compliance with ANILCA; this suspended potential federal regulation and left the state in charge of implementing ANILCA.	
5 AAC 77.001(a) (Spring 1982)	Board of Fisheries, under general authority of AS 16.05.251(a), establishes "personal use" fishing as a new category to cover persons who do not qualify for the subsistence priority.	

TABLE 1 (Continued)  
EVOLUTION OF ALASKA'S SUBSISTENCE LAW

SOURCE	ACTION	DEFINITION OF SUBSISTENCE
<b>Repeal Initiative (1982)</b>	A statewide effort to repeal the 1978 subsistence law makes it to the ballot but fails by a substantial margin at the polls (112,000 to 80,000).	
<b>Madison decision (February 1985)</b>	Alaska Supreme Court overturns the interpretation of the boards in 5 AAC 99.010 of "subsistence uses" as applying only to rural residents. The court examined the definition in AS 16.05.940(23) and the legislative history and determined that the boards did not have statutory authority to identify subsistence uses as rural.	
<b>Court of appeals Eluska decision (April 1985)</b>	Court rules that the state has a duty to issue regulations to implement the statutory authority for a subsistence priority; in the absence of regulations, a "subsistence defense" can be argued (i.e., in a prosecution for a fish or game violation, it is a defense that the taking was done for subsistence uses).	
<b>Emergency regulations (July 1985) (repealed in July 1986)</b>	Boards of Fisheries and Game publish specific regulations governing subsistence uses; a "tier II" application and permit system was created for hunts previously governed by registration or random-drawing permits; point systems were created for determining "customary and direct dependence," "local residency," and "availability of alternative resources." In many cases, non-resident hunts were closed.	
<b>Letter to the Governor of Alaska (September 1985)</b>	Secretary of the Interior notifies Alaska officials that the Madison decision means Alaska is out of compliance with ANILCA; if the state is not in compliance by June 1, 1986, federal officials will take over management of subsistence resources on public lands; in a letter dated 5/6/86 from an assistant secretary of the Interior to the director of the U.S. Fish & Wildlife Service, the Secretary could assume authority over "public lands" as defined by ANILCA, including non-Federal lands upon which fish and wildlife resources used for subsistence depend." The courts, however, have never ruled on the extent of federal authority to manage subsistence resources in Alaska.	

TABLE 1 (Continued)  
EVOLUTION OF ALASKA'S SUBSISTENCE LAW

SOURCE	ACTION	DEFINITION OF SUBSISTENCE
Ch 52, SLA 1986	Alaska legislature passes new subsistence law; defines "rural area" as "a community or area of the state in which the noncommercial, customary, and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy of the community or area;"	"subsistence uses means the noncommercial, customary and traditional uses of wild, renewable resources by a resident domiciled in a rural area of the state for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption;"
Letter to the Governor of Alaska (November 1986)	An assistant secretary of the Interior states that, since passage of the 1986 subsistence law, Alaska is once again in compliance with ANILCA.	
Supreme Court Eluska decision (1986)	Court rules that AS 16.05.225(b) established subsistence uses within a regulatory scheme and found no evidence of an intent to grant any personal right to take or possess game in the absence of such regulations (i.e., in a prosecution for a fish or game violation, it is not a defense that the taking was done for subsistence uses).	
5 AAC 99.012 (1987)	Joint Boards of Fisheries and Game publish 13 criteria to be used to determine whether an area of Alaska is rural; criteria include "values associated with the use of fish and game" but not population.	
Kenaitze decision (October 1988)	The U.S. Ninth Circuit Court of Appeals rules that the state definition of "rural area" (in Ch 52 SLA 1986) is inconsistent with the meaning of the term "rural" in ANILCA; the court found that Congress used rural in its ordinary sense to refer to areas that are "sparsely populated;" the court refused to consider the legislative history of ANILCA in search of a contrary meaning; the court also ruled that, after initial certification of compliance by the Secretary of Interior, "ANILCA thereafter vests the power to approve or disapprove the state's performance in the courts alone. [The November 1986] letter purporting to recertify the state's compliance with ANILCA had no legally operative effect." Case remanded to the lower court for entry of a preliminary injunction.	

**TABLE 1 (Continued)  
EVOLUTION OF ALASKA'S SUBSISTENCE LAW**

SOURCE	ACTION	DEFINITION OF SUBSISTENCE
<b>Kenaitze injunction (April 1989)</b>	District court judge orders the state to elect, by May 15, 1989, whether or not it will afford the Kenaitze Indians "on an interim basis priority over all other consumptive uses for [some subsistence uses on the Kenai]" and whether the state desires to turn over management of subsistence resources to the federal government.	
<b>Notice to the District court (May 1989)</b>	State officials inform the court that Alaska will not, at this time, turn over management of subsistence resources to the federal government.	
<b>Consent preliminary injunction (May 1989)</b>	Parties in the Kenaitze case agree to a one-year fishery, for the plaintiffs in the case only, until a permanent subsistence solution can be found.	
<b>McDowell decision (December 1989)</b>	Alaska Supreme Court rules that "the rural preference violates article VIII, sections 3, 15, and 17 of the Alaska Constitution" (i.e., special privileges to take fish and wildlife are prohibited by the Alaska Constitution); state officials begin to look for ways to implement a subsistence priority (e.g., amend Alaska's constitution, amend ANILCA, amend state law, etc.).	
<b>Stay granted (January 5, 1990)</b>	The chief justice of the Alaska Supreme Court grants the state a stay of the effect of the McDowell decision with respect to existing hunting and fishing regulations; existing regulations remain in effect until July 1, 1990.	
<b>Petition for reconsideration (February 1990)</b>	The State of Alaska and Alaska Federation of Natives file petitions requesting the supreme court to reconsider its McDowell decision; the court has no time limit to rule on the petitions.	
<b>Superior court to rule on severability (Spring 1990?)</b>	Court to rule on whether the "rural" part of the 1986 law is severable from the other parts to determine if the remaining parts of the law are still in effect (i.e., do subsistence uses still have priority over other uses or is Alaska without a subsistence priority law altogether); as of 2/20/90, a judge has not yet been assigned to the case.	

Prepared by the Legislative Research Agency, February 1990 (90.166).

## FEDERAL SUBSISTENCE LAW

Title VIII of ANILCA declares that "the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes."<sup>1</sup> The definition of subsistence in ANILCA is essentially the same as it is in Alaska's 1978 subsistence priority law with one additional phrase. Congress stipulated that subsistence means "customary and traditional uses *by rural Alaska residents...*" Although "rural" is not defined in the law, the state definition of "rural" has been found to be out of compliance with what Congress intended in ANILCA (see discussion of *Eluska v. Alaska*, below). Additional provisions of federal law will be outlined in the context of the two court cases discussed below.

## CONFLICTS BETWEEN STATE AND FEDERAL SUBSISTENCE LAW

The rulings in two recent court cases have forced the state of Alaska to examine the conflicts between the 1986 state subsistence law and the federal subsistence law in ANILCA. In *Kenaitze v. Alaska*, state and federal governments disagreed on what was meant by the term "rural" in ANILCA. The court ruled that the state's definition of rural was not consistent with what was meant by "rural" in ANILCA. The remedy preferred by state officials to the rural definition problem was to add the state's definition of "rural" to federal statute in ANILCA. The point became somewhat moot, however, after the *McDowell* decision. In *McDowell v. Alaska*, the court held that a subsistence preference based on rural residency was unconstitutional. Even without the rural definition problem as a result of *Kenaitze* (i.e., even if the state and federal definitions of "rural" were exactly the same), Alaska has a constitutional problem in that restricting subsistence uses to rural residents--whatever "rural" is defined to be--is not consistent with Alaska's constitution. The "rural definition problem" has not gone away since the *McDowell* decision; state officials are merely faced with a higher order dilemma--a constitutional problem rather than a statutory problem. The *Kenaitze* and *McDowell* cases are discussed in more detail below.

### The U.S. Ninth Circuit Court Ruling in *Kenaitze v. Alaska*<sup>2</sup>

The U.S. Ninth circuit court held that "the state's redefinition of rural does not comport with [Section 803 of ANILCA]. Alaska has failed to enforce the state's subsistence priority; the state is not in compliance with ANILCA." The court refused to consider the legislative history of ANILCA; it stated that "the state argue[d] that its definition of "rural" best promote[d] ANILCA's

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<sup>1</sup>The text of Title VIII of ANILCA is included as Attachment A (Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2422, 16 USC § 3111 et seq.).

<sup>2</sup>*Kenaitze Indian Tribe v. State of Alaska*, 860 F.2d 312 (9th Cir. 1988).

policy of protecting the subsistence way of life...Even if we agreed that this approach more clearly accomplishes the purpose behind ANILCA...Congress passes laws, not purposes...."

The court also ruled in this case that, after initial certification of compliance with the subsistence provisions of ANILCA by the Secretary of Interior, "ANILCA thereafter vests the power to approve or disapprove the state's performance in the courts alone. [The November 1986 letter from the assistant secretary of Interior to the Governor of Alaska] purporting to recertify the state's compliance with ANILCA had no legally operative effect." In other words, the Secretary of the Interior had only one chance to certify that the state was in compliance with ANILCA; any other determination that the state is out of compliance with ANILCA must come from the courts.

The court did rule in *Kenaitze* that the state was out of compliance with ANILCA. The case was then remanded to the lower court for entry of a preliminary injunction. The lower court did not order the state to turn over management of subsistence resources to the federal government--the court merely questioned the state regarding its desire to turn over management of subsistence resources to the federal government. The state expressed a desire to retain management of fish and wildlife resources, federal officials were not eager to take over management of subsistence resources, and the parties in the case agreed to temporize with a one-year fishery for the plaintiffs in the case while officials worked out a permanent subsistence solution. Officials had not arrived at a solution to the rural definition problem when the *McDowell* decision, discussed below, overshadows *Kenaitze* considerations.

#### The Alaska Supreme Court Ruling in *McDowell v. Alaska*<sup>3</sup>

On December 22, 1989, the Alaska Supreme Court found that "the rural preference violates article VIII, sections 3, 15 and 17 of the Alaska Constitution."

##### Article VIII, section 3: The no exclusive right of fishery

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

##### Article VIII, section 15: The uniform application clause

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

---

<sup>3</sup>*McDowell v. State of Alaska*, Opinion No. 3540 (Alaska, December 22, 1989).

Article VIII, section 17: The equal rights clause

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

The court ruled that special privileges--such as the subsistence priority afforded only to rural residents--are prohibited by the three articles of Alaska's constitution listed above. The court specifically stated, however, that it "[did] not imply that the constitution bars all methods of exclusion where exclusion is required for species protection reasons....[The court held] only that the residency criterion used in the 1986 act which conclusively excludes all urban residents from subsistence hunting and fishing regardless of their individual characteristics [was] unconstitutional." The court implied that a system based on individual characteristics might better stand a constitutional test when it stated that "[a] classification scheme employing individual characteristics would be less invasive of the article VIII open access values...than the urban-rural criterion."

On January 5, 1990, at the request of the attorney general of Alaska, Chief Justice Warren W. Matthews granted the state a stay until July 1, 1990 "solely with respect to existing hunting and fishing regulations." Existing hunting and fishing regulations remain in effect until July 1, 1990. Without action by the state or federal governments before July 1, 1990, the state will not be in compliance with ANILCA because it will not be able to implement the rural preference mandated by ANILCA.

Several questions remain regarding the impacts of the *McDowell* decision. The superior court must rule on whether the rural preference part of the 1986 law is severable from the other parts to determine if the remaining parts of the law are still in effect (i.e., do subsistence uses still have priority over other uses or is Alaska without a subsistence priority law altogether). Even if the court determines that the entire subsistence law is no longer in effect, Alaskans could still participate in subsistence uses but subsistence uses would not have priority over other uses.

In the event that the state remains out of compliance with ANILCA, questions remain concerning federal authority to manage subsistence resources. Courts have never ruled on the extent of federal authority to manage subsistence resources in Alaska. It is unclear to what land federal authority applies and what powers the secretary of interior possesses.

The ANILCA states that a subsistence priority exists on "public lands" and defines public lands as "lands, waters and interests...situated in Alaska...the title to which is in the United States." Expressly excluded are State and Native Corporation lands. Some argue, however, that federal authority could extend over "non-Federal lands upon which fish and wildlife resources used for

subsistence depend."<sup>4</sup> As to what powers the secretary possesses, arguments can be made that the secretary has narrow or broad authority. Some argue that the secretary merely has closure authority as stated in ANILCA ("The Secretary, in performing his monitoring responsibility pursuant to section 806 and in the exercise of his closure and other administrative authority over public lands..."); others argue that the secretary's authority extends to setting hunting seasons, bag limits, and other management actions. In 1986, when federal officials prepared a draft plan for "takeover" of management of subsistence resources<sup>5</sup>, they included only "federally owned lands" and included restrictions on hunting seasons, bag limits, gear specifications, etc.

#### RESOLUTION OF CONFLICTS: ALASKA'S OPTIONS AFTER *MCDOWELL*

In the two months since the *McDowell* decision, many Alaskans have thought about ways to resolve the conflicts between ANILCA and the state constitution. A complete analysis of all possible options is beyond the scope of this memorandum; included for your review as Attachment B, however, are a sample of written opinions on ways the state could proceed in response to *McDowell*.<sup>6</sup>

At least two categories of response to *McDowell* are immediately apparent: amend ANILCA to repeal the rural preference or amend the state constitution to allow for a rural preference. Attorneys from the Alaska Department of Law are analyzing the following nine possible courses of action that Alaska officials might take to resolve the conflict between Alaska's constitution and subsistence provisions in ANILCA:

- 1) ask the Alaska Supreme Court to reconsider its decision in *McDowell*<sup>7</sup>;

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<sup>4</sup>Letter from an assistant secretary of the Interior to the director of the U.S. Fish and Wildlife Service (May 6, 1986).

<sup>5</sup>*Federal Subsistence Resource Management Program, Draft, (1986).*

<sup>6</sup>Included are the opinions of Robert E. Price (a former assistant attorney general for the state of Alaska); Gregory P. Cook (private attorney in Douglas, Alaska); John W. Katz (director of the Alaska Governor's office in Washington, DC); the Association of Village Council Presidents; Senator Ted Stevens (from informal comments during the Senator's visit to Juneau in January 1990); the United Fishermen of Alaska; Representative Dick Shultz; and Bill Caldwell (Alaska Legal Services). This author has made no attempt to pick which opinions to include as attachments; all written opinions in the possession of this agency are included.

<sup>7</sup>On February 9, 1990, the State of Alaska and the Alaska Federation of Natives filed petitions requesting the supreme court to reconsider its *McDowell* decision.

Representative Cotten  
February 21, 1990  
Page 13

- 2) amend Alaska's constitution to authorize a subsistence priority for rural residents;
- 3) amend ANILCA to eliminate the federal subsistence priority for rural residents;
- 4) amend state law to provide a subsistence priority to state residents most dependent on fish and wildlife, then amend ANILCA to conform to state law;
- 5) amend ANILCA to preempt state law as necessary to grant rural residents a subsistence priority statewide;
- 6) interpret section 804 of ANILCA as preempting state law on federal lands (as those may ultimately be defined by the courts), with implementation carried out by state officials;
- 7) challenge the ANILCA subsistence priority for rural residents and/or Congress' power to require such a priority on constitutional grounds;
- 8) seek cooperative agreements with the secretaries of Interior and Agriculture under which the ANILCA priority would be implemented by them, perhaps only through closure authority to avoid dual management of the resource; and
- 9) use current management tools--seasons, bag limits, same-day (or even two-day) airborne prohibitions, etc.--creatively to benefit those most dependent on fish and wildlife.

Additional possible state responses to *McDowell* include amending Alaska's constitution and ANILCA to allow for a subsistence priority for Alaska Natives; establishing a system based on individual need for subsistence resources (this option would also require amendments to ANILCA); removing rural preference in ANILCA and enact a state statute which provides subsistence preference based on income, customary use, or other relevant factors; and returning management of subsistence resources to federal authorities, as provided in ANILCA.

\* \* \* \* \*

I hope you find this information useful. If you would like additional information, please do not hesitate to call this office.

Attachments

**Subsistence**

**(Special  
Session)**

# AVCP

Association of Village Council Presidents  
P.O. Box 219 • Bethel, Alaska 99559 • Phone 336-5512

RECEIVED  
MAY 14 1990

GOVERNOR'S OFFICE

May 10, 1990

Governor Steve Cowper  
P.O. Box A  
Juneau, Ak. 99811

Dear Governor Cowper:

The Legislature has recently adjourned without addressing the subsistence issue. Lack of action, I am sure, may have created vacancies within the Alaska Department of Fish and Game.

If the vacancies have been created and the Legislature does not address the subsistence issue, we are requesting that you consider having the funds BRU'd to AVCP, so that we can use the funding in administering a contract with USFWS in management of resources on Federal lands.

We are presently preparing our contract proposal to USFWS - DOI for the management of resources.

Thank you for your assistance.

Sincerely,

ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS  
Willie Kasayulie, Chairman

  
Myron P. Naneng, President

MPN:cmh



Post-It™ brand fax transmittal memo 7671		# of pages	3
To	Gov. Cowper	From	ANNA Phillip
Co.	Gov's Office	Co.	ICC
Dept.		Phone #	258-6917
Fax #	463-3454	Fax #	276-4330

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## INUIT CIRCUMPOLAR CONFERENCE

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### INUIT CIRCUMPOLAR CONFERENCE PRESS RELEASE

**TO:** Newspapers, Television, Radio Stations, and Interested Citizens.

**FROM:** Anna Phillip, Special Assistant - ICC Alaska Office

**DATE:** May 14, 1990

**RE:** ICC statement on subsistence issue in Alaska

Enclosed is the Inuit Circumpolar Conference (ICC) statement on subsistence issue in Alaska. The ICC Executive Council made this statement during the meeting in Barrow, Alaska, May 10 - 12, 1990.

Attached is the names you can contact for more information.

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**HEAD OFFICE:**

650 32ND AVE SUITE 404  
LACHINE QUEBEC H8T 1Y4  
TEL (514) 637-3771  
FAX (514) 637-3146

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**REGIONAL OFFICES:**

ALASKA 429 D Street Suite 202 Anchorage, Alaska 99501. tel (907) 258-6917 FAX (907) 276-4330  
GREENLAND P O Box 204 DK 3900. Nuuk, Greenland tel (011) 299-23632 FAX (011) 299-23001  
CANADA 170 Laurier Street Suite 510, Ottawa, Ontario K1P 5V5 tel (613) 563-2642 FAX (613) 234-1991

INUIT CIRCUMPOLAR CONFERENCE  
STATEMENT ON THE  
ALASKA SUBSISTENCE  
ISSUE

The Executive Council of the Inuit Circumpolar Conference (ICC), the international organization representing Inuit of Greenland, Canada, and Alaska met from May 10 - 12, 1990 in Barrow, Alaska.

During the meeting Rep. Eileen MacLean addressed the Council on the Alaskan subsistence issue.

ICC is deeply concerned by the failure of the State of Alaska to bring the subsistence priority law into compliance with the Alaska National Interest Lands Conservation Act (ANILCA).

It is the position of the ICC that the priority of indigenous subsistence rights must be recognized and protected. With regard to non-subsistence utilization, it is appropriate that after subsistence needs have been met, and subject to conservation requirements, any harvestable surplus should be available for other uses. To achieve these management objectives in the absence of appropriate state legislation and regulations, ICC recognizes and supports the right of the Alaskan tribes and Native organizations to contract with the federal government to cooperatively manage the resources on which they depend.

Having failed to resolve the present crisis and to avoid further jeopardizing Alaskan subsistence, the State of Alaska should not enter into any federal contract for management responsibilities unless and until the current legal impasse has been resolved to the satisfaction of Alaskan Natives.

It is the view of the ICC that tribal and Native organizations are in the best position to negotiate cooperative management agreements in the long-term interest of the resources and of subsistence users who depend on them.

The Alaska Federation of Natives has called for the ultimate recognition of a subsistence priority for Alaska Native members and for the affirmation of the authority of Alaska tribes to manage and regulate subsistence activities by their members. The ICC strongly supports this AFN priority and calls on the State of Alaska to work with tribal authorities and Native organizations to seek a lasting solution which recognizes and supports Alaskan subsistence.

Page Two  
ICC Subsistence Statement

For more information contact the following ICC representatives.

Mary Simon (514) 637-3771 ICC Head Office,  
ICC President Canada

Edna MacLean (907) 465-2800 Work Phone  
Alaska Vice President

Charlie Johnson (907) 443-5592 Home Phone  
Executive Council

# NORTH SLOPE BOROUGH

OFFICE OF THE MAYOR

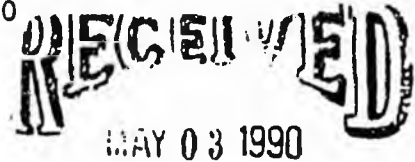
P.O. Box 69  
Barrow, Alaska 99723

Phone: 907-852-2611

George N. Ahmaogak, Sr., Mayor



April 27, 1990



Walter O. Stieglitz  
Regional Director  
U.S. Fish and Wildlife Service  
1011 E. Tudor Road  
Anchorage, AK 99503

GOVERNOR'S OFFICE

Dear Mr. Stieglitz:

Thank you for including the North Slope Borough in your call for comments in the event the Federal Government takes over the management of fish and wildlife resources on Federal lands in the State of Alaska. I commend the U.S. Fish and Wildlife Service for taking these steps to prepare for that possibility.

I would like to restrict my comments on the lands within the North Slope Borough which would be affected by the possible takeover by the federal government on the management of fish and wildlife resources in Alaska if the State is unable to comply with the terms of ANILCA by July 1, 1990. Under ANILCA these would include national wildlife refuges, national parks, national forests and other lands under the auspices of the Federal Government.

The North Slope Borough encompasses an area of approximately 88,000 square miles, and within its jurisdictional boundaries lies the Arctic National Wildlife Refuge, National Petroleum Reserve - Alaska, Gates of the Arctic National Park and Preserve, Bureau of Land Management CAMA Lands (which includes some of the Haul Road Corridor) and the Teshekpuk Lake Special Study Area. These lands under federal mandates cover a lot of area in the North Slope region and the North Slope Borough asks that careful consideration be given when and if the Federal Government does take over management of these federal lands for the subsistence hunting and fishing of the natural renewable resources in the State of Alaska.

Walter O. Stieglitz  
April 27, 1990  
Page 2

The above mentioned lands have been used by local residents for subsistence hunting and fishing from generation to generation and the North Slope Borough would not like to see that continued use disrupted in any way.

The natural renewable resources are plentiful in these lands and the populations of the various species utilized for subsistence purposes by local residents are not in any danger of being diminished in the near and long term. The North Slope Borough Department of Wildlife Management has had good working relationships with both the State and Federal agencies on the management and research of these resources in the past and they should be included in all phases of the probable takeover process.

Most of the resources taken for subsistence purposes by local people of the North Slope are for personal consumption and the by-products then used to create clothing and handicraft either for personal use or for sale to other people within the Borough and outside. We also would not like to see any restrictions placed on the transportation of these resources within and outside the borough. We have people who travel outside the borough who in one way or another utilize subsistence resources while they are away from the borough.

I would like to cite an example of the kind of problem we may face if that concern is not expressed to the Service. Several years ago, a resident of the North Slope Borough had to spend quite a bit of time in Anchorage to be with his daughter who had a terrible accident. She was in critical condition for several weeks and the man in question wanted to be with her until he knew that she would survive. While in Anchorage, he craved for native food so he asked his relatives to send him some geese and muktuk. Somehow the U.S. Fish and Wildlife Service Enforcement office was tipped off and when the man went to get his package he was cited on the spot for a violation of federal law regarding migratory birds. He was ordered to appear in district court to face these charges. After having been through a humiliating experience the charges were later dropped. This man was put through a very unnecessary and humiliating ordeal which to this day he shudders even when he thinks about it. No person who wants to eat food he has been raised with or craves for should ever again be put through this process. The transport of subsistence foods to other people within and outside the borough must be allowed if the Federal Government should take over the management of subsistence resources in their lands.

The question of reasonable access should also be addressed and the local people who would be impacted must have the opportunity to

Walter O. Stieglitz  
April 27, 1990  
Page 3

be heard by Federal personnel at their own villages and areas where they do most of their subsistence hunting and fishing. There have been instances in the past where local people were denied reasonable access to traditional hunting areas located within Federal lands. If they were allowed access in Federal lands, it was usually restricted to very narrow easements which we believe were unreasonable and arbitrarily laid out without input from the local people. The animals hunted for subsistence purposes wouldn't know an easement if they crossed one and would not stay on it anyway and the people who hunt them would be reluctant to stray from the easements because of their unwillingness to break any laws. We believe these access problems only apply to summer travel since there are few or no restrictions on winter travel on Federal lands. Most people who hunt during the summer months do so with all terrain vehicles or boats in navigable waters. The use of all terrain vehicles should be allowed in the summer months if travel by any other means is not possible. We know there are some hurdles to go through if this was allowed but I know that local people would be willing to talk to Federal personnel about this mode of travel.

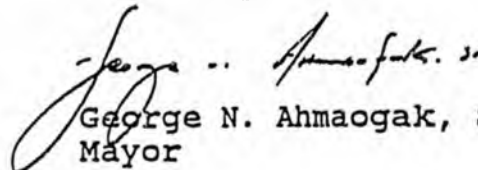
If the Federal Government did take over the management of subsistence resources on their lands, the North Slope Borough, as a home rule government, must be given the opportunity to contract with the Federal Government on the management of fish and wildlife resources within its jurisdictional boundaries as provided for in ANILCA. We are not saying that we are willing to do so at this time but this avenue must be kept open at all times during the life of federal management of our fish and wildlife resources. If we were to contract with the Federal Government on some or all aspects of managing fish and wildlife resources within the borough, we would expect to receive enough financial resources to do a good job.

The Federal Government must make sure that all villages within the North Slope Borough have the opportunity to participate in this rule making process if it has any chance of succeeding. Too many times in the past, the Federal Government has initiated changes in the way things are done in rural Alaska with little or no input from the people who are most impacted. These changes wreck havoc on the lives of these people and they have no ways or means to reverse the changes. The Federal Government has a chance to do something right for a change and that will take a lot of time and effort on your part. We understand that this management process is a temporary measure and that the Federal Government will review the procedures if it happens that the State of Alaska does not make a permanent change to comply with the federal laws.

Walter O. Stieglitz  
April 27, 1990  
Page 4

I thank you again for including us in the process and if you have any questions about our position, please contact Mr. Benjamin P. Nageak, Director of the North Slope Borough Department of Wildlife Management at 852-2611, ext. 240.

Sincerely,

  
George N. Ahmaogak, Sr.  
Mayor

cc: Honorable Governor Cowper  
Senator Al Adams  
Representative Eileen MacLean  
Dan Fauske, C.A.O.  
Warren Matumeak, Director, Planning  
Dennis Roper, Federal Affairs  
Ben Nageak, Director, Wildlife Dept.

Donald Bremner  
2150 C Lawson Creek Road  
Juneau, Alaska 99824  
Phone (907-364-2607)

RECEIVED

MAY 10 1990

HAND DELIVERED  
GOVERNOR'S OFFICE

RECEIVED

MAY 10 1990

GOVERNOR'S OFFICE

May 9, 1990

Mr. Manuel Lujan, Secretary  
U.S. Department of Interior  
Interior Building, C Street N.W.  
Washington, DC 20240

RE: RECOMMENDATIONS TO MANAGEMENT OF FISH AND GAME ON FEDERAL LANDS  
IN ALASKA BY THE DEPARTMENT OF INTERIOR.

Dear Mr. Lujan;

My name is Don Bremner, I was born and raised in Yakutat Alaska. Following are my recommendations regarding Federal Management of Fish and Game in Alaska on Federal lands. My recommendations are in two parts, WHAT NOT TO DO and WHAT SHOULD BE DONE by the Department of Interior regarding this management issue.

1. WHAT NOT TO DO

a. Donot contract fish and game management out to the State of Alaska or their agents.

JUSTIFICATION

The State of Alaska has had every legal, political, and administrative opportunity to implement proper measures to manage the resources in Alaska, but, they have failed in their government responsibility to the people and resources involved. The State of Alaska is not now a part of the solution, but, a part of the problem. Therefore, it would not be a solution to allow the State of Alaska to attempt to correct their errors under the veil of Federal Authority and programs.

b. Donot contract fish and game management to native organizations or the Bureau of Indian Affairs.

JUSTIFICATION

In order to manage fish and game requires people, time and money.

Both the native organizations and the Bureau of Indian Affairs lack all three of those necessary items of resource management. Therefore, it would not be a solution to contract fish and game management to either entity.

c. Donot reduce any valid existing right of native resource use or reduce any harvest or escapement goal of fish and game resources.

#### JUSTIFICATION

Native resource users have established uses which have withstood the test of time and nature. Native uses are done in seasons of harmony with the resource and with their native way of life. The Department should take this opportunity to enhance the native ways of resource use with harvest and escapement goals.

#### 2. WHAT SHOULD BE DONE BY THE DEPARTMENT OF INTERIOR

a. Prior to taking over management the Department should make public the laws and authority that will apply to the overall management program.

b. Prior to taking over management the Department should make public all regulations that will apply to fur, fish, game and fowl uses.

c. Prior to taking over management the Department should make public maps of all Federal lands which will be subject to the management program.

d. Prior to taking over management the Department should make known the names, addresses, and locations of all management offices and agents responsible for the management programs, regulation implementation and enforcement.

e. Finally, prior to taking over management the Department should identify the Courts of Jurisdiction responsible for adjudication of claims and cases that will arise as a result of this new program.

#### 3. REGULATIONS SHOULD ADDRESS THE FOLLOWING ACTIVITIES

There are basic components to any resource management program such as program policies that embody the philosophy behind management thinking; Congressional Acts of Authority; Statutes; Codes and Regulations. Current Federal take-over regulations should address the following;

1. Administration operations and procedure.

a. Resource management planning and public participation procedure.

- b. Public relations management.
- c. Inter-government coordination and relations procedure.
- d. Land use planning and procedure.
- 2. Fish and game regulations for Alaska.
  - a. Wildlife management concepts and principles.
  - b. Wildlife management harvest and escape principles.
  - c. Wildlife management conservation and preservation techniques.
- 3. All federal take-over programs should include the following.
  - a. Titles of programs.
  - b. Purposes of programs.
  - c. Authority of programs.
  - d. Applicability and scope of programs.
  - e. Definitions of legal and common use terms.
  - f. Program policies.
- 4. Federal take-over program structure should include the following.
  - a. Program diagrams and charts.
  - b. Local advisory committees.
  - c. Regional fish and game councils.
  - d. Federal boards of fisheries and game.
  - e. Federal monitoring procedures.
  - f. Park and monument subsistence commissions.
  - g. Cooperative federal agency management guidelines.
  - h. Federal subsistence board and division or department.
- 5. Federal take-over regulations should include the following.
  - a. Licenses, permits, harvest tickets, tags and fees.
  - b. Rural and urban uses.

- c. Aircraft uses.
  - d. Penalties.
  - e. Subsistence hunting and trapping.
  - f. Methods of taking wildlife.
  - g. Unlawful methods of trapping.
  - h. Unlawful methods of hunting and fishing.
  - i. Localized restrictions by region.
  - j. Marked or tagged wildlife.
  - k. Wildlife as animal food or bait.
  - l. Feeding of wildlife.
  - m. Emergency taking of wildlife.
  - n. Taking of wildlife in defense of life or property.
  - o. Endangered species.
6. Regulations of subsistence should include the following.
- a. Subsistence uses permitted.
  - b. Types of legal gear.
  - c. Unlawful possession of subsistence species.
  - d. Regional programs that include descriptions, seasons and periods, lawful gear and specifications, areas closed and closures, subsistence permits, marking of subsistence take, possession and bag limits.
7. Regulations should include the following procedures.
- a. Procedures for annual regulations.
  - b. General provisions.
  - c. Purpose and scope of annual regulations.
  - d. Regulation development.
  - e. Seasons, bag limits and possessions.
8. The Yakutat region to remain separate and distinct from other

areas.

a. The Yakutat region should be from Cape Suckling to Cape Spencer for management purposes.

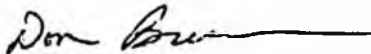
b. A federal agent should be designated for the Yakutat region and stationed in Yakutat.

c. All recommendations herein should apply to the Yakutat region.

d. One exception to any common regulations applied statewide is the fact that aircraft use should be allowed in the Yakutat region along with other existing motorized uses.

This concludes my comments and recommendations regarding Federal take-over management of fish and game resources in Alaska. I look forward to hearing from you and participating in local meetings here in the State of Alaska.

Sincerely,



Don Bremner

cc/ The Honorable Steve Cowper, Governor of Alaska  
Ms. Julie Kitka, President of the Alaska Federation of Natives



May 9, 1990

RECEIVED  
MAY 11 1990

GOVERNOR'S OFFICE

Mr. Walter O. Stiglitz  
Regional Director  
Fish and Wildlife Service  
U.S. Department of the Interior  
1011 E. Tudor Road  
Anchorage, Alaska 99503

Re: April 20, 1990 Notice of Intent  
Regarding Title VIII of ANILCA

Dear Mr. Stiglitz:

We are responding to the Fish and Wildlife Service (USFWS) request for public input on how Title VIII of ANILCA should be implemented on public lands in the event the State of Alaska can no longer provide for a subsistence priority. Sealaska Corporation has been extremely concerned about those dynamic changes occurring in fish and wildlife resource management. They have been created, in part, by ineffective administration and ineffective rule making, which has resulted in court intervention and involvement in Alaska fish and game resource management. The inability of the Alaska Legislature to come to agreement before the end of the 1990 session concerning how to begin the process of bringing the State back into compliance with ANILCA only serves to demonstrate how factionalized the public is regarding the issue.

The uncertain nature of the situation and the short time frames make it necessary for your agency to begin to develop interim regulations which will impact subsistence uses on public lands managed by the National Park Service, the Bureau of Land Management, the Forest Service, the Air Force, the Army, and various other land managing agencies as well as your own agency. Because most of the Southeast region is under federal ownership and management, there has been much interaction. Sealaska would like to take this opportunity to share its insights concerning the land and resource management agencies and their apparent "attitudes" concerning subsistence.

In Southeast, the primary federal agency having the authority to manage public lands is the Forest Service. The USFS and Sealaska differ on the priority to be given to subsistence pursuant to ANILCA. Sealaska's position is that ANILCA requires that subsistence must be given the priority over all other consumptive uses of the forest. This, in turn, would result in the "least adverse impact possible on rural residents who depend upon subsistence uses . . . consistent with . . . the purposes for each unit established, designated or expanded by or pursuant to Titles II through VII of ANILCA".

Our involvement in the Tongass Land Management Plan (TLMP) Revision process has enabled us to determine that the current forest management regime places subsistence in a secondary role to all other forest uses and places the burden of proof on the subsistence users to establish how they are adversely affected by USFS activities rather than on the agency to meet the terms and conditions of ANILCA. Neither the new planning process nor TLMP Revision will correct this.

Our concern is heightened by an ongoing resistant attitude on the part of the Forest Service. We have continued to have dialogue with them concerning a more integrated approach to planning and managing for subsistence - without result. All this despite the fact that Native people have organized and channeled their input in order to help agencies to manage land and resources in recognition of the ANILCA subsistence mandates and to prevent further deterioration of their subsistence rights.

Section 810 of ANILCA mandates that a federal agency having primary authority over federal public lands must effect the subsistence priority in land use decisions. Yet in the case of the Forest Service, that mandate is weakened by administrative interpretations under which the agency simply evaluates proposed activities to determine if a significant restriction to subsistence opportunity will occur. Of course, 810 guidelines are written in such a way that they can proceed even if it is determined that the activity poses a significant restriction to subsistence uses *as long as the activity is consistent with the intended use of the area (management prescription)*.

In Sealaska's opinion, to effectively manage subsistence (as well as other consumptive uses) in the Tongass, the USFS must investigate and identify subsistence in the forest prior to making any determinations of use of the forest. Only after the USFS has determined the subsistence uses and area, and only then, can it make section 810 determinations. The burden of proof should not be on the rural residents to establish how they are adversely affected, but on the federal agency to meet the terms and conditions of section 810(a)(1)(3). This process must be clarified in any federal management regime.

Mr. Stiglitz - Sealaska is extremely concerned about the state regional council system. The role of the regional councils, as envisioned by ANILCA, is critical to both the federal management and state regulatory processes. In addition to providing recommendations to the state boards, ANILCA requires that the regional councils and local advisory committees be permitted to influence the decisions of all other agencies having authority over public lands where agency decisions could significantly affect subsistence. This is not occurring. The Forest Service is preparing to make major decisions regarding subsistence in the Tongass without the participation of the regional council system.

Furthermore, the National Park Service will not even recognize subsistence uses as legitimate. In the Glacier Bay situation, the National Park Service has interpreted federal law in such a manner that the outcome is directly opposite of what was intended. They are disallowing any subsistence uses in the Glacier Bay area. When Glacier Bay was brought into protected status in the 1920's, the federal government assured the local residents that they would be allowed to use the lands as they had historically used them. However, the restriction of Native subsistence activities began almost immediately, through bans on fish, gathering of seagull eggs and seal hunting. More recently, the State Board of Fisheries expanded subsistence permits to include certain salmon streams emptying into the Glacier Bay, in recognition of the long term traditional and customary ties that the Hoonah Tlingits have to the area. The National Park Service staunchly

refused to recognize the state permits. The battle has become jurisdictional with the Hoonah people paying the price.

In your notice, the Secretary has expressed an intent to work in close cooperation with the State in order to minimize disruption to fish and wildlife users and to historical state management of resident fish and wildlife. Southeast Natives, through the Southeast Native Subsistence Commission and the General Assembly of the Tlingit and Haida Indian Tribes of Alaska, had also agreed to work cooperatively with the Alaska Federation of Natives and the State of Alaska for an amendment to the state constitution. We took this position in the interest of unifying Native people to achieve a common goal - the protection of existing rights - and in the interest of working out our differences with non-Native friends and neighbors. We took this position to support single resource management on public lands and to keep the management authority with the state and closer to home. It is our belief that dual management would only complicate an already complicated resource management system and process. We have not changed our opinion. However, now that this effort has failed, we assume that USFWS will move ahead with plans which, in part, involve use of the state regulatory and regional council system.

Your statement regarding your intent to address the regional council system only in the event that you have to promulgate permanent regulations leads us to believe that you will use the existing regional council system to meet your agency's regional participation mandate. This concerns us since we have had the opportunity to examine the system as it operates in Southeast Alaska. Southeast conditioned its support for state retention of management authority on whether the State agreed to review and revise, as necessary, state subsistence statutes, policies, regulations, programs and practices in order to establish an overall subsistence management regime that is responsive to the true needs of Alaskans. We have attached a copy of the *Summary Recommendations and Conclusions* of Sealaska's white paper study which concluded that the Board of Fisheries and the state advisory committee/regional council system were out of compliance with ANILCA.

Federal oversight has become inevitable at least for an interim period. In one sense it may be an opportunity for the Secretary to ensure an across the board application of subsistence management procedures by all appropriate federal land management agencies. Secretary Lujan indicated the desirability of uniform procedures at the recent AFN Summit Conference in Anchorage. Sealaska strongly encourages this whether the state recaptures management authority or not.

Sealaska agrees with the commitment evidenced by the USFWS statement in the Notice: *"The protection of wild renewable resources and the opportunity to utilize those resources by rural Alaskan residents on public lands for subsistence purposes are of paramount importance to the Federal government and to the public as a whole."* We also like the manner in which you have listed the mandates which must be met through any promulgated regulations. They are simple to understand and straight forward and are a good place to start from. Those mandates:

To ensure the maintenance of healthy fish and wildlife populations.

To define subsistence uses as the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; or 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.

To provide for nonwasteful subsistence uses of fish and wildlife and other renewable resources as priority consumptive use of such resources on public lands, and when it is necessary to restrict consumptive uses.


To provide reasonable access to subsistence users as well as for a system of regional participation.

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

In closing, we strongly encourage you listen and talk to those people that will be most affected by your decisions - Native and rural subsistence users. The consequences may be an unacceptable resource management package if subsistence users concerns are ignored, which may, in turn, invalidate federal government efforts. We stand prepared to assist you to this end. Thank you for your consideration.

Sincerely,

SEALASKA CORPORATION



Robert W. Loescher  
Executive Vice President  
Natural Resources Management

**Attachments - 5**

Review of the State Management System - Workbook  
Synar Testimony - Tongass Timber Reform  
Summary Regional Council White Paper  
Sealaska Position on Regional Council System  
Sealaska Position on TLMP Revision

cc: Robert Willard, SENSC President  
Richard Stitt, ANB Grand President  
Susan Sargent, ANS Grand President  
Ed Thomas, CCTHIFA President  
Marlene Johnson, Sealaska Corporation  
Byron I. Mallott, Sealaska Corporation  
Chris McNeil, Sealaska Corporation  
William K. Williams, President - Cape Fox Corp.  
Joe Wilson, President - Goldbelt, Inc.  
James P. Senna, President & CEO - Shee Atika, Inc.  
Lowell Peterson, President - Yak-Tat Kwaan  
Corrine Garza Medina, CEO - Klawock Heenya Corp.  
Ralph Strong, CEO - Klukwan, Inc.  
Clarence Jackson, President & CEO - Kake Tribal Corp.  
Gordon James, President - Shaan-Seet, Inc.  
George D. Cooper, CEO - Huna Totem Corp.  
Bruce Cook, Jr., President - Haida Corporation  
Louis A. Thompson, President & CEO - Kavilco, Inc.

Mayor Liv C. Gray, City of Hoonah  
Mayor Daniel Johnson, Jr., City of Angoon  
Mayor Donald James, Sr., City of Kake  
Mayor Aaron Isaacs, Jr., City of Klawock  
Mayor Dennis Watson, City of Craig  
Mayor , City of Hydaburg  
Mayor Frank Waliace, City of Haines  
Mayor Estelle Thompson, City of Kasaan  
Mayor Harry A. Davidson, City of Pelican  
Mayor Forrest Dewitt, City of Saxman  
Mayor Dan Keck, City & Borough of Sitka  
Mayor Larry Powell, City of Yakutat  
Sam Kito, Kito & Associates  
Julie Kitka, AFN  
Southeast Conference  
Southeast IRA Councils  
Alaska Congressional Delegation  
Governor Steve Cowper  
Craig Lindh, Office of the Governor  
Michael Barton, Regional Forester, USFS Alaska Region  
Steve Brinks, Team Leader - TLMP Revision  
Bob Muth, USFS Regional Office - Subsistence  
USDOJ/BIA Tribal Operations - Juneau Area Office  
State Board of Fisheries  
State Board of Game  
Southeast Regional Fish and Game Council  
Commissioner Collinsworth, ADF&G  
Southeast State Legislators  
Joe Mehrkens, Southeast Natural Resources Center  
Bart Kohler, Southeast Alaska Conservation Council  
Jim Clark, ALA  
Thyes Shaub, ALA

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# ALASKA FEDERATION OF NATIVES, INC.

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



May 15, 1990

The Honorable Steve Cowper  
Governor, State of Alaska  
P.O. Box A  
Juneau, AK 99811

Dear Governor Cowper:

With considerable speculation now being voiced in the media over a possible special session of the Sixteenth Alaska Legislature, I want to pass along the encouragement of the Alaska Federation of Natives, and the statewide Native community for a responsible solution of the impending subsistence crisis.

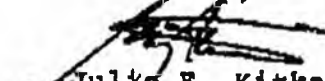
As you know, AFN made every possible effort during the regular session to support passage of a constitutional amendment. We are convinced that such an action, allowing State law to comply with Federal law, is the only way of keeping fish and game management in State hands.

The position of the Native community remains that which emerged from our Subsistence Summit Conference on April 11. We do not want a Federal takeover on Alaska's public lands after July 1. Such a scenario would most likely result in management chaos, years of litigation and further divisiveness in our state's politics. The Legislature's initial failure to deal with the issue, while disappointing, has not caused us to give up or to change our minds. We support continued State management of all fish and game through compliance with ANILCA, and we stand ready to support you in that effort. If a special session is feasible, we strongly encourage you to take the lead in making it a reality.

Integrity • Pride in Heritage • Progress

Should a special session turn out to be impossible, then we, like all Alaskans, have no choice but to prepare ourselves for Federal intervention. But as long as there is any chance to fix this problem at the State level and to keep our renewable resources in Alaskan hands, we want you to know that we support your efforts and will help in any way you deem appropriate.

Sincerely,

  
Julia E. Kitka  
President

# MEMORANDUM

# State of Alaska

Department of Law

TO: Denby S. Lloyd, Special Assistant DATE: May 15, 1990  
Office of the Governor

FILE NO:

TEL. NO: 465-3600

SUBJECT: Pros and cons of  
challenging ANILCA's  
subsistence provisions

GTK

FROM: G. Thomas Koester  
Assistant Attorney General

CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATION AND  
DELIBERATIVE PROCESS DOCUMENT

You asked for a short memorandum outlining the advantages and disadvantages of filing a lawsuit challenging the provisions of Title VIII of the Alaska National Interest Lands Conservation Act ("ANILCA"), P.L. 96-487, 94 Stat. 2371, 2422-30, 16 U.S.C. §§ 3111 et seq. (1980), which give rural residents a preference for subsistence uses of fish and wildlife on federal land.

I. Advantages of filing suit

There would be some advantages to filing a suit challenging the constitutionality of ANILCA's subsistence preference for rural residents on federal land. First, such a suit would please those Alaskans who believe all Alaskans, no matter where they live, should have the same rights to fish and wildlife resources, those who oppose a subsistence preference for rural residents, and those who believe the federal government has no right to dictate the manner in which fish and wildlife in Alaska should be managed or allocated among competing user groups.

Second, if a preliminary injunction preventing the federal government from taking over fish and wildlife management on federal land while the suit is pending can be obtained, such a federal takeover would at least be postponed (but see below: a preliminary injunction probably cannot be obtained).

Third, if the suit is successful on the merits, the threat of a federal takeover would be eliminated altogether (but see below: the suit probably would not be successful on the merits; moreover, success on the merits might well lead to new Congressional action at least as onerous as the existing subsistence preference for rural residents).

Fourth, during the pendency of the litigation, such a lawsuit would provide an excuse for the state to take no action with respect to a constitutional amendment until the courts have

finally ruled on the federal government's authority to require such a preference on federal land and to take over fish and wildlife management unless the state enacts such a preference.

Finally, such a lawsuit would resolve the issue of the federal government's authority to enact such legislation once and for all (but see below: the lawsuit probably would be resolved in favor of the federal government).

## II. Disadvantages of filing suit

There are several disadvantages to filing a lawsuit challenging the federal government's authority to establish a subsistence preference for rural residents on federal land. The first is that, on the legal merits, such a case probably cannot be won. Attached is a copy of a May 6, 1990, letter from me to Representative Mike Navarre in which I concluded that such a lawsuit probably would not be successful. <sup>1/</sup> In that short letter, I discussed the two most obvious potential challenges to ANILCA's subsistence preference for rural residents: (1) challenging the rural/urban classification on federal equal protection grounds; and (2) challenging the federal government's action as a violation of state's rights. In my opinion, the federal government would prevail on both issues.

Both Representative Robin Taylor (minority leader in the House and a staunch opponent of the subsistence preference for rural residents) and Wayne Anthony Ross (Vice President of the National Rifle Association and a staunch opponent of the subsistence preference for rural residents) have stated publicly that they agree with my conclusions with respect to those two issues. They believe, however, that the state should argue that the term "subsistence" cannot be given a meaningful definition and therefore ANILCA's subsistence provisions are void for vagueness.

The problem with such an argument, of course, is that Congress defined the term "subsistence uses" in section 803 of ANILCA:

Sec. 803. As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild,

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<sup>1/</sup> I deliberately styled the letter as my own personal conclusions and not those of the Department of Law so, should the state file such a suit, my views could be discounted as those of only one Assistant Attorney General who had reviewed the matter only briefly, and whose views therefore do not bind the state. Most attorneys who have studied the questions addressed in that letter, however, agree with my conclusions.

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; for barter, or for sharing for personal or family consumption; and for customary trade. For the purposes of this section, 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 of their parts; or

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

In addition, the state has made determinations regarding "subsistence uses" for many years. While some people have disagreed with those determinations, the determinations nonetheless have been made, demonstrating that it is possible to make such determinations with respect to the given factual circumstances surrounding specific uses of various fish stocks and wildlife populations. Those applications of the term "subsistence uses" to various factual contexts will be highly persuasive in any void for vagueness court challenge: "It is well established that vagueness challenges to statutes which do not involve First Amendment freedoms must be examined in the light of the facts of the case at hand." United States v. Mazurie, 419 U.S. 544, 550 (1975).

In short, Congress defined "subsistence uses" in ANILCA as "customary and traditional uses" of fish and wildlife. That definition has been, and will continue to be, applied administratively, either by the state or by the federal government. "The fact that Congress might, without difficulty, have chosen '[c]learer and more precise language' equally capable of achieving the end which it sought does not mean that the statute which it in fact drafted is unconstitutionally vague." United States v. Powell, 423 U.S. 87, 94 (1975) (citation omitted). A void for vagueness challenge of ANILCA's subsistence provisions probably would be unsuccessful.

A second disadvantage to bringing such a lawsuit is that, until a final judgment is obtained, the uncertainty over the final resolution of this controversy would be prolonged. During that

time, as pointed out in my May 6, 1990 letter to Representative Navarre, it is unlikely that a preliminary injunction could be obtained since the lower federal courts would be bound to apply governing United States Supreme Court precedents and accord ANILCA's subsistence provisions a presumption of validity. <sup>2/</sup> As a consequence, the federal government would begin managing at least some fish and wildlife resources in the state, making it more difficult for the state to regain management authority over those resources later on.

A third disadvantage is that such a lawsuit would represent an apparent reversal of what has been the state's policy for most of a decade (since Congressional enactment of ANILCA): favoring a subsistence preference for rural residents. This most certainly would upset rural residents, including large numbers of Alaska Natives.

Moreover, ANILCA was the product of intense negotiations between the state, the oil companies, the Alaska Native community, and the commercial and sport hunting and fishing interests. As finally enacted, it was viewed as a compromise that did not satisfy everyone but that all parties could accept. A state challenge to the subsistence provisions in ANILCA undoubtedly would be viewed by Congress as the state now reneging on the agreement it struck a decade ago. This clearly could have implications in the future with respect to the state's ability to advocate effectively before Congress on other issues: If the state reached agreement on ANILCA's subsistence provisions only to turn around and challenge them, what is to prevent the state from reaching agreement on other compromises only to turn around and challenge those provisions it does not like?

Finally, if the state is successful in such an action, that success might well provide the opportunity for Congress to exercise its constitutional authority over interstate commerce, Native issues, and federal land to craft subsistence provisions which are even more onerous and undesirable from the state's

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<sup>2/</sup> Both the state and the federal government would be required to manage in such a way that sustained yield is not jeopardized, so the balance of hardships with respect to the resource probably does not tip in either direction. Because of United States Supreme Court precedents, the federal government would be able to show a greater probability of success on the merits, and preliminary injunctive relief probably would be denied. It should be pointed out that the lower federal courts are bound by prior decisions of the United States Supreme Court, and it is questionable whether the Supreme Court would even review this case if brought. Moreover, it does not take a genius to recognize that the state's actions in this area have not been given much respect by the federal courts.

perspective than a rural subsistence preference. The ANILCA subsistence preference for rural residents is one that the state has accepted and attempted to live with, albeit not without difficulty (particularly in light of decisions by both federal and state courts). Should Congress legislate on this subject again, there is no guarantee that the new approach will be even as acceptable as the rural preference in current law.

III. If suit is brought, consider outside counsel

If a decision is made to file a lawsuit challenging ANILCA's subsistence preference for rural residents on federal land, some consideration should be given to retaining outside counsel to bring the action. The attorneys in this department have consistently supported the subsistence preference for rural residents, both as it exists in ANILCA and as it existed in state law prior to the McDowell decision. In terms of credibility with the courts, it could be prejudicial to the state's case for those who once defended the rural preference to now turn around and attack it.

In addition, those who oppose the rural subsistence preference have been very critical of this department's work on this issue. To the extent filing such a lawsuit is what that constituency wants, having an attorney in this department file the action would negate any good will which otherwise might be gained. Indeed, the opponents of the rural subsistence preference probably would conclude that the state was not seriously challenging the preference since the same lawyers that used to defend it now would be attacking it.

At a minimum, when (as we believe likely) ANILCA's rural subsistence preference ultimately is held constitutional, the opponents of that preference will be tempted to attribute the court's decision to a lack of effective state advocacy and not the legal merits. To the extent one advantage of bringing such a suit is to resolve the question once and for all, it is imperative that all parties accept the final court judgment on the merits and not continue to argue the issue.

If such a lawsuit is brought, all of these problems would be eliminated by retaining private counsel to prosecute the action. (This department unfortunately has no discretionary funds to pay for such an effort. We do not know what funds the Department of Fish and Game may have available for this purpose.)

Denby S. Lloyd, Special Assistant  
Office of the Governor

May 15, 1990  
Page 6

We hope this answers your questions. If we can be of further service, please contact us at your convenience.

GTK:prm

Attachment

cc: Norm Cohen, Deputy Commissioner  
Department of Fish and Game

Steve Behnke, Director  
Subsistence Division  
Department of Fish and Game

Mike Irwin, Special Assistant  
Office of the Governor

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

May 16, 1990

The Honorable Bettye Fahrenkamp  
Alaska State Senator  
119 N. Cushman Street, Suite 201  
Fairbanks, AK 99701

Dear Bettye,

The Alaska State Legislature adjourned last week without tackling one of the most significant issues facing the State: subsistence. As you know, the Alaska Supreme Court, in McDowell v. State, found the current State subsistence law unconstitutional, leaving us in direct conflict with requirements for a rural subsistence priority in federal law. I believe that the Legislature must act on this issue, and that the only viable solution is an appropriate amendment to the Alaska Constitution. Amending ANILCA or suing the federal government to address this basic issue are not viable options.

On July 1, regardless of legislative action, the federal government will begin substantial management of fish and wildlife in Alaska. The uncertainties of interim federal management can be kept to a minimum if there is an indication that Alaska will provide for a solution to this dilemma; however, with no such indication, the federal government will have no incentive to tailor its efforts to meet our needs.

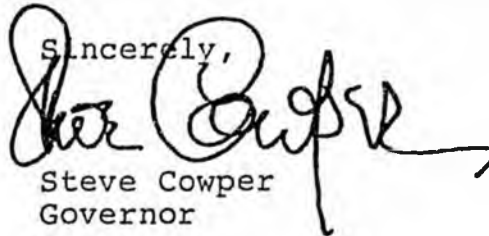
It was opposition to distant and insensitive federal control of Alaska's fish and wildlife that largely fueled the hard-won fight for statehood. Only you can prevent a return of federal agencies back into control of our fish and wildlife resources. A special legislative session to deal with this crisis is still possible but, as I have said before, it is only warranted if two-thirds of each house are willing to solve the problem.

Now that other pressures of the regular session are behind you, I encourage you to concentrate on the subsistence issue. I hope you will review the enclosed information and consider what is best for Alaska. At the very least, the Legislature should pass a constitutional resolution and

allow the voters of Alaska to express their preference at the ballot box. Inaction by the Legislature precludes the public from expressing its desire and is a positive vote for the chaos, uncertainty, and insensitivity of federal management.

If you have any questions, please call me or my staff. We still have a chance to do the right thing: ratification of established State policy to assure subsistence opportunities to those residents who most rely upon fish and wildlife, as opposed to reliance upon a quixotic challenge to Congress's actions in ANILCA. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", with a long horizontal flourish extending to the right.

Steve Cowper  
Governor

Enclosures

# NEWS RELEASE

STATE OF ALASKA

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

STEVE COWPER,  
GOVERNOR



FOR INFORMATION CONTACT:

DAVID RAMSEUR  
PRESS SECRETARY

TERENCE O'MALLEY  
DEPUTY PRESS SECRETARY

(907) 465-3500

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FOR IMMEDIATE RELEASE

May 17, 1990

No. 90-69

## COWPER URGES SUPPORT FOR SUBSISTENCE CONSTITUTIONAL AMENDMENT

JUNEAU--Gov. Steve Cowper today announced that he is sending a letter and information packet to state lawmakers urging them to support an amendment to the state's constitution giving rural Alaskans a priority for subsistence uses of fish and wildlife.

Cowper also restated his position that a constitutional amendment is the only viable solution to resolving the state's impending subsistence crisis.

"Many Alaskans, including legislators, don't realize what's at stake here," Cowper said. "We're about to abandon control over much of our fish and wildlife resources, something we fought long and hard for in our struggle for statehood."

Cowper said that he will call legislators back to Juneau for a special session if there is an indication that a subsistence resolution will pass. He called on the people of Alaska to urge their senators and representatives to support a constitutional amendment and prevent a federal takeover.

-MORE-

The Governor also refuted assertions that the state could win in a lawsuit against the federal government in an attempt to change federal law.

"That's like whistling past a graveyard," Cowper said. "It would take years in court to resolve this issue, and eventually we would probably lose. New Mexico has already tried it and lost."

In December, the Alaska Supreme Court declared unconstitutional the state's subsistence laws giving rural residents priority over other uses when fish and wildlife resources are scarce.

That ruling jeopardized the state's authority to manage fish and wildlife on federal lands because federal law (ANILCA) requires that rural residents be given priority for subsistence uses on federal lands. Approximately sixty percent of all the land in Alaska is owned by the federal government.

In March, Cowper introduced a joint resolution in both houses of the state legislature that would amend the state constitution to authorize a subsistence priority for rural residents. The resolution was never voted on in the Senate and it was voted down by the House.

As a result, the federal government is drafting a fish and wildlife management plan for federal lands in Alaska, without public input. The federal government intends to take over management on July 1.

"It's going to be an absolute nightmare," Cowper said. "You'll have federal management in some areas and state management in others. Hunters and fishermen will have to know at all times whether they are on federal or non-federal land and what the applicable state and federal regulations are."

Federal Management of Fish and Game:  
What to Expect

May 16, 1990

Federal agencies will manage fish and wildlife in the context of what is "best" for all citizens of the United States and, even then, may not have the flexibility, monetary resources, or indeed the interest in assuring that Alaskan needs are satisfied. Consider the national emphasis on animal rights, movements toward abolition of trapping and hunting. And, consider the lack of importance that Congress will ascribe to adequate research and management for Alaska's fish and game, particularly considering increasing federal deficits.

Yet, who will set management objectives and standards; who will define and manage for harvestable surplus? Look at what's happened with Native use of sea otters, with trapping in the Kenai Moose Range, with commercial and subsistence fishing in Glacier Bay.

There is also the possibility that, eventually, the federal government will contract out the management of fish and wildlife to tribal or native non-profit organizations. All of this will result not only in a patchwork of management authorities, based upon the checkerboard ownership of land in Alaska, but also a complex mixture of management philosophies that may not coincide with the State's emphasis on optimum sustainable yield and public use of fish and wildlife.

Beyond what this shift in emphasis means in broad-scale terms, the following are only a few specific scenarios of likely impacts to individual Alaskans:

- The proposed Federal Subsistence Management Board will be composed of federal land managers from a variety of agencies like the National Park Service, the U.S. Fish and Wildlife Service and the Bureau of Land Management, of all whom have different missions and management philosophies. This board will appoint representatives to local and regional advisory committees, rather than providing for local election of representatives to these important committees. This will result in a dilution of local access and input to the decision-making process. Anyone wishing to be on a local advisory committee will need to secure appointment from the

Federal Subsistence Advisory Board, rather than garner the support of fellow residents.

- With federal management of subsistence on public (federal) lands, but State management on other lands, there will be at least two separate sets of authorities and regulations to abide by. This will be confusing, not only to regulators and enforcement officials, but most directly to hunters and fishers. Anyone hunting, say, caribou in the Nelchina Basin will have to know the applicable state regulations, the applicable federal regulations, and know at all times whether he is on federal or non-federal land.
- The U.S. Forest Service controls almost all of the land in Southeast Alaska, in the Tongass National Forest. Management of timber harvest is already a contentious issue, particularly regarding protection of old growth forests for deer habitat and water quality. With federal management of not only timber harvest but also subsistence use of fish and wildlife, there will be greatly reduced opportunities for local residents to affect logging plans and harvest limits. At the extreme, there will be very limited opportunity for State residents to assure sufficient old growth habitat or to set standards for high sustained yields and harvests of deer and salmon.
- Federal officials in Interior Alaska have already indicated, to a local advisory committee, that sport fishing limits for northern pike in the Innoko River are too high and that managers of the national wildlife refuge there believe harvest levels should be reduced. Such recommendations in the future will be made from one federal official to another. Alaskans with life-long knowledge and dependence on fish and wildlife, such as residents of Ruby and the Interior, will not have equal footing with federal officials, such as refuge managers, to set fish and game harvest limits and allocations.
- Recently the Board of Fisheries set regulations to allow subsistence fishing in Glacier Bay. The National Park Service has objected, not only to subsistence activities but also to long practiced commercial fishing within park boundaries. With federal management of subsistence, desires of local residents may not even be an issue if they conflict with other land management concerns. If the National Park Service had definitive control over subsistence in Glacier Bay National Park, Hoonah residents would likely be excluded from historic fishing and berrving grounds.

• The U.S. Fish and Wildlife Service is developing a management plan for the Togiak National Wildlife Refuge. There is escalating tension over the appropriate mix of sport, commercially-guided sport, and subsistence harvest levels in the productive Kanektok, Goodnews, and Togiak Rivers. With federal management over access and subsistence harvests, local residents, as well as sport fishermen and guides, may find they have no recourse to local or State regulatory processes to resolve disputes.

• The National Park Service has developed a general management plan for the Gates of the Arctic National Park and Preserve that emphasizes the wilderness characteristics of the area. Many limitations have already been placed on the use of aircraft and all-terrain vehicles for guiding and subsistence activities. With federal management, residents of Anaktuvuk Pass can anticipate even further limitations to access into traditional areas, and guides and outfitters can expect further restrictions to the use of mechanized travel, with no real avenue for State assistance.

# NEWS RELEASE

STATE OF ALASKA

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

STEVE COWPER,  
GOVERNOR



FOR INFORMATION CONTACT:

JUN 11 1990

DAVID RAMSEUR  
PRESS SECRETARY

TERENCE O'MALLEY  
DEPUTY PRESS SECRETARY

(907) 465-3500

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FOR IMMEDIATE RELEASE

June 8, 1990  
No. 90-77

## COWPER CALLS LEGISLATURE INTO SPECIAL SESSION FOR SUBSISTENCE

JUNEAU--Gov. Steve Cowper today called the state Legislature back into special session to prevent a federal take-over of fish and game management in Alaska for subsistence.

The Governor called legislators to convene at 10 a.m. on June 25 to consider a solution to the problem created when the state Supreme Court ruled unconstitutional Alaska's subsistence law which gives a preference to rural Alaskans.

"Alaskans don't want to see a federal take-over of fish and wildlife management," Cowper said. "That was a major statehood issue and we're not going to hand it back to them by doing nothing.

"We still think the best solution is a constitutional authorization for rural subsistence, but it's clear to us that the votes aren't there. We will propose an alternative plan, and will make it public when we've ironed out the final details."

Cowper used his authority under Articles II and III of the Alaska Constitution to call the special session. Under those provisions, the Governor can call a special session and specify what issues will be considered. He is permitted to add other issues during the session.

Cowper said he decided to call the special session following Thursday's announcement by the federal government of interim regulations designed to govern federal take-over of fish and game management in Alaska. Cowper said that while those regulations may appear benign now, they invite considerably broader federal involvement in Alaska wildlife issues in the future.

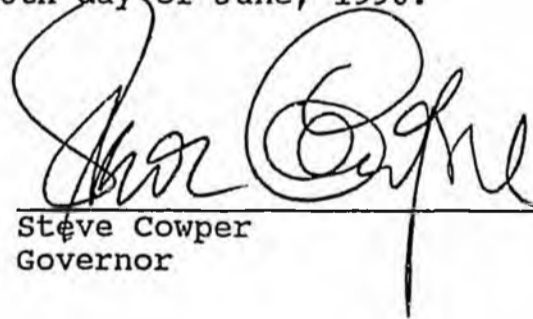
# STATE OF ALASKA



## PROCLAMATION

Under the authority of article II, section 9, and article III, section 17 of the Alaska Constitution, I call the Sixteenth Legislature of the State of Alaska into special session. The legislature shall convene its first special session at Juneau, Alaska in the legislative chambers on June 25, 1990 at 10:00 a.m. to consider the enactment of a law or an amendment to the Constitution of the State of Alaska relating to the subsistence uses of fish and wildlife and other wild renewable natural resources.

Dated at Juneau, Alaska this 8th day of June, 1990.

  
Steve Cowper  
Governor



Telegram

05008 ANCHORAGE ALASKA 51 06-08 1450 ADT

PMS

SENATOR BETTYE FAHRENKAMP

119 N. CUSHMAN, SUITE 201

FAIRBANKS AK 99701

JUN 11 1990

000534

DEAR SENATOR FAHRENKAMP:

GOVERNOR COWPER HAS CALLED, TODAY, A SPECIAL SESSION OF THE LEGISLATURE TO BEGIN ON JUNE 25TH. THE SENATE WILL CONVENE AT 10 AM. THE GOVERNOR HAS INDICATED THE SESSION WILL BE PRIMARILY CONCERNED WITH SUBSISTENCE, ALTHOUGH HE MAY ADD OTHER ITEMS AT A LATER DATE. SEE YOU IN JUNEAU.

SENATOR TIM KELLY

SENATE PRESIDENT



## North & Northwest Mayor's Conference

P.O. Box 68  
Unalakleet, Alaska 99684



President: Albert Washington (907) 923-3771  
Secretary: Robert Foote (907) 624-3655

18 May 1990

Vice President: Loren Ahlers  
Treasurer: Valerie Bergman

Steve Cowper, Governor  
Office of the Governor  
Third Floor, State Capitol  
P.O. Box A  
Juneau, Alaska 99811

JUN 8 1990

Dear Governor Cowper,

Thank you for your strong standing on the subsistence issue. I hope you will remain firm in your stand.

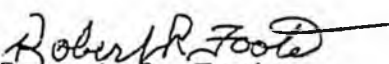
I disagree with the constant attitude of any organization or individual that uses divisive tactics and means to divide the people of Alaska and it's different cultural origins. This position and attitude failed in 1982 and is due to fail in 1990 or 1996.

The issue of subsistence is not life threatening to anyone except the people whom are, or would be deprived of their own way of life. I personally have lived and worked in villages over most of Alaska. I have observed the Native way of harvesting the fruits of the land. In no way has the Native people threatened the White Man's way of living.

Having just held our North and Northwest Alaska Mayor's Conference in Barrow, we discussed in depth the subsistence issue. in our resolutions Committee meeting, it was discussed in depth and over much deliberation, we balanced out a very positive resolution, Resolution 90-42, which we could all support as a positive answer to a disturbing question.

As Secretary of the North and Northwest Mayor's Conference for the past five years, and a charter member since 1980, I wish to offer you my services in any manner you might see fit. I believe as much as possible, there needs to be a solid, unified effort in convincing our voting public to support a Constitution amendment for subsistence.

Sincerely,

  
Robert R. Foote  
Secretary

PLANNING FOR YOUR FUTURE

SECOND SESSION OF THE TENTH ANNUAL  
NORTH AND NORTHWEST ALASKA MAYORS' CONFERENCE  
BARROW, ALASKA  
May 10 - 12, 1990  
Resolution No. 90-42

A resolution supporting the adoption of an amendment to the Alaska constitution to bring Alaska Law in compliance with Federal law regarding subsistence.

WHEREAS, subsistence is important for natives in order to provide food for themselves; and

WHEREAS, hunting, fishing, and other subsistence activities remain the most important part of traditional Alaska Native culture and Alaska Native spiritual values; and

WHEREAS, for generations, Alaska Natives have depended on fish and wildlife as their main stay of livelihood; and

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

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

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

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

NOW THEREFORE BE IT RESOLVED BY THE SECOND SESSION OF THE TENTH ANNUAL NORTH AND NORTHWEST ALASKA MAYORS' CONFERENCE THAT: we support amending Article VIII, Constitution of the State of Alaska, by adding a new section to read:

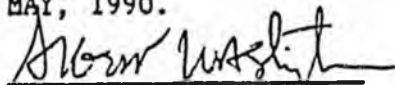
SECTION 19, USE OF FISH AND WILDLIFE RESOURCES FOR SUBSISTENCE. The legislature may grant a preference in the use of fish and wildlife resources for subsistence based upon geographic, "socioeconomic" and cultural considerations; and

BE IT FURTHER RESOLVED BY THE SECOND SESSION OF THE TENTH ANNUAL NORTH AND NORTHWEST ALASKA MAYORS' CONFERENCE THAT: the amendment proposed by this resolution be placed before the voters of the state at the next general election in conformity with Art. XIII, Section 1, Constitution of the State of Alaska, and the election laws of the state; and

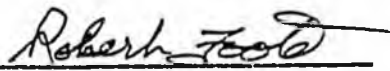
BE IT FURTHER RESOLVED BY THE SECOND SESSION OF THE TENTH ANNUAL NORTH AND NORTHWEST ALASKA MAYORS' CONFERENCE THAT: once such an amendment is adopted, the Alaska State Legislature provide, by statute, a preference in the use of local resources by local people in those geographic areas of Alaska where subsistence has special importance.

BE IT FURTHER RESOLVED BY THE SECOND SESSION OF THE TENTH ANNUAL NORTH AND NORTHWEST ALASKA MAYORS' CONFERENCE THAT: we urge Governor Cowper to call a special session of the legislature for the specific purpose of dealing with subsistence.

PASSED AND APPROVED BY THE SECOND SESSION OF THE TENTH ANNUAL NORTH AND NORTHWEST ALASKA MAYORS' CONFERENCE THIS 12th DAY OF MAY, 1990.



Albert Washington  
President



Robert Foote  
Secretary

Introduced by: Kotzebue  
Seconded by: Savoonga

Vote: Yes: Unanimous

Directed to: Governor Cowper  
Alaska State Legislature

RECEIVED  
MAY 21 1991

GOVERNOR'S OFFICE

Governor Steve Cowper

P.O. Box A

Juneau. Ak. 99811

Dear Governor Cowper,

Just for the record. I think the Education Endowment Fund was the best idea any political figure has put forth in the seven years I have been a resident of Alaska. I wish to commend you for creating and promoting it. I have promoted it as a private citizen and am appalled that our State Senate failed to back you and bring this issue to the public.

Alaska will be losing a real statesman, a forward thinking man of high ideals, with your departure. I sincerely hope you have not finished with us yet.

Sincerely,

Kathleen H. Ashmore

Kathleen Askmore  
HCO-4 Box 9248-D  
Palmer, Ak. 99645

6/1/90

Sir: ~

It seems to us that time is running out for the "Special Session" to consider/reconsider subsistence legislation. It's sheer madness to allow federal control over Alaskan programs such as subsistence.

Please call the boys and girls together. Who knows, it may pay off!

SC  
Evans  
Legisl.  
to Denby

Sincerely,  
Lee / Vivien Antrim  
Box 210832  
Anko Bay, Alaska 99521

# ALASKA CONFERENCE OF MAYORS

SC  
Legisl.  
Denby  
to Evans

217 SECOND STREET, SUITE 200  
JUNEAU, ALASKA 99801

June 4, 1990

RECEIVED  
JUN 05 1990

The Honorable Steve Cowper  
Governor of Alaska  
Post Office Box A  
Juneau, Alaska 99811

GOVERNOR'S OFFICE

Dear Governor Cowper:

On behalf of the Alaska Conference of Mayors, I respectfully urge you to call a special session of the 16th Alaska State Legislature to consider legislation dealing with subsistence, assistance for communities affected by spills, and the education endowment. The Alaska Conference of Mayors met in Anchorage on June 1, 1990, and voted unanimously to request that you call a special session.

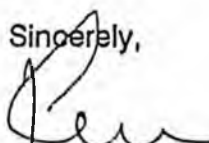
The Alaska State Legislature adjourned without passing a comprehensive measure to protect the subsistence hunting and fishing rights of rural Alaska residents. Without legislative action the federal government will take control of hunting and fishing activity on federal lands July 1, thus reversing one of the hard fought gains of Alaska statehood.

Another measure which was not passed in the Second Session was SB 359, which would have given further financial and legal protection to communities affected by the *Exxon Valdez oil spill* and to other communities which might find themselves in the same financial and legal situations as a result of future disasters. A recent example was the *Alaska Railroad spill*. The Alaska Conference of Mayors does not feel communities should remain unprotected for another year while Alaskan oil traffic poses a continued threat to its citizens' livelihood.

The Conference also supports the right of the people to vote on the education endowment. Education has always been a priority with Alaskans and a decision on a permanent future funding mechanism is an issue of statewide public importance.

Again, the Alaska Conference of Mayors urges you to call a special session of the legislature to complete the unfinished work on subsistence, SB 359, and the education endowment.

Sincerely,

  
FOR Willie Goodwin  
President

cc: Senator Tim Kelly, President  
Representative Sam Cotten, Speaker

## Subsistence dies; special session looms

Without a moment to spare, the Sixteenth Alaska Legislature brought down the gavel near the stroke of midnight, May 8, the constitutionally mandated 121st day of session.

A near record 216 measures survived (see related summary), but several critical ones perished.

The most serious issue left on the table was subsistence: how to ensure that Alaskans accustomed to the tradition of hunting and fishing for food will be guaranteed first opportunity to harvest those resources.

The legislature's failure to act is triggering a complicated federal takeover of nearly 400,000 square miles of public land in Alaska and could result in a special session this summer.

"I find it ironic, considering how passionately Alaskans battled for statehood so that we could manage our own affairs," Gov. Cowper said. "The Alaska Legislature abdicated its responsibility. Now, federal managers, controlled by a bureaucracy thousands of miles away, will be in charge of the bulk of Alaska's resources."

The key was to create a state preference for subsistence users that would conform with an overriding federal requirement that rural residents have priority taking fish and wildlife.

The Alaska Supreme Court ruled in December that giving a rural preference is unconstitutional. Yet, federal law designates a rural priority on federal land. Thus, state law needs to match federal law without running afoul of the state constitution.

After considering a number of proposals, the Cowper administration decided that a constitutional amendment is the best long-term solution.

However, despite round-the-clock efforts, the necessary 27 votes in the House could not



Gov. Cowper meets with the press after midnight adjournment.

be mustered. The Republican minority blocked passage of the measure, which also needed Senate approval.

In the days following adjournment, the administration continued to seek sufficient votes for a subsistence amendment in order to call a special session. The possibility of a special session looms and appears favored by the public (see related story).

In the meantime, at least six federal agencies are preparing to co-manage vast areas in Alaska, including nearly all of Southeast, blanketed by a national forest.

Hunters and fishermen will have to know at all times whether they are on state or federal land and what regulations apply.

The legislature also killed in the last moments of the session a comprehensive ethics package and a proposal to let voters decide whether to establish a permanent education fund.

## Public wants subsistence resolved

A statewide poll of 517 Alaskans in May showed a strong majority favors a special legislative session to resolve the subsistence issue.

The poll reinforced Governor Cowper's attempt to secure the necessary legislative votes to put a subsistence preference on the November ballot.

Another poll question resulted in an overwhelming majority supporting an opportunity for Alaskans to vote on creation of an education fund. However, Cowper said the education fund alone was not reason enough to bring back the legislature.

The poll, administered by Dittman Research Corporation, showed that 55 percent favor bringing the legislature back to deal with the subsistence question.

In nearly every region and demographic category, a majority of the respondents want

a special session.

On the proposed education fund, 84 percent felt Alaskans should have a chance to vote on its creation. In every region, support for placing the constitutional amendment on the ballot exceeded 80 percent.

The education fund would be created by putting 40 percent of Permanent Fund profits back into a special account within the principal. Compromise legislation established the education fund for four years, at which time it would be voted on again.

Over four years, up to \$2 billion would be saved. Dividends would grow, but be about \$62 smaller than they would have been otherwise over that four-year period.

State News Notes is now printed on 50 percent recycled white paper-- which can be recycled again!

# Reading effort wins award

First Lady Michael Cowper visited more than 60 schools, distributed hundreds of books and attracted a prestigious national award during the first year of her reading encouragement program, Look to a Book.

Mrs. Cowper visited schools from Barrow to Bethel and Kasigluk to Ketchikan, reading to children and oftentimes talking with their parents about the importance of reading.

A video promoting reading and two books were distributed to all 383 elementary schools in Alaska.

Four Look to a Book public service announcements featuring Alaskan children were aired on television during the school year.

This month Look to a Book PSAs receive the nationally-recognized ACT Achievement Award from Action for Children's Television, a Boston-based public advocacy group dedicated to improving the quality of programming for children.

In addition, the Literacy Council of Alaska has selected Mrs. Cowper as the winner of 1990 State Reading Association Literacy Award and the Juneau-Haines Reading Council honored her for promoting literacy.

Mrs. Cowper raised more than \$42,000 in private support for Look to a Book, includ-

ing donations from Alaska Airlines, Wings of Alaska, Alascom, Chugach Heritage Foundation, Cook Inlet Region, IBM, Scalaska, MarkAir, Alaska Commercial Company, Seley, Inc., and a number of publishers. The program is not funded by the state, but the Governor's Office and the Department of Education provided technical assistance.

Look to a Book will continue in the fall. For more information about the program, call Nancy DeCherney at 465-3500.



## Soviet deals need patience

Gov. Steve Cowper last month told U.S. business leaders at a Moscow conference to exercise patience and flexibility when dealing with the Soviet system. Cowper spoke to the 13th Annual U.S.-U.S.S.R. Trade and Economic Council May 22. About 1,000 Soviet and American business leaders attended the session.

The governor, who was on his third trip to the Soviet Union, stressed that business and cultural exchanges by necessity must occur on an ad hoc basis while economic reforms are developed over time. He also encouraged nurturing personal relations with Soviet counterparts to ease business transactions.

Cowper spent six days in the Soviet Union and traveled to Great Britain, where he visited the Sullum Voe oil terminal in the Shetland Islands. The North Sea terminal, owned by British Petroleum and operated jointly with the government, is considered a model of safety.

The vessel tracking system emphasizes helicopter escorts and radar monitoring.

## 216 bills survive legislative hurdles

Here's a summary of some of the bills that passed:

- Agency and community assistance budget, \$2.3 billion.
- Public works construction budget, \$359 million (including about half, or \$127 million of the Railbelt Energy Fund).
- A \$150 million deposit to the Permanent Fund.
- Five "spill bills" toughening State enforcement and prevention.
- Comprehensive forest management requiring stream buffers.
- Consumer-oriented rewrite of outdated insurance code.
- Land trust to fund mental health care.
- Mandatory seat belt law.
- Rewrite of laws pertaining to sexual abuse of minors.
- Four bills aimed at recycling.
- Revised payment and priority for new school construction.
- \$10 million to clean up leaky underground tanks.
- Competition of in-state long-distance phone service.
- Reform of welfare programs to encourage employment and family unity.
- A ballot measure to create a budget reserve.
- Additions to the marine park system.
- Tougher anti-smoking restrictions.
- Pay raises for public employees and judges.
- Elimination of most AHFC mortgage subsidies.

### HOME SWEET HOME

Gov. Steve Cowper, his wife Michael and son Wade are not leaving Alaska following his term, although that's been the impression left by headlines. The family intends to take a break together, probably on an extended trip, perhaps to Asia. The Cowpers then will return to Fairbanks, where they are planning to buy or build a house.

*State News Notes* is produced monthly by the Office of the Governor and distributed with outgoing agency correspondence to Alaskans. If you'd like to receive it regularly, call the Governor's Office at:

Juneau	465-3500
Anchorage	561-4228
Fairbanks	451-2920
Ketchikan	225-4856
TDY	465-2272 or 1-800-478-1833

JUN 22 '90 12:59 LIO - ANCH 277-6112

P.1/4

## Alaska State Legislature

2917 SHELDON JACKSON STREET  
ANCHORAGE, ALASKA 99501

SENATOR  
ARLISS STURGULEWSKI  
Senate President Pro Tempore  
Chairman, Senate Rules Committee

WILSON JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99801  
(907) 465-3818

## Senate

EMBARGOED UNTIL 12 NOON AST  
JUNE 22, 1990

CONTACT: CLARE LYNAM  
(907) 272-2403

STATEMENT BY SENATOR ARLISS STURGULEWSKI CONCERNING  
A LEGISLATIVE SOLUTION TO SUBSISTENCE

"Just 31 years ago Alaska became a state so we could control our own resources. Today there are some who say we should give up what we fought so hard for and let the federal government take back management of fish and game on sixty percent of our state. I disagree.

"I can not believe the drafters of our Constitution ever envisioned legitimate subsistence needs being denied nor that anyone would even consider throwing away management of our own resources.

"We are in this situation because of recent decisions in both federal and state courts, most notably the McDowell and the Kenaitze decisions, compounded by Judge Cutler's decision Wednesday on severability.

"Together, these decisions mean that on July 1st the federal government will take over management of fish and game on all federal lands. On that date as well, subsistence hunts and fisheries with a priority over all sport and commercial uses will become allowable statewide, including in urban areas.

"This is not a tolerable situation, it is to the detriment of every user of Alaska's wild resources, whether sport, commercial, or subsistence.

"In 1982 I served on the Blue Ribbon Commission to oppose Proposition 7 which would have repealed the subsistence statutes. In 1986 I was the Chair of the Senate Resources Committee that drafted the subsistence bill that became law. This past session I worked on legislation and helped draft the language of the Senate amendment. I have a long history with subsistence, a history of results.

"I know the very real dependence of many people in our state on subsistence and I am dedicated to defending it. I also know the

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Page Two

tremendous problems that have been caused by the undefined terms in ANILCA and game management by judicial interpretation. I am dedicated to fixing these problems.

"I have spent a good portion of this past year, both during the legislative session and since, talking to representatives of all affected user groups. While they may differ on the means, the one thing I found in common was that everyone wanted to fix this problem and none wanted to do away with subsistence. When the Governor announced the special session of the legislature I was encouraged because I know that he is also dedicated to finding a solution for this problem.

"As I was, throughout the last session, I am convinced that the proper solution consists of a package which will resolve both the McDowell and Kenaitze cases and address the longer term challenges of subsistence. The appropriate legislation is being drafted and on Monday I will introduce four legislative measures as a package:

1. A narrowly defined constitutional amendment to allow for a rural preference for subsistence, similar to the version the Senate Resources Committee passed this session. A constitutional amendment is necessary to fix the problems caused by the McDowell case.
2. A two part amendment to state statute. The first part would adopt the definition of rural currently proposed in federal regulation. A definition of rural in statute is required to fix the Kenaitze case. The second part would provide for a \*sunset clause on the entire state subsistence statutes in four years unless the legislature acts to reauthorize the statutes.
3. Establishment of a (Subsistence Commission) which would include representatives of all major user groups to recommend long term solutions to the first session of the 18th legislature.
4. \* A resolution to Congress urging a technical amendment to ANILCA specifying that all (undefined terms) in Title 8 (such as "rural", "customary trade" and "wild renewable resources") are defined by reference to definitions adopted in statute by the Alaska Legislature.

"This is a package of legislation that deals with our problems and can pass. It retains state management of our resources by resolving both the McDowell and Kenaitze cases. It provides a mechanism to bring affected user groups together for a long term Alaskan solution. It calls for definition of terms by Alaskans to help get our game management out of the federal courts. By including a sunset clause on the subsistence legislation, it

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Page Three

provides a strong incentive for all of us to work together for our common good and an Alaskan solution.

"Fishing, hunting, the ability to live off the land; these things are very special in Alaska, unique among the states and the reason many of us live here. Together we can resolve the challenges of subsistence for the benefit of all."

-30-

TELECOPY COVER SHEET  
SENATOR BETTYE FAHRENKAMP

PHONE: (907) 465-3834  
FAX: (907) 586-6246

P.O. BOX V  
JUNEAU, ALASKA 99811

TO: Dan Austin

PHONE: 789-4197

FROM: Joan Hope Phone: 465-3834

DATE/TIME SENT: 6/22 3:07

NUMBER OF PAGES (including cover sheet): 4

PLEASE ACKNOWLEDGE RECEIPT: YES NO (UNLESS GARBLED)

SPECIAL INSTRUCTIONS:

*Frank(?) Coleman*

# Special session

## *Governor should force lawmakers to deal with subsistence, ethics*

If any issue ever cried out for leadership from an Alaska governor, it's subsistence.

State legislators have decided to run as far as they can from the issue. They refused to do the responsible thing and pass a constitutional amendment to restore the state's rural subsistence preference. Their duck-and-run act dooms Alaska to the certain chaos that will come with a federal takeover of fish and game management. Now, it's up to Gov. Cowper to lasso cowardly lawmakers and lean on them until they to do the right thing.

So far, Gov. Cowper has been quiet — too quiet. The impression he's created for Alaskans is one of indifference. When it looked like he couldn't get the votes before adjournment, he quit. His press office suggested that when two-thirds of lawmakers are ready to pass the amendment, they can call themselves back into special session.

Right. And the entire legislature might be captured by UFO's, too. This gang is one that spooks at the slightest peep of protest. No way they're going to rise up and call themselves back to deal with something so controversial.

Asked if he was as indifferent as it appears, Gov. Cowper told the Daily News no. Fixing subsistence is his highest priority, he said, and he's busy trying to round up the votes. Until he gets them, he won't call a special session.

Here's hoping he gets the votes — and soon. July 1 is the deadline for the federal takeover. Subsistence needs the firm hand of the governor to steer the state back to the status quo. No issue is imbued with greater urgency or inflamed by worse passions.

The Alaska Constitution gives the governor all the clout he needs. Gov. Cowper can bring lawmakers back before the deadline for announcing his vetoes. He can make them wonder what he'll do to their pet projects and bills. He can make lawmakers sweat under a statewide spotlight. He can make them explain to Alaskans why we shouldn't worry about having decisions about our fish and game made in that bastion of ecological enlightenment, Washington D.C.

And as long as Gov. Cowper is calling lawmakers back, he would do Alaskans a favor by putting legislative ethics on the agenda, too. A majority in both houses supported tough ethics reform, but it got impaled on a procedural point and died as time ran out. Let lawmakers show whether they were sincere — or were just posturing.

As good political animals, legislators want something they can brag about come election day. Gov. Cowper can oblige them — by asking them to put a subsistence amendment on the ballot and overhaul their joke of a legislative ethics law.

Apr 13 '90

# Snubbing subsistence

Times  
5-12-90

IT WAS before last Christmas that the Alaska Supreme Court declared unconstitutional the state's subsistence hunting and fishing law. Now Easter has come and gone, Mother's Day is at hand, and a quarter of the New Year has slipped away. And last Tuesday night the legislature, after four months of looking at the subsistence problem sitting there, adjourned without touching it.

Members of the legislature, said Senate President Tim Kelly, were evenly divided on the issue — just like the rest of Alaskans, he said.

So there wasn't anything they could do.

Except walk away.

And that they did, to get ready for their campaigns for re-election or their bids for higher political office.

What now?

Well, nobody knows for sure.

Absent anything else, Uncle Sam says he will take over management of fish and game resources on federal land in Alaska on July 1.

**MAYBE THE** legislature, in some queer kind of reasoning, figured this was one way to cut state spending. If we don't manage wildlife resources on 60 percent of the land in the state, maybe we lay off 60 percent of the Alaska Fish & Game enforcement agents and professional biologists.

Surely not.

But equally certain is the fact that nobody in Juneau has the foggiest idea of what best to do about the crisis.

The governor proposed a constitutional amendment that, in effect, would repeal the current provision of the constitution that says all Alaskans have equal access

to the resources of this state. That would put Alaska in conformity with a congressional law that says in Alaska — and in Alaska alone — rural residents have a preferential right for subsistence purposes to fish and game resources.

And that's what the Alaska law had said, in an attempt to conform to Congress, until the state Supreme Court nixed the idea.

But it was this proposal, renewed as a constitutional amendment, that the legislature rejected, denying it a place on the November ballot.

**IN LIEU** of no solution on the home front, the state apparently has no plan for a court challenge of that particular section of the federal law that imposed this crisis on the state.

One reason might be that even a discussion of the matter — let alone a lawsuit on one side of the issue — stirs racial fires. Subsistence indeed is a rural concern, but more than that it is a Native concern because a majority of Alaska's rural residents are Eskimos, Indians and Aleuts.

All of which suggests that subsistence has become a crisis in leadership — or the lack of it. After all, the right to manage our own fish and game resources was one of the compelling drives that led us to embrace statehood more than three decades ago.

And now that right is in danger of monumental erosion — because nobody in authority has come up with a solution to this political problem. One whole branch of government, in fact, just walked away from it.

That's statesmanship, Juneau style.

# If D.C. gets subsistence

Times 5-14-92

**JUNEAU** — Anybody who watched the Alaska Legislature stumble to a halt over subsistence hunting and fishing can see why this issue should stay out of Washington. Imagine transplanting last week's debacle to Congress....

Stalemated politically at home, Alaskans began lobbying federal officials in 1991 to make sense out of the management mess. The final straw was the disclosure that the Seward Silver Salmon Derby would need the approval of five federal agencies and a U.S. District Court judge to proceed as planned.

The appeal for help was confusing, however. Some Alaskans were asking for repeal of the rural subsistence preference in federal law, others for an amendment granting subsistence to Natives only, and still others for a simple definition of what subsistence is.

"We thought we knew what subsistence is," said Alaska's new governor in a letter to President Bush. "But the courts keep telling us something different, and I was able to get elected last fall without ever taking a position on the issue. Can you please help us get state fish and game management back?"

The letter reached Bush while he was fishing in Florida. The president had always meant to visit Alaska following the big oil spill, but he never quite made it, and this latest request for assistance was forwarded to the vice president who gave it to an aide.

The first hearings on subsistence in Congress were uneventful and largely ignored by the national media. Sen. Jesse Helms was seeking a broader definition of obscene art that federal money won't buy, and he grabbed all the headlines.

Then events began to snowball. Sensing the divisions in Alaska, animal-rights activists and a few extreme environmental organizations saw the moribund subsistence bills as their chance to put some long-sought restrictions into law. A ban on leg-hold traps, as well as on hunting and fishing in national



## john greely

parks in Alaska, became the subject of a massive letter-writing campaign and high-powered lobby on Capitol Hill.

"Alaska has a problem that needs fixing," said J. Allen Smith, president of Vegetarians for Subsistence Reform. "Our group also supports returning fish and game management to Alaska, but with a few improvements."

Smith and the VSR were able to push through a compromise subsistence bill after breaking a filibuster by Sens. Ted Stevens and Frank Murkowski. They gave up their opposition to the bill when environmental groups agreed to drop an amendment banning oil and gas development in the Arctic National Wildlife Refuge.

"Dear Governor," the president wrote as he signed the legislation, "I am pleased to return fish and game management over all of Alaska to your hands. This authority, as you know, was promised at statehood, and frankly I could never understand why Alaska surrendered it in 1980, when you had a chance to solve the problem without federal help.

"Oh well, this bill is in keeping with my environmental presidency. Hope to see you in '92. I may have time for a little fishing then."

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John Greely is a KTOO-radio reporter in Juneau. He covered the Alaska Legislature for various news organizations from 1972-1982 and was Gov. Bill Sheffield's deputy press secretary and press secretary from 1982-1986.

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# Showdown at Glacier Bay

3-4-90  
ADN

JUNEAU — Public hearings by the National Park Service this week foreshadow what may lie ahead if Alaskans don't settle their differences over subsistence hunting and fishing rights. Hundreds of jobs and millions of dollars are at stake in a move to close Glacier Bay National Park to commercial fishermen.

The conflict started out innocently last year, when subsistence fishermen from neighboring Hoonah requested permits from the state to harvest a small number of salmon from streams in and near the park. The Board of Fisheries agreed and a handful of permits were issued.

In researching federal law, however, the Park Service found that there was no authorization for subsistence activities in Glacier Bay. In fact, despite decades of use by trollers, crabbers and longliners, the Park Service concluded they may have no standing to continue commercial fishing, either.

While waters within the 32-million-acre park are not heavily fished, those bordering the park along Icy Strait and the lucrative Fairweather Grounds are. And those waters also may fall under a federal ban or cutback on fishing.

"A national park is not a multiple-use area," said Marvin Jensen, superintendent of Glacier Bay. "It's a place where nature is left to operate at its own will."

Indeed, that's the case all over the country, except for Alaska, where our small population and history of living off the land convinced Congress in 1980 to relax the normal restrictions imposed



**john greely**

on the use of motorized vehicles such as snow machines, motorboats and airplanes to hunt and fish on federal parklands.

In Glacier Bay itself, tens of thousands of tourists visit each summer to see the ice fields and the wildlife. Invariably, those multitudes must ask their guides, "What is that boat doing out there fishing?"

If the guides know their stuff, they'll tell the visitors that Congress has seen fit to allow the state of Alaska to regulate hunting and fishing of most species even though many wander across federal, state and private boundaries. And despite conflicting ownership (the state, for example, owns submerged lands under navigatable waters in Glacier Bay, but the water belongs to the Park Service) it only makes sense to have one government making rules about the fish swimming there.

Some people, of course, would prefer to see the federal government making those rules on federal land. The conflicts over land-and-shoot wolf hunts are but one example of the pressure that can be brought to bear on state game managers imple-

menting controversial policies.

But the scattered instances of federal pre-emption now threaten to spread far wider with the Dec. 22 decision of the Supreme Court in the McDowell case. Unless some solution is found quickly to the constitutional conflict over subsistence, the Interior Department will be stepping in where the state defaults.

Gov. Steve Cowper apparently has been converted on this point, announcing he will ask the legislature and voters to approve a constitutional amendment designed to preserve state fish and game management authority. The congressional delegation is unanimous in its opinion that this is the best course, and that Washington, D.C., is the last place on earth from where hunting and fishing in Alaska should be regulated.

Right now, though, the coalition behind Cowper's amendment is composed chiefly of the Alaska Federation of Natives. It will take much broader support to generate the super majority needed in the legislature to get the amendment on the ballot.

Time is short, but that kind of support might be generated if the smaller controversies like fishing in Glacier Bay multiply.

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□ John Greely, a KTOO radio reporter, covered the legislature for various news organizations from 1972-1982 and served as Gov. Bill Sheffield's deputy press secretary and press secretary from 1982-86.

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# A subsistence solution?

THE STATE was handed the subsistence hunting and fishing hot potato back in December.

The legislature, in session for almost four months now, is just starting to poke around on the subject through committee hearings scheduled in the House today and tomorrow on the issue.

So far, no clear direction is in sight.

Among those apparently hoping the matter will go away are most of the candidates for governor, who have been busy looking for other things to talk about.

But one candidate took a stab at the issue the other day — and at least has come up with a viable proposal. His idea doesn't meet the apparent need to resolve this matter by July 1, but as Republican candidate Jim Campbell put it: "Federal law be damned. Alaska needs more than three months to untangle this two-decades-old conflict."

Mr. Campbell is proposing that the state create what he calls the Joint Commission on Subsistence Use and then petition the federal government to participate.

**THE CRISIS** exists because of a conflict between the Alaska Constitution, adopted more than 30 years ago and put into effect at the time of statehood in 1959, and a federal law enacted by Congress a few years ago.

The constitution says that all Alaskans have equal rights to the fish and game resources of the state. That's clean and simple.

But a federal law, enacted in the course of the old D-3 land battles in which Congress created a bunch of wilderness in Alaska and took a lot of other land classification actions, says residents of rural areas where subsistence may be a way of life have priority rights to fish and game resources.

And if the state doesn't agree, the law says, Uncle Sam will take over management of the resources on federal lands.

The state tried to conform, passing a law some

years ago that granted subsistence favors to rural residents.

But under challenge from a suit filed by a number of Alaskans, the state Supreme Court just before year-end held that law to be unconstitutional because it denied equal access to fish and game.

As much as it upset a lot of apple carts, not to mention a lot of Alaskans, the Supreme Court decision clearly was right. And, just as clearly, the federal law is obnoxious to the interests of Alaska because it goes against the grain of our constitution — which not only was ratified by the people of Alaska at the time of statehood, but which also was an inherent part of the federal compact under which statehood was granted.

**BUT ALL** three members of our congressional delegation say there is no hope of amending the federal law — Congress simply will not do it, they say. As a result, the Interior Department is ready to take over fish and game management on federal lands on the state.

That offends Mr. Campbell, who says "this resource management question goes to the heart of our statehood compact."

His proposal is for a joint commission composed of members appointed by the governor "so as to fairly represent state and federal agencies, the native community, and parties of interest such as sport and recreational resource users." The purpose, he says, would be "to define the issue; identify the low- and high-conflict user areas; explore any options for subsistence management, and make recommendations to the governor for implementation by the Boards of Fish and Game."

And he thinks the feds would cooperate and delay a takeover of management duties. If there's a chance that might happen, his proposal is worth being pursued with vigor in the next couple of months.

TIMES 4-24-80

# Feds' turnaround

## *Officials begin to show some sense*

For a while, it looked like the federal government was doing its best to vex Alaska. Federal officials, in the way they were drawing up subsistence regulations, had chosen secrecy over openness, arrogance over cooperation, and flippant dismissal over state involvement.

In locking the state out of the process, the federal government was carrying out a scenario guaranteed to provoke bitterness.

But on Monday it relented. Federal officials invited state wildlife management people to participate in planning for the management of subsistence regulations on federal land in Alaska. The invitation — if it proves to allow substantive participation — will help make up for months of neglect. But some animosity is certain to linger.

Federal officials until Monday had pursued an infuriating course of secrecy and arrogance. Since last year, they had been meeting in secret to discuss subsistence management plans. Participants snubbed the public and barred state wildlife managers.

Walter Stieglitz, regional director of the U.S. Fish and Wildlife Service, flatly dismissed state officials' concerns. When asked when the state would be involved in planning, he replied, "When we think it's appropriate to sit down and talk to them."

"Appropriate" apparently meant two weeks before July 1, the day the federal government is scheduled to take over management of about two-thirds of Alaska. State officials had been told they'd get to look at the regulations the same time as everyone else, when they're published in the federal register June 15.

Had federal officials left the state only two weeks to review and comment on such a critical issue, it would have been unconscionable. That attitude represented a pathetic lack of tact. And it suggested an extraordinary scarcity of good sense — essentially ignoring, as it did, the unmatched knowledge and experience of state wildlife managers.

The new federal posture, however, appears to relent on those policies somewhat. The changes portend the state at least will gain a foothold in planning how wildlife will be managed on two-thirds of Alaska's land.

The plan at issue, of course, will be best never put to use. For the remedy to federal fish and game management — and any accompanying arrogance — remains state approval of a constitutional amendment restoring the state's rural subsistence preference. Gov. Steve Cowper holds the key to getting that process rolling. The governor should call a special session of the state legislature, demand it approve the amendment, and thus get the proposal into the hands of the state's voters.

The federal posture has shown hints its regulatory posture could be distasteful. It could be aloof, distrusting and contemptuous. It's a prospect well worth Alaskans' best efforts to avoid.

NEWS CLIPPINGS IN  
Anchorage Daily News

## Ostrich alert

*Lawmakers should quit stalling  
and pass a subsistence amendment*

The Alaska Legislature has but five days to deal with the subsistence question. Lawmakers have a choice: they can act now and pass a constitutional amendment restoring a subsistence preference for rural residents, or they can do nothing and be remembered for letting much of Alaska's fish and game management slip into federal hands.

Some urban legislators are apparently happy to play the ostrich. They apparently think that by doing nothing they can block a rural subsistence preference. They're wrong.

Federal law requires a rural preference on federal lands — a third of the state. But the federal reach may not stop at federal borders. Fish and game migrate; they don't respect arbitrary boundaries between landowners. To protect fish and game on federal land, the federal government may have to claim jurisdiction far into state and private lands.

What would federal management look like? The feds aren't saying, but one thing is for sure: it's a recipe for endless frustration and litigation.

Yet, an equitable solution lies within easy reach of state lawmakers. They can ask voters to approve a constitutional amendment overturning the court ruling that killed the state's rural subsistence priority law. The status quo wasn't perfect, but it was a workable solution.

Critics of the subsistence amendment are loud, but they are a minority. A rural priority law won statewide voter endorsement in 1982. A recent poll shows that Anchorage voters support such an amendment by 82 to 28 percent.

A constitutional amendment is Alaska's only chance to settle the subsistence issue among ourselves. If legislators fail to act, they will put power over fish and game in the hands of federal bureaucrats and federal courts.

Office of the Governor

# Subsistence amendment

## Pro: Rural priority is only good solution

Last Dec. 22, the state Supreme Court presented Alaskans an early Christmas present few of us wanted—a resumption of the sometimes bitter conflict over subsistence.

In a split decision, the court upset a notion to which a majority of Alaskans have subscribed for more than a decade: when fish and game are scarce, those most dependent on them should have first crack.

The decision has refueled a long-standing debate over an issue that Alaskans have visited several times since 1978. In essence the question is this: At a time when there is not enough fish and game for all Alaskans who want them, how do we decide which Alaskans have a priority in the harvest?

There's only one good solution: an amendment to the state Constitution to permit the Legislature to give rural Alaskans priority access to fish and game for subsistence purposes. Earlier this month I proposed such a constitutional amendment to the Legislature.

If passed by two-thirds of both the House and Senate, the proposed amendment would appear on the November general election ballot where all Alaskans will be asked to

### Guest Opinion



By GOV.  
STEVE  
COWPER

vote on it. If approved by voters, the proposal would become a part of the Alaska Constitution, and I hope, resolve this issue once and for all.

Alaskans have consistently supported giving those who depend on fish and wildlife resources a priority when they are scarce. We showed our support for this policy when the Legislature passed the first subsistence law in 1978. We showed our support during the congressional debate over the Alaska National Interest Lands Conservation Act in the late 1970s.

We showed our support in 1982 when Alaska's voters decisively rejected a referendum to overturn the rural subsistence preference. And we showed our support in 1986 when the Legislature approved our

current subsistence law.

To the surprise and frustration of many Alaskans, the state Supreme Court four months ago said that long-standing policy doesn't square with the state's Constitution. The court said giving rural Alaskans a preference violates the state Constitution, at the same time the federal government says Alaska must give such a preference to rural Alaskans.

The ruling makes it virtually impossible to ensure that Alaskans who depend on fish and game the most have the opportunity to take those resources. Equally important, the decision jeopardizes the state's authority to manage fish and wildlife on federal lands and perhaps throughout the state.

When it mandated a rural subsistence priority in ANILCA, Congress also said the federal government must take over the management of fish and game resources for subsistence users on federal lands in Alaska if the state did not pass similar legislation.

To me and to most Alaskans, the prospect of the federal government managing Alaska's fish and game is unacceptable. One of the main reasons Alaskans fought for state-

hood was so that we—not federal bureaucrats 5,000 miles from here—could make decisions about our own lives.

Alaskans know what's best for Alaska. We know that subsistence is part of the culture, tradition and economy of many families and communities in Alaska. We know that, in general, rural Alaskans depend more on the subsistence use of fish and game than Alaskans living in our cities.

Certainly there are exceptions. One of my first reactions to the court's ruling was to consider creating an individualized permitting system under which the state could determine which Alaskans should qualify for subsistence, regardless of where they live. But it didn't take long to realize that such a system would require a huge and expensive state bureaucracy, would intrude into the lives of Alaskans and, because of a lengthy appeals process, would be a legal nightmare.

Some have suggested that we return to the days before Alaska had a subsistence priority law, when the boards of Fisheries and Game used seasons and bag limits to favor rural residents. Unfortunately, any

direct attempt by the boards to do that is subject to the same constitutional challenge as the rural preference struck down in December. And since state law would still be inconsistent with federal law, we'd still be running the risk of a federal takeover.

I also thought long and hard about trying to fix the problem by attempting to change federal law. But the problem, at least according to our Supreme Court, is with our state Constitution. Opening up ANILCA to possible amendment makes us vulnerable to other changes that could affect our ability to manage our own affairs. Without the support of Alaska's congressional delegation and the Alaska Native community, Congress would be unwilling to change federal law anyway.

Amending the state Constitution is not something we should do lightly. That carefully crafted document provides us basic guidelines for how we run our government and our state. That's why all Alaskans should have a say in this important decision. That's why preserving this essential Alaska tradition belongs in the Constitution.

Steve Cowper of Fairbanks was elected governor in 1986.

# Kenaitze set up subsistence salmon net

TIMES 5-16-90

By JOHN TETTON  
Times Writer

Kenaitze tribal members set a 60-foot salmon net near the mouth of the Kenai River early Tuesday using guidelines approved last month by a federal judge, tribal leader Clare Swan said.

The subsistence fishing venture, dubbed an "educational" fishery by state and tribal negotiators, seeks to teach Indian youngsters old ways, tribal leaders say.

A decades-old controversy over subsistence fishing on the Kenai has been the subject of fierce court battles between the tribe and anglers. The Kenai River and its tributaries hold the most popular sportfishing areas

in Southcentral Alaska.

Last year, anglers and fishing guides floated past the net in river boats, raising their rods at tribal members as they floated past the site near the mouth of the river. No violence was reported then, although tribal members said children were harassed when no adults were present, Swan said.

The Alaska State Troopers in Soldotna said no trouble was reported Tuesday.

The 600-member tribe will be allowed to catch up to 6,000 salmon in all under an agreement hammered out by attorneys for the tribe and the state. The number includes a harvest of up to 600 king salmon.

See Kenaitze, back page



TIMES MAP

# Sovereign Women of Kenai member jailed in fishing case

TIMES 5-16-90

TIMES STAFF

Department of Fish and Game troopers on Tuesday arrested a member of Sovereign Women of Kenai on charges of illegal subsistence fishing in Cook Inlet, officials said.

Dena Jacobson, 42, of Kenai was arrested on a charge of illegal fishing after troopers discovered her net in closed waters in Cook Inlet, said Lt. Ted Ruddell. She was lodged in Wildwood Pre-Trial Facility.

Members of the Sovereign Women of Kenai were arrested at least four times last July for setting a net out in closed waters and for catching fish illegally.

They say federal law gives them — and all Kenai Peninsula residents — the right to subsistence fish in the most popular sportfishing river in Southcentral Alaska. Thousands of fishermen flock to the river every summer to bag the prized king

See Arrest, back page

B-8 Wednesday, May 16, 1990, The

## Kenaitze

Continued from page B-1

The tribe last summer caught nearly 4,000 salmon including 96 kings, it said.

U.S. District Court Judge H. Russel Holland granted the tribe a salmon-fishing season from May through September.

Meanwhile, dissident members of the tribe set their own salmon net at the tribe's fishing site to protest the deal struck between the Kenaitze and the state.

Kenai River sportfishing guide Harry Gaines, who led the protest group of 60 to 80 boats last June, said although one subsistence net will not harm the sportfishing industry by itself, he fears what will happen if the tribe eventually is allowed more.

Gaines said he does not agree subsistence is necessary in an urban area like Kenai. The Kenaitze tribe has argued the Kenai Peninsula is rural, and the U.S. 9th Circuit Court in San Francisco agreed after the tribe lost in Alaska Supreme Court.

"We're living in modern times. We feel like they have a job like everybody else and they're teaching their young people how to subsistence fish? It doesn't make sense," he said.

Gaines also said his group was encouraged to "show a sign of strength" by clients, mostly anglers from outside Alaska.

Of the estimated 6 million salmon of all species that migrated to Cook Inlet and its tributaries last year, 5.5 million were netted by commercial fishermen, 340,000 by anglers and 18,000 by subsistence users, said Alaska Fish and Game biologist Dave Nelson and Paul Reusch. Those numbers include catches from the Kenai River.

## Arrest

Continued from page B-1

salmon.

Ruddell said his officers found a net in Cook Inlet and questioned a group of people on the beach. Jacobson reportedly claimed the net and was arrested, he said.

The woman was arrested about 6:30 p.m. one mile south of the mouth of the Kenai River.

Jacobson said earlier Tuesday she and members of the group were ready to face jail and would refuse to pay bail if arrested.

"We are sovereign," Jacobson said. The only law that exists is tribal law and the Kenaitze Indian tribe has bowed to state and federal pressure to conform, she said.

Two other members of the group who are Kenai Peninsula residents were kicked out of the Kenaitze tribe last year when they refused to go along with the "educational fishery" agreement reached by the tribe with the state Department of Fish and Game. Jacobson, a Yupik-Athabaskan who lives and works as an artist in Anchorage, contends the Kenaitze tribe is wrong to agree to a fishery that allows only one net.

Kenaitze tribal leader Clare Swan Tuesday said although she respects their tenacity, the women would be breaking the law. "I don't know that things like that help a lot," she said. "I think it makes it harder for Native people" to get community support.

# Feds draft rules on subsistence

By CRAIG MEDRED  
The Anchorage Daily News

Only Alaskans in communities of 2,500 or less will be guaranteed special privileges to subsistence hunt and fish when the state government assumes management of fish and wildlife on federal lands in Alaska this summer, according to a draft plan obtained by the Daily News.

Residents of communities larger than 2,500 people — Anchorage, Fairbanks, Juneau, Kenai, Ketchikan, Sitka and Valdez — will be automatically denied subsistence privileges according to the plan.

Residents of places with populations of 2,500 to 2,000 people — Barrow, Bettler, Cordova, Homer, Kotzebue, Nome, Palmer, Petersburg, Seward, Soldotna, Wasilla, Wrangle, Kenai and

Please see Back Page SUBSISTENCE

## THE BACK PAGE

### SUBSISTENCE: Federal government to set its own rural preference

Continued from Page A1

Kotlik will have their status determined by a new Federal Subsistence Management Board.

Whether these latter communities have rural or urban characteristics will decide their subsistence status under the federal plan. Even some communities of less than 2,500 people could be denied subsistence privileges, according to the draft plan.

Federal officials are as yet undecided whether those characteristics will be defined. Walter Storz, regional director of the U.S. Fish and Wildlife Service, said Thursday night.

The federal government on July 1 will assume management responsibility over 10 percent of the state in order to enforce subsistence priority. The Alaska National Interest Lands Conservation Act requires federal protection of that priority.

Subsistence is the customary and traditional harvest of fish and wildlife for food and cultural enrichment.

The state, which now manages fish and wildlife in most of Alaska, can no longer grant a subsistence preference for rural residents because of a state Supreme Court decision that distribution on the basis of residence is unconstitutional.

State subsistence privileges had been determined on a community-by-community basis by the boards of Fish and Game, Anchorage, Fairbanks, Juneau, the Matanuska-Susitna Borough, most of the Kenai Peninsula, Valdez, Whittier and the Eastern Air Force Station were classified as non-rural. Sitka, Kotlik and most of the rest of the state was classified as rural.

Commercial fishing would be largely unaffected by the federal plan. Commercial fisheries take place in state waters, and Storz said an attempt will be made to exert federal authority there.

Subsistence groups, unhappy about federal action, have already sued the state in federal court. Subsistence fishermen in the Bethel area have already sued the state in an effort to block commercial fishing at False Pass in the Aleutian chain.

Storz said he doubts federal officials can win their way through the maze of conflicting interests and opinions surrounding the subsistence issue without getting sued by someone.

left a trail of litigation through state and federal courts. State courts have twice overturned the subsistence law, with the latest and most critical decision coming this winter.

That was when the Alaska Supreme Court ruled the subsistence priority for rural residents is unconstitutional.

An effort to restore the rural preference by passing a constitutional amendment before Alaska voters this fall died in the legislature. That set the stage for a federal takeover of fish and game in 1980.

Under the leadership of the Fish and Wildlife Service, federal officials have been ruling to discuss subsistence management plans. State officials and the public have been told little of those discussions.

"They're not talking to us," Dan Thum, regional supervisor for wildlife in the Alaska Department of Fish and Game, said Thursday. "They've told us we'll get to review their regulations when they're published in the federal register on June 15, or something like that."

"When we think it's appropriate to sit down and talk to them we will," Storz said. He defended secret discussions as routine business for the Fish and Wildlife Service.

"The way regulations are commonly set," he said, "we didn't think it was a good idea to go public with a program. This program still has not been finally proposed."

All the major issues are decided, he acknowledged, but minor points remain to be ironed out. Until all of those are settled, the public and other Alaska resources must wait. Storz said.

The Daily News has obtained a copy of a 115 page draft of proposed regulations, along with issue statements. Key points in that document:

• State regulations would be adopted and modified where necessary to provide for subsistence hunting and fishing, as well as sport hunting and fishing, this year.

• No federal licenses would be required of Alaskans, but state hunting, fishing and trapping licenses would be necessary, and free federal permits might be required in some cases.

• The federal government would move to take over management of fish and wildlife not only on the federal lands in Alaska, but on 60 million acres of land selected by but not yet transferred to the state and private Native corporations.

• Each federal agency would be allowed to determine rules for access to its lands for hunting, fishing and trapping.

• An effort would be made to differentiate subsistence trapping from commercial or sport trapping and establish a subsistence priority for rural trappers.

• Subsistence harvest and trade of fish, wildlife and furs would be allowed to continue "if the exchange is of a limited and noncommercial nature," and if it is restricted to "types and volumes of trade which existed prior to passage of ANILCA in 1980."

• Alaskans would have to substantiate they are rural residents to qualify for subsistence.

• Healthy fish and wildlife populations will be maintained, even if that means curtailing subsistence activities.

• Subsistence hunting and fishing within parks and refuges would be limited to local rural residents, "defined as people using the area without the use of aircraft to gain access."

• Berries, herring, hark, mussels, mussels, trout, fish, fungi, vegetables and other resources would be reserved for subsistence where necessary.

All of these activities would be supervised by the Federal Subsistence Management Board, made up of the regional directors of the U.S. Fish and Wildlife Service and the National Park Service. The state director of the Bureau of Land Management, the regional forester for the U.S. Forest Service and an at-large federal official as yet unnamed.

These top level bureaucrats would be advised by a federal subsistence staff committee with representatives from Fish and Wildlife, National Parks, BLM, the Bureau of Indian Affairs, the Forest Service, the Army and Air Force, the National Marine Fisheries Service, the Federal Aviation Administration, the regional subsistence office of the Department of the Interior, and other federal officials to be determined.

which the management board would deal with the issue of those unincorporated communities of 2,500 to 2,000 residents. Storz said.

How many people qualify for subsistence is the key issue, he said.

All of Alaska's wild resources are owned by the state. The state has the sole right to provide hunting and fishing for non-rural Alaskans. The fewer the people who qualify for subsistence, the more chance there is to provide hunting and fishing opportunities for non-rural Alaskans.

Seasons and limits for hunting, and fishing for all Alaskans, will depend to some degree on subsistence decisions, although the implications for hunting are far greater than for fishing.

Sport fishermen shouldn't see much change in regulations because of a federal takeover, said Steve Debus, deputy director of sport fisheries for the Alaska Department of Fish and Game.

Most of the major sport fisheries take place in state waters, he said, and in those fisheries an federal takeover "has no noticeable impact on the sport fishery. It has never been any conflict with subsistence."

Aside from the Russian herd sport fisheries occur on state lands on in the public waters like the Kenai River, said Paul Krasnowski, state regional sport fisheries supervisor. The state owns all navigable waters.

Hunting is a different matter, however, and that from 10 to 90 percent of the top game animals killed in Alaska are shot on federal lands.

For instance, he said, about 50 percent of Northern quinnone are shot on federal land. The herd that roams the Rubicon basin north of Anchorage is the most popular with Southern hunters. It has provided a constant source of conflict for non-rural hunters from Anchorage and the Matanuska Valley, and rural hunters from Ekwonuk.

Because of a subsistence priority, the Chenook hunters there can catch salmon. Chenook hunters there can catch salmon, but not enter a lottery with a small amount more than 10,000 applicants for these permits.

The status of that lottery, as well as the Chenook subsistence permits, is to be made at the moment awaiting further decisions on subsistence, Thum said.

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# Subsistence strategy casts burden on state

By JOE HUNT  
Times Writer

Alaska's cooperation is essential for the U.S. government to successfully take over fish and game management on vast tracts of federal land in the state, said Glen Ellison, chairman of a group planning the July 1 takeover.

A draft plan outlining how the federal government will provide subsistence hunting and fishing seasons in national parks,

refuges and forests was put together behind closed doors, without public hearings or state involvement.

The plan is to be hand-carried to Washington, D.C., today for review by high-level officials from several agencies.

Lew Pamplin, director of the Alaska Department of Fish and Game's Division of Wildlife Conservation, said he saw the federal plan for the first time Monday.

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Considering the complexity of wildlife management in Alaska, the federal plan appeared reasonable, he said.

"Yeah, it can work, but that doesn't mean it's good," he said. "In fact, I know it's not."

Ellison warned the transition from state to federal control likely would not be smooth. However, the plan does the job required by Congress when it guaranteed rural Alaskans a priority for subsistence hunting and fishing in the state, he said.

"We'll admit up front there's going to be substantial amount of confusion in the process," Ellison said. "But the law's the law, and we're going to do the best job we can administering it."

Federal officials are counting on complete cooperation from the state boards of Fish and Game, and they want to use the expertise of Alaska Department of Fish and Game biologists and managers without paying for their help.

There will be no contract this year for the state to manage the hunting and fishing seasons and conduct biological research on federal lands, Ellison said. But state cooperation will be essential to ensure the health of animal populations and maintain a subsistence lifestyle for rural Alaskans, he said.

The federal government will

be spending at least \$3 million to beef up its wildlife management program. If Alaska does not cooperate fully, the cost will be more than \$10 million, Ellison said.

The state, in many ways, can control federal subsistence decisions by the way it manages wildlife on its own land. Salmon, for example, must pass through state waters where they can be harvested commercially, by sport fishing or by subsistence users. Upriver, on federal land, the small percentage of fish getting through are needed to spawn.

It will be up to the state to either provide subsistence or "personal use" fisheries on state land or ensure enough fish escape upstream to allow a subsistence harvest on federal land, Ellison said.

Federal law prohibits subsistence hunting or fishing if it endangers the health of a species.

Similarly, the Nelchina caribou herd migrates over state land onto federal land. Hunting seasons on state and federal land could conflict, creating a difficult political and biological situation.

The question of which side would set seasons and bag limits is unresolved. "It'll probably be a mixed bag," Ellison said. "It's going to be a very interactive process between state and federal governments and the state and federal boards."

Pamplin pledged the state's cooperation. "If we don't and they don't, the loser is going to be the resource — and then the people," he said.

The state subsistence pro-

gram was thrown into a tailspin in December when the Alaska Supreme Court ruled unconstitutional a state law that gave rural residents priority to fish and game in the state. That forced the state out of compliance with the Alaska National Interest Lands Conservation Act of 1980 which guaranteed rural residents subsistence priority over other users of fish and game on federal land in Alaska.

Because the state no longer can give rural residents preference, ANILCA calls on the federal government to open subsistence hunting and fishing seasons on its land. The law strips the state of its right to manage wildlife on federal lands, which covers about 60 percent of the state.

The takeover and the federal plan are sure to meet with objections, Ellison said.

"I think it's safe to assume we'll probably get sued on a variety of aspects from a variety of sources," he said.

The plan creates a federal subsistence board to oversee wildlife management, set hunting seasons and bag limits and determine whether a community qualifies as rural. The plan categorizes communities by population. Villages with fewer than 2,500 people usually will qualify for subsistence, but even they are not guaranteed a rural designation, the plan said.

Some smaller towns along the road system, and several larger bush communities with populations up to 7,000 residents, must be analyzed for their urban characteristics, Ellison said.

# Subsistence failure could cost sportsmen

By JOE HUNT  
Times Writer

Splitting wildlife management in Alaska between the federal and state governments could threaten the stability of sport and subsistence hunting and fishing seasons, wildlife managers say.

The Alaska Legislature almost guaranteed such a division when it adjourned without approving a measure that would have asked voters in November whether to change the constitution to give rural residents a priority in allocating fish and game in the state.

"It seems terrible to me the Legislature won't give Alaskans a chance to have their say on that and I think it's going to come back to haunt them," said Steve Behnke, director of the state Department of Fish and Game's Subsistence Division.

Walter Stieglitz, regional director of the U.S. Fish and Wildlife Service, said in a statement the federal government prefers to leave wildlife management in state hands.

"We are extremely disappointed the state Legislature appears to be coming up empty-handed on this extremely important issue," Stieglitz said. "Our goal is to have as smooth a transition as possible."

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Sen. Bettye Fahrenkamp, D-Fairbanks, and Sen. Al Adams, D-Kotzebue, pass the time with a game of cribbage during a lull in the legislative session Tuesday.

## Game

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ble considering the complexity of the issue and the tight time constraints facing us."

Sportsmen's lobbyists opposed the vote, saying they feared rural communities and native corporations would wage an expensive media campaign to win voter approval of the proposed amendment. It is a complicated equal rights issue that can too easily be distorted by a heavy advertising blitz, said Russ Redick, spokesman for the Alaska Sportsmen's Association.

"This issue is not about whether subsistence will continue — of course it will and it should," Redick said. "This is about priority."

The Alaska Supreme Court in December ruled unconstitutional the state's subsistence law giving rural residents a priority to fish and game in the state.

The state constitution guarantees residents equal access to the fish and game in Alaska, but the Alaska National Interest Lands Conservation Act of 1980 requires rural residents be given a preference for subsistence purposes. The state could lose its management authority over wildlife on federal lands making up 60 percent of Alaska if it cannot conform to this federal law.

State and federal wildlife managers have said they hoped to avoid such a split.

Separate management of wildlife on state and federal land promises duplication of effort, turf battles, data problems and poor control of hunting seasons, said Lew Pamplin, director of Fish and Game's Division of Wildlife Conservation. It easily could lead to shortened or canceled hunting seasons in parts of the state.

"Essentially we're looking at a revolution in the overturning of the way fish and game have been managed in the state since statehood," Behnke said.

Legislative action was the only hope for a quick fix, Behnke said.

Though the Supreme Court set a July 1 deadline for federal takeover, Behnke said the state would have asked for a stay until the November election if the Legislature had approved the proposed constitutional amendment.

"It seems clear to me that Alaskans as a whole don't want federal management and the polls also seem to indicate Alaskans are willing to provide a rural preference," he said.

A March survey conducted by Dittman Research Corp. showed 51 percent of Alaskans polled supported an amendment allowing such a preference.

Redick said he objected to the survey question. If respondents had been asked whether they would allow Kenai Peninsula residents to hunt or fish when Anchorage residents could not, there might have been a very different answer, Redick said.

Sportsmen's groups also object to a federal takeover, but Redick said it would be a better alternative than voting away constitutional rights. He said the state should sue the federal government to regain its authority to manage fish and game in the state. He also said Congress should change the federal law.

A possible solution would be for the Fish and Wildlife Service to contract with state biologists to continue their management of fish and game on federal lands. But the agency has not started any such negotiations, said Bruce Batten, spokesman for the service.

"They haven't thrown out many of those options right now, but we're developing a separate plan," Batten said. "We're definitely not negotiating with them."

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That likely means Alaska will be left out of the federal effort, said Norm Cohen, deputy commissioner for the Alaska Department of Fish and Game. There have been no negotiations for the state to conduct biological studies for the federal government or to manage the subsistence hunting and fishing seasons on federal lands, he said.

"I don't think we're looking at contracting," Cohen said. "It's been raised as an issue, but I just don't think it will happen."

Stieglitz said a federal board will be formed to oversee wildlife management on federal holdings. The group, composed of representatives from various federal agencies, will set seasons and bag limits as well as oversee biological studies and monitoring programs.

Federal land managers will provide their own law enforcement, Stieglitz said.

Many existing state regulations will be incorporated in the federal plan as long as they fit the new program, he said.

The Alaska Supreme Court in December ruled unconstitutional the state's subsistence law giving rural residents a priority to fish and game. The state constitution guarantees residents equal access to fish and game in Alaska, but that is in direct conflict with the Alaska National Interest Lands Conservation Act of 1980.

That federal law requires rural residents be given a preference for subsistence hunting and fishing.

The Legislature failed to address the conflict and the federal

government is going ahead with plans to manage subsistence on its land.

The draft federal regulations attempt to answer one of the trickiest questions of the subsistence issue: What defines a rural community? The plan divides Alaska communities into three categories.

If the regulations remain as drafted, most communities with fewer than 2,500 people would qualify for subsistence, said Lou Waller, who represents the National Park Service on a federal task force writing the rules.

But there are no guarantees, he said. A small town that "demonstrates characteristics of an urban community" and does not have a history of "customary and traditional use" of the resource may not qualify.

Towns with populations of 2,500 to 7,000 people could qualify if they are in a bush setting and meet the criteria set by federal law, he said. Any city with more than 7,000 residents would not qualify.

Waller said that broadcasting every move the federal task force made would have slowed down the process considerably.

A public hearing on the federal plan is expected late this month or in early June.

Though state officials have sat in on a few meetings of the task force, the Department of Fish and Game has not been told of the federal plan, Cohen said. The state files are open to public view, he said, and that would have blown the federal blackout on the planning process.

"There's an awful lot to fish and game management and it's really a sorry state of affairs that they haven't been working with the guys that know how to do it," said Dan Timm, state game biologist.

## Subsistence plan evolves in secret

By JOE HUNT  
Times Writer

Hastily written regulations on subsistence hunting and fishing on federal land in Alaska are being fine-tuned behind closed doors and next week will be shipped to Washington, D.C., for approval, officials close to the process say.

Walter Stieglitz, director of the U.S. Fish and Wildlife Service in Alaska, defended the secrecy in developing the management plan.

"I realize this cuts the public a little short in being able to react to the proposal, but that's the nature of the beast because of the time crunch involved," he said Thursday.

Lew Pamplin, director of the state Division of Wildlife Conservation, said he cannot understand why the federal process has not been more open.

"This is not the MX missile system here," Pamplin said. "This is subsistence that will be governed on public lands. This is ridiculous. It should be conducted in a public forum."

The federal government intends to take over subsistence management on federal land July 1, following the Legislature's failure to resolve the controversial issue. The federal government owns about 80 percent of the land in the state.

The federal plan is being crafted without information from state biologists who have managed and monitored hunts on federal acreage, state officials say. While a few state biologists have received telephone calls from their federal counterparts asking for biological or administrative information, state experts largely have been ignored.

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# Subsistence talks shift to W

**TIMES STAFF**

Members of Alaska's congressional delegation plan to meet with the secretary of the Interior today regarding a federal take-over of subsistence rights on federal lands in the state, said Sen. Ted Stevens, R-Alaska.

Stevens made his comments at a press conference Friday. Federal officials have drafted a management plan to take over subsistence hunting and fishing rights on federal land — about 60 percent of Alaska — on July 1.

The federal government is stepping in following the state's failure to resolve who has subsistence rights. The Alaska National Interest Lands Conservation Act of 1980 requires a subsistence preference for rural Alaskans. Conforming with that act is the basis of the subsistence controversy.

Stevens said he and other members of Alaska's congressional delegation plan to meet

with Interior Secretary Manuel Lujan today in Washington, D.C., to discuss subsistence. He did not say what the delegation hoped to accomplish.

"We're putting this on the front burner," Stevens said.

The plan would deny subsistence hunting privileges to Alaskans who live in communities with populations over 7,000, while smaller communities' subsistence rights would be governed by a special federal board.

Stevens would not comment specifically on the draft plan Friday. But he did warn of possible dire consequences if Congress must revisit ANILCA to resolve the subsistence issue.

"This now shifts to Washington; there's no question about it," Stevens said. "I still think this is an issue that begs a state solution, and if it comes to Washington . . . there isn't a single segment of Alaska that's not going to suffer."

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