

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6557 SENATE RESOURCES

961

Subsistence Hunting Regulations
Regulatory year 1989-90
Region II
DALL. SHEEP

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern	% of Harvest on Federal Lands?
5AAC85.055(4) Dall Sheep	200-250	400-600	No	No	30%

Units 6 and 9, remainder of Unit 13, and Units 14(B), 16, 17, and 19.

SUBSISTENCE HUNTERS: Aug. 10-Sept. 20
1 ram with 7/8 curl horn or larger.

RESIDENT AND
NONRESIDENT HUNTERS: Aug. 10-Sept. 20
1 ram with full-curl horn or larger.

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5ACC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.

Subsistence Hunting Regulations
Regulatory Year 1988-90
Region III -- Interior

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?	
GRIZZLY BEAR						
Unit 24 that portion of the Koyukuk River drainage upstream from, and including, the Alatna River drainage						
SUBSISTENCE HUNTERS: Residents of Anaktuvuk Pass: One bear every regulatory year.	Sept. 1- Oct. 31 Apr. 1- May 31	30 30	30 30	No No	No No	100% 100%
ALL OTHER SUBSISTENCE HUNTERS: One bear every four regulatory years by registration permit; 15 bears may be taken. registration permit;	Sept. 1- Oct. 31 May 10- May 31	100 100	10 10	No No	No No	50% 50%
RESIDENT/NONRESIDENT HUNTERS: One bear every four regulatory years by registration permit; 15 bears may be taken. registration permit;	Sept. 1- Oct. 31 May 10- May 31	50 50	100 100	No No	No No	50% 50%

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?
Unit 19, residents domiciled in Lima Village only: No bag limit, provided that no more than 100 caribou are taken. Cows and calves may not be taken April 1-Aug. 9.	35-40	3500-4000	Yes	Yes	75%
SUBSISTENCE HUNTERS: July 1- June 30					
Unit 20(D) south of the Alaska Highway	2-4 Subsistence 40-80 Permittees	500+	Yes	Yes	0%
SUBSISTENCE HUNTERS: One bull. Aug. 10- Sept. 30					
RESIDENT/NONRESIDENT HUNTERS: One bull by drawing permit only. 150 permits will be issued. Aug. 10- Sept. 30					
Unit 20(D) north of the Alaska Highway.	20*	250	No	No	0%
			(*These numbers are included in data for GUN 12 & 20(D) north of the Alaska Hwy listed above)		
SUBSISTENCE HUNTERS: One caribou. Aug. 10- Sept. 30					
Dec. 1- Feb. 28					

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?	
Forty-mile River upstream from and including Ketchumstuck Creek.						
SUBSISTENCE HUNTERS: One caribou	Aug. 10- Sept. 30	5-25	100-200 - Area is remote.	No	No	75% including BLM managed native selections.
	Dec. 1- Feb. 28	5-25	100-200 - Area is remote.	No	No	75% including BLM BLM managed native selections.
RESIDENT/NONRESIDENT HUNTERS: One bull	Aug. 10- Sept. 20					
Remainder of Unit 20(E) (accessible by the Taylor Highway and associated trails)						
SUBSISTENCE HUNTERS: One caribou by registration permit only. Season will be closed when 325 caribou have been taken.	Aug. 10- Sept. 30	400-500	2000-3000*	Yes	Yes	75% including BLM managed native selections.
	Dec. 1- Feb. 28	400-500	2000-3000*	Yes	Yes	75% including BLM managed native selections.

* If all Alaskans were considered eligible for subsistence, most would hunt under the subsistence regulations, and not in this hunt.

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?	
Units 24, and 26(A), those portions within the Gates of the Arctic National Park. Three sheep.						
SUBSISTENCE HUNTERS:	Aug. 1- Apr. 30	30	30	No	No	100
RESIDENT/NONRESIDENT HUNTERS:	No Open Season					
<u>MOOSE</u>						
Unit 12, that portion drained by the Tanana, Nebeane and Chisana Rivers east of the Tetlin Reservation boundary and north of the winter trail from Pickeral Lake to the Canadian border. One bull.						
SUBSISTENCE HUNTERS:	Sept. 1- Sept. 20	75-100	100-150	No	No	60%; Tetlin MWR
RESIDENT/NONRESIDENT HUNTERS:	Sept. 10- Sept. 15					

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expended Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?	
RESIDENT/NONRESIDENT HUNTERS:	Sept. 1- Sept. 20	25-30	50	No	Yes	50%
Unit 19(D), remainder of the Upper Kuskokwim Controlled Use Area. One bull.						
SUBSISTENCE HUNTERS:	Sept. 1- Sept. 30	200	300	Yes	Yes	50%
	Dec. 1- Feb. 28	20	200	Yes	Yes	75%
RESIDENT/NONRESIDENT HUNTERS:	Sept. 1- Sept. 30	200	200	No	No	50%
Unit 20(B), that portion within the Minto Management Area. One bull by registration permit only. Season will be closed when 15 bulls have been taken.						
SUBSISTENCE HUNTERS:	Sept. 1- Sept. 20	75-100 ⁴	Over 500 due to proximity to Fairbanks, good access, and high demand for moose.	Yes	Yes	None
	Jan. 10- Feb. 28					
RESIDENT/NONRESIDENT HUNTERS:	No Open Season					

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?	
Unit 20(F). One bull.	15-30	100	Yes, for the Dec. portion of the season. 1988.	Yes, for the Dec. portion of the season.	30% (BIM)	
SUBSISTENCE HUNTERS: Sept. 1- Sept. 15	Based on reported subsistence participation 1988.	Based on AK resident participation				
Dec. 1- Dec. 10	I did not include Minto permit holders as eligible because in practice few Minto hunters would travel to 20F although eligible.					
RESIDENT/NONRESIDENT HUNTERS: Sept. 1- Sept. 15						
Unit 21(D)						
SUBSISTENCE HUNTERS: One moose; antlerless moose may be taken only from Sept. 21- Sept. 25 and Feb. 1- Feb. 5. Moose may not be taken within 1/2 mile of the Yukon River during the February season.	Sept. 5- Sept. 25 Feb. 1- Feb. 5	200 200	600 500	Yes Yes	Yes Yes	80% 80%
RESIDENT/NONRESIDENT HUNTERS: One bull.	Sept. 5- Sept. 25	400	400	No	No	80%

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?
SUBSISTENCE HUNTERS:					
	Sept. 10- Sept. 30				
	Dec. 1- Dec. 10				
	Feb. 18- Feb. 28				
Remainder of Unit 25(D)					
One bull					
SUBSISTENCE HUNTERS:					
	Sept. 10- Sept. 30	280-310 Based on one biologist's est.	330-380	No	No
	Dec. 1- Dec. 10				100%
RESIDENT/NONRESIDENT HUNTERS:					
	Sept. 10- Sept. 20	31 (1989 hunters)			
Remainder of Units 26(B), and Unit 26(C)					
SUBSISTENCE HUNTERS:					
One moose.	Aug. 1- Dec. 31	50-60 Based on 1988 Subsistence Division est. of hunters in Kaktovik and Nuqsut.	150-175	Yes	Yes
					50%

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region V -- Northwest

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?
<u>Unit 18 (B/G Bear)</u>					
SUBSISTENCE HUNTERS: (Domiciled in Kwethluk)	12-16	20-40, mostly residents of Bethel	Yes	Yes	100
Sept. 10-Oct. 10					
Apr. 10-May 25					
One bear every regulatory year					
ALL OTHER HUNTERS:					
Sept. 10-Oct 10					
Apr. 10-May 25					
One bear every 4 regulatory years					

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibilty be expanded to include all Alaskans.

Subsistence Hunting Regulations
 Regulatory Year 1989-90
 Region V - Northwest

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?
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Unit 26A (Moose)

SUBSISTENCE HUNTERS:	20-40	80-100 ⁵	Yes	Yes ⁴	10
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Aug. 1-Dec. 31

One moose. The taking of cows accompanied by calves is prohibited.

ALL HUNTERS:

Sept. 1 - Dec. 31

One moose. The taking of cows accompanied by calves is prohibited.

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. Overharvest can be prevented and Tier II would not be necessary if aircraft use is allowed only from Sept. 1 - Dec. 31.
5. Additional hunters would mostly come from the Fairbanks area.

MEMORANDUM

State of Alaska

TO Norm Cohen
Deputy Commissioner
Department of Fish and Game

DATE February 21, 1990

FILE NO

TELEPHONE NO

FROM *St. For*
David Cahtillon
Deputy Director
Division of Commercial Fisheries

SUBJECT Response to
Subsistence
Questions Your Memo
of 02/05/90

The responses to the six questions you posed are organized by region with the various management areas lumped into each response. Due to the short time frame, some small details may have been overlooked.

REGION I

1. By board action in the spring of 1989, the residents domiciled in the communities of Yakutat, Klukwan, Haines, Hoonah, Angoon, Sitka, Kake, Saxman, Kasaan, Klawock, Craig and Hydaburg have a priority for a variety of fishery resources within specific described areas (5 AAC 01.665, 01.715 and 02.107). Additionally, 5 AAC 01.730(d) limits subsistence coho fishing in Mitchell Bay to residents of Angoon.
2. The subsistence halibut fishery is open year around while personal use fishing is open from 2/1 through 12/31. 5 AAC 77.624(1) and 77.676(1)

For herring roe on kelp in Yakutat a permit is required for personal use but not for subsistence. 5 AAC 77.620(4)

In Yakutat and Southeast, bottomfish may be taken by all gear types for subsistence, but personal use fishermen can only use longlines or hand held lines. 5 AAC 77.622(2). Additionally, in Southeast there are personal use rockfish limits in areas adjacent to Ketchikan and Sitka that do not apply to subsistence fishermen. 5 AAC 77.622(3)

In Yakutat, annual salmon bag limits are specified for personal use fishermen as well as no directed fishing for chinook. Personal use fishermen are restricted to taking salmon to the 7/1-9/30 period and can only fish in areas open to commercial fishing. 5 AAC 77.628(c&j)

In Southeast, a personal use open season, gear restrictions, seasonal bag limits, and open fishing area is provided for the Taku River and no such restrictions apply to subsistence fishing. 5 AAC 77.682(f)

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In Southeast, personal use regulations provide for the use of set nets in Shiply Bay. No such provision is in the subsistence regulations. 5 AAC 77.682(g)(2)(C)

In Southeast, personal use regulations close the waters of Sitkoh Bay in order to provide a subsistence priority for Sitka and Angoon. 5 AAC 77.682(i)(1)

3. When the board established Southeast Alaska and Yakutat personal use fisheries, the intent was to allow individuals to continue to harvest resources, for their own personal consumption, in the same manner as was occurring before the customary and traditional findings. I do not anticipate any significant increases in demand or harvest resulting from the differences in personal use and subsistence regulations outlined in #2. Over time, if everyone in the region remained eligible for subsistence some increases could occur. If Juneau residents were eligible for subsistence, larger harvests of sockeye could be expected from the Taku River.
4. We do not anticipate the immediate development of any Tier II situations resulting from all Southeast Alaska residents becoming eligible for subsistence fishing.
5. The primary conservation situations involving subsistence and personal use fishing are already occurring. Rockfish populations near Ketchikan and Sitka and some small sockeye systems are of concern. Most of the rockfish are being harvested under sport licenses and little change to subsistence would occur if everyone was eligible. The small sockeye systems are already heavily utilized and the user level would probably stay about the same as has occurred in recent years.
6. This is a difficult question. Most of the actual harvest occurs in marine waters. A large portion of the salmon resource originates from streams that lie on federal lands.

REGION II

BRISTOL BAY - 5 AAC 01.335

1. Only those residents domiciled in the Nushagak District may take salmon in the Nushagak District and drainage.
2. Only Togiak drainage residents and residents of Manokotak may subsistence fish in Togiak.
3. Only Naknek and Kvichak drainage residents may subsistence fish in the Naknek drainage.
4. Only residents in the Iliamna and Lake Clark drainages may

subsistence fish in that drainage.

5. Only residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clarks Point and Ekuk may take subsistence herring and herring roe on kelp at Togiak. 5 AAC 27.805(a)

COOK INLET - 5 AAC 01.565(a&b)

1. Only Pt. Graham and English Bay residents may fish in the Pt. Graham and Dogfish Bay subdistricts.
2. Only Tyonek residents may fish in the Tyonek subdistrict.

PRINCE WILLIAM SOUND - 5 AAC 01.648

1. Only residents of the southwest district may subsistence fish in the Southwest District and Green Island.
2. Only residents of Tatitlek and Ellamar may fish in the area described in the Tatitlek area.

COPPER RIVER - 5 AAC 01.630(a)

1. Only those residents domiciled in Game management units 11, 13A, 13B, 13C, 13D as described in 5 AAC 88.005 may subsistence fish in the Upper Copper River.

QUESTION #2 & 3

In general, the Bristol Bay subsistence fisheries and personal use fisheries are different. The personal use fisheries on the Nushagak are only in the commercial fishing district and are limited 70 salmon per individual during the month of July. The PU fishery on the Naknek starts after the escapement goal has been reached (900,000) and dip net as well as gillnets can be used. It is doubtful there would be additional participation from what is correctly taking place with the exception of the Naknek River which has a large and growing sport fishery. If this fishery were made into a subsistence fishery this catch would increase to some unknown extent.

There are several PU fisheries in Cook Inlet, but all are managed on a quota system. Even if they were made into subsistence fisheries it is doubtful the harvest would increase substantially. The Tyonek subsistence fishery was opened to all residents in 1985 following the MADISON case. The number of permits increased to 176 from a average of 70. Tyonek was issued 73, 82 went to Anchorage area residents and 21 were issued to Kenai Peninsula residents. Only 17 percent of the total harvest was taken by non-Tyonek fishermen (326 kings).

It is doubtful if any changes could be projected for PWS at this

time since the subsistence regulations are so new and there doesn't appear to be much interest in a subsistence fishery in PWS from residents outside of the remote villages earlier mentioned.

The PU fishery in the Upper Copper River is another story, the current PU fishery issues approximately 4500 permits per year with bag limits of 15-30 fish. Subsistence bag limits are 30-50 with 200-500 per individual or family permitted. If the guideline harvest rates in the Copper River management plan were not used, the harvest could be expected to go up to at least the 120,000 fish that were documented in 1983 before the current plan was adopted. If the current guideline were maintained the harvest should remain stable at about 85,000.

It does not appear that Tier II would apply to any Region II salmon subsistence.

REGION III

1. Four finfish fisheries in the Kuskokwim Area are limited in subsistence eligibility. These are the salmon, halibut, Pacific cod and herring and herring roe fisheries. 5 AAC 01.285(a)(b)(c)(d)

Subsistence eligibility in the Yukon drainage is currently limited to residents of rural areas, as determined by the board for Yukon Area salmon and freshwater fish species including sheefish, char, whitefish, lamprey, burbot, sucker, grayling, pike and blackfish. Cape Roma of herring also have limited access. 5 AAC 01.235(a)(b)(c)(d)

2. In the Kuskokwim Area, only the salmon fishery has regulations for personal use fishing that are different from those for subsistence fishing. Personal use fishermen must have a permit, cannot take king salmon and can only fish from 7/1-9/30. 5 AAC 77.?

In the Yukon there are no provisions for personal use fishing for freshwater finfish other than salmon. Permits are required for personal use salmon fishing, but are only required for select areas for subsistence salmon fishing - 5 AAC 01.230. Salmon taken for personal use may not be used for dog food.

3. In the Kuskokwim, no increase in effort is expected as the result of expanded eligibility.

In the Yukon, the main expansion would be from residents of the Fairbanks area who were formally limited to personal use fishing. These people could take subsistence fish for dog food which they could not do under personal use regulations. The Tanana River and the area in District 5 near the Haul Road

bridge are the locations increased effort is anticipated.

4. No Tier II situation is anticipated during the 1990 season. In the Yukon, participation in areas near Fairbanks may rise over time to levels that will require some limitation on effort.
5. No biological concern exists for the Kuskokwim as harvests are not expected to increase. In the Yukon, some concern exists for stocks in the Tanana drainage where effort increases can be anticipated. Management actions in the commercial and subsistence fisheries should be able to compensate for these increases, but fall chums are still considered rebuilding and weak returns may be impacted.
6. Again, this is a tough question. Considering that the state has jurisdiction in navigable waters, almost all the harvest occurs off federal lands.

REGION IV

1. In the Kodiak Area, the subsistence taking of king crab (5 AAC 02.465) and salmon (5 AAC 01.535) is limited to Kodiak Borough residents, excluding those persons residing on the Coast Guard base. These restrictions do not apply to the Mainland District.

In the Aleutians Islands Area, only those persons domiciled in the area and the Pribilof Islands may take halibut in the area and around the Pribilof Islands 5 AAC 01.365.

In the Alaska Peninsula Area, only the residents of the area, including those of the communities of Ivanof Bay and Perryville may take halibut in the area 5 AAC 01.415.

Only residents of the Chignik Area may take halibut for subsistence in the area 5 AAC 01.465.

2. There is only one personal use salmon fishery provided for in the region. This occurs in the Adak District in the waters around Adak and Kagalaska Islands 5 AAC 77.318.

For shellfish, the personal use, and subsistence regulations mirror each other.

3. Small increases in salmon subsistence participation would occur as a result of the participation of Coast Guard base personnel in Kodiak and by fishermen in the region that reside in other areas of the state. The increase in permits issued could range from 10-20 percent and the harvest increase would not exceed this amount.

No increase in shellfish subsistence participation or harvest is anticipated.

4. No Tier II situations are expected to develop in this region.
5. No biological concerns for fish stocks in this region have been identified.
6. In the Kodiak Area, a significant portion of the salmon harvest occurs in rivers or lagoons located in the Kodiak National Wildlife Refuge. A rough estimate of 40 percent of the Kodiak Area subsistence salmon catch falls into this category and additional salmon are harvested in marine waters adjacent to this refuge. In the other management areas of the region, almost all of the catch occurs on state or native lands or adjacent marine waters.

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Southeast Alaska Subsistence Fishing and Hunting Update November 1989

Subsistence fishing and hunting are important parts of the culture and economy of many southeast Alaska communities. Subsistence is a social issue with a long history. Major changes have been occurring in state subsistence regulations that effect southeast villages. Many residents have not heard of them. This report is a current update of recent events effecting subsistence in southeast Alaska.

Background

Since 1979, the state has had a state law protecting subsistence fishing and hunting. The law requires that subsistence fishing or hunting be allowed where it traditionally occurs. The law requires that subsistence be given priority over commercial fishing and sport fishing and hunting. This means that in times of shortages of wild fish stocks and game populations, where it becomes necessary to restrict harvests, the state must cut back on sport and commercial uses before subsistence uses are cut back. Since 1981, the federal government also has had a federal law protecting subsistence (in ANILCA). It is almost identical to the state law. In both laws, subsistence is defined as the "customary and traditional use" of wild resources in "rural areas".

The subsistence laws are implemented by the Alaska Board of Fishery and Alaska Board of Game. These are two state boards made of seven citizens, appointed by the governor. They meet at least twice a year to make fishing and hunting regulations for the state.

The Board of Fisheries and Board of Game have just recently started to implement the subsistence law in the southeast region. This means they are in the process of creating regulations that will affect subsistence fishing and hunting for years to come in southeast Alaska.

Recent Decisions Affecting Southeast Alaska

The Boards of Fisheries and Game decide which communities in southeast qualify for subsistence. That is, the boards decide who may fish and hunt under subsistence regulations. Deciding who qualifies is a two step process.

In the first step, the Boards of Fisheries and Game decide which communities are "rural communities" in southeast. By law, subsistence occurs only in "rural communities or areas". Over the past four years, the Boards have decided that all communities in southeast (including Saxman) are "rural", except for the Juneau Borough and the Ketchikan area, which are "non-rural." This means that residents of Juneau or Ketchikan (except Saxman) cannot fish or hunt under subsistence regulations, but can only fish or hunt under general, sport, commercial, or personal use regulations.

In the second step, the Board of Fisheries and the Board of Game decide which rural southeast communities have "customary and traditional uses" of fish or game. By law, subsistence is defined as "customary and traditional uses." Over the past two years, the Board of Game has decided that all rural communities in southeast have customary and traditional uses of deer. They have decided that only residents of Chichagof and Baranof islands and residents of Kake have customary and traditional use of brown bear. The Board of Game has not completed their decisions about other game animals.

In their January-March 1989 meetings, the Board of Fisheries decided that the following southeast rural communities have customary and traditional uses of all types of salmon: Yakutat, Klukwan, Haines, Kake, Hoonah, Angoon, Hydaburg, Kasaan, Saxman, Klawock, and Craig. These communities qualify for subsistence salmon fishing. The Board decided that residents of Sitka had customary and traditional uses of sockeye salmon only.

The Board decided that these rural communities do not have customary and traditional uses of salmon: Skagway, Gustavus, Elfin Cove, Pelican, Tenakee Springs, Petersburg, Wrangell, Point Baker, Port Protection, Port Alexander, Thorne Bay, Coffman Cove, North Whale Pass, Hollis, Edna Bay, Meyers Chuck, and Hyder. These communities do not qualify for subsistence salmon fishing. The Board of Fisheries did provide "personal-use" fishing regulations for these communities. Personal use is a new fishing category for southeast. It allows salmon to be taken with nets for home use, under the terms of permits issued by ADF&G, but this type of fishing does not carry the subsistence priority.

The Board of Fisheries also decided about shellfish and bottomfish. In general, the same communities that qualified for subsistence salmon also qualified for subsistence shellfish (except king crab) and subsistence bottom fish. The same communities that did not qualify for subsistence salmon did not qualify for subsistence shellfish and bottom fish.

The Board of Fisheries determined that subsistence king and coho salmon may only be taken incidentally to sockeye, pink, and chum salmon fishing, except for kings and coho in Yakutat, and coho in Angoon.

Discussion of Recent Southeast Subsistence Decisions

These recent decision are important ones, for they affect the ability of residents to subsistence fish and hunt for years to come. The decisions by the Board of Fisheries are particularly important. The Board of Fisheries has eliminated from subsistence fishing a major portion of the rural residents in southeast, including residents of two major communities (Wrangell and Petersburg) and seventeen small communities. This includes both the Native groups and non-Native residents of these communities.

The system for establishing Alaska's fish and game regulations provides for citizen input in formulating and changing these regulations. The Boards have kept all upcoming agendas open for considering proposed revisions to subsistence regulations. Proposals submitted to the Board of Game by mid-December will be considered at the spring, 1990 meeting. Proposals submitted to the Board of Fisheries by April 1 will be considered at the fall, 1990 meeting.

Decisions by the Boards may also be challenged by legal suits. On June 30, 1989, a lawsuit was filed by Herman Kitka, Mark Jacobs, Jr., and John Dapcevich, on behalf of themselves and residents of the City and Borough of Sitka. They are suing the State of Alaska, Alaska Department of Fish and Game, and the Board of Fisheries over the recent decisions in Sitka that recognize Sitka's customary and traditional uses of some food species but not others.

vs. State A-89-276

Statewide Subsistence Issue: The Kenaitze Case

Another major subsistence issue is the lawsuit by the Kenaitze Indian Tribe on the Kenai Peninsula against the State of Alaska. It is a complicated suit, but in general, the Kenaitze Tribe is suing for an opportunity to subsistence salmon fish on the Kenai Peninsula. Recently, a California federal court found in favor of the Kenaitze on part of their suit. The federal court found that the state's current definition of "rural" did not match a "common" definition, and was not in compliance with ANILCA (the federal subsistence law).

This court decision throws the state's approach toward defining "rural" into confusion. The state has not wanted to define "rural" with a simple population size (the usual standard is 2,500 people), because

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.

Key events in recent history of subsistence

The following are key events in the recent history of subsistence in Alaska:

- Under the terms of the Alaska Native Claims Settlement Act of 1971, Natives gave up claims to aboriginal hunting and fishing rights in exchange for roughly \$1 billion and 44 million acres of land.

- Responding to the plummeting population of the Western Arctic Caribou Herd, the Alaska Board of Game for the first time in 1975 limited eligibility for hunting permits to local residents of the area most dependant on the herd.

- The Tanana Valley Sportsmen's Association filed suit in 1975 in Fairbanks to prevent the Board of Game from implementing the permit regulations. The case reached the Alaska Supreme Court in 1978, by which time the regulations were out of date and no policy issues were settled.

- The Alaska Legislature authorized, but did not compel the Board of Game to establish subsistence hunting areas in 1975. In 1976 the Legislature divided fish and game management between the newly created Board of Game and the Board of Fisheries.

- The 10th Alaska Legislature passed in 1978 the first comprehensive subsistence law. Urban residents and sportsmen protested, calling the new law unfair. They predicted the destruction of game resources by the growing rural population.

- In a case between the Kenai Peninsula Fisherman's Cooperative Association and the state in 1981, it was ruled that Section 15, Article VIII of the Alaska Constitution does not prohibit differential treatment of sport, commercial and subsistence fishermen.

- Ballot Measure 7, an attempt to repeal the 1978 subsistence law, failed in 1982 in a statewide election.

- Four men, two of them Anchorage residents, filed a lawsuit in 1983 challenging the constitutionality of the 1978 subsistence law.

- The Alaska Supreme Court struck

down in 1985 the 1978 subsistence law in the Madison case, stating that all Alaskans should be able to use subsistence, and only when resources are extremely scarce should preferences be allowed.

- The Alaska Legislature in 1985 adopted a letter of intent leading to the development of the 1986 subsistence law.

- The U.S. government informed the state in 1986 that the Madison decision contradicted the Alaska National Interest Lands Conservation Act, and threatened to take over the management of all federal land in Alaska unless a new subsistence law was created to meet ANILCA specifications.

- The Alaska Legislature created in 1986 a new law defining eligibility for participation in subsistence practices. The new guidelines were based on residency, with a 10-point criteria system deciding what areas qualified. The lawsuit filed in 1983 was modified to challenge the new law.

- A U.S. judge ruled in 1987 against the Kenaitze Indian Tribe, stating that the 1986 subsistence law agrees with ANILCA provisions.

- The 9th U.S. Circuit Court of Appeals in 1988 reversed the 1987 Kenaitze decision, telling the state that a better definition of "rural" was needed.

- An attempt by the state in 1989 to get federal legislation to match the federal definition of rural to that of the state, thus bypassing the 9th Circuit Court decision by changing the laws it was based upon, was thwarted by Native groups.

- The state and Kenaitzes agreed in 1989 to a one-year fishery solution until a permanent agreement is decided upon.

- The Alaska Supreme Court struck subsistence law as unconstitutional in December 1989.

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

MAR 21 1990

subsistence

March 20, 1990

The Honorable Bettye Fahrenkamp
Alaska State Senator
P.O. Box V
Juneau, AK 99811

Dear Bettye,

As you know, Alaska faces a real dilemma following the recent Alaska Supreme Court decision in McDowell v. State. In that case, the Court found that the subsistence priority for rural residents, which has been State policy for more than ten years, is unconstitutional. This is an unfortunate ruling because it interferes with good, workable policy. Additionally, it makes it impossible for us to enact a State law which is consistent with demands of federal law.

It is not the threat of federal takeover of fish and game management, under authority of the Alaska National Interest Lands Conservation Act (ANILCA), that compels me to seek a constitutional amendment. In 1978 the Legislature enacted a subsistence law which authorizes a subsistence priority for rural residents. In 1982 Alaskans overwhelmingly voted to preserve the law and the priority. In 1986 the Legislature reaffirmed the rural preference.

To maintain the present law, I have proposed an amendment to the Alaska State Constitution that would allow such a rural priority. The amendment would validate the current State subsistence law by returning us to the status quo before the McDowell decision.

This proposal was not developed in a vacuum. I have had many discussions, with a wide variety of interests, on this issue over the past two months. Although I had initially hoped that a solution via individual permits could be developed through a simple statutory amendment, I have concluded that the resulting system would be extremely burdensome, costly, and unwieldy. Moreover, I believe that

March 20, 1990

a statutory permit system would be unduly intrusive into the lives of individual Alaskans and probably would not meet federal requirements under ANILCA.

I am convinced that the constitutional amendment is the cleanest and most effective way to assure fishing and hunting opportunities to those people who most rely on fish and wildlife as a mainstay of their livelihood. It is also the most effective way to preserve the State's authority to manage those resources, not just for subsistence users but for commercial and recreational users as well.

Enclosed is a discussion paper that explains our rationale supporting the need for a constitutional amendment. It also outlines the several options my administration considered before coming to this conclusion. I solicit your support for the amendment, as the only way to preserve the integrity of our management system as well as unique Alaskan lifestyles.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written in a cursive style.

Steve Cowper
Governor

Enclosure

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

PLUW

March 2, 1990

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

Dear Mr. Speaker:

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

In Title VIII of the Alaska National Interest Lands Conservation Act ("ANILCA"), P.L. 96-487, 94 Stat. 2371, 2422 (1980), the United States Congress established a priority for subsistence uses of fish and wildlife by rural residents on federal land, and provided that the priority would be implemented by the secretaries of interior and agriculture unless the state enacted legislation affording the same priority. In ch. 52, SLA 1986, the legislature gave rural residents a priority for subsistence uses of fish and wildlife. The legislature enacted ch. 52, in part, to prevent a federal takeover of fish and wildlife management on federal land, an action with which I wholeheartedly agree.

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

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

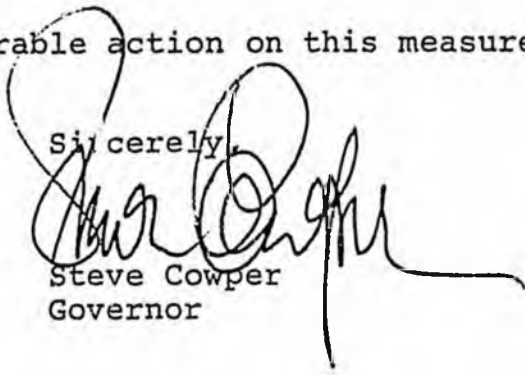
and customary and direct dependence on a fish or game population as a mainstay of livelihood. This would give the legislature clear constitutional authority to enact laws that are consistent with the subsistence provisions of ANILCA.

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

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

I urge your prompt and favorable action on this measure.

Sincerely,


Steve Cowper
Governor

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE JOINT RESOLUTION NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 Proposing an amendment to the Consti-
6 tution of the State of Alaska relating
7 to subsistence uses of fish and wildlife
8 by rural residents.

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

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

12 SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE. Nothing in
13 this constitution prohibits the legislature from limiting the taking
14 of fish and wildlife for subsistence uses to rural residents, and from
15 providing for the allocation of that taking among rural residents on
16 the basis of local or community residence, availability of alternative
17 resources, and customary and direct dependence on a fish or wildlife
18 population as the mainstay of livelihood.

19 * Sec. 2. The intent of the amendment proposed by this resolution is to
20 validate, ratify, and reinstate any provisions of the new statutes and
21 amendments enacted by ch. 52, SLA 1986, and of any regulations adopted
22 under those statutes and amendments, which otherwise might have to be
23 declared invalid under the Alaska Supreme Court's decision in McDowell v.
24 State, 785 P.2d 1 (Alaska 1989), and to explicitly reverse the effect of
25 the McDowell decision as to those provisions and regulations.

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

1 and the election laws of the state.

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G




Alaska State Legislature

REPRESENTATIVE DICK SHULTZ

Member
Finance Committee

P.O. Box V
Juneau, Alaska 99801
(907) 465-4940
Home: P.O. Box 487
Tok, Alaska 99780

MEMORANDUM

TO: ALL LEGISLATORS
FROM: REP. SHULTZ 
DATE: APRIL 6, 1990
RE: SUBSISTENCE PRECEDENTS

There are two recent court decisions that if left unresolved will make any resolution of the subsistence issue impossible.

Both the Kenaitze and Kwethluk decisions beg two important questions.

1. Who is considered rural by the Federal Government?
2. Will the federal law continue to threaten our sustained yield principle of game management?

Before we know the answers to these critical questions it will be remiss to feel comfortable in conforming our constitution to allow the implementation of federal subsistence law on state lands.

My constituents are already considered urban under several state programs because they are road connected. I need to know what to tell them about any change in our constitution and how it might affect them. In light of these two court decisions it is becoming obvious to me the federal government is insensitive in using the sweeping fish and game allocation powers granted to them under ANILCA.

As the information I receive arrives from the Department of Fish and Game I will be happy to share it with you. I for one want to know why we keep losing these battles to protect our fish and game management in Alaska. Without this knowledge I can not begin to support allowing federal policy to be put in place on our state lands.



Member
Finance Committee

Alaska State Legislature

REPRESENTATIVE DICK SHULTZ

PO. Box V
Juneau, Alaska 99801
(907) 465-4940
Home: PO. Box 487
Tok, Alaska 99780

April 6, 1990

Commissioner Collinsworth
Dept. Of Fish and Game
Juneau, Alaska 99802

Dear Commissioner;

Please send to my office all communications by your Department both internal and otherwise on the Kenaitze decision and the Kwethluk decision.

Since both of these decisions involve a public resource namely fish and game and also involve the issue of subsistence I am most interested in what the Department has in mind for a solution to these cases.

I want to know what data was available to the Boards and what was actually presented to the Boards either voluntarily or as requested. The same holds true for the court. This includes subsistence studies done in the area and in the case of Kwethluk the commercial fishing catch numbers for this season.

I would also like to see any information presented on these matters by the local biologists and the Directors of Wildlife Conservation, Commercial Fisheries, Subsistence, and Sport Fish to the court, board, or their superiors. Please note accordingly.

It is my intent to review this information to determine what impacts may occur in my District as a result of the disturbing precedents being established in the handling of these matters by the Department and courts.

Sincerely,

A handwritten signature in cursive script that reads "Dick Shultz".

Dick Shultz

cc: Senator Stevens, and Murkowski,
Congressman Young, Governor Cowper
Boards of Fish and Game, All Regional Council Chairmen
All Advisory Chairmen

APR 11 1990

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

TO: Commission Members
FROM: Staff
DATE: April 9, 1990
RE: Written comments on subsistence

Enclosed please find written comments from the public on subsistence received by Commission staff as of this date. The first document in the packet is the one forwarded to staff by Rep. Goll after the Commission meeting of March 31st.

As a reminder, teleconference sites in Anchorage, Fairbanks, Juneau, Ketchikan, Kodiak, Kotzebue and Wasilla will be on line for the Commission's discussion of subsistence April 17th at 5:00 p.m. The teleconference sites are located in the Legislative Information Offices for the respective communities with the exception of the one in Juneau which will be located in the House Judiciary Committee Room in the Capital Building.

Following are some general thoughts for your preparation of a statement. Naturally, the final language will await the conference in Anchorage during the second week of April.

DRAFT DRAFT

The Citizens Advisory Commission on Federal Areas:

1. Supports state action to prevent federal intervention into fish and game management;
2. Supports protection of uses by the citizens of Alaska of fish and game for subsistence purposes;
3. Recognizes the particular importance of subsistence to rural communities.
4. Believes that given the geographical and other limitations on residents of rural areas, that subsistence activities by area residents must receive priority protection in rural areas of our state;
5. Endorses a constitutional amendment which will protect subsistence, permit legislation granting a preference for subsistence uses by area residents in rural areas of Alaska, and must provide for allocation among subsistence users when resources must be limited;
6. Supports language for this amendment which will permit statutory consistency with ANILCA.



Native Village of Fort Yukon

P.O. Box 126
Fort Yukon, Alaska 99740
(907) 662-2581

April 3, 1990

Citizen Advisory Commission
on Federal Areas
Mr. Lew Williams Jr., Chairman
250 Cushman Street, Suite 4-H
Fairbanks, Alaska 99740

Dear Mr. Williams:

Please accept our most sincere apology for interrupting your March 30, 1990 audio-conference hearing on subsistence.

As I understand from those present, there was profanity used in the room (located in Fort Yukon) which the hearing was held and that it was broadcasted to the statewide audience.

I would like to explain what transpired during this time. I am told that there was a co-employee conflict which got picked up on the audio-conference microphones. In no way were these words directed towards members of the commission.

On behalf of this organization, I would like to state that I am sorry for this incident and assure you that this will not happen again in the future. We appreciate the opportunity this community is given to participate in statewide forums and we do not condone the abuse of this opportunity, nor the disrespect shown to others.

Respectfully yours,

Barry Wallis
Barry Wallis,
Administrator

cc: Council

P. O. Box 1410
Petersburg, Alaska 99833

March 6, 1990

Dear _____

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

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

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

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

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

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

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

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

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

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

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

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

In summary:

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

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

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

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

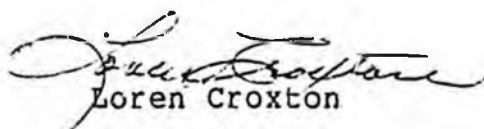
The Federal Government erred in not recognizing that the Alaskan Natives forfeited any aboriginal rights they may have had under terms of ANCSA. This should be challenged in the highest court of the land, and our congressional delegation must begin immediately working toward a revisions of that flawed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

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

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

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

Sincerely yours,



Loren Croxton

addendum:

Another legitimate method of handling this problem would be for the state, on July 1, to defy the Federal Government to take over management of our fish and game resources. It is questionable, given the circumstances, that the Federal Government has the authority to "take over", but should we say no, they do not have the authority to enforce their threatening action. The management of marine mammals they took from us in 1972 should be included in this action.

The state would then have sufficient time to craft a program which would be protective of the resource and equitable to all based upon individual need.

Testimony by: H. C. "Bud" Wiese
1426 2nd Avenue
Fairbanks, Alaska 99701

March 31, 1990

To: State of Alaska Citizens' advisory Commission
on Federal Areas
250 Cushman St., Suite 4H
Fairbanks, Ak 99701

To the Commission:

I am 69 years old - 49 years in Alaska-- 2 children - 5 grandchildren,
all born in Alaska.

Am a conservationist and have worked with Sportsmens and other
groups for over 40 years for the proper management and wise use of all
our resources.

Also for 40 plus years our family have harvested and processed fish,
game, berries and etc., for what we feel is a subsistence life style as
much as anyone with probably very few exception both rural and/or urban.
To elaborate with pride, except for very few specialty items such as ham,
turkey, oysters or eating out, we have fulfilled our needs of fish, red meat,
and berries off the land. We try hard to take only what we can use - such
as now our family group has a limit of 6 plus moose plus caribou, sheep,
deer and etc, but feel 2 (two) moose and some of the smaller animals are
what we can use and limit ourselves. I assure you we have the capability of
taking much more. We do not bone animals in the field and process it
ourselves with as little waste as reasonably possible. These resources are
in most cases shared by our group that now number 17 to 21, this includes
the kids of our group.

"continued"

Page II - 3/31/90 Testimony to Alaska Citizens' advisory Commission

My wife and I live in the City limits of Fairbanks, the others of our group live within approximately 15 miles of us.

Our harvest of these resources have not been restricted to the Fairbanks area as we usually combine vacations and recreation with the harvest. Speaking for those of our group and all being Alaskans and U. S. Citizens, we recommend and hope these resource be managed for maximun yield and that we be allowed access and use of these resources on all public lands on an equal base.

Attached is a copy of a letter that should be considered in any recommendations your commission make.

Erud Wise

The words "subsistence", "customary and traditional", "rural" and "urban" are ambiguous and mean different things to different people. Any legislation on this issue must be clear and precise as to the meaning of these idealisms.

If this is not done:

1. A political appointed board or some department of government will make up some kind of a determination of how these idealisms would apply.
2. Until these determinations were made, no one in Alaska would be able to understand the legislation, and/or how it would effect them.
3. To give a preference by made-up meanings to these idealisms will be right back in the courts - and it could be that a judge(s) would make the determination.

I for one, would prefer that I have a vote on the meanings of these idealisms and how they are applied. Contact your legislators at once and let them know you do not want ambiguous words used in any legislation they pass.

Don Szepanski
PO Box 3382
Juneau, Ak 99803
March 26, 1990

The Citizens' Advisory Commission
On Federal Areas
250 Cushman St. Suite 4H
Fairbanks, AK 99701

It is becoming increasingly common that subsistence hunting in Alaska is being abused by rural residents and mismanaged by Federal officials. Eskimo hunters have killed many walruses for ivory only leaving carcasses that have washed up on Russian beaches as reported in the media. This is an embarrassment for all the people of Alaska who care about Alaskan wildlife!

In the Fall of 1987 a few Eskimo young men from Barter Island used snow machines over a one week period to kill 78 Dall Sheep Rams in the Jago River/Achillik River Basins. This was mentioned to me by Kurt Lepping, a registered guide of Alaska, and was verified by four of us in our visit to Kaktovik in August 1988. We counted 250 sheep in this area but not even one Adult Ram! The large area was wiped out of mature rams. Seemingly subsistence hunting should not allow a game resource to be wiped out by irresponsible people. Residents of Kaktovik said this was done by young males to show their "Manhood". The Federal game official in Kaktovik was notified of this matter but said his hands were tied in subsistence hunting issues.

Seemingly all of us are responsible to leave some wildlife for our children.

Sincerely,

Don Szepanski

Dr. J. H. ...
Miss ...
Professors

3-21-90

Concerning the longshore proposals
on subsistence I take the following
comments:

All state wild government land in
Alaska is for common public use.

I oppose special provisions to
anyone, regardless of person.

People should be managed, not
wild life, in contrast over hunting

or to protect the area with
low game population. (Common sense only)

This should include all areas currently
open to the taking of game, or fish.

Restrictions if necessary should
include all people who might

otherwise be utilizing these resources.
(written from Anch - or Reber).
FBI - on talk)

Subsistence is the right of all people,
it should not be made a privilege

of only a part, or few -
Shawn Roberts
Gene Roff or Eric

Thank you -

**Statement of Robert Willard, President
Southeast Native Subsistence Commission before the
Citizens Advisory Commission on Federal Areas
Teleconference - March 31, 1990**

All communities that we represent in the Southeast are located within the Tongass National Forest and other federal designated areas. There are a host of conflicts between the lifestyles and the management by both the State and federal agencies.

Permit me to be specific, and not in order of any importance:

- o The Southeast Native Subsistence Commission supports access into the Glacier Bay National Park by the Tlingits of Hoonah for subsistence opportunity that is founded upon any definition of customary and traditional, long established and important uses; and related to economy and culture. More than that, the Tlingit people of Hoonah have used and occupied the Glacier Bay for thousands of years; indeed, before the first Europeans arrived on the shores of Alaska.

The use of Glacier Bay includes commercial fishing that antedate the taking of the Glacier Bay in creating the then Glacier Bay National Monument.

If there are any people that can truly cherish the good old days, as you say, it is the people of Hoonah. Many of the Elders Council of Hoonah were born and raised in the Glacier Bay and would love to teach their grandchildren the proper use of the Glacier Bay and to exercise their cultural duty to leave something behind for their offspring. We ask the Citizens Commission to recommend to the proper authorities to permit the Hoonah people to exercise their inherent right to subsist and for their future generations.

- o Another matter is that of protections of the marine life that are of importance for subsistence use purposes. We object to the commercializing of such marine life as sea cucumbers,

kelp, herring, herring eggs in great quantities, scallops and sea urchins. We object to commercializing particularly to the sea cucumber prior to any biological data necessary to make sound management judgment on the so-called sustained yield. We would ask the Citizens Commission to request the cessation to commercial harvest until such time as the propagation level is at least determined and as is contained in Section 810 of the Title VIII of ANILCA.

o Of major concern is that of the forested areas where habitat areas must be protected in accordance with Title VIII provisions. Our view is that the U.S. Forest Service must upgrade its assessment of areas important to subsistence uses, as plans for logging are developed. There are areas that are important to the deer in particular, wild berry picking areas. There are thousands of bays, coves, inlets, portages, canals, channels, passages and navigational waterway systems that are important to salmon, halibut, black cod, trout, herring, hooligans, seals and other marine life. Somehow, the U.S. Forest Service must take into serious account these vital resources.

In the Southeast, the home of approximately 16,000 Alaska Natives. If you were to sum up the problems of the Southeast Alaska Natives relative to subsistence, you could say that:

1. It is a problem of the opportunity to even subsist. Alaska law denies 12,100 Tlingits and Haidas their inherent right to subsist. Of the 19 Southeast communities that we represent, only ten are determined to be eligible; that means three-fourths of the Tlingits and Haidas are ineligible.

2. It is a problem of access. Our Tlingits are denied access into the Glacier Bay to exercise their inherent right to subsist. There are areas that access is a problem -- we can be more specific in writing.

3. It is a problem of over harvest of certain species important for subsistence.

All of this carries with it the destruction of the cultures of my people being denied subsistence opportunity and would continue under the status quo or HJR 88; on a statewide basis,

40,000 Alaska Natives are being denied subsistence opportunity and would continue under the status quo. Even a federal takeover would not resolve the problem of the urban Natives who stand the most at risk of losing their culture on account of being denied subsistence opportunity - thereby thwarting cultural activity. Let me give you one of many examples. When a death occurs among the Tlingits, the Clan Leader is placed in charge of all proceedings to arrange for a dinner to be served those that worked on the last rites. If the decedent's favorite food was deer meat, a boiled king salmon and potatoes, the Clan Leader orders you to go out to get enough deer and salmon to feed those to be fed. Now, in our culture, the order of the Clan Leader is inviolate. It is our custom to carry out his order. Except the State law says no. It is against the law to carry out our cultural activity. Thus, what we have is a conflict between our culture and your laws that govern subsistence.

All of this is compounded by the fact that diabetes mellitus is increasing in dramatic numbers and all on account of a law that forbids us the opportunity to subsist. U.S. Public Health officials are encouraging our people to revert back to the subsistence lifestyle and consume our subsistence foods as a means of counteracting the increase of incidences of diabetes among the Tlingits, Haidas and Aleuts in particular. Now, there is no problem of the availability of the resources -- only access.

For these reasons, the Southeast Native Subsistence Commission supports and urges passage of House Joint Resolution No. 90 which would establish a Native priority for subsistence opportunity. This is not to the exclusion of all others in rural areas. I might explain that in the Southeast, there would be no priority because the salmon runs are strong. Last year, 49 million returned into the region. Of that number, 29 million were taken by commercial; 5 million by sports and 40,000 million by subsistence users. That means less than one percent of the salmon is taken by subsistence users. We fail to see the importance people have placed on subsistence. A priority would only go into effect when resources are low -- and I don't foresee

a situation where a priority would take effect in the Southeast. All HJR 90 would do is to provide an opportunity to subsist in the urban areas.

Perhaps if rural Alaska were to be governed in accordance with ANILCA and an allocation plan devised for all residents in urban Alaska, we might go along with that. But, that is for you to recommend and, again, I appreciate the opportunity to appear before this auspicious panel.

Thank you.

Southeast

Subsistence Summit Conference
Alaska Federation of Natives
Resolution 90-
April 11, 1990

Entitled: Alaska Native Subsistence Rights: An Affirmation and a Strategy

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

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

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

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

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

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

Whereas, Congress declares that the continuation of opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands, and by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional and social existence; and

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

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

Now therefore it is resolved, that the Alaska Federation of Natives herein assembled at the Subsistence Summit Conference adopts as its principal direction and recommends to all appropriate Native organizations the following:

- Act to continue to support the inherent Native rights to subsistence resources and uses.
- Act to gain approval of an amendment to the Constitution of the State of Alaska that allows the State to exercise management jurisdiction over all fish, wildlife, plant and other renewable natural resources within its boundaries and provides that the State shall exercise management of subsistence resources therein in accordance with applicable federal law.
- Act prior to July 1, 1990 to have the State of Alaska review and revise as necessary all State subsistence statutes, policies, regulations, programs and practices in every area of State jurisdiction in order to establish an overall subsistence management regime that is responsive to the true subsistence needs of affected Alaskans. Such review and revision shall include representation from Native organizations that represent those Alaskans directly affected. Such review and revision shall be undertaken with the fundamental intent to allow those Alaskans who by custom, tradition, location, and circumstance have practiced subsistence use of Alaska's resources up to the present and will in the future, to do so in an appropriately responsive, sensitive, comprehensive, timely and continuing manner.

- .. Act immediately to request and to take every action to involve affected Native organizations directly and fully in the development, promulgation and implementation of any federal subsistence management regime developed for federal lands in the event State management is terminated.
- .. Act to initiate a vigorous campaign to educate and familiarize public officials and legislators with all aspects of subsistence resources and uses.
- .. Act to initiate a vigorous voter registration campaign across the State of Alaska.

Be it further resolved, that all Native entities and organizations shall withdraw after July 1, 1990 their support for State subsistence management on federal lands and for a State constitutional amendment if there is not a satisfactory resolution pursuant to the review and revision of State subsistence management requested herein; and

Be it finally resolved, that in the event of the above withdrawal of Native support, all affected Native organizations shall pursue with all appropriate resources any and all legal and Congressional actions to secure their rights to Alaska's subsistence resources and uses.

President

Secretary

TCC
AUCP

TCC PROPOSALS TO AMEND RESOLUTION

AMENDMENT A

amend the third clause of the resolve section of the resolution after the second sentence to add the following:

"This review shall seek to establish a definition of "rural" which includes as many Alaska Native people as possible."

AMENDMENT B

amend the first resolve section to add the following clause after the sixth clause as follows:

" -Act to support tribal contracting of federal functions under Title VIII of ANILCA in the event of a federal takeover of fish and wildlife management and oppose any such contracting by the State of Alaska."

MOTION by Association of Village Council Presidents to amend Resolution 90-_____, Alaska Native Subsistence Rights: An Affirmation and Strategy.

Amend the third paragraph under the NOW THEREFORE BE IT RESOLVED section to read:

Act prior to July 1, 1990 to have the State of Alaska review and revise as necessary all State subsistence statutes, policies, regulations, programs and practices in every area of State jurisdiction in order to establish an overall subsistence management regime that is responsive to the true subsistence needs of affected Alaskans. Such review and revision shall include representation from Native organizations that represent those Alaskans directly affected. This review shall seek to establish a definition of "rural" which includes as many Alaska Native people as possible. Such review and revision shall be undertaken with the fundamental intent to allow those Alaskans who by custom, tradition, location, and circumstance have practiced subsistence use of Alaska's resources up to the present and will in the future, to do so in an appropriately responsive, sensitive, comprehensive, timely and continuing manner.

Amend the fourth paragraph under the NOW THEREFORE BE IT RESOLVED section to read:

Act immediately to request and to take every action to involve affected Native organizations directly and fully in the development, promulgation and implementation of any federal subsistence management regime developed for federal lands in the event State management is terminated. Native organizations shall resist, with all possible force, any attempt by federal agencies to contract with the State for any role in managing federal lands for subsistence uses. Tribal contracting for management of federal lands for subsistence uses will be strongly supported.

SUBSISTENCE SUMMIT CONFERENCE
Alaska Federation of Natives
Resolution 90-_____

Entitled: Alaska Native Subsistence Rights: A priority for Alaska Native Tribal Members, submitted by the Association of Village Council Presidents.

WHEREAS, Alaska Native tribes have managed fish and game in their traditional areas since before anyone can remember, and both the Native people and the animals benefited from tribal management; and

WHEREAS, members of Alaska Native tribes today, and in the future, rely on the right to harvest subsistence resources to nourish their bodies, and for the survival of their culture; and

WHEREAS, the only way to guarantee subsistence rights for members of Alaska Native tribes is for tribal members to be given a priority to harvest subsistence resources on all lands in Alaska that they have traditionally and customarily used;

NOW THEREFORE BE IT RESOLVED that Native tribes and organizations will work in the long term to gain a subsistence priority for Alaska Native tribal members, and to affirm the power of Alaska Native tribes to manage and regulate subsistence uses by their members.

DATED this 11th day of April, 1990.

President

Secretary



Citizens' Advisory Commission on Federal Areas

April 23, 1990

250 Cushman St.
Suite 4H
Fairbanks, Alaska 99701
(907) 456-2012
Fax: 456-2039

APR 26 1990

Honorable Tim Kelly
President
Alaska Senate
P.O. Box V
Juneau, Alaska 99811

Dear Senator Kelly:

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

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

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

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

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

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

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

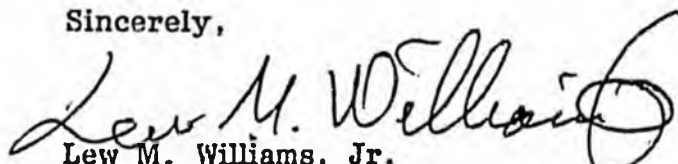
WE PROPOSE AMENDING THE ALASKA CONSTITUTION IN SUCH A WAY AS TO EMPOWER OUR ELECTED OFFICIALS TO ACT RESPONSIBLY. ONCE THE CONSTITUTION IS AMENDED, WE URGE THE LEGISLATURE TO PROVIDE, BY STATUTE, A PREFERENCE IN THE USE OF LOCAL RESOURCES BY LOCAL PEOPLE IN THOSE GEOGRAPHIC AREAS OF ALASKA WHERE SUBSISTENCE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

Senator Tim Kelly
April 23, 1990
page 3

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

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

Sincerely,



Lew M. Williams, Jr.
Chairman

cc: Alaska Senate
Alaska House of Representatives

Citizens' Advisory Commission on Federal Areas
April 23, 1990

IN THE SENATE

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

Proposing an amendment to the Constitu-
tion of the State of Alaska relating to a
preference for subsistence use of fish
and wildlife resources.

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

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

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

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

April 21, 1990

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

DRAFT

Dear Governor Cowper:

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

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

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

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

DRAFT

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

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

Governor Steve Cowper
April 21, 1990
page 3

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

Sincerely,

Lew M. Williams
Chairman

cc: Alaska Senate
Alaska House of Representatives

DRAFT

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

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

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

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

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

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

F A X T R A N S M I T T A L M E M O
TO: Sen. Bethge FAHRENKAMP
DEPT: _____ FAX #: 586-6246
FROM: S. LEONARDY PHONE: 456-2012
CO: CALFA FAX #: 456-2039
Post-It brand fax transmittal memo 7671

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Citizens' Advisory Commission on Federal Areas
April 21, 1990

DRAFT

IN THE HOUSE

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

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

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

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

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

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

DRAFT

May 3, 1990
P.O. Box 762
Dillingham, AK 99576

VIA FAX

Senator Bettye Farenkamp
Senate Resources Committee
Alaska State Legislature
Juneau, AK 99811

Re: Subsistence

Dear Sen. Farenkamp:

In today's Daily News you are quoted as saying that you were trying to "find something that works" on subsistence.

For months all the experts on federal Indian law in Alaska have been grappling with this issue and have concluded that the only legally viable option is a constitutional amendment. Either the Cowper or Hoffman proposals would work, but Hoffman's has the advantage of leaving the door open for a future compromise amendment to ANILCA.

Anything else, or doing nothing, will result in a federal takeover. That effectively defers the issue to Congress should it choose to act. Do you really want that? There would still be no consensus "Alaska" position in Congress.

A state statutory change won't fix the problem. And challenging the federal law in court is doomed. ANILCA is federal Indian legislation and immune from constitutional attack. Although Mr. McDowell and a few urban divorce lawyers have urged that tactic, not one of them is expert in Indian law and none seem to realize that the key issues have already been decided by the U.S. Supreme Court.

The McDowell decision was badly reasoned. Failing to amend our constitution would put Alaska in the same doomed, anti-minority, "states rights" position that Washington took against tribal rights in the '60s and '70s and that Arkansas took over desegregation in the '50s. It would be a black mark on Alaska history, and grossly irresponsible.

What's ironic is that anyone who has really thought out the implications of a dual management system realizes that urban people will lose more than anyone else. Sooner or later the "urban" constituency will figure that out. Please put an amendment on the ballot!

Sincerely,

Bruce Baltar

Bruce Baltar
Attorney at Law

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

VIA FAX

May 2, 1990

Senator Bettye Fahrenkamp
Chairman
Senate Resources Committee
Alaska State Legislature
Juneau, AK 99576

Re: Subsistence

Dear Sen. Fahrenkamp:

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

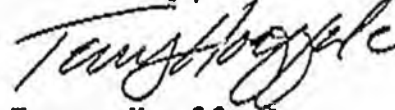
We believe the issue will become less divisive as Alaskans come to understand it better. Urban hunters and fishermen actually have the most to lose under a federal takeover since long term their hunting and fishing activities would tend to be forced onto the 25% of the state that is not federal or Native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

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

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

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

Sincerely,



Terry Hoeffler
Executive Director

ALASKA NATIVE BROTHERHOOD &
ALASKA NATIVE SISTERHOOD
CAMP 14
P.O. BOX 6295
KETCHIKAN, ALASKA 99901

APRIL 18, 1990

Senator Bettye M. Fahrenkamp, Chair
Representative Cliff Davideon, Co-Chair
Representative Curt Menard, Co-Chair
Senate/House Joint Resource Committee
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Resource Committee,

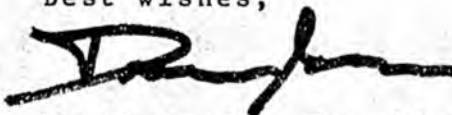
We attended and testified on behalf of the Alaska Native Brotherhood and Sisterhood Camp 14, Ketchikan, April 10, 11, 1990 at Egan Center, Anchorage. Alaska Federation of Native's Subsistence Summit.

We have a major concern that Ketchikan classification as Urban community. Mr. Don Hoff, Jr. testified that we object and we should have the same subsistence rights as villages.

We have written evidence that proves that Ketchikan is and still a village with a large number of Indian that reside in Ketchikan. It is the goal of ANB/ANS Camp 14 to protect our inherent rights to subsist in our area. This evidence will go along with Mr. Hoff's Testimony for your review.

We know you folks have a difficult road ahead of you, but we are willing to work with you to find a resolve. Thank-you.

Best wishes,



David Jensen, President
ANB Camp 14

ALASKA NATIVE BROTHERHOOD &
ALASKA NATIVE SISTERHOOD
CAMP 14
P.O. BOX 6295
KETCHIKAN, ALASKA 99901

Ms. Julie E. Kitka, President
Alaska Federation of Natives, Inc.
411 W. 4th Ave. Suite 301
Anchorage, Alaska 99501

April 10, 1990

Dear Julie and Boardmembers,

Alaska Native Brotherhood and Sisterhood Camp 14 Ketchikan want to go on record with this position statement. **SUBSISTENCE** .

Ketchikan Native population is two thousand that are enrolled at Ketchikan Indian Corporation (Non-Profit). We are very concerned that Ketchikan will not be able to subsist for our native foods. Ketchikan is a traditional Village the Natives call it "Kichxaan". Presently, Ketchikan is considered Urban Community which leaves us without the right to Subsist, the State of Alaska say we have the right for Personal use. we object because it is excluding Tribes.

We are a coastal people that depend on the use of the Sea and Land for our Tribes livelihood and our social economy.

Alaska Native Brotherhood and Sisterhood supports the concept of the States version House Joint Resolution 90, introduced by Rep. Kay Wallis.

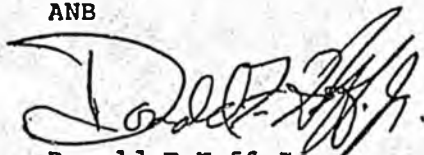
Ketchikan ANB/ANS Camp 14 wants to tell AFN that we want to be included and to make sure that our inherent rights are protected. We can not comprehend the idea that we can be left out subsistence. How we go back to our grandfathers, grandmothers and uncles, say we can no longer get our indian foods?

We are wondering how anybody or person can decide whether or not we can subsist or not? We do not come up here and try to sell your land or fish, what right do you have to sell our rights? Ketchikan alot of History that we will submit to your office if you request it. Thank-you.

Sincerely yours,



David Jensen, President
ANB



Donald F. Hoff, Jr.
Recording Secretary
ANB

ALASKA NATIVE BROTHERHOOD &
ALASKA NATIVE SISTERHOOD
CAMP 14
P.O. BOX 6295
KETCHIKAN, ALASKA 99901

APRIL 13, 1990

To: ANB/ANS Camp 14

From: Don Hoff, Jr.

Travel Report: AFN Subsistence Summit
April 10 & 11, 1990
Egan Center-Anchorage

First of all, I want thank the ANB/ANS Camp 14 Officers and Members for allowing me to represent Ketchikan in Anchorage Subsistence Summit Conference.

ANB/ANS Camp 14 was the only representation that Ketchikan sent up to speak on Subsistence Rights of Ketchikan Indian Tribes. If it wasn't the foresight of our local Camp to send a representative, Ketchikan might have been left out again. I will make recommendations for the Camp 14 at the end of my observations in Anchorage.

I arrived in Anchorage, 4/9/90 with many of our S.E. Native Leadership representing Corporations, Village Corporations and I.R.A.'s. Meetings started on time because of the full and informative agenda.

It was apparent to me that I was going to have to testify on our behalf. I gave testimony to AFN Panel stating Ketchikan position on Subsistence and that our Inherent Rights of Indians have to be protected because of our concerns that we live in a urban community and subjected to "Personal Use" title thought up by the State of Alaska. I also stated that we objected to that title and that we were very concerned about the AFN position for Rural Preference. Rural Preference would leave Ketchikan out of Subsistence Rights. I also stated that I will use the Tlingit Name "Kichxaan" instead of the whiteman's version Ketchikan. I told them Kichxaan Indian population was two thousand verified by Ketchikan Indian Corporation enrollment. As Tribes in Kichxaan cannot be excluded because of the defination of Rural. I submitted a position statement to AFN President Ms. Julie Kitka on behalf of Camp 14. I was very well recieved by the floor of the convention and every one knew where Kichxaan was there after.

I also testified in front of Joint House/Senate Resources Committee. It started at 5:45 PM, 4/11/90. I didn't get to speak until 9:45 PM and was only allowed three minutes. I hit almost all the major points I outlined in earlier testimony. But we have to send up to the committee documents supporting Kichxaan claims to subsist.

Senator Ted Stevens stated on video tape, that "Indian Preference" will be hard to pass the State Senate and House.

He made some key points: subsistence should be protected for all subsistence users, we need 27 votes from the House and 15 votes from the Senate. He said we don't have the votes. The Bush Caucus in Alaska will try to get the votes need to pass the Indian Preference. We have to lobby our area representatives for a positive vote.

Mr. Manuel Lujan, Secretary of Interior testified that he will start the process of taking over management of fish and wildlife if the State of Alaska does not comply with Federal laws in regards to ANILCA by July 1, 1990. He said that they really didn't want to take over management and hopes that we can solve our own problems.

The floor of this Subsistence Summit was emotional. People from all over Alaska testified on how they depend on Subsistence for their livelihood, it was all the same no matter which part of the State they were from. Rural Preference was amended that "All Alaskan Natives" be included because of the Inherit Rights had to protected by Alaska Federation of Natives, Inc. The Alaskan Native Leadership had no choice but to support all Alaskan Natives and sent a strong message to State of Alaska.

All our Southeast Leadership did a excellent job representing Southeast Alaskans: Southeast Native Subsistence Commission, Tlingit and Haida Central Council, Grand Camp and all villages that sent representatives.

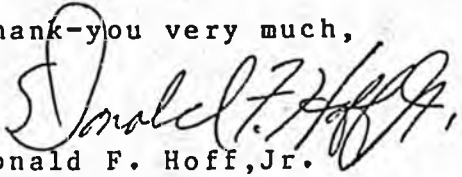
There were Three amended resolutions passed on the floor. AFN office will send us the finished resolutions.

Recommendations: We Lobby our local representatives.
Ketchikan Indian Corporation send a representative to these important meetings.

It is not going to be easy to pass a positive vote, if it goes on Alaska General Election Ballot but it goes to show how Non-Native people and private enterprize feels towards Alaskan Natives. We have to continue to justify our stand and keep on going together in one direction to protect our Rights as Natives.

Respectfully submitted.

Thank-you very much,


Donald F. Hoff, Jr.
Recording Secretary
ANB Camp 14

TONGASS TRIBE
P.O. BOX 3258
KETCHIKAN, ALASKA 99901

APRIL 4, 1990

To whom it may concern,

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

The Tongass Tribe number approximatedly 300. They live for the most part in urban locations with a large concentration in the Ketchikan area.

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

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

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

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

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

In 1890, natives outnumbered the non-natives 26 to 9. As the Indian population in Ketchikan grew in the 1890's, they were displaced, the village became informally known as "Indian Town".

Among the Tlingit decent was claimed through Matrilineal moieties (one of two fundamental divisions of the Tlingit Tribe) of Raven or Eagle/Wolf. When a child was born she/he automatically became a member of the mother's clan and grew up to marry the opposite moieties.

According to Tlingit Genealogy, Notes and Information (Shotridge, Louis 1915-1926) clan houses (Hit) of the Taantakwan in Ketchikan on May 8, 1916 include:

RAVEN

EAGLE/WOLF

Gaanaxa a'di Clan

Teikweidei' Clan

(Raven) Yei'l Hit

(Moose) Xaas Hit

(Over the Isthmus) X'agoon Hit

(Golden Eagle) Gidjook Hit

(Ground Squirrel or Marmot)

S'aax Hit

(Ravine) Shaan'ax Hit

(Bear) Xutz Hit

(Man who married the Brown Bear)

Kaats' Hit

(Around the Eagle) Wandaa Hit

Today because of assimilation and disconnection to cultural heritage due to the lack of a land base the Tongass Tribe's Matrilineal Moieties have only one know house group apiece. The Gaanax a'di Clan have only the Yie'l Hit and the Teikweidei have the only the Kaats Hit. Today the Tongass Tribe is only a Breath away from extinction if there is not any attempts to restore some semblance of the social economy that once existed.

Tongass Tribal members are learning the Arts, Songs, Dance, Legends and Language that neared extinction. The few remaining Elders, who grew up in homes where traditions were practiced, are unselfishly contributing great time and effort to teach young tribal members.

This research was done by Richard H. Jackson, Teikweidei' Clan-Kaats' Hit of the Tongass Tribe.

The Tongass Tribe depends on the subsistence for survival of the Tribe. Our Elders and Uncles are teaching us how to subsist for our Traditional foods and we need to continue this process as did our forefathers since time began.

Sincerely yours,



Donald F. Hoff, Jr.
Gaanax a'di Clan
Yei'l Hit
Tongass Tribe

4-12-90

To: Senator Betty Fahrenkamp
Chairperson House-Senate
Committee on Resources

APR 18 1990

From: Timothy Shine
P.O.B. 874895
Wasilla, Ak. 99687

Re: Testimony - Anchorage Hearing

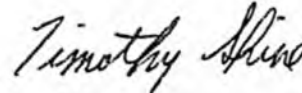
Senator Fahrenkamp,

Enclosed is a copy of the letter which was to comprise my complete testimony at the Anchorage hearing of 4-11-90. Since you asked me to be brief I limited myself to the last two sentences at that time.

Please enter the complete letter into your records if you will, and give copies to the other members of your committee, especially to Mr. Menard who has seen it once but did not recall it when I questioned him about his written response to me.

I believe I speak for a significant number of Alaskans when I say that our constitution should not be amended to legalize the discriminatory aspect of rural or native preference in the taking of any public resource.

Sincerely,



Timothy Shine

11-21-89

To: Alaska Game Law policy makers, enforcers

From: Timothy Shine
PO Box 874895
Wasilla, Ak. 99687

Fellow Alaskan,

I want to register the strongest possible protest against the recent regulation changes which create restrictions on the taking of certain game species in many of our management units. Manipulation of the harvest through restrictions on the size or sex of animals which may be legally taken by one group of Alaskans, while another group enjoys fewer or no restrictions is morally wrong and should be as illegal as bank robbery.

I am a long time resident Alaskan, who like many others endures the considerable negatives of life here that I might pursue my positive passion for hunting and the lifestyle which attends it. I happen to live near a major population center. This is not by choice, but in response to the compelling reality of economic survival. I spend a significant amount of time and effort each year endeavoring to get afield and supplement my store bought foodstocks with the wild game meats which I prefer. But I find myself increasingly hampered in these efforts. With Caribou it is "Bulls Only" (Taylor Highway Area) for those hunters in my classification. For Sheep it is "Full Curl or Larger", for Moose "36 inches or Larger", etc. Simultaneously I see the restrictions relaxed or abolished altogether for the other classification of Alaskans. And when I see them in the field, as well or better equipped than myself, taking full advantage of their good fortune under this system of game management, I cannot escape the conclusion that it is at my own expense. This blatantly unfair situation instills in me the profoundest sense of outrage.

This year I came away empty handed from my considerable time spent in various hunting endeavors. Opportunities for taking prime specimens of sheep and caribou had to be passed up because of the restrictions recently imposed, while individuals I know personally to be better off financially than myself were allowed to fill their freezers with the cherished game meat. These individuals are either the fortunate ones who are able to earn their living and consequently reside in remote areas, or the irresponsible ones whose consciences will allow them to enjoy the bush life by accepting society's dole. In both cases they are enjoying the benefits of rural life to which I so earnestly aspire. Why must my own misfortune be compounded by unfair regulations which negate or severely limit the only tangible return on my own investment in the bush economy?

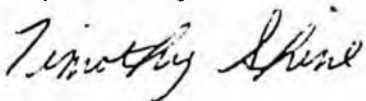
Urban residents who are content with their lot tend to view the bush lifestyle simply as harsh, they tend to overlook the values which hold most

bush residents where they are. The so called advantages of urban living are only perceived as such by those who do not seek a bush lifestyle. No allowance is made for this in the present system of subsistence preference. Bush life for most is a matter of choice and fortunate circumstance. The few who can earn a living while pursuing it are doubly blessed. They should have the right to take fish and game for their personal use, but by no means should they be given rights which their less fortunate urban counterparts are cut off from. Just as they are free to seek employment in more urbanized areas to supplement their incomes, so should the urban dweller have equal rights under the law to supplement his foodstocks with a public resource which may not originate in his exact geographic location.

I can accept the need for setting seasons and limits in the taking of game. But in my view the function of the Department of Fish and Game should be limited to just that. It should not be extended to the management of people. The so called mandate from the Federal Government to give preference to subsistence users can and should be satisfied with a definition of the term, for state enforcement purposes, which includes any resident of this state who takes the resource for personal consumptive use. The urban and rural dichotomy promoted by the current system is very wrong. It is a divisive force among Alaskans which can only make lawbreakers out of normally decent people who are finally fed up with the erosion of their rights and destruction of their dreams by a system which wrongfully divides the people of our state into priveleged and non priveleged "classes".

The too frequent assertion; "Our hands are tied....", given by many of our officials and policy makers with reference to the Federal position on subsistence, should be abandoned completely in favor of an aggressive stance on the equality of rights due to Alaska's citizens under our own constitution. Quality of life is measured by many of us in such terms. And it is quality of life that holds us here...

Respectfully,



Timothy Shine

cc. Kertula	Lentfer
Semanski	Nageak
Larson	Springer
Menard	Collinsworth
Loyd	Pamplin
Bennett	Randall
Castle	Timm
Huntington	Kellyhouse
Jackson	

MAY 2 1990

ALASKA FEDERATION OF NATIVES, INC.



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

April 30, 1990

Senator Bettye Fahrenkamp
Alaska State Legislature
Post Office Box V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

I am writing to you and your colleagues in the Sixteenth Legislature to urge your prompt action prior to the May 7 adjournment.

All of us in Alaska are now confronted by a profound challenge: how to protect our subsistence lifestyle and our control of fish and game management from the consequences of the recent Supreme Court decision in McDowell v. State. In this effort, we find ourselves caught between ANILCA, which guarantees a rural priority for subsistence hunting and fishing, and the Alaska Constitution, which will not presently allow such a preference.

As you may know, AFN sponsored a statewide conference on subsistence in Anchorage three weeks ago. Out of that gathering, a broad policy consensus emerged. The Native community is now unanimously on record in favor of a constitutional amendment to keep fish and game management in the hands of the State government, in compliance with Federal law. We do not - and I emphasize not - wish to see a federal takeover after July 1. What Natives want is for the Legislature and the people to fix the issue here, to comply with Federal law and to keep fish and game management at home, in Alaskan hands.

In order to accomplish this, a constitutional amendment must be adopted by at least two-thirds of both houses before adjournment and by a majority of the voters on November 6. There are several bills currently before the Legislature which effectively accomplish this end. After careful legal review, we have recommended, in testimony before House Resources, the language suggested by Representative Lyman Hoffman (presently CS HJR 74).

Integrity • Pride in Heritage • Progress

Regardless of which language is chosen, the central issue must be faced: (1) whether the Legislature will adopt any constitutional language to keep fish and game in Alaskan hands, or (2) turn its back on the issue and go home. A third alternative, of course, is that the Legislature might adopt statutory language which, while satisfying the State Constitution, would still be out of compliance with Federal law. I urge you to see that either of the last two options represents a tragic political failure and will precipitate a long-term crisis of fish and game management which, in my opinion, we shall all come to regret.

There may be, on the part of some legislators, an assumption that what really needs to be done - no matter how long the effort and how painful the cost - is to force the Congressional opening of ANILCA to get rid of the subsistence priority.

I think it is highly unlikely that the United States Congress will open ANILCA. But if it does, we must all assume that reconsideration of this enormous Federal statute will not be limited to subsistence. Once you open any part of it, all of its provisions become fair game. Some people in Alaska obviously do not believe that, but the political reality is that there are dozens of outside interests (and their advocates in the Congress) who will make it come true.

At best, amending ANILCA will be a three to five-year process, during which time the Federal government will be in Alaska anyway, managing most of our fish and game. Even if the Congressional process starts with subsistence, dozens of oversight hearings, floor speeches, bills and amendments will reach out and touch every Federal land use question in Alaska. Senator Stevens and other members of our Congressional Delegation have described that scenario in stark language. How much does Alaska really want to pay to the rest of the country in order to get rid of the subsistence priority? How long will it take? And what will the permanent consequences be for the political, economic and social environment of our state?

I have concluded that the real outcome of amending ANILCA will be so costly to the State government, to the business community and to the general public that - once they see it - they will insist that this Pandora's box remain closed. Fish and game has to be dealt with here in Alaska.

I cannot overstate the importance of acting quickly. Adjournment is imminent. Seventeen days ago the United States Fish and Wildlife Service published in the Federal Register its formal notice of "Intention to Propose Interim Rules

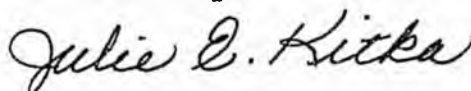
Implementing Title VIII of the Alaska National Interest Lands Conservation Act." As Interior Secretary Lujan has repeatedly stated, the United States does not wish to come into Alaska and take over fish and game on Federal lands. But it will do so if there is no solution at the state level by July 1. Interior is now gearing up to do that, and Federal law requires it to go through a public consultation process on interim and permanent rule-making. The deadline for receipt of recommendations and comments at Interior is May 14.

In addition, Interior Department officials in Alaska have been at work for more than two months, through a special task force, drawing up a plan for a Federal management takeover. Because the Native community is not a party to that process, I cannot tell you what the plan will look like. But I am convinced that the Department is moving quickly to carry out its non-discretionary responsibility under Federal law.

In closing, I want to emphasize that, for Alaska Natives, subsistence represents everything. What is being considered in this Legislature is nothing less than our economic survival, our cultural identity and our physical and psychological health. We strongly urge you to act expeditiously, to adopt a constitutional amendment in compliance with Federal law and to move forward in the effort to retain fish and game in the hands of those who know best how to manage them - the Alaskans.

Thank you.

Sincerely,



Julie E. Kitka
President

Myths

What Have You Heard?

by Robert Wolfe

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.



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 354 pounds of food per person per year. That is more than the U.S. average consumption of 255 pounds of domestic fish, and poultry per year. (The average American uses 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 material for parkas (wind guards), mitts, parkas, kuspiks, clothes 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 cedar are used for building houses and other structures.



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.

November—December 1989

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 shellfish (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?

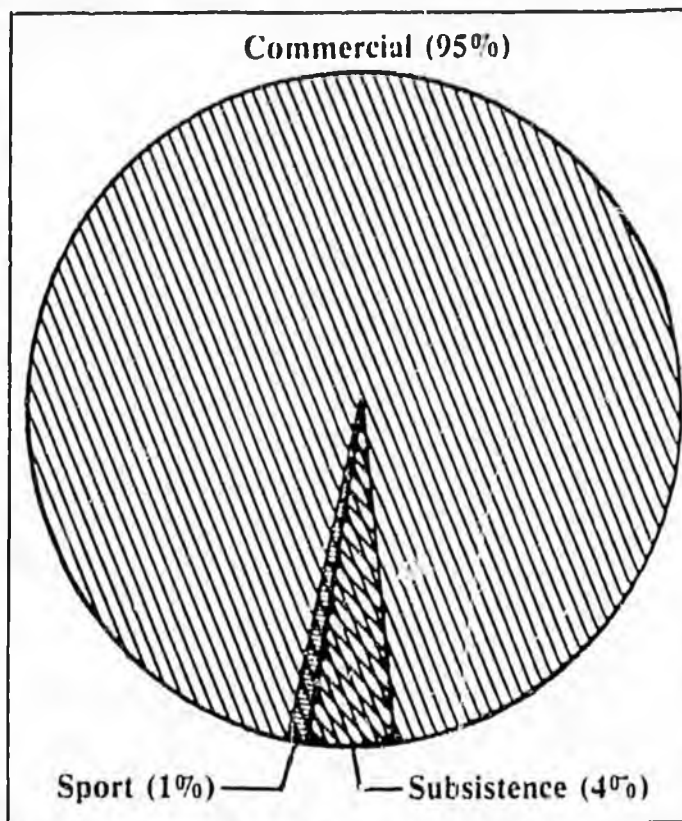
Yes. Rural families use money in order to purchase basic goods and services: fuel oil and electricity for heat, light, and power; family goods like clothing and shelter; subsistence equipment like guns, ammunition, fishing nets, power motors, gasoline, rain gear, and so forth. Money is used to invest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



JIMMELAGDAN, 2

Rural Families use money to purchase tools and supplies.

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

SAM E. McDOWELL, DALE E.
BONDURANT, RONALD MAHLE and
HAROLD EASTWOOD,

Appellants,

v.

STATE OF ALASKA, ALASKA
DEPARTMENT OF FISH AND GAME,
ALASKA BOARD OF FISHERIES,
ALASKA BOARD OF GAME and
DON W. COLLINSWORTH,
Commissioner of Fish and Game,

Appellees,

THE ALASKA FEDERATION OF
NATIVES, PROTECTORS OF THE
LAND d/b/a NUMAN KITLUTSISTI,
TONY VASKA and WALTER CHARLEY,
on behalf of himself and all
other persons similarly
situated,

Intervenors/
Appellees.

Supreme Court File
No. S-2732

Trial Court File
No. 3AN-83-1392 Civil

O P I N I O N

[No. 3540 - December 22, 1989]

Appeal from the Superior Court of the State
of Alaska, Third Judicial District, Anchorage,
Douglas J. Serdahely, Judge.

Appearances: Cheri C. Jacobus, Ross,
Gingras, Bailey & Miner, P.C., Anchorage, for
Appellants. Larri Irene Spengler, Assistant
Attorney General, Grace Berg Schaible,
Attorney General, Juneau, for Appellees.
Donald Craig Mitchell, Anchorage, for
Intervenors/Appellees.

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- FACTUAL AND PROCEDURAL SETTING

The 1986 act¹ defines subsistence fishing and hunting as activities which can be undertaken only "by a resident domiciled in a rural area of the state" Subsistence uses are also defined in terms of residency in rural areas:

"Subsistence uses" means the noncommercial, customary and traditional uses of wild, renewable resources by a resident domiciled in a rural area of the state for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of non-edible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption.

AS 16.05.940(30). A "rural area" is defined 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." AS 16.05.940(25).

Appellants are Alaska residents who have engaged in subsistence hunting and fishing in the past and wish to continue to do so. Under the 1986 act, they are disqualified as subsistence users because they reside in areas classified as non-rural by the joint Boards of Fisheries and Game. Appellants McDowell and Mahle reside in Anchorage, Bondurant resides in

1. For ease of reference, citations to chapter 52 SLA 1986 in this opinion will be to the appropriate section of the Alaska Statutes where that act is codified.

CORRECTION

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

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THE SUPREME COURT OF THE STATE OF ALASKA

SAM E. McDOWELL, DALE E.
BONDURANT, RONALD MAHLE and
HAROLD EASTWOOD,

Appellants,

v.

STATE OF ALASKA, ALASKA
DEPARTMENT OF FISH AND GAME,
ALASKA BOARD OF FISHERIES,
ALASKA BOARD OF GAME and
DON W. COLLINSWORTH,
Commissioner of Fish and Game,

Appellees,

THE ALASKA FEDERATION OF
NATIVES, PROTECTORS OF THE
LAND d/b/a NUMAN KITLUTSISTI,
TONY VASKA and WALTER CHARLEY,
on behalf of himself and all
other persons similarly
situated,

Intervenors/
Appellees.

Supreme Court File
No. S-2732

Trial Court File
No. 3AN-83-1592 Civil

O P I N I O N

[No. 3540 - December 22, 1989]

Appeal from the Superior Court of the State
of Alaska, Third Judicial District, Anchorage,
Douglas J. Serdahely, Judge.

Appearances: Cheri C. Jacobus, Ross,
Gingras, Bailey & Miner, P.C., Anchorage, for
Appellants. Larri Irene Spengler, Assistant
Attorney General, Grace Berg Schaible,
Attorney General, Juneau, for Appellees.
Donald Craig Mitchell, Anchorage, for
Intervenors/Appellees.



Before: Matthews, Chief Justice, Rabinowitz,
Burke, Compton, and Moore, Justices.

MATTHEWS, Chief Justice.
COMPTON, Justice, concurring.
MOORE, Justice, concurring.
RABINOWITZ, Justice, dissenting.

INTRODUCTION

This case challenges chapter 52 SLA 1986 which grants a preference to rural residents to take fish and game for subsistence purposes. The only requirement to be met by a subsistence fisherman or hunter is residency in a rural area of the state.

The rural preference is challenged under several provisions of the Alaska Constitution: the common use clause, article VIII, section 3; the no exclusive right of fishery clause, article VIII, section 15; the uniform application clause, article VIII, section 17; the equal rights clause, article I, section 1; and the due process clause, article I, section 7. In addition, violation of the equal protection and due process clauses of the United States Constitution is claimed. For the reasons that follow, we hold that the rural preference violates article VIII, sections 3, 15 and 17 of the Alaska Constitution.

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FACTUAL AND PROCEDURAL SETTING

The 1986 act¹ defines subsistence fishing and hunting as activities which can be undertaken only "by a resident domiciled in a rural area of the state" Subsistence uses are also defined in terms of residency in rural areas:

"Subsistence uses" means the noncommercial, customary and traditional uses of wild, renewable resources by a resident domiciled in a rural area of the state for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of non-edible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption.

AS 16.05.940(30). A "rural area" is defined 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." AS 16.05.940(25).

Appellants are Alaska residents who have engaged in subsistence hunting and fishing in the past and wish to continue to do so. Under the 1986 act, they are disqualified as subsistence users because they reside in areas classified as non-rural by the joint Boards of Fisheries and Game. Appellants McDowell and Mahle reside in Anchorage, Bondurant resides in

1. For ease of reference, citations to chapter 52 SLA 1986 in this opinion will be to the appropriate section of the Alaska Statutes where that act is codified.

Cooper Landing, and Eastwood resides in the community of McKinley Park.

The 1986 act requires the Board of Fisheries and the Board of Game to decide what portion of each fish stock and game population can be harvested consistent with the principle of sustained yield. Next the Boards must determine how much of the harvestable portion is needed to satisfy subsistence needs. If the harvestable portion of any stock or population is not sufficient to accommodate all consumptive uses -- sport, personal use, and commercial -- then subsistence uses

shall be accorded a preference over other consumptive uses, and the regulations shall provide a reasonable opportunity to satisfy the subsistence uses. If the harvestable portion is sufficient to accommodate the subsistence uses of the stock or population, then the Boards may provide for other consumptive uses of the remainder of the harvestable portion.

AS 16.05.258(c). If the harvestable portion of a stock or population is insufficient to satisfy all subsistence needs, all non-subsistence uses are barred, and the Boards are required to distinguish among subsistence users by applying three criteria: "(1) customary and direct dependence on the fish stock or game population as the mainstay of livelihood; (2) local residency; and (3) availability of alternative resources." Id.

This case was brought in 1983 as a challenge to the 1978 subsistence statute, chapter 151, section 4 SLA 1978. The 1978 statute established that subsistence hunting and fishing had priority over other uses of fish and game stocks. Like the 1986

statute, it provided for two tiers of subsistence users. In the first tier were those who could take fish or game for subsistence purposes when populations were adequate to satisfy all subsistence needs. The second tier was limited to those who could take fish and game for subsistence purposes when populations were inadequate to supply all subsistence needs. The 1978 statute distinguished the second tier of subsistence users from the first tier on the basis of the same three factors utilized in the 1986 statute, namely, customary and direct dependence, local residency, and availability of alternative resources. Id. However, unlike the 1986 statute, the 1978 statute did not impose a rural residency requirement as a condition to becoming a first-tier subsistence user.

The appellants' initial complaint challenged the second-tier subsistence priority of the 1978 statute. The complaint was amended several times to expand on the original theory and add challenges to various regulations. All parties submitted motions for summary judgment. The superior court granted some of these motions and deferred others on October 24, 1984. Before the deferred motions could be ruled on, this court decided Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985), which struck down, as inconsistent with the 1978 statute, subsistence fishing regulations which imposed a rural residency requirement on first-tier subsistence users. Id. at 178.

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The next event of significance was the passage in 1986 of chapter 52 SLA 1986, which, as noted, provides that only rural residents can be first- or second-tier subsistence users. Following passage of this act, the appellants again amended their complaint, challenging the rural preference on constitutional grounds. Both the appellants and the state moved for summary judgment. The superior court granted the motion of the state and denied the motion of the appellants. Judgment was entered on the basis of this ruling.

The setting of this case would not be complete without mention of the Alaska National Interest Lands Conservation Act (ANILCA), enacted by Congress in 1980.² Section 3114 of this act requires that on federal public lands in Alaska, subsistence uses are to be given priority over the taking of fish and wildlife for other purposes. Under ANILCA, only rural Alaska residents are entitled to a subsistence priority.³ ANILCA requires federal

2. 16 U.S.C.A. §§ 3101-3233 (West 1985).

3. ANILCA § 804, 16 U.S.C.A. § 3114, states:

Except as otherwise provided in this Act and other Federal laws, 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. Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be

(Footnote Continued)

management of public lands in Alaska in order to ensure the subsistence priority.⁴ However, federal management may be supplanted by the state so long as the state enacts and implements subsistence laws "which are consistent with, and which provide for the definition, preference, and participation specified in" ANILCA.⁵

(Footnote Continued)

implemented through appropriate limitations based on the application of the following criteria:

(1) customary and direct dependence upon the populations as the mainstay of livelihood;

(2) local residency; and

(3) the availability of alternative resources.

(Emphasis added).

ANILCA § 803, 16 U.S.C.A. § 3113, defines the term "subsistence uses" as used in ANILCA to mean

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 handcraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.

(Emphasis added.)

4. 16 U.S.C.A. § 3115(c).

5. 16 U.S.C.A. § 3115(d).

After this court's Madison decision, the Secretary of the Interior notified the state that state law was no longer consistent with ANILCA and that federal management would begin unless consistency was achieved by June 1, 1986. Kenaitze Indian Tribe v. State of Alaska, 860 F.2d 312, 314 (9th Cir. 1988), cert. denied, 105 L. Ed. 2d 695 (1989). With the passage of the 1986 act, the Interior Department has stated that Alaska is once again in compliance with ANILCA. Id.

After final judgment was entered by the superior court, the 9th Circuit Court of Appeals ruled that the definition of "rural" in the 1986 act does not comply with § 3113 of ANILCA. Id. at 318. "Rural," in ANILCA, according to the court, refers to "sparsely populated" areas; "rural is the antonym of urban and includes all areas in between cities and towns of a particular size." Id. at 316-17. The court referred to Census Bureau standards under which "the urban population consists of people living in communities of 2,500 or more, while the rural population comprises everyone else." Id. at 317. Thus, the 1986 act's subsistence-oriented definition was held inconsistent with ANILCA.

Bondurant and Eastwood both reside in rural areas as Kenaitze has interpreted ANILCA's use of that term. They are thus probably entitled to injunctive relief under ANILCA, 16

U.S.C.A. § 3117(a).⁶ However, the Kenaitze decision does not change the issues presented in this appeal because the 1986 statute remains fully applicable to all non-federal lands.

Background and Purpose of the 1986 Statute

Prior to 1978, urban residents could engage in subsistence hunting and fishing. However, there was no statutory preference given to subsistence over sport or commercial fishing or sport hunting. With the enactment of chapter 151 SLA 1978, subsistence hunting and fishing was given such a priority. Madison, 696 P.2d at 174 n.12. The 1978 statute did not bar urban residents from eligibility as first-tier subsistence users. Madison, 696 P.2d at 176. However, a regulation adopted by the Board of Fish and Game did exclude urban residents. 5 AAC 01.597. Madison held that this regulation violated the 1978 statute. Id.

In 1985 the Alaska House of Representatives adopted a letter of intent which accompanied the bill that became the 1986 subsistence act. 1985 House Journal 1246. The letter explained the rural preference of the 1986 act as follows:

This limitation of the definition of "subsistence uses" recognizes that Alaska is unique, and unlike any of the other forty-nine states, the economy of many rural communities in rural areas in Alaska is significantly dependent upon participation by the residents of these communities in the

6. Such relief has not been requested in this case, and the question whether the § 3117(a) remedy is available only in federal courts has not been briefed.