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> taking of fish stocks and game populations for personal and family consumption. Further, the legislature finds that the general health and welfare of these citizens is significantly tied to their participation in these activities.

Id. at 1229-30. In making this determination, the legislature sounded a theme that was also expressed by Congress in enacting ANILCA. The House Committee on Interior and Insular Affairs determined that:

> After consideration of the testimony at the subcommittee's hearings and town meetings throughout Alaska and review of studies done by a variety of federal, state, academic, and other agencies and groups, the Committee has no doubt about the importance of subsistence uses to the rural people of Alaska. Reliable evidence was given to the Committee demonstrating that fifty percent of the food for three-quarters of the Native families in Alaska's small and medium villages is acquired through subsistence uses, and 40 percent of such families spend an average of 6 to 7 months of the year in subsistence activities . . . .

H.R. Rep. No. 1045, 95th Cong., 2d Sess., at 181 (1978). The intervenors in this appeal similarly expressed the purpose of the rural preference as follows:

> If village access to fish and game is overwhelmed by competition from the tens of thousands of sportsmen who Alaska's fortuitous oil wealth has drawn to the urban centers, the effect on the rural village economy would be adverse, and the effect on the health and welfare of rural residents would be even more so.

An additional purpose of the 1986 subsistence law is to retain state management of fish and game on federal lands by meeting the requirements of ANILCA.[7]

Urban-Rural Subsistence Patterns

Appellants' basic objection to the 1986 act is that by excluding from eligibility as subsistence users all urban dwellers and by including all rural dwellers, the act unfairly excludes some urban residents who have lived a subsistence lifestyle and desire to continue to do so, while needlessly including numerous rural residents who have not engaged in subsistence hunting and fishing. Appellants claim, in other words, that the urban/rural criterion is both unfairly under-inclusive, because it excludes deserving urban residents, and over-inclusive, because it includes undeserving rural residents. Appellants instead suggest that the right to subsistence should depend upon individual needs and traditions, not on one's place of residence.

The record supports the appellants' claim that there are substantial numbers of urban subsistence users. A state

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7. Senator Fisher, a member of the Senate Resource Committee, noted in the Senate floor debate: "[T]his legislation will provide the boards the tools to solve the problems in harvest disruption that followed Madison, and will assure the state will retain management of fish and game throughout Alaska by meeting the requirements of the federal subsistence law."

study of subsistence use patterns[8] found that of some 255 holders of subsistence salmon permits for the 1980 Tanana River fishery, approximately 20% exhibited the attributes commonly associated with a traditional subsistence lifestyle, even though they all resided in the urban Fairbanks area. The report states:

> Despite their residence in or near populated areas of the Fairbanks North Star Borough, these households generally participated in the wage economy on a seasonal basis and had longer histories of participation in the fishery, lower cash incomes, and somewhat larger household sizes than the majority of users. Some of these households have long-standing cultural ties to the subsistence fishery. For these more intensive users, fishing in sub-district Y-6C was less a recreational outing than an integral component of their way of life in Interior Alaska. Their residence in an area which is currently defined by regulation as urban, coupled with escalating demands upon the resource base, however, raise questions about whether these more intensive uses can continue in the future.

Study at 12. Similarly, in the city of Homer, an urban area under the regulations,[9] the study reports that 38.2% of the city residents obtained at least one-half of their meat and fish supply from personal hunting and fishing activities. Id. at 162.

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8. R.J. Wolfe and L.J. Ellanna Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities, Technical Paper Number 61, Alaska Department of Fish and Game, Division of Subsistence, Juneau, March, 1983 (hereinafter "Study").

9. 5 AAC 99.014.

Likewise, the study documents the fact that numerous Alaskans who live in areas classified by the regulations as rural do not engage in subsistence activities. For example, in the City of Sitka, which is classified as rural, although it has a population of 7,803, some 26% of the households sampled did no hunting and 7% did no fishing. Id. at 235. Similarly, in the City of Nome, population 3,249, which is also rural under the regulations, id. at 93, some 5% of all households use no locally taken fish or game. Id. at 111.

The study also amply supports the critical importance of subsistence hunting and fishing to residents of the numerous small and remote villages of our state. For example, in the Wade Hampton census area of Western Alaska, the average annual per capita cash income was only $2,737 (1979),[10] id. at 30, and the average household harvested 4,597, dressed weight, pounds of fish and game each year. Id. at 42.

The Article VIII Clauses - History and Analysis

A.

Section 15 of article VIII of the Alaska Constitution provides:

> No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to

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10. The 1979 statewide average was $11,152. Study at 30.

> limit entry into any fishery for the purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Section 3 of article VIII provides:

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

Section 17 of article VIII provides:

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

Although the ramifications of these clauses are varied, they share at least one meaning: exclusive or special privileges to take fish and wildlife are prohibited. Section 15 states this explicitly with respect to fisheries. The proceedings of our Constitutional Convention show that the same meaning was intended with respect to sections 3 and 17.

A memorandum of the Constitutional Convention Committee on Resources expresses the view that the common use clause has as one of its purposes a prohibition on exclusive grants or special privileges. The memorandum states: "The expression 'for common use' implies that these resources are not to be subject to exclusive grants or special privileges as was so frequently the case in ancient royal tradition." Alaska Constitutional Convention Papers, Folder 210, Papers Drafted by Committee on Resources, entitled "Terms."

The Committee on Resources commentary with respect to the uniform application clause states:

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

6 Proceedings of the Alaska Constitutional Convention 84 (Dec. 16, 1955).

In Owsichek v. State, 763 P.2d 488 (Alaska 1988), we observed that the article VIII provisions were designed to ensure to the public the broadest possible access to wildlife. We noted that "the common use clause impose[s] upon the state a trust duty to manage the fish, wildlife and water resources of the state for the benefit of all the people." Id. at 495 (emphasis added). "[A] minimum requirement of this duty is a prohibition against any . . . special privileges." Id. at 496. In State v. Ostrosky, 667 P.2d 1184, 1191 (Alaska 1983), we observed that the common use and no exclusive right of fishery clauses reflected "anti-exclusionist values."

Appellants contend that the rural residency requirement amounts to an exclusive or special privilege prohibited explicitly by section 15 and implicitly by sections 3 and 17. They focus on Hynes v. Grimes Packing Co., 337 U.S. 86 (1949), a case which interpreted section 1 of the White Act, former 48 U.S.C. §§ 220-224 (1941), under which Alaska fisheries were regulated before statehood. In Hynes, the Supreme Court held that the White Act prohibited granting a preferential right to fish to Native residents of the Karluk Reservation. Id. at 123.

This case is of precedential importance, they contend, because section 15 was based on section 1 of the White Act.

In response, the state agrees that the first sentence of section 15 is based on section 1 of the White Act. However, the state distinguishes Hynes on the grounds that the exclusive right to fish there was available to "a closed class." In contrast, it argues there is no closed class here because "people may become eligible to participate in subsistence uses by establishing their domicile in a rural area." Further, the state relies on Kenai Peninsula Fishermen's Cooperative Association v. State, 628 P.2d 897, 904 (Alaska 1981) which held that section 15 does not bar differential treatment between commercial, sport, and subsistence fishermen. The intervenors' argument in response relies exclusively on this case.

The parties correctly agree that the no exclusive right of fishery clause is based on section 1 of the White Act. The commentary concerning the exclusive right of fishery clause prepared by the Committee on Resources of the Constitutional Convention states:

> This section is intended to serve as a substitute for the provision prohibiting the several right of fisheries in the White Act. Instead of using the terminology of that Act the purposes sought by it are given expression in a prohibition of exclusive right or special privileges of any person to the fisheries of the state.

6 Proceedings of the Alaska Constitutional Convention Proceedings at 87 (Alaska Legislative Council).

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The language of the White Act, for which the no exclusive right clause is meant to be a substitute, is as follows:

> Provided, that every such regulation made by the Secretary of the Commerce shall be of general application within the particular area to which it applies, and that no exclusive or several right of fishery shall be granted therein, nor shall any citizen of the United States be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of the Commerce.

Act of June 6, 1924, ch. 272, S 1, 43 stat. 464.

The appellants' reliance on Hynes as an explanation of the meaning of the bar on exclusive rights and special privileges is apt. At issue in Hynes was a regulation of the Secretary of the Interior[11] prohibiting commercial salmon fishing in all waters within 3,000 feet of the shores of the Karluk Reservation. 337 U.S. at 92. The Secretarial Order made an exception which allowed Natives residing on the Reservation and their licensees to fish in these waters. Id. The Supreme Court held that this exception in favor of the Native residents and their licensees violated section 1 of the White Act. The court stated:

> [W]e think it clear that its proviso, "that no exclusive or several right of fishery shall be granted therein," applies to commercial fishing by Natives equally with

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11. Regulatory jurisdiction over the administration of the White Act was transferred from the Department of Commerce to the Department of the Interior, effective July 1, 1939; Hynes, 337 U.S. at 92 n.4.

> fishing companies, nonresidents of Alaska or other American citizens and so applies whether those Natives are or are not residents on a reservation. We find nothing in the White Act that authorizes the Secretary of the Interior to grant reservation occupants the privilege of exclusive commercial fishing rights. . . . "Exclusive," as used in Section 1 of the White Act, forbids not only a grant to a single person or corporation but to any special group or number of people. The legislative history set out above shows this. The offending regulations which brought about the enactment of the proviso in § 1 of the White Act were administered so as to limit fishing to those who had been using the fisheries before the regulations.

337 U.S. at 122.[12]

As noted above, the state seeks to distinguish Hynes on the ground that Hynes involved a closed class of recipients of a special privilege, whereas the 1986 subsistence law does not because anyone who wants to hunt and fish for subsistence purposes can move to a rural area. We find this argument unpersuasive. If it were valid, virtually any discrimination based on residence would be justified - the residents of the disfavored area could simply move. Such a rationale is inconsistent with the prevailing approach in territorial

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12. We do not agree with Justice Rabinowitz's statement in dissent that the limitation struck down in Hynes was predicated solely on the fact that the users were Indians. Infra at 50. Both ethnic status and local residency were required as the regulation in question applied to "natives in possession of [the Karluk] reservation." 337 U.S. at 92. In any case, the quote in the text makes it clear that if the exception had been based solely on residence, rather than on residence and race, it would also have been struck down.

discrimination cases, which is to subject territorial classifications to scrutiny under the equal protection clause. Gilman v. Martin, 662 P.2d 120, 125 (Alaska 1983); Neuman, Territorial Discrimination, Equal Protection, and Self-Determination, 135 U. Pa. L. Rev. 261, 274-75 (1987).

The state's and the intervenors' reliance on Kenai Peninsula is also off the mark. That case merely affirmed what article VIII, section 4[13] says explicitly - that preferences among beneficial uses of fish and game may be legislatively or administratively established. We stated in Kenai Peninsula:

> While section 15 does prohibit granting monopoly fishing rights, that section was not meant to prohibit differential treatment of such diverse user groups as commercial, sport, and subsistence fishermen. To conclude that, because a certain species is made available for sport fishing in a given area, commercial fishing of the same species must also be allowed, would be to go far beyond the purpose of the section.

628 P.2d at 904 (footnote omitted). The state may, indeed must, make allocation decisions between sport, commercial, and

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13. Article VIII, section 4 of the Alaska Constitution provides:

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

subsistence users. That authority, however, does not imply a power to limit admission to a user group.[14]

Section 1 of the White Act guaranteed equal access to fisheries regardless of residence. The language of the Act and Hynes make this clear.[15] Alaska's constitutional framers were

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14. The foregoing also answers Justice Rabinowitz's contention that our interpretation of the equal access clauses of article VIII is in conflict with article VIII section 4. We have consistently taken the position that limits on admission to user groups are subject to scrutiny under the article VIII equal access clauses. See State v. Ostrosky, 667 P.2d 1184, 1189 (Alaska 1983); Owsichek v. State, 763 P.2d 488, 492 (Alaska 1988).

15. The legislative history of the White Act is in accord. Congressional debate at the time the White Act was proposed demonstrated concern that Alaska residents and non-residents alike were being excluded from Alaska fisheries. The debate also demonstrated Congress' desire that Alaska fisheries be equally accessible to everyone:

> Mr. Robinson. The Secretary of Commerce sought to give exclusive right to fish in certain Alaskan water, and out of this attempt to give exclusive rights to fish, thus depriving a large number of the people the right to pursue their usual vocation, great complaint arose. This bill, however, denies to the Secretary of Commerce any power to grant an exclusive right to fish and requires him to give everyone equal rights within the areas where fishing is permitted.
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> . . . .
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> Mr. Jones of Washington. The bill removes the principal cause of complaint with reference to the exercise of power by the Secretary of Commerce. . . . Within the two reservations [of restricted fishing areas] that were created by Executive Order a year or two ago the Secretary of Commerce has seen

(Footnote Continued)

(Footnote Continued)

fit to make regulations under which outsiders might not go in order to fish. In other words, those who are already located there, if [the Secretary] thought they took all the fish that should be taken, were given the full rights, and nobody else could go in there and take fish.

Mr. King: They were given exclusive rights.

Mr. Jones of Washington. They may be called exclusive rights, but I want to say this in justice to the Secretary of Commerce:

When I came back this fall, and came down here, and we were considering matters of this kind, the Delegate from Alaska and I talked over the matter with reference to those exclusive rights, and I saw the Secretary of Commerce, and the Secretary of Commerce himself said that he would be glad to have that discretion taken away, that certainly he was not in favor of that policy, but those who were on the ground and who had been dealing with the matter especially and who might be considered to be experts had recommended and urged that that policy be pursued. I will say, in justice to him, that he said frankly that he would prefer not to have that absolute power, so I can say for him that he is glad that this provision is put in the bill prohibiting him from granting exclusive rights within the fishing areas up there.

. . . .

Mr. Robinson. I have been unable to find any authority for [the Secretary] to grant exclusive rights of fishery. It was about that alleged abuse of authority that most of the complaints arose; namely, that the Secretary in some instances had created reservations, and in others had granted in certain waters the exclusive right to fish, usually to large corporations or packing concerns, which deprived the fishermen of the

(Footnote Continued)

aware of Hynes.[16] As noted, section 15 of article VIII was meant to be a substitute for section 1 of the White Act and to further

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(Footnote Continued)

> opportunity to pursue their occupations; and they desired very much the provision that is in this bill, which secures to every citizen of the United States the right to fish in Alaskan waters upon equal terms and without discrimination. The bill deprives the Secretary of any power . . . to grant exclusive rights to fish in Alaskan waters.

65 Cong. Rec. 9520-21 1924) (emphasis added).

Based in part upon the Congressional debate identified above, Hynes concluded that

> [T]he legislative history of the White Act only emphasizes what the statute clearly says, that is, no special privileges in Alaskan fishing preserves.

Hynes, 337 U.S. at 120 (footnote omitted).

16. A memo of the Committee on Resources defining terms states the following under "White Act Provisions 48 U.S.C.A. 222:"

> That every such regulation made by the Secretary shall be of general application within the particular area to which it applies, and that no exclusive or general right of fishery shall be granted therein, nor shall any citizen of the U.S. be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary. . . . The word "exclusive" forbids not only a grant to a single person or corporation, but to any special group or number of people. (Hynes-Grimes Karluk Reservation)

Alaska Constitutional Convention Papers, Folder 210.

its purposes.[17] It follows that section 15 likewise was meant to ensure an equal right to participate in fisheries, regardless of where one resides.

Although section 15 pertains only to fisheries, the prevention of grants of exclusive or special privileges with respect to fish and game is also one purpose of the common use and the uniform application clauses.[18] It follows that the grant of special privileges with respect to game based on one's residence is also prohibited.

We therefore conclude that the requirement contained in the 1986 subsistence statute, that one must reside in a rural area in order to participate in subsistence hunting and fishing, violates sections 3, 15, and 17 of article VIII of the Alaska Constitution.[19]

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17. Commentary on Article on State Lands and Natural Resources, 6 Proceedings of the Alaska Constitutional Convention at 87.

18. See supra pages 14 and 15.

19. Justice Rabinowitz states in his dissenting opinion that he does not interpret the statute to mean that "eligibility to participate in subsistence uses is determined solely with reference to where an individual lives." Infra at 47. That, however, clearly is the case with respect to first-tier subsistence users. Urban resident may not be subsistence users because subsistence uses are by definition limited to rural residents. AS 16.05.940(30), quoted supra at pp.2-3. Yet all rural residents may be first-tier subsistence users without regard to their individual characteristics. The regulation on which Justice Rabinowitz relies, 5 AAC 99.010(b), defines customary and traditional uses but does not state that first-tier subsistence rights can be limited to customary and

(Footnote Continued)

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B.

The conclusion we have reached does not mean that everyone can engage in subsistence hunting or fishing. We do not imply that the constitution bars all methods of exclusion where exclusion is required for species protection reasons. We hold only that the residency criterion used in the 1986 act which conclusively excludes all urban residents from subsistence hunting and fishing regardless of their individual characteristics is unconstitutional.

We are not called upon in this case to rule on what selection criteria might be constitutional. It seems appropriate, however, to note that any system which closes participation to some, but not all, applicants will necessarily create a tension with article VIII. In such cases, assuming that the exclusionary criterion is not per se impermissible, our decisions suggest that demanding scrutiny is appropriate.

We alluded to this in State v. Ostrosky, 667 P.2d 1184 (Alaska 1983) in discussing the interplay between the constitutionally allowed limited entry system, which was permitted by

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(Footnote Continued)

traditional users. As we stated in Madison "the phrase 'customary and traditional' modifies the word 'uses' . . . it does not refer to users." 696 P.2d at 174. The state acknowledges that only in the second-tier subsistence context may individual characteristics separate those rural residents who may be second-tier subsistence users from those who are ineligible. Brief of Appellees, p. 8. The state also notes that the need for a second-tier limitation has, to date, not arisen. Id.

amendment to article VIII, section 15, and the common use and no exclusive right of fisheries clauses. We stated:

> [S]ince the common use clause of section 3 and the no exclusive right of fishery clause of section 15 remain in the constitution, the premise of the argument is that whatever system of limited entry is imposed must be one which, consistent with a feasible limited entry system, entails the least possible impingement on the common use reservation and on the no exclusive right of fishery clause. The argument concludes that free transferability does not entail the least possible impingement on the anti-exclusionist values which these provisions reflect.
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> . . . [T]he premise of this argument is logical.

Id. at 1191. We expressed the same theme in Johns v. Commercial Fisheries Entry Commission, 758 P.2d 1256 (Alaska 1988) concerning the obligation of the Commercial Fisheries Entry Commission to establish an optimum number of entry permits. We stated in Johns:

> In [Ostrosky], we noted that there is a tension between the limited entry clause of the state constitution and the clauses of the constitution which guarantee open fisheries. We suggested that to be constitutional, a limited entry system should impinge as little as possible on the open fishery clauses consistent with the constitutional purposes of limited entry, namely, prevention of economic distress to fishermen and resource conservation. Ostrosky . . . . The optimum number provision of the Limited Entry Act is the mechanism by which limited entry is meant to be restricted to its constitutional purposes. Without this mechanism, limited entry has the potential to be a system which has the effect of creating an exclusive fishery to ensure the wealth of permit holders and permit values, while exceeding the constitutional purposes of limited entry. Because this risk of unconstitutionality

> exists, the [Commercial Fisheries Entry Commission] should not delay in embarking on the optimum number process, except where there is a substantial reason for doing so.

Id., 758 P.2d at 1266 (footnote omitted).

Most recently in Owsichek, we suggested that section 17 of article VIII, the uniform application clause, "may require 'more stringent review' of a statute than does the equal protection clause in cases involving natural resources." Owsichek, 763 P.2d at 498 n.17 (quoting Gilman v. Martin, 662 P.2d 120, 126 (Alaska 1983)). We also cited with approval Justice Rabinowitz's dissent in Ostrosky, 667 P.2d at 1196 which employs a least restrictive alternative approach in view of the "highly important interest running to each person within the state" by virtue of the common use clause. 763 P.2d at 492 n.10.

In reviewing legislation which burdens the equal access clauses of article VIII, the purpose of the burden must be at least important. The means used to accomplish the purpose must be designed for the least possible infringement on article VIII's open access values. Ostrosky, supra at 1191, Johns, supra at 1266.

We employ this method of analysis in the present case as an alternative ground of decision. Using this approach, we conclude that the rural-urban residency criterion is unconstitutional for the reasons that follow.

One purpose of the 1986 act is to ensure that those Alaskans who need to engage in subsistence hunting and fishing in order to provide for their basic necessities are able to do so.

This is an important interest.[20] However, the means used to accomplish this purpose are extremely crude. There are, as noted above, substantial numbers of Alaskans living 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 claims. A classification scheme employing individual characteristics would be less invasive of the article VIII open access values and much more apt to accomplish the purpose of the statute than the urban-rural criterion.

We note that several other jurisdictions have struck down intrastate residential preferences in fish and game statutes. These authorities support our view that the equal access clauses of article VIII, which are a special type of equal

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20. Another expressed purpose is to aid communities whose residents are dependent on subsistence, as distinct from aiding the individual residents. This is not a purpose separate from aid to individual community members where the aid goes directly to the individuals. As we stated in State v. Enserch, __ P.2d __ , Slip Op. No. 3539 at 31 (Alaska, December 18, 1989): "It would not make sense to conclude that a statute may not discriminate between residents of two areas in order to aid the residents of the more disadvantaged area, but that such a statute could discriminate between residents of two areas in order to aid the communities in the more disadvantaged area. The communities are merely the collective sum of the residents."

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

protection guaranty, bar the residential discrimination imposed in this case.[21] Lewis v. State, 161 S.W. 154 (Ark. 1913) contains an excellent historical statement:

> When it becomes necessary for the propagation and preservation of wild game and fish for the use of the public, the people acting in their sovereign capacity, through their lawmaking power, may pass laws to regulate the right of each individual which he enjoys in common with every other member of the community to use of same. But when

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21. See State v. Bryan, 99 So. 327, 330 (Fla. 1924) (state law levying $10 and $50 license tax on state residents who are non-residents of certain counties, as a prerequisite to hunting in those counties, when residents of those counties pay only $1 or $1.25, violates equal protection); State v. Barkley, 134 S.E. 454, 455 (N.C. 1926) (state law levying $3 hunting fee on non-resident hunters in the county, and a $1 fee on residents of the county, held invalid in that it taxed inhabitants unequally); Harper v. Galloway, 51 So. 226, 229 (Fla. 1910) (state law that required citizens of the state of Florida who were not residents of Marion County to give a previous notice of intention to hunt and to pay a special license tax for the privilege of hunting game in Marion County, while no notice or license tax was required of residents of Marion County, denied equal protection of the laws); Bruce v. Director, Dep't of Chesapeake Bay Affairs, 276 A.2d 200, 208 (Md. 1971) (statutes prohibiting crabber from crabbing in waters of county other than his county of residence and prohibiting oystermen from going to waters of another county invalid); Power, More About Oysters Than You Wanted To Know, 30 Maryland L. Rev. 199, 218 (1970) ("A county non-resident represents no peculiar threat to the fishery but merely the same threat as represented by a county resident.").

But see Commonwealth v. Hilton, 54 N.E. 362, 364 (Mass. 1899) (selectmen of a town may prohibit the digging of clams by nonresidents of the town); State v. Norton, 335 A.2d 607, 615 (Me. 1975) (state had compelled governmental interest in conservation of its clams and its attempt to achieve that purpose by, in part, authorizing municipalities to apply a resident-nonresident standard in licensing shell fisheries did not unconstitutionally discriminate against nonresidents).

the sovereign undertakes to regulate or restrain the individual in its right as a member of the community to enjoy the right to take and use this common property of all, it must do so upon the same terms to all members of the community alike. The common right, which one individual of the whole community is entitled to enjoy as much as another, cannot be made by law the exclusive privilege of the people of a certain class or section upon terms and conditions that do not apply to the whole people alike. This right which one individual has in common with every other individual in the community to take and use fish and game, ferae naturae, is one that has existed from the remotest times, and, although at one time in England after the Norman Conquest the right to take fish and game was claimed as a royal prerogative to the exclusion of the people, it was restored to them by the Barons at Runnymede in 1215, and was declared in the great charter which they wrested from King John. "The rights," says Green, "which the barons claimed for themselves they claimed for the nation at large." Green's History of the English People, vol. 4, pp. 252-254.

These rights were confirmed and established ever thereafter in England by acts of Parliament, and they have come down to us from the laws of England and may be regarded as a common heritage of the English-speaking people. See Parker v. People, 111 Ill. 581, 53 Am. Rep. 643. Also Geer v. Conn., 161 U.S. 519, 16 Sup. Ct. 600, 40 L. Ed. 793; Martin v. Waddell, 16 Pet. 412, 10 L. Ed. 997. The only justification for a law regulating and restricting the common right of individuals to take wild game and fish is the necessity for protecting the same from extinction, and thus to preserve and perpetuate to the individual members of the community the inalienable rights which they have had from time immemorial. While the state, holding the title to game and fish, so to speak, in trust for every individual member of the community, may pass laws to regulate the rights of each individual in the manner of taking and using the common property, yet, as we have already stated, this must be done, under the

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> Constitution, upon the same terms to all the people. No special privileges or immunities can be conferred.
>
> Where the necessity for the preservation of the wild game and fish exists in certain territories of the state, that territory may be segregated for the purpose of regulating the right to taking game and fish therein; but the privilege of taking and using same must be extended to the people of the state outside of the territory upon the same terms that are given to those who are residents of the territory embraced in the legislation. Hayes v. Territory, 2 Wash. T. 286, 5 Pac. 927. In the cases of State v. Higgins, 51 S. C. 51, 28 S. E. 15, 38 L. R. A. 561, and Harper v. Galloway, 58 Fla. 255, 51 South. 226, 26 L. R. A. (N.S.) 794, 19 Ann. Cas. 235, the question here involved was considered and determined in accord with the doctrine we have announced.

Id. at 155-156 (footnote omitted, emphasis added).

CONCLUSION

Our disposition of this case makes it unnecessary to discuss the other grounds advanced by appellants. For the above reasons, the judgment of the superior court is reversed. This case is remanded to the superior court with instructions to issue a declaratory judgment that the rural preference of ch. 52 SLA 1985 is unconstitutional and to take such further action as may be appropriate.

REVERSED and REMANDED.

COMPTON, Justice, concurring.

I agree with Part A of the opinion, holding that this preferential scheme violates art. VIII, sections 3, 15 and 17 of the Alaska Constitution.

I express no opinion regarding Part B as it is superfluous to the decision.

MOORE, Justice, Concurring.

The court correctly concludes that chapter 52, SLA 1986 ("the Act") violates the Alaska Constitution. I write separately to explain my understanding of the court's holding in part B of the section entitled "The Article VIII Clauses - History and Analysis," which I join, and because I disagree with the court's analysis in part A.

Equal Protection

The Act is motivated by a compelling purpose, ensuring that persons who are dependent upon subsistence hunting and fishing have access to wildlife. However, the Act's geographical classification scheme is only loosely related to that purpose. This is an equal protection case, and an easy one at that.

Article I, section 1 of the Alaska Constitution provides that "all persons are . . . entitled to equal rights, opportunities, and protection under the law . . . ." We have decided many cases interpreting this provision, most recently, State v. Enserch Alaska Construction, Inc., ___ P.2d ___, Op. No. 3539, (Alaska, December 18, 1989). The Alaska Constitution has a similar clause specifically concerning natural resources. Article VIII, section 17, the uniform application clause, provides that "[l]aws and

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

When applying the equal protection clause of article I, we determine the importance of the individual interest affected by the enactment. The importance of the individual interest determines the level of scrutiny we apply to both the state's interest in the enactment and the nexus between that interest and the enactment. Enserch, Op. No. 3539, at 22-24; Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264, 269-70 (Alaska 1984). Without explicitly acknowledging it, the court's opinion employs the same analysis under the uniform application clause of article VIII. See supra pp. 26-27. Since the principle of equality underlies both clauses, the use of our equal protection analysis in the uniform application context is proper.

I believe that the individual interest impaired by the Act, access to wildlife for subsistence purposes, is a species of the important right to engage in economic endeavor at issue in Enserch, Op. No. 3539, at 25-28. See also Commercial Fisheries Entry Comm'n v. Apokedak, 606 P.2d 1255, 1266 (Alaska 1980). The challenged enactment

therefore should receive close scrutiny.[1] The Act then at least must be closely related to an important state interest. Enserch, Op. No. 3539, at 28.

The state's interest, ensuring that those who must engage in subsistence hunting and fishing are able to do so, is undoubtedly important. Indeed, I believe it is compelling. However, the Act's classification scheme for deciding who is entitled to engage in subsistence hunting and fishing and its implementing regulations are not closely related to the purpose of the Act. As the court's opinion describes, large numbers of residents of areas classified as urban under the Act are dependent upon subsistence hunting and fishing. Conversely, some of the state's larger cities, where many people are not dependent upon subsistence hunting and fishing, are classified as rural. Supra pp. 11-12. There is only a modest correlation between the set of people who reside in areas designated as rural under the Act and the set of people who are dependent upon subsistence hunting and fishing. The fit between the Act and the state's interest does not even approach that required to withstand

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1. Enserch, Op. No. 3539, at 28; Patrick v. Lynden Transp., Inc., 765 P.2d 1375, 1379 (Alaska 1988). It may be that the enactment should receive even greater scrutiny under the uniform application clause; however, the court has not decided that question. Owaichek v. State, 763 P.2d 488, 498 n.17 (Alaska 1988).

close scrutiny. Therefore, the Act violates the equal protection and uniform application clauses of the Alaska Constitution.

This is not to say that all subsistence preference laws would be unconstitutional. I simply believe that for such a law to pass constitutional muster, it must be closely related to its compelling purpose. A law providing for individual determinations of eligibility would in my view be sufficiently tailored to the state's interest to withstand a constitutional challenge.

Common Use and Exclusive Right of Fishery

The court's holding in Part A of the section entitled "The Article VIII Clauses - History and Analysis" is not altogether clear. I agree with the court to the extent that it holds that an intrastate geographical preference for the taking of wildlife violates sections 3 and 15 of article VIII of the Alaska Constitution. I reject any implication that all preferences, especially all subsistence preferences, would violate these sections. I do not believe that the court can find a violation of article VIII, section 17

without a full equal protection analysis. I do not join part A of the court's opinion, but I concur in its result.[2]

Section 15 of article VIII provides that "[n]o exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State." Alaska Const., art. VIII, § 15 (emphasis added). Section 4 of article VIII provides that the use of resources shall be "subject to preferences among beneficial uses." On the surface, there appears to be some conflict between these provisions. To the greatest extent possible, we must interpret the provisions of Article VIII consistent with each other. See Abrams v. State, 534 P.2d 91, 95 (Alaska 1975).

Section 4 clearly authorizes some preferences based upon uses. The court recognized a parallel exception to section 15 in Kenai Peninsula Fisherman's Cooperative Association, Inc. v. State, 628 P.2d 897 (Alaska 1981), where we wrote that section 15 "was not meant to prohibit differential treatment of such diverse user groups as commercial, sports, and subsistence fishermen." 628 P.2d at 904. The Act distinguishes subsistence uses from commercial and sport uses in name only. As discussed above, its classification

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2. I would not, however, reach this question, because I believe that such geographical preferences violate the equal protection and uniform application clauses of the Alaska Constitution.

is in fact a fairly arbitrary one based upon residence." It is not the type of classification we have previously held permissible under section 15.

We are left with the question whether geographical preferences are permissible under section 15. For the reasons given in the court's opinion, see supra pp. 15-19, I believe that reliance upon Hynes v. Grimes Packing Co., 337 U.S. 86 (1949), which interpreted the federal statute upon which section 15 was based, is appropriate. In Hynes, the Court invalidated regulations prohibiting fishing off the shores of the Karluk Reservation. While I do not believe that Hynes is determinative since it involved an exclusive right to fish in a particular area and not a mere preference, 337 U.S. at 92, section 15 proscribes "special privilege[s]" as well as exclusive rights. Like the court, I do not read Hynes as being based on the fact that the exclusive right was granted to Natives rather than some other group. Nor do I believe that Hynes can be distinguished by the ability of people to move to rural areas and thus qualify under the Act. See supra pp. 18-19 & n.12. For these reasons, I agree with the court that geographical preferences for the taking of fish are not permissible under section 15. The Act thus violates section 15. Although section 15 is facially applicable only to fishing, I would have no difficulty finding a corresponding

prohibition of geographical hunting preferences in the common use clause of article VIII, section 3. See supra p. 23.

RABINOWITZ, Justice, dissenting.

I dissent from the court's holding that ch. 52 SLA 1986 is unconstitutional.[1] In my view Alaska's subsistence laws are not violative of either section 3 ("common use"), section 15 ("no exclusive right of fisheries"), or section 17 ("equal application of laws") of article VIII of the Alaska Constitution.

Article VIII, section 4 explicitly provides for "preferences among beneficial uses." In Kenai Pen. Fisherman's Co-op Ass'n v. State, 628 P.2d 897, 904 (Alaska 1981), we said in part: "[w]hile section 15 does prohibit granting monopoly fishing rights, that section was not meant to prohibit differential treatment of such diverse user groups as commercial, sport, and subsistence fishermen." The subsistence laws at issue here do not exclude individuals from access to wildlife; rather, wildlife resources are allocated on a preferential basis. Nor do these laws create an exclusive right of fishery in any class. Rather, the effect of these laws is to provide for a subsistence preference among benefical users of the resource. No exclusive, monopolistic, or otherwise closed classes of resource users are established.

I would further hold that ch. 52 SLA 1986 is not violative of the equal protection provisions of the Alaska

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1. Hereinafter state subsistence laws.

Constitution (article I, section 1, article VIII, section 17). In my view adoption of the strict scrutiny and least restrictive alternative standards is inappropriate. Given the nature of the interest at stake I would apply a lesser standard for purposes of equal protection analysis. This subsistence legislation is substantially related to legitimate legislative goals. I conclude that the fit between the legislature's goal of furthering the health and welfare of subsistence users, and the subsistence preference system it devised to carry out this objective, is sufficiently close to withstand scrutiny under Alaska's equal protection provisions.

INTRODUCTION.

In response to the impact the state's population growth has had upon subsistence lifestyles, Congress in 1980 enacted the Alaska National Interest Lands Conservation Act (hereinafter ANILCA or federal subsistence law).[2] ANILCA was designed to protect subsistence hunting and fishing by giving such uses priority over commercial and sport uses in rural areas.[3]

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2. Pub. L. No. 96-487, 94 Stat. 2371 (1980); 16 U.S.C. §§ 3101-3233 (West 1985). Congress prefaced Title VIII of ANILCA with a declaration that "the continuation of the opportunity for subsistence uses by rural residents of Alaska . . . is essential to Native physical, economic, traditional, and cultural existence . . . ." 16 U.S.C. § 3111(1).

3. See 16 U.S.C. §§ 3111-3126 (1982 & Supp. IV 1986).

The federal subsistence law specified that subsistence uses must be "customary and traditional uses by rural Alaska residents." ANILCA § 803; 16 U.S.C. § 3113 (emphasis added). Thus, under ANILCA, eligibility for subsistence permits was dependent in part upon one's geographic place of residence. ANILCA § 804; 16 U.S.C. § 3114.[4]

ANILCA authorized the state to continue managing fish and game inhabiting Alaska's federal lands and waters if the state established regulations maintaining the definition of and preference for subsistence uses articulated in the federal subsistence law. ANILCA § 805(d); 16 U.S.C. § 3115(d). The state legislature complied, and thereby retained managerial control over federal lands located within the state—by authorizing the Joint Boards of Fish and Game to promulgate regulations defining "rural" use.

In enacting ch. 52 SLA 1986 the Alaska House of Representatives adopted a letter of intent.[5] The letter articulated the subsistence-rural preference of the act in the following terms:

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4. "Rural" areas are those with sparse populations, and the term "rural" as used in ANILCA is not a term of art. Kenaitze Indian Tribe v. State of Alaska, 860 F.2d 312 (9th Cir. 1988), cert. denied, 105 L. Ed. 2d 695 (1989), (term "rural" is to be given its ordinary significance, meaning "sparsely populated").

5. 1985 House Journal 1246.

> 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 the communities in the taking of fish stocks and game populations for personal and family consumption. Further, the legislature finds that the general health and welfare of these citizens is significantly tied to their participation in these activities.6/

The subsistence statutes challenged here define "rural area" as "a community or area of the state in which the noncommercial, customary, and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy of the community or area." AS 16.05.940(25).

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6. See also the House Committee on Interior and Insular Affairs Report issued in conjunction with the passage of ANILCA.

> After consideration of the testimony at the subcommittee's hearings and town meetings throughout Alaska and review of studies done by a variety of federal, state, academic, and other agencies and groups, the Committee has no doubt about the importance of subsistence uses to the rural people of Alaska. Reliable evidence was given to the Committee demonstrating that fifty percent of the food for three-quarters of the Native families in Alaska's small and medium villages is acquired through subsistence uses, and 40% of such families spend an average of 6 to 7 months of the year in subsistence activities. . . .

H.R. Rep. No. 1045, 95th Cong., 2d Sess., at 181 (1978).

Appellants' basic contention here is that "by excluding from eligibility as subsistence users all urban dwellers and by including all rural dwellers, it unfairly excludes some urban residents who have lived a subsistence lifestyle and desire to continue to do so, while needlessly including numerous rural residents who have not engaged in subsistence hunting and fishing." The linchpin of this dispute, then, is whether the challenged subsistence law constitutes an unconstitutionally imperfect attempt to fulfill the legislature's purpose of protecting subsistence uses.

I. DO ALASKA'S SUBSISTENCE LAWS VIOLATE ARTICLE VIII OF THE ALASKA CONSTITUTION?

Appellants challenge the constitutionality of the state subsistence laws under three clauses of article VIII of the Alaska Constitution, sections 3 ("common use"), 15 ("no exclusive right of fisheries"), and 17 ("equal application of laws").[7] The court attributes a "shared meaning" to these three constitutional

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7. Section 3 of article VIII provides:

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

Section 15 of article VIII provides:

> No exclusive right or special privilege of fishery shall be created or authorized in the natural

(footnote continued)

provisions: that "exclusive or special privileges to take fish and wildlife are prohibited." The court then concludes that the subsistence statute's preference for rural residents violates each of the aforementioned clauses and offends the shared meaning of article VIII. I disagree.

A. Section Three: The "Common Use" Clause.

Article VIII, section 3 (the "common use" clause) is derived from laws designed to guarantee the common citizen participation in wildlife harvest, and to divest the Crown of exclusive entitlement to those resources.[8] It is said that this

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(footnote continued)

> waters of the State. This section does not restrict the power of the State to limit entry into any fishery for the purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.
>
> Section 17 of article VIII provides:
>
> Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

8. In Lewis v. State, 161 S.W. 154 (Ark. 1913), the court described the history of the common use principle in the following terms:

> [A]lthough at one time in England after the Norman Conquest the right to take fish and game was claimed as a royal prerogative to the exclu-

(footnote continued)

"public trust" doctrine[9] "impose[s] upon the state a trust duty to manage the fish, wildlife and water resources of the state for the benefit of all the people." Owsichek v. State, 763 P.2d 488, 495 (Alaska 1988) (citations omitted); see also Metlakatla Indian Community, Annette Island Reserve v. Egan, 362 P.2d 901, 905 (Alaska 1961), aff'd, 369 U.S. 45 (1962); Herscher v. State, Dep't of Commerce, 568 P.2d 996, 1003 (Alaska 1977).

In State v. Ostrosky, 667 P.2d 1184 (Alaska 1983), reh'g denied, 468 U.S. 1204 (1984), we accepted the view that the common use clause reflects "anti-exclusionist values." Id. at 1191. Thereafter, in Owsichek v. State, 763 P.2d 488 (Alaska 1988), a case involving an exclusive right to conduct guided hunting in particular areas of wilderness, we reiterated this

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(footnote continued)

> sion of the people, it was restored to them by the Barons at Runnymede in 1215, and was declared in the great charter which they wrested from King John.
>
> . . .
>
> These rights were confirmed and established ever thereafter in England by acts of Parliament, and they have come down to use from the laws of England and may be regarded as a common heritage of the English-speaking people.

Id. at 155 (citations omitted).

9. The public trust doctrine maintains that government holds untaken wildlife in trust for public use, and that government owes a fiduciary duty to manage such resources for the common good of the public as beneficiary. See Owsichek v. State, 763 P.2d 488, 493-95 (Alaska 1988).

theme stating that section 3 is fundamentally "anti-monopoly" in its thrust. Id. at 493 ("Because an EGA [exclusive guide area] is clearly a type of monopoly . . . [legislative] history strongly suggests that the statutes at issue here are unconstitutional."). Critical to our holding that the guide licensing system at issue in Owsichek was unconstitutional under the common use clause were the following characteristics of the scheme: it permitted a single guide permanently to exclude all other guides from leading hunts professionally on specific lands; it favored established guides at the expense of new entrants in the guiding market; it created a salable, property-like interest in the license; and it established exclusivity of an unlimited duration. Id. at 496.

In the case at bar the challenged subsistence laws exhibit none of these characteristics. The state subsistence laws establish a subsistence preference, not an exclusive, monopolistic, or otherwise closed class. Anyone may join subsistence users by moving to a sector of the state which has been designated as a "rural area." Further, these laws do not establish subsistence hunting and fishing as an exclusive use, even in rural areas, except during periods of extreme resource scarcity.[10] In regard to this issue I think the court's reliance

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10. Alaska Statute 16.05.258(c) authorizes complete

(footnote continued)

on Owsichek and Ostrosky is misplaced. Both Owsichek and Ostrosky emphasize that the primary thrust of article VIII is anti-exclusionist or anti-monopolistic, not anti-preferential.

I do not read the statutes in question as providing that eligibility to participate in subsistence uses is determined solely with reference to where an individual lives. That is not the case. The subsistence laws at issue here are implemented by multi-factoral regulations which focus not only on place of residence, but also upon particular stocks and populations of fish and game, and particular patterns of subsistence usage.[11] Moreover, individual characteristics are always considered under the state subsistence law during lean periods when it becomes necessary to restrict even certain subsistence uses. In those periods, the determination as to which individuals among those normally eligible for a subsistence permit may continue harvesting is made on the basis of an analysis of individuals' characteristics under the following criteria: (1) customary and

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(footnote continued)

prohibition of non-subsistence uses during periods of famine when the state's total harvest is insufficient to support even normal subsistence uses.

11. Subsistence uses must be "customary and traditional" uses as determined by the separate Boards after evaluation of a particular fish or game stock in light of eight criteria. 5 AAC 99.010(b). These eight criteria include examination of individual populations' patterns of use, methods and efficiency of use, consistency of use, and methods of food storage, as well as the nexus between the asserted subsistence use and the maintenance of individuals' cultural heritage. Id.

direct dependence on the resource as the mainstay of livelihood; (2) local residence; and (3) availability of alternative resources. AS 16.05.258(c).

The court's interpretation of the common use clause would prohibit the legislature from making any differential allocation of natural resources whatsoever, an outcome precluded by our holding in Kenai Peninsula, 628 P.2d 897 (Alaska 1981) and the language of article VIII, section 4, which explicitly provides for "preferences among beneficial uses." In Kenai, we held that "[w]hile section 15 does prohibit granting monopoly fishing rights, that section was not meant to prohibit differential treatment of such diverse user groups as commercial, sport, and subsistence fisherman." 698 P.2d at 904 (emphasis added).

Moreover, it is axiomatic that the provisions of article VIII of the Alaska Constitution should be interpreted so as to avoid internal contradictions. Abrams v. State, 534 P.2d 91, 95 (Alaska 1975) ("It is an undisputed maxim of constitutional construction that the different provisions of the document shall be read so as to avoid conflict whenever possible"); Park v. State, 528 P.2d 785, 786-87 (Alaska 1974) ("It is a well accepted principle of judicial construction that, whenever reasonably possible, every provision of the Constitution should be given meaning and effect, and related provisions should be harmonized."). In my view the court's reading of article VIII, section 3 as prohibiting preferences among beneficial uses

of Alaska's resources plainly conflicts with article VIII, section 4. That section provides, in full:

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

(Emphasis added.) The intent of section 4 is that persons situated differently can be treated differently and that some users of a resource may legitimately be given preference over others.

In brief, the common use clause constitutionalized the doctrine that wild fish and game are held in trust by the state for the benefit of the public as a whole, rather than by the sovereign in exclusive possession. That principle is consistent with the view that the sovereign state may manage wildlife for the common good, including certain beneficial preferences. Thus I conclude that the challenged subsistence laws do not offend the anti-monopolistic, anti-exclusionist values underpinning the public trust and common use doctrines embodied in section 3 of article VIII of Alaska's constitution.

B. Section 15: the "No Exclusive Right" Clause.

I also disagree with the court's holding that the state subsistence law violates article VIII, section 15 (the "no exclusive right" clause).

The court relies for its interpretation of the no exclusive right clause upon Hynes v. Grimes Packing Co., 337 U.S. 86 (1949), a case in which the United States Supreme Court interpreted the federal legislation which governed Alaska's fisheries before statehood, former 48 U.S.C. SS 220-224 (1941) (hereinafter "The White Act"). The White Act did include language seemingly prohibitive of the kind of geographic distinction at issue here. Section 1 of the White Act provides, in relevant part:

> [N]o exclusive or several right of fishery shall be granted . . . nor shall any citizen of the United States be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of the Commerce.

Act of June 6, 1924, Ch. 272, S 1, 43 stat. 464 (emphasis added). On the other hand, I disagree with the court's view that insofar as the White Act was expressly anti-geographic, section 15 should be given a similar construction. For in my opinion Hynes is distinguishable in several important respects.

First, Hynes did not involve an allocation of fish and game on the basis of residence; rather, the exemption at issue there applied only to fish, and was predicated upon the users' status as Indians, not their place of residence. 337 U.S. at 89-97. Second, Hynes involved an exclusive right of access which had been made available only to a closed class of fishermen. At issue in Hynes was a regulation of the Secretary of the Interior completely prohibiting commercial salmon fishing in all waters

within 3,000 feet of the shores of the Karluk reservation, but exempting Native fishermen from this otherwise comprehensive ban. Id. Therefore, Hynes, like Owsichek, is distinguishable from the classification scheme at issue in the present case, since in the case at bar one may become eligible for subsistence permits by moving into a rural area. Finally, as noted previously, both article VIII, section 4 and Kenai Fishermen establish that section 15 cannot be read to prohibit differential treatment of such diverse user groups as commercial, sport, and subsistence users.

C. Section 17: the "Equal Application" Clause.

Although section 17 (the "equal application clause") is a component of article VIII, it is essentially, as the court states, a "'more stringent . . .' equal protection clause [for] . . . cases involving natural resources." I will address these issues together.

II. DO THE 1986 STATE SUBSISTENCE LAWS VIOLATE ARTICLE VIII, SECTION 17 OR THE EQUAL PROTECTION CLAUSE OF THE ALASKA CONSTITUTION (ARTICLE I, SECTION 1)?

The court holds the state subsistence laws unconstitutional on equal protection grounds.[12]

Although this court has not yet addressed the issue whether equal access to fish and game is a fundamental right, we have held that commercial fishing is not fundamental. Commercial Fisheries Entry Comm'n v. Apokedak, 606 P.2d 1255, 1262 (Alaska 1980). Other courts have concluded that recreational hunting is not a fundamental right. See, e.g., Baldwin v. Montana Fish and Game Comm'n, 436 U.S. 371 (1978) (elk hunting by non-residents not fundamental); Utah Public Employees Ass'n v. State, 610 P.2d 1272 (Utah 1980) (entry in big game permit drawing not fundamental). See also Herscher v. State, Department of Commerce, 568 P.2d 996, 1003, 1006 (Alaska 1977).

In my view, the interest at stake, i.e., the right to participate in subsistence hunting and fishing, is not a fundamental right. Maximum scrutiny is reserved for fundamental

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12. The majority opinion employs article VIII section 17 and the concurring opinion of Justice Moore uses article I section 1. As Justice Moore points out, the method of analysis in either case is the same. Because Alaska's equal protection standards are more stringent than the federal constitutional standard, any statute which passes muster under Alaskan law will also survive the equal protection clause of the United States Constitution. Herrick's Aero-Aqua Repair v. Department of Transportation, 754 P.2d 1111, 1114 (Alaska 1988). Therefore, discussion of the federal standard is omitted.

rights and suspect classifications. Ostrosky, 667 P.2d at 1192. Given what I perceive to be the appropriate characterization of the interest involved, the state must demonstrate the existence of a substantial relationship between the means utilized by the legislation and the legitimate governmental ends sought to be achieved thereby.

Since I am of the view that strict scrutiny is inapplicable, I conclude that the questioned legislation does not violate the Alaska Constitution's equal protection clause. The challenged subsistence laws are fairly and substantially related to the important governmental goal of protecting the health and welfare of the state's subsistence users, a goal admittedly within the state's police powers to pursue.[13]

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13. As mentioned previously, in enacting the state subsistence laws, the Alaska legislature explicitly found that "the general health and welfare of these citizens is significantly tied to their participation in [subsistence] activities." 1985 House Journal 1246. In a similar vein this court said in State v. Tanana Valley Sportsmen's Ass'n, 583 P.2d 854, 859 n.18 (Alaska 1978):

> . . . For hundreds of years, many of the Native people of Alaska depended on hunting to obtain the necessities of life. To this day, despite incursions by those of different cultures, many Alaska Eskimos, Indians and Aleuts eke out a livelihood by reliance on fish and game. . . . Not only is the game of prime importance in furnishing the bare necessities of life, but subsistence hunting is at the core of the cultural tradition of many of these people. . . .

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Implicit in my view that this legislation is not violative of equal protection is the further conclusion that the subsistence classification formulated to fulfill this concededly legitimate legislative purpose is not constitutionally infirm. As we said in Apokedak, 606 P.2d at 1267:

> [I]ndividual cases will arise in which those barred may be able to show extreme hardship. The legislature in its wisdom could conceivably have better provided for such instances. But equal protection, even under Alaska's stricter standard, does not demand perfection in classification. If it did, there would be few laws establishing classifications that would sustain an equal protection challenge.

The subsistence legislation in question here effectively captures within its ambit the thousands of subsistence users residing in Alaska's numerous rural villages. In short, I would hold that the subsistence laws' fit satisfies the requirements of equal protection under both article I, section 1, and article VIII, section 17 of the Alaska Constitution.

approved

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INDIGENOUS RIGHTS, JURISDICTION AND COLONIAL INTRUSION IN ALASKA

A Brief Overview

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INDIGENOUS RIGHTS, JURISDICTION AND COLONIAL INTRUSION IN ALASKA: A brief historical overview

To begin to understand the rights of Alaska's Indigenous Peoples, the Athabascan, Tlingit, Haida, Aleut, Yupik, Inupiat[1] one most go as far back in history as possible, remembering that for ten's of thousands of years we existed as self-governing Sovereign Nations, living in harmony with the land and sea, upon which we depended for our very existence.

The impact of colonial intrusion began with the Russian occupation of the coastal areas of Alaska, and continued with the Treaties made between the United States and Russia.[2]

A crucial fact about these Treaties is that they were not, first and foremost, land transfer Treaties. Instead, they were mainly barter and trade agreements,[3] which eventually lead to the removal of all Russian occupation of the North American Continent. The Treaties made with Russia over their relinquishment of trading rights along the West coast of North America were first signed in the 1820's. At this time Russia was trading as far south as what is now

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1. Tsimpsian People are not referred to in the information because they are the only Indigenous people of the land that the United States recognizes as having an actual reservation and they came to Alaska around the 1930's.
2. The treaties of 1824, 1832, 1854, 1867, and 1868 effected Russia trade routes etc. along the West coast of Continental United States.
3. Ibid. Treaties with Russia compiled in the United States Statutes may be found at the State of Alaska Court House 303 "K" Street Anchorage, Alaska).

known as Mexico under the Russian American Trading Company.[4]

Most of Alaska Indigenous People's major problems began after the 1867 Treaty of Cession was signed by the two countries, giving rise to United States occupation of Alaska.

The Alaska Natives in the Treaty of Cession were referred to as "uncivilized" for the most part. There were some Natives, referred to as "civilized" in the Treaty, who were held as slaves or servants by the Russian American Trading Company mostly around the coastal trading posts [5].

The Treaty of Cession in reality was the purchase of the right to trade in Alaska by the United States for $ 7.2 million.[6] The Memorandum Descriptive "Marked AA" (Kostlivtzov Memorandum) of 1867 documents the prior status of Alaska Natives ownership (as Caretakers) of Alaska.[7] The Kostlivtzov Memorandum outlines the limits of the actual land purchased by the U.S., basically consisting of the land occupied by the fort at Sitka and the trading posts of the Russian American Trading Company, totalling approximately 550[8] acres.

At no time did Alaska Natives or any foreign power sign any Treaty and/or agreement giving the United States

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4. Which is alive and well today in bush villages under the name of the Alaska Commercial Company (AC Company).
5. 1950 Report titled "Russian Administration and the Status of Alaska Native"American Trading Company Charter
6. Russian American Company Charter 1844 and Treaty of Cession 1867.
7. This document has been concealed from the Alaska Natives during all the United States occupation of Alaska.
8. This figure was taken from the Kostlivtzov Memorandum. 117600 sq. ft. multiplied by 200 possible trading posts. 44000 sq.ft. equal 1 acre) (117600 / 44000 = 2.67 acres X 200 = 534.54 acres) approximately. total acres in Alaska 365 million

ownership or jurisdiction to the rest of more than three hundred million acres of land in Alaska.

Included in the 1867 Treaty was the obligation, which the United States accepted upon signing, to obtain the consent of the Natives in Alaska in regards to any future interactions with them or any appropriation of their lands.

After 1867, the U.S. claimed Alaska as its "territory", although there existed no legal basis for this claim. Shortly thereafter the U.S. government divided all of Alaska into twelve (12) geographical areas, assigning a different Christian denomination exclusive operating rights in each, in order to convert and colonize the Natives. Railroads and roadways were constructed by the federal government. Land appropriation and resource exploitation by the federal government and American settlers, miners, commercial fishermen, farmers, trappers, timber harvesters, etc. increased. Alaska became a major military base of operations for the U.S., as increasing numbers of military personell were imported.[9]

As a result of the influx of settlers, diseases killed large numbers of Natives (there is documentation that diseases have been and continue to be purposely introduced in some communities to this day). Large numbers of Native children were forcibly removed from their villages, and were sent to government or church-run boarding schools both within and outside of Alaska. The political, cultural and economic self-determination once enjoyed by our Peoples was seriously

9. U.N. Charter Article 73e Transmition of information.

undermined during this "territory" phase of our history.

When United States became signatory to the United Nations Charter in 1945, it accepted the "sacred obligation" to bring the inhabitants of it's "non self governing territories", which included Alaska, Hawaii, Guam and others, up to self government.[10] Instead, in violation of this sacred agreement, the U.S. instituted statehood in Alaska, bringing us further away from, rather than closer to, the self-governing status to which we have always had a right.

In 1950, Mr. Felix Cohen[11] wrote a series of letters to the President of the United States, Secretary of the Interior, and the Alaska Native Brotherhood, asking for protection of remaining Native fisheries, timber, minerals, and homes from "white settlers". Instead, in 1958 the U.S. authorized the creation of the State of Alaksa, through which these settlers instituted a governmental apparatus run by themselves for their own advantage, and imposed it upon the Native traditional goverments. Great numbers of Alaska Natives were denied the right to vote in the Statehood referendum because of a law mandating english speaking as a prerequisite and criteria for voters.[12]

A strong turnout of settler voters was insured by allowing military personell to vote as residents anywhere else in the U.S.. With the discovery of major oil deposits in Alaska in 1968, the multi- national energy corporations,

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10. U.N. Charter, Article 73 Non Self-Governing Territories.
11. Author of the Handbook on Federal Indian Law.
12. Alaska Legislature House Joint Resolution 51, of 1970.

along with the State and federal governments, pushed for a means to "clear title" to Alaska's lands away from the traditional and still legal owners, the Indigenous Peoples. The result was the Alaska Native Claims Settlement Act (ANCSA), passed by the U.S. Congress on December 18, 1971. ANCSA was an act of Genocide[13] perpetrated against the Indigenous Peoples of the the North American Continent and institutionalized as federal law, once again without the consent of the vast majority of the Alaska Native Peoples. The State of Alaska, the Federal government and the multi-national energy corporations were the major beneficiaries of ANCSA, while the Indigenous Peoples lost more than 330,000,000 acres of our traditional land base, had profit-making state chartered corporations imposed upon us, and who were denied any land rights to all Native chilren born after 1971.

Although the text of ANCSA denies that it was "a jurisdiction act",[14] it nevertheless claimed to terminate traditional Native hunting and fishing rights, placing it in direct conflict with the inherant rights of Alaska Natives to exert jurisdiction over their own subsistence activities.

Many Alaska Native Villages (including Chickaloon) refuse to except the valididy of ANCSA because the vast majority of Alaska Natives never had the opportunity to vote or otherwise approve the Act. The persons who voted in favor

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13. Genocide as defined by the United Nation is "an intent to destroy in whole or in part, a national, ethnical, racial, or religious group."
14. Alaska Native Claims Settlement Act Public Law 92-203, Section 2f.

of accepting ANCSA at the Alaska Federation of Natives Convention in 1971 (used as the "proof" of Native acceptance of ANCSA by the U.S. government) did not legally represent the vast majority of Native Alaskan's. [15]

In 1991 the provisions of ANCSA will go into full effect, and many villages may lose what is left of their land base through taxation, sale of "Native corporation" stock to non-Natives, confiscation of lands for corporate debts, and other forms of so-called legal land theft provided for by ANCSA and its amendments. Transfer of "corporation" lands to tribal governments is the only protection for Alaska Natives, but this option is not being presented to the villages by governmental, corporate and/or state-chartered organization officials who claim to have our interests at heart.

Similarly, great numbers of these same government officals and corporate representatives are currently invovled in presenting "options" to Native communities regarding the preservation of our Subsistence rights. The proposal of a State constitutional ammendement as a solution is another example of a campaign of misinformation, and would result in placing Native communities more directly under the thumbs of the those who claim the right to impose their authority over us while they continue to approprate our resources as they see fit.

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15. Under Freedom of Information Act we learned the U. S. Dept. of Interior violated many Federal Statutes by not having provided a vote in each and every village to relinquish lands or jurisdiction to the U.S.A. or the State Of Alaska.

The fact is that, upon its formation, the State of Alaska disclaimed any jurisdiction over Indian lands, including fishing rights. This "disclaimer clause" is written into the State of Alaska Constitution as follows: "The State of Alaska and its people shall disclaim any and all Lands owned, occupied, and/or claimed by Natives of Alaska, including fishing rights FOREVER)". [16] Meanwhile harassment, and arrests of Native hunters and fishers by State Fish and Game continues, in violation of the State's own constitution.

Amending the Constitution to authorize more State control over our way of life would result in a further denial of our right to self-determination and self-government.

This is the one option not being presented by the State, federal and corporate representatives currently debating the issue of our Subsistence rights -- our basic and fundamental right to assert our sovereignty and self-determination in the area of subsistence as well as in all areas of our lives. This is a right we have never given up or relinquished, just as we have never given up or sold our lands to any government.

The Federal Government recognizes at least some of our Traditional Governments (Chickaloon is one example), [17] but the State of Alaska continues to contest every assertion of sovereignty by the Traditional Tribal Governments. Although the State of Alaska is Public Law 280 State, and uses this law to justify its jurisdiction over Natives (in direct

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16. State of Alaska Constitution, Article XII, Section 12.
17. See Federal Register Vol. 51, No. 132, July 10, 1986.

contradiction to its own Constitution), it continues to fail to comply with the terms of the Indian Civil Rights Act of 1968 which and mandates that PL 280 states obtain the consent of the enrolled adult members of each tribe, band, group, village, etc, before any decision can be made affecting Indian lands, jurisdictional rights, etc.[18]

It can be clearly seen that at the heart of the problems of our Native Peoples in Alaska is this crucial historical reality: the United States Government has not fulfilled its sacred obligation towards the inhabitants of Alaska,[19] nor has it or the State of Alaska ever obtained the consent of Alaska Natives to appropriate our lands, assume jurisdiction over us, or to otherwise intrude into our way of life.

This brief overview is not intended as a detailed legal or historical analysis but rather as an introduction to certain trends and perpectives which continue to effect our lives as Native Peoples and Nations in Alaska. In closing, we have included the following chronology of the laws, acts and other significant events which have had a profound effect on the lives of Alaska's Indigenous Peoples since the beginning of colonial intrusion. Reference materials and historical documents are available to those wishing to learn more about this chain of events and its effects upon our Peoples.

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18. See 25 CFR 1.4 State and local regulations of use, and 30 CFR 229.105, Evidence of Consent, 30 CFR 229.106 withdrawl of consent
19. Ibid at 10.

1867 Treaty Of Cession
1871 U.S.A. Ending of Treaty Making with Indigenous Nations
1884 Alaska was divided up by the "Missionary Christian Churches"(See Eskimo Administration by Diamond Jennings)
1884 District Organic Act
1906 Native Allotment Act
1924 Indian Citizenship Act
1936 Indian Re-organization Act was extended to Alaska (IRA)
1945 United States Signed United Nations Charter (Art. 73)
1953 Public Law 280 1958 Alaska Statehood Act sec. 4.
1959 Alaska became the 49th State of the United States
1968 Indian Civil Rights Act amending PL 280 (ICRA)
1968 Oil was Discovered on the North Slope at Prudoe Bay
1970 State of Alaska removed the english speaking Prequiste to vote in Alaska.
1971 Alaska Native Claims Settlement Act (ANCSA)
1975 Indian Self-Determination and Educational Assistance Act
1976 Federal Land Policy and Management Act (FLPMA)
1978 Indian Child Welfare Act (ICWA)
1980 Alaska National Interest Lands Conservation Act (ANILCA)
1982 Indian Tribal Governmental Tax Status Act (ITGTSA)
1982 Alaska Railroad Transfer Act
1984 Indian Tribal Governmental Tax Status Act (amendments)
1986 Recodification of United States Code title 25 "Indians"
1988 ANCSA "1991 Amendments"
1988 Genocide Act (Proxmire Act) ratified by U.S. Congress
1989 Investigation of the Alaska Offices of the Department of Interior by the Senate Select Committee on Indian Affairs.

Alaska State Legislature

Senate Resources Committee

Senator Bettye Fahrenkamp, Chairman
Senator Jay Kerttula, Vice Chairman
Senator Dick Eliason
Senator Steve Frank
Senator Rick Halford
Senator Arliss Sturgulewski
Senator Fred Zharoff

P.O. Box V
Juneau, Alaska 99811
(907) 465-4907

M E M O R A N D U M

To: Members, Senate Resources Committee

From: Senator Bettye Fahrenkamp, Chairman

Re: Committee Meeting on Subsistence

Date: April 4, 1990

As you may know, the Alaska Federation of Natives is holding a conference at the Egan Convention Center on Tuesday, April 10, and Wednesday, April 11, on the issue of subsistence.

In conjunction with the conference, I have scheduled a joint hearing with the House Resources Committee from 5:30 p.m. to 9:00 p.m., to be held at the Egan Convention Center, in the Summit Room, for the purpose of taking public testmony on subsistence. I have made arrangements for the meeting to be teleconferenced to Juneau (Butrovich Room), for those of you who are unable to attend.

It is my understanding that Secretary of the Interior Manuel Lujan will speak before the Anchorage Chamber of Commerce on Wednesday morning. Although he has been invited to participate at the conference, and at our hearing, confirmation has not yet been received.

As per session policy, travel authorizations must be approved by the Senate President.

I am enclosing a copy of the conference schedule for your information. The issue of subsistence is vitally important to all of us and I urge your participation.

SUBSISTENCE: A STRATEGY FOR OUR FUTURE
DRAFT AGENDA

[illegible] April 10

8:00am WELCOME - Julie Kitka, AFN
INVOCATION - Rev. Anne Frank, Athabascan, Episcopal Diocese of Alaska

8:45 INTRODUCTION & PURPOSES - Ralph Eluska, AFN
PRESENTATION - Walter Charley, Athabascan Elder

9:00 REVIEW OF AGENDA - Co-moderators Perry Eaton & Marlene Johnson
"CHALLENGES FACING ALASKA NATIVES - SUBSISTENCE"

ISSUE #1: (Assuming there is not solution by July 1) Federal Pre-emption & Dual Management of Fish & Game

9:10 Speaker: *To Be Announced*, "The Federal Government's Responsibilities to Alaska Natives"

9:50 FEDERAL/STATE PANEL: "How Would It Work?"
Panel Moderator: Johnny Hawk
Glenn Elison, USF&S — Steve Behnke, ADF&G
Tom Koester, Dept. of Law — Stan Leaphardt, CACFA
WRITTEN QUESTIONS FROM THE FLOOR

10:45 Break

11:00 SPEAKER: *To Be Announced*, "Dual Federal/State Management"

11:20 PANEL: "How Will It Affect Us?"
Panel Moderator: Chris McNeil
Trefon Angasan, "Unanswered Questions & Continuing Litigation"
Ken Johns, "Impacts on Villages Surrounded by State Land"
Myron Nanong, "Impacts on Y-K Delta"
Clare Swan, "Kenaitze Lawsuit"
Ed Thomas, "Co-management Under '638'"
Walter Sampson, "Living with Federal Management"
WRITTEN QUESTIONS FROM THE FLOOR

12:30pm Break for lunch

2:00 REMARKS BY CO-MODERATORS (AGENDA/PRODEDURES)
ISSUE #2: CONGRESS & ANILCA

2:05 PANEL: "Opening ANILCA"
Panel Moderator: Edgar Blatchford
TBA, RurAL CAP — Sheryl Sutton, KPFA
Willie Kasayulie, ANC — Robert Willard, SENSC
Mitch Demientieff, TCC — *TBA*, Sierra Club
TBA, Alaska Outdoor Council
WRITTEN QUESTIONS FROM THE FLOOR

4:00 PRESENTATION BY SENATOR TED STEVENS VIA TAPE
Staff Representative: Marie Matsuno Nash

4:20 CLOSING REMARKS, Eddie Hopson, Inupiat Elder

4:30 Recess

Wednesday, April 11

9:00am OPENING REMARKS, Rev. Billy Sheldon, Sr., Inupiat Elde

9:10 REMARKS BY CO-MODERATORS (AGENDA/PROCEDURES)
ISSUE #3: STATE CONSTITUTIONAL AMENDMENT

9:20 Mike Irwin, Office of the Governor

9:40 QUESTIONS & ANSWERS

10:15 Break

10:30 LEGISLATORS' PANEL: "The Next Four Weeks - Options Available to the Alaska State Legislature"
Panel Moderator: Nels A. Anderson, Jr.
Sen. Al Adams — Rep. Eileen MacLean
Rep. George Jacko — Rep. Kay Wallis
Sen. Jack Coghill — *Others To Be Announced*
WRITTEN QUESTIONS FROM THE FLOOR

12:00pm Break for lunch

1:30 REMARKS BY CO-MODERATORS (AGENDA/PROCEDURES)
ISSUE #4: CONSTITUTIONAL AMENDMENT APPROACH

PANEL: Village Perspective
Will Mayo, Interior — Tom Tilden, Bristol Bay
TBA, Southeast — Gary Oskolkoff, Southcentral
TBA, Western Alaska — *TBA*, North Slope

2:20 PANEL: Regional Perspectives
Myron Nanong, AVCP — Bob Willard, SENSC
Mitch Demientieff, TCC — *Others To Be Announced*
Trefon Angasan, Bristol Bay
Sam Demientieff, Fairbanks Native Association

3:10 Break

3:30 PANEL: Statewide Perspectives
Ralph Eluska, AFN — Matthew Iya, RAPA
TBA, RurAL CAP — Sen. Al Adams
Willie Kasayulie, ANC — Rep. Eileen MacLean
Others To Be Announced

4:20 CLOSING REMARKS Dr. Walter Soboleff, Tlingit Elder

4:30 BENEDICTION Bishop Jacob Nelson, Moravian Mission
CONFERENCE CLOSING

6-9:00pm JOINT HOUSE/SENATE RESOURCES HEARING

SUBSISTENCE:
A Strategy for Our Future

THE PURPOSE OF THE SUBSISTENCE SUMMIT CONFERENCE IS:

* To provide Alaska Native leaders with the best available *INFORMATION* on the current political and legal challenge to our subsistence way of life, and to present such information in ways which respect the diversity of interests within the Native community and empower Natives to act.

* To provide the opportunity for Native leaders to express their *POSITIONS, OPINIONS AND FEELINGS* on the subsistence issue, on its present and future impacts on the well-being of our people, and on effective strategies for protecting our long-term interests.

* To generate creative *IDEAS* on how the Alaska Native community can deal effectively with the political opposition on subsistence and related issues of public policy.

* To develop an effective network of *COMMUNICATION* in the statewide Native community between individuals, communities and organizations as we confront the external challenge to our subsistence economies and cultures.

* To encourage *TRUST AND COOPERATION* among all Alaska Natives and their organizations, while respecting the cultural, geographical and generational diversity of our people.

To Alaska Native People:

On behalf of the Alaska Federation of Natives, I invite you to attend an important statewide summit conference of the Alaska Native community on subsistence issues. The meeting will be held on April 10-11, 1990, at the Egan Convention Center in Anchorage. Its theme will be ***SUBSISTENCE: A Strategy for Our Future.***

At this conference we plan to provide the best possible information on the consequences of the recent Alaska Supreme Court decision (McDowell v. State) which declared the state subsistence law unconstitutional.

We will provide a broad framework for discussion of several different options available to Native people, and the implications of each. The conference will be an educational opportunity for all of us to say what we think and listen to each other. Representatives of villages and Native organizations will be able to return home carrying accurate information and a broad perspective on this complicated issue.

Protection of subsistence hunting and fishing is critically important to the future of Alaska Natives and to the survival of our villages. I urge you to attend the conference.

Sincerely,

Julie S. Kitka

Julie Kitka
President

PRE-REGISTRATION

Name: _____

Organization: _____

Address: _____

_____

_____

☐ *YES, I DO plan to attend.*

☐ *NO, I DO NOT plan to attend.*

ACCOMMODATIONS

The Anchorage Westward Hilton is offering special room rates during the Subsistence Summit Conference. Single- or double-occupancy room rates are $70 per night. PLEASE MAKE YOUR TRAVEL AND HOTEL ARRANGEMENTS IN ADVANCE. You may call the Anchorage Westward Hilton toll-free at 1-800-478-3616.

PLEASE DETACH AND MAIL TO:
Alaska Federation of Natives, Inc.
411 West 4th Avenue - Suite 301
Anchorage, AK 99501

(907) 274-3611

U.S. POSTAGE PAID
Non-Profit
Organization
Permit No. 747
Anchorage, AK

Alaska Federation of Natives
411 W. 4th Avenue, Suite 301
Anchorage, AK 99501

SUBSISTENCE: A Strategy for Our Future

SUBSISTENCE:
A Strategy for Our Future

Egan Convention Center
Anchorage, Alaska
April 10-11, 1990

ESKIMO INDIAN ALEUT

A Conference of the Native Community

(9)

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

REPRESENTATIVE
PETER GOLL

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4925

STATE OF ALASKA
HOUSE OF REPRESENTATIVES

MAY 3, 1990

THE LEGISLATURE SHALL PROVIDE FOR SUBSISTENCE USES OF FISH AND WILDLIFE AND RENEWABLE NATURAL RESOURCES AND MAY GRANT A PREFERENCE IN THE TAKING OF THESE RESOURCES FOR SUBSISTENCE USES BY RESIDENTS OF RURAL AREAS. WHEN NECESSARY TO PROTECT SUBSISTENCE USES, THE LEGISLATURE MAY ALLOCATE THESE RESOURCES ON THE BASIS OF DIRECT DEPENDENCE, LOCAL RESIDENCY AND AVAILABILITY OF ALTERNATIVE RESOURCES.

DRAFT

ALASKA STATE LEGISLATURE

Anchorage Office:
3111 C St., Suite 530
Anchorage, AK 99503
907-561-7616

While in Juneau:
P.O. Box V
Juneau, AK 99811
907-465-4958

Senator Rick Halford

January 15, 1990

Senator Bettye Fahrenkamp, Chairman
Senate Resources Committee
P.O.Box V
Juneau, Alaska

Dear ~~Madam~~ Chairman, Bettye

As you know, in the recent Kenaitze case, the Ninth Circuit Court of Appeals found the Alaska Subsistence Law to be not in conformity with ANILCA. Now the State Supreme Court has ruled that the state law on Subsistence is unconstitutional. Although the Chief Justice has issued a six month stay on this ruling, the question of the stay is being appealed to the full court. I believe that there is a reasonable chance that the stay will be overturned. Therefore, since this issue is of vital concern to all Alaskans, we must address this issue as soon as possible.

I hope we will concentrate on the following aspects of this issue:

1. In 1986, the Federal U.S.Fish and Wildlife Service, under the direction and delegation of the Secretary of the Interior, developed the Federal Subsistence Resource Management Program [regulations] in the event the State did not pass a new subsistence law which was in conformity with Title VIII of ANICLA. Under Title VIII of ANICLA the Federal Government could take over management of fish and game resources on Federal lands in Alaska if the State of Alaska's Subsistence Law was not in conformity with Title VIII. The Alaska Supreme Court invalidated our Subsistence Law as not being in conformity with Alaska's Constitution which requires that all fish and game resources be "for the common good". Alaska now faces the real threat of a Federal

Residence: P.O. Box 190 • Chugiak, AK 99567 • 907-694-4958

takeover of fish and game management on two thirds of all lands in Alaska.

2. The Federal U.S. Fish and Wildlife Service was delegated as the lead agency responsible for developing and promulgating, under emergency regulatory authority, the Federal Subsistence Resource Management Program. If promulgated under the emergency regulatory authority, it would most likely not allow any public review or comment in Alaska.

3. If the Supreme Court stay is overturned, this federal regulatory program may be put into place by the Federal government without Alaska having a reasonable opportunity to participate in its application even though it seriously impacts our people and resources. If the stay is not overturned, the federal program should still be released in the Federal Register and public hearings held across Alaska to ensure that all Alaskans, including those who live, work of subsist on federal lands have a reasonable opportunity to review and comment on this regulatory program, consistent with the Federal Administrative Procedures Act.

4. Of course, under either scenario, it would be a real tragedy to the people of Alaska, to lose local control or the management of fish and game resources in a large portion of Alaska, to the Federal government. I firmly believe we can, as Alaskans working together, solve the Subsistence issue, without the necessity of Federal intervention. For decades subsistence needs were met through normal board regulation of seasons, bag limits, harvest methods and means.

5. It is vital that this body consider requesting our Congressional delegation to assess the feasibility of changing Title VIII of ANILCA to remove the threat of Federal takeover of our fish and game resources, and to allow us to solve our Subsistence questions on our own.

6. Failing in obtaining a change in ANILCA, we should explore the option of litigation to remove the threat of Federal takeover and to preserve our State's right to solve its own problems. No other state in the Union operates in managing its fish and game resources under the legislative threat we now find ourselves under.

7. We should also consider informing other state legislatures of the Federal threat to take over management of fish and game here. After all, if it can be done in our state, it can done in other states, especially states with extensive Federal holdings. We should also point out, that a Federal takeover of fish and game management here means that

citizens of other states will be paying, through their Federal taxes, for the expensive costs of managing fish and game in Alaska, whereas, so long as the State of Alaska manages its own resources, citizens of other states do not have to pay for that management.

I understand that Mr. Rick Davidge, whom you know, was the Chairman of the Federal Task Force when the program was written. I believe he, and other members of that task force, should be called to meet with the Senate Resources Committee to discuss the Federal Program, and that all the appropriate Federal officials also be requested to come before this committee and explain their intentions. Other persons, knowledgeable on the issue, will also wish to appear.

The complexity and political volatility of this issue, as well as its potential for divisiveness if we do not provide leadership, is apparent to all of us. It is time that we address this issue directly and in the best interest of all the people of Alaska.

Sincerely,

Rick

Senator Rick Halford
Member
Senate Resources Committee

Subsistence

Mary L. Bishop
1555 Gus's Grind
Fairbanks, AK 99709
907-455-6151

January 24, 1990

Interior Delegation
Alaska State Legislature
Juneau, AK 99811

Dear Legislators: Bethye-

What I was trying to say, maybe unsuccessfully, during the Tuesday night teleconference is that

1. Subsistence is a source of identity for some people. For many it is an ideology--a system of values which people hold in varying degrees, whether they be named McDowell or Vaska, both litigants in the crucial lawsuit.

2. Governments should never define--or discriminate on the basis of--one's ideology or spirituality. That leads to violence; we see the consequences throughout the world, and sadly, the beginnings of it in certain parts of Alaska. At best, it leads to endless litigation.

3. The subsistence lifestyle and values should be recognized as a valid and desirable ideology. NO ONE who claims to be a participant of the subsistence lifestyle should be denied it. Could government devise a point system that would define whether or not I was a Christian, or Christian enough?

4. If a priority for wildlife harvest is given, then it should CLEARLY be based on something other than one's personal ideology. Any priority should be based upon measurable/definable individual characteristics that will clearly stand the test of constitutionality.

If the state feels compelled to establish a priority, give it a different name--don't call it a priority for subsistence use. Don't try to define whether or not McDowell or Vaska are subsistence participants. The term "subsistence" has come to mean far more than what government has any business defining.

Sincerely,

Mary Bishop

Mary Bishop

ALASKA OUTDOOR COUNCIL, INC.

1780 McGILVRA DR. JUNEAU, AK 99801
(907) 789-3545

P.O. Box 34097
Juneau, Ak. 99803

Jan. 26, 1990

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

Dear Governor Cowper:

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

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

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

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

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

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

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

Sincerely Yours,

Ed Grasser

Ed Grasser, Director
Legislative Affairs

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

alaska federation of natives, inc.

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

FEB 7 1990

February 6, 1990

Distinguished Members of the
Alaska State Legislature
Juneau, Alaska

Dear State Legislator:

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

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

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

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

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

Sincerely,

Julie Kitka

Julie Kitka
President

alaska federation of natives, inc.

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

POSITION STATEMENT ON SUBSISTENCE

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

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

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

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

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

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

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

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

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

(b) AFN is committed to working with the Governor and Legislative leadership in considering other solutions which meet AFN's policy goals.

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

THE SECRETARY OF THE INTERIOR

WASHINGTON

January 30, 1990

Honorable Steve Cowper
Governor of Alaska
Juneau, Alaska 99811

Dear Governor Cowper:

The Alaska Supreme Court decision in McDowell v. State of Alaska is a matter of concern to both of us. I want to reiterate my desire to have a constructive dialogue with the State of Alaska on this most important issue. Despite the Court decision, I believe that the state remains in a position to determine its own destiny in this matter.

I remain committed to the principle of state management of fish and wildlife resources. I hope that the state will be able to devise a solution to the issues raised in the McDowell decision before July 1, 1990, and thus continue to administer the subsistence program consistent with Title VIII of ANILCA. I have instructed senior program officials and the Solicitor to work directly and closely with you, your Washington office and your Commissioners to provide whatever assistance we can.

Please do not hesitate to contact me if I can be of assistance.

Sincerely,

Manuel Lujan Jr.

cc:
Julie Kitka, President
Alaska Federation of Natives, Inc.

Subsistence

AFN NEWSLETTER

JANUARY ISSUE

Volume VIII, Number 1 *Alaska Federation of Natives* *January 30, 1990*

Alaska Supreme Court rules State subsistence law "unconstitutional"

Stay of decision granted until July 1, 1990

COMING SOON: AFN will publish a special newsletter on subsistence, covering the recent Court decision and how it affects subsistence users, & options for dealing with the current situation.

AFN PRESIDENT'S REPORT

Julie Kitka

This is our first newsletter for 1990 and my first report to you as President of AFN.

Let me begin by thanking the AFN Board of Directors and members organizations for allowing me the opportunity to work on your behalf. I pledge to do my very best and to work hard on issues fo concern to Alaska Natives across the state. With your help, we can make great strides in resolving the difficult problems which continue to impact us.

Priorities for this year are very clear. Foremost is the protection of subsistence rights. As you will read on page 3, the Alaska Supreme Court issued its decision in McDowell v. State on December 22, 1989, ruling that the rural preference in state subsistence law is unconstitutional.

Unless the State of Alaska comes back into compliance with the federal subsistence law, the federal government is mandated to take over management of fish and game on public lands. The short- and long-range impacts of the McDowell decision will require serious consideration by all Native leaders.

In light of this grave situation, we recently met with Interior Secretary Manuel Lujan. We inquired about his plans to meet his federal fish and game management responsibilities, if the state should fail to comply with federal law. Secretary Lujan assured us he will respond to our inquiry this week and will be travelling to the state soon. We will continue to work with both the state and federal governments to review the options available to resolve the current legal situation.

Other priorities for the year include urgent health, social, economic and education concerns of Alaska Natives. Over the past year, AFN has had some success in raising the visibility of these continuing problems. However, more work must be done to enable Alaska Native people to take responsibility for their own lives.

Public officials must be urged to respond to this social crisis, which is expressed statistically in unacceptably high suicide, homicide and accidental death rates among Alaska Natives. No one can rest until all that ***can*** be done is being done.

Now that the Congress is back in session, we are happy to report that federal legislation creating the Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives is very close to passage. With final adoption of the commission bill, Alaska Natives will have a new opportunity to address comprehensively those issues which are of greatest importance to us.

This year is going to be a busy one. In our next newsletter, we will outline in detail the legislative priorities AFN and its member organizations are working on - and ways you can help. AFN appreciates your continuing input and support.

SUBSISTENCE UPDATE:

Alaska Supreme Court grants stay, State subsistence law remains in effect until July 1.

The Alaska Supreme Court, acting on a suit filed in 1983 by a group of Alaskans challenging the subsistence priority in the State's subsistence law, ruled December 22, 1989, that giving one group of users priority over another is direct conflict with the constitution of the State of Alaska. As a result, the State's subsistence law has been invalidated and, under the provisions of Federal law, the State must now forfeit management authority of fish and wildlife on public lands.

Following the December 22nd decision, the Alaska Department of Fish and Game closed three winter subsistence hunts in the Nelchina, Fortymile and Dot Lake game management units, citing the need to prevent overharvest of caribou and moose by urban residents now allowed to participate in subsistence hunts. AFN strongly protested these closures and urged the Governor to overturn his Department's decision.

At the State's request, Chief Justice Warren Matthews issued a stay of the Courts decision until July 1, 1990, in order to provide limited time for the devleopment of an orderly process of implementing the decision. With the stay in place, the winter hunts will proceed as scheduled, while the State and Federal governments have a six-month period to work toward a solution to the conflict.

Over the past two decades, there have been repeated challenges to subsistence use of fish and wildlife. Perhaps the best way to examine how this latest development will affect subsistence users in rural Alaska - mainly Alaska Natives - is through a brief history of State and Federal subsistence law.

□

1978: The State of Alaska passed a law that required subsistence uses be allowed, once "sustained yield" had been ensured, allowing for a subsistence priority when necessary. This law defined subsistence uses as those "customary and traditional" - mainly the use of fish and wildlife for food and cultural purposes.

1980: President Jimmy Carter signed the Alaska National Interest Lands Conservation Act (ANILCA) into law. Under Title VIII of ANILCA, subsistence uses were given priority over sport and commercial interests on all public lands. The priority was ensured by requiring that the State of Alaska give up management authority of public lands to the Federal government if State subsistence law did not contain a priority for subsistence uses.

1982: The State Boards of Fisheries and Game, in order to comply with the requiements of ANILCA Title VIII, adopted a regulation defining "customary and traditional uses" as mainly rural uses, thus allowing the State to manage fish and wildlife on all lands. Following this regulation, a statewide effort was launched by sport and commercial interests to repeal the subsistence priority. The initiative gained enough support to be placed on the ballot, but failed at the polls by a wide margin.

1983: After losing the subsistence repeal initiative in 1982, Sam McDowell and Dale Bondurant filed a lawsuit in State Superior Court challenging the constitutionality of the State subsistence priority. The suit was entitled McDowell v. State and is the case decided unfavorably on December 22, 1989.

1985: The Alaska Supreme Court ruled in another case, called the Madison decision, that State regulations limiting subsistence use to rural residents are not consistent with the State's 1978 subsistence law. In response, the Department of the Interior notified the State the Madison decision put State law out of compliance with ANILCA and threatened to takeover management of fish and wildlife on public lands.

1986: To avoid a Federal takeover, the Alaska Legislature enacted a new law limiting subsistence to rural residents. The McDowell suit was then amended in state superior court to challenge the new subsistence law. Also in 1986, the Kenaitze Indian Tribe filed suit against the State in Federal court challenging the classification of the Kenai Peninsula as urban.

1987: A Federal court in Anchorage ruled against the Kenaitzes, citing the State subsistence law's definition of rural as consistent with ANILCA. Also in 1987, State superior court ruled against the McDowell case, ruling that the 1986 State subsistence law was consititional.

cont. on page 8

Joint Commission receive support from State legislature, moves forward in Congress:

After a stall prior to the Congressional Christmas recess, federal legislation to create the Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives is expected to be passed into law very soon.

The Joint Commission will be funded by a combination of Federal, State and private monies over an eighteen month period. Its membership will include Alaska Natives and State and Federal representatives, with both President George Bush and Governor Steve Cowper making the appointments. Federal funding for the Commission was included in the FY1990 Senate Appropriations Bill by Senator Ted Stevens.

On the State side, Governor Steve Cowper has included the State's portion of the funding in his FY1990 budget bill submitted to the Alaska State Legislature.

AFN is greatly encouraged by the continued strong support for this legislation from Governor Steve Cowper, Senator Ted Stevens, Senator Frank Murkowski, Senator Daniel Inouye, Senator John McCain, Congressman Morris Udall and others.

The recent passage of SJR 46 by the Alaska State Legislature, supporting the establishment of a Joint Commission, is appreciated by AFN and is another indication that public policy makers recognize the serious crisis affecting Alaska Native individuals and families.

AFN will continue to press for early Congressional enactment of this legislation.

SENATE JOINT RESOLUTION NO.46
IN THE LEGISLATURE OF THE
STATE OF ALASKA

Supporting the establishment of a Joint Commission on the Status of Alaska Natives by Congress.

BE IT RESOLVED BY THE LEGIS-LATURE OF THE STATE OF ALASKA:

WHEREAS Alaska Natives were the first residents of the state and today represent a significant percentage of the residents of the state, particularly residents who live in rural villages; and

WHEREAS since 1867 Alaska Natives have had a special relationship with the federal government and since 1959 have had an important relationship with the state; and

WHEREAS in 1971 the state participated in the settlement of Native land claims and since that time has worked closely with the federal government and Native organizations to develop and implement federal and state policies intended to improve the health, social, and economic status of Alaska Natives; and

WHEREAS several recently published articles and reports have documented a growing social and economic crisis in the lives of many Alaska Natives, particularly Alaska Natives who live in rural villages, and presented disturbing statistics that attest to growing health and social problems, lack of economic opportunity, and widespread educational failure in the Native community; and

WHEREAS since 1969, when the Federal Field Committee for Development Planning issued its report "Alaska Natives and Land," there has been no comprehensive review of federal and state policies and programs that affect Alaska Natives, their implementation, or the extent to which they have improved the health, social, and economic status of Alaska Natives; and

WHEREAS Alaska Natives have expressed to the Congress and the state a critical need to review the current status of Alaska Natives and to forge a renewed partnership among the federal and state governments and Alaska Natives, with the goal of providing new opportunities, making governmental programs more effective, and building a healthy, productive, and self-reliant rural Alaska; and

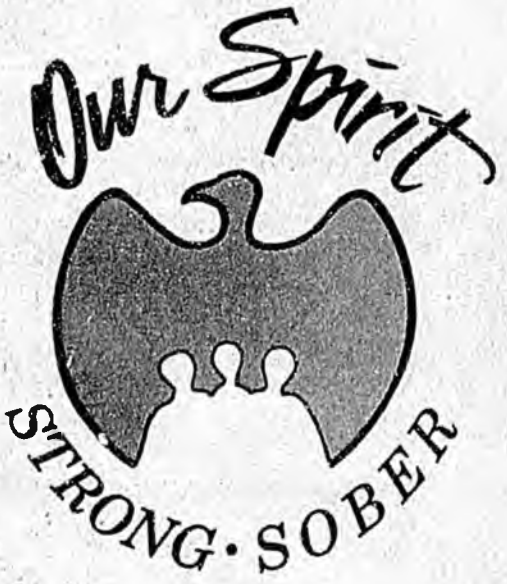
WHEREAS, in response to this expressed need, the United States Congress is considering the establishment

cont. on page 5

BLUE RIBBON COMMISSION UPDATE

Since our last report, work on the Alaska Native Blue Ribbon Commission's media campaign has begun in earnest. We have received funding from several corporations for production and placement of three television Public Service Announcements which we will begin airing in late February. The ads will use Alaska Natives and Commission members to promote the idea that *sober behavior* is *healthy behavior.*

Also planned for February are several appearances by Commission members. First, Commission member Doug Modig will address the Alaska Native Health Board's Health Fair, scheduled for February 6, 7 and 8 in Anchorage, on how the Commission plans to support the efforts of existing individuals and organizations working to make their communities drug- and alcohol-free. On February 13, Commission Co-chair John Schaeffer will speak to Doyon's Health Care Provider workshop in Fairbanks.



Also planned for the upcoming month is the initial production of our "How To" Packet. This information packet will include an "alternative activities kit" - such as how to participate in the ARCO Jesse Owens Games, examples of what other communities are doing, how to organize a Talking Circle group, etc. - as well as a directory of what resources and services are available throughout the state. We plan to bring the "How To" Packet to the Alaska Native Health Board's Health Fair, to hear Health Care Providers' input on what information they feel would be most useful to them.

Finally, at our last meeting, the Commission established a Planning Committee which will meet the first week of February to develop our "1990 Plan". Among other things, we will develop a year-long calendar of events for Commission members or representatives to participate in, and establish a speakers' bureau of individuals who can address conferences and meetings throughout the state. If you have information on upcoming events, or conferences planned in your region later in the year, please contact the AFN offices.

The Blue Ribbon Commission's main goal is to support efforts of *existing* groups and organizations, and to call attention to the positive efforts and successes throughout the state. But to do this, we need your input and help. Our mission is to make the vision of an alcohol- and drug-free Alaska a reality - working together it is possible.

SJR 46 cont.

of a Joint Commission on the Status of Alaska Natives, the membership of which will include federal and state officials and Alaska Natives; and

WHEREAS the purpose of the commission will be to conduct a comprehensive review of federal and state policies affecting Alaska Natives, the implementation of those policies, and the current health, social, and economic status of Alaska Natives;

BE IT RESOLVED that the Alaska State Legislature strongly supports the establishment of the Joint Commission on the Status of Alaska Natives by the Congress and commits the State of Alaska to actively participate on the commission and in its work.

COPIES of this resolution shall be sent to the Honorable Dan Quayle, Vice-President of the United States and President of the U.S. Senate; the Honorable Tom Foley, Speaker of the U.S. House of Representatives; Honorable Morris Udall, Chair, House Interior and Insular Affairs Committee; the Honorable J. Bennett Johnston, Chair, Senate Energy and Natural Resources Committee; the Honorable Daniel Inouye, Chair, Senate Select Committee on Indian Affairs; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

HEADSTART celebrates its 25th anniversary!

This year marks the silver anniversary of the Headstart program nationwide and will be celebrated on the local, statewide and national levels beginning in March. While generally thought of as simply affordable childcare for low-income families, Headstart services cover a broad range of early childhood development and education, medical and dental health care and screening programs, as well as providing nutritious breakfasts and hot lunches to all their students. Here are some interesting facts about what your local Headstart program provides, and some information on the program nationwide.

photo by Harold Schietzle

SOME NUMBERS. For the school year 1989-90, in Alaska **1,820** children and families in **59** communities will receive Headstart services. Enrollment figures nationwide for 1989 were projected at more than **452,000**, with handicapped children (mental retardation, health impairments, visual handicaps, hearing impairments, emotional disturbance, learning disabilities, and speech and language impairments) accounting for **13.3 percent** of enrollment. For this school year, Headstart programs in Alaska provided **329** permanent jobs and over **100** temporary positions. Of these employees, **157** in Alaska are bi-lingual.

HEADSTART SERVICES. Headstart's services focus on keeping the whole child healthy, and thus provide many educational and developmental services to the children and families they serve. These include: **Working with low-income parents to increase their knowledge about child development and parenting skills. **Providing opportunities for low-income parents to develop leadership qualities and employability skills. **Linking low-income families with other resources and agencies available in the area. **Working with children from low-income families to better prepare them for school, both academically and socially. **Providing health services for children (medical/dental). **Providing nutritional snacks and hot lunches for children. **Providing on-the-job training for locally-hired staff.

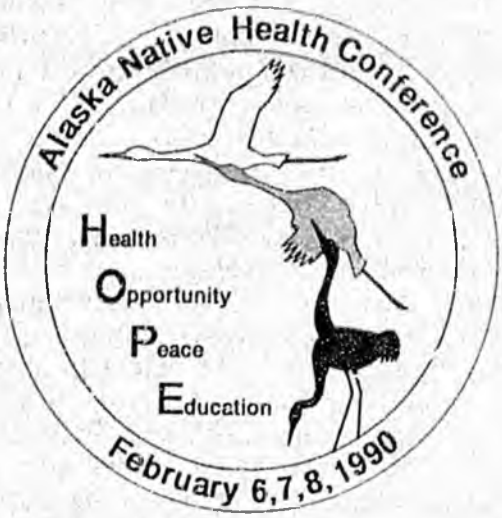
DOLLAR FIGURES. In Alaska, Headstart funding for 1989-90 combined federal, state and local dollars to total $7,742,887 or an average cost per child of $4,560. Community and parent in-kind or volunteer contributions were estimated to total more than **$1,494,033** in FY1988. Headstart's budget for FY1989 nationwide was funded at **$1,235,000,000**, while the number of programs across the country grew to over **1,200!** And although these figures sound astromically high, Headstart directors estimate that the program's budget - were it ***fully funded*** - would total as much as **$5 billion!**

So if you're a Headstart parent, the next time you drop your child off in the morning or the Headstart bus stops at your house, take a minute to thank the driver or teacher aide. The services they provide not only benefit our children, but by helping parents learn how to improve their child's ability to learn in school and the community, we all benefit. Headstart teachers and helpers are working hard to ensure that our greatest resource is well-prepared for the job ahead of them - our future.

ANHB Health Fair: "Choices for Healthy Communities" February 6, 7 and 8 in Anchorage

The Alaska Native Health Board (ANHB) is planning a statewide health conference in Anchorage, February 6, 7 and 8, at the Captain Cook Hotel. The conference theme, ***"CHOICES FOR HEALTHY COMMUNITIES IN THE 1990S"***, will focus on giving participants ideas and resource for developing their own health care programs at the village level.

In addition to several respected speakers who represent both American Indian tribes and Alaska Natives, the conference will also feature workshops, presentations and discussion on such topics as Intervention Strategies for Families, Careers in Health for Alaska Natives, Youth Alcohol Abuse, and Community Development Case Studies. The primary purpose of the conference is to provide a forum for village residents and health providers to share practical information on how to meet the unique health needs of Alaska Natives.



Also planned for the conference is a "Program Fair" which will feature unique, working examples fo successful programs, with village providers on hand to explain how to design and implement similar programs. In addition, a resource booklet has been prepared for distribution during the conference, which describes some of the many programs and events organized in communities around the state to promote and celebrate healthy living.

Other activities planned for the week will include a Native Potluck, being sponsored by the Village of Anchorage, and an Awards Banquet to honor Community Health Representatives and other village providers. The Native Potluck will take place Monday night, February 5 at 7:00PM, at the Fairview Recreation Center, and the Awards Banquet will be held Wednesday, February 7 , at the Captain Cook Hotel. A question and answer period with the Republican, Democratic and Independent candidates for Alaska's Governor seat has been scheduled for Tuesday afternoon, February 6, from 2:30 to 5:00PM at the Captain Cook Hotel. For more information on these and related events, contact the Alaska Native Health Board at 337-0028, or your local health care provider.

Task Force on Guiding & Game proposes resource-based management system:

The Legislative Task Force on Guiding and Game is working to develop of a new resource-based management system that will be used in allocating access to big game hunting opportunities among guide/outfitters.

Two related tasks are being carried out: first, the Task Force is currently drafting legislation for introduction to the Alaska Legislature in January. The draft legislation will represent a first effort at designing a game management area allocation program for managing guide/outfitters. An important aspect of the new program will be the integration of wildlife resource management concerns into the process of creating specific resource areas (game management units and subunits) for guide/outfitters.

The second task involves the development of resource area maps that will be the basis for the new management system. The Alaska Department of Fish and Game (ADF&G) is the lead agency in developing the resource area maps. ADF&G is seeking input to the process from users and landowners.

The new system is being developed as a result of a recent Alaska Supreme Court decision which struck down the State's previously-used "exclusive guide area" system. The Court ruled that an exclusive guide area system excluded new applicants and was therefore unconstitutional. To remedy the situation, the State Legislature created the Legislative Task Force on Guiding and Game, and gave it the charge of developing a new system.

Requests for information on the draft legislation should be directed to Senator Jan Faiks, Chairman, Legislative Task Force on Guiding and Game, P.O. Box V, Juneau, AK 99811.

For information on the resource mapping project, contact Marianne See, Division of Wildlife Conservation, ADF&G, 333 Raspberry Road, Anchorage, AK 99518-1599. The resource area mapping project is scheduled for completion in two years.

SUBSISTENCE: *cont. from page 3*

1988: The Kenaitze decision was reversed in the ninth U.S. circuit court of appeals in San Francisco, which ruled that the State definition of "rural" was not consistent with ANILCA. However, the U.S. Supreme Court denied the review. As a result of an appeal, in summer, 1989, the Kenaitze Tribe and the State agree to implement a one-year educational fishery which allowed the Kenaitzes to set subsistence nets at the mouth of the Kenai River for limited periods of time with a limited harvest of salmon. Prior to this agreement, the State sought to amend ANILCA and change its definition of "rural" to match the State's. The effort failed in the face of opposition from the Native community.

December 1989: Finally, the Alaska Supreme Court issued its ruling in the McDowell case, effectively invalidating State subsistence law and making a Federal takeover of management of fish and wildlife a reality. At this point, unless either State subsistence law is changed, the State constitution is amended, or ANILCA is changed, fish and wildlife in Alaska will be managed under a dual system: resources on public lands by the Federal government, and State and private lands by the State of Alaska.

□

As this brief history demonstrates, subsistence uses have been challenged repeatedly in the past two decades. We have been successful in our efforts to protect our subsistence lifestyle and what it means to our cultures and identities as a people. We are confident that - working together - we will be successful in this effort as well.

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Ralph Eluska, Chairman

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TO: NANCY PETERSON - SEN. FAHRENKAMP
DEPT: _____ FAX #: 463-4867
FROM: S. LEAPHART PHONE: 456-2012
CO. CACFA FAX #: 456-2039
Post-it brand fax transmittal memo 7671

NO. OF PAGES 12

TO: Nancy Peterson

FROM: Stan Leaphart

DATE: January 30, 1990

RE: Federal Subsistence Resource Management Program

In September, 1985 the U.S. Department of the Interior notified the State of Alaska that it was no longer in full compliance with the requirements of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). This determination of non-compliance was based on the interpretation given by the Alaska Supreme Court to the Alaska subsistence statute in the Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985). In the same notification, the State was informed that the Department of the Interior would be forced to take over administration of subsistence use on public lands (federal lands) if the State program was not brought back into compliance with ANILCA by June 1, 1986. Passage of the State's 1986 subsistence statute prevented a federal takeover at that time.

In preparation for assuming administration of subsistence uses, the federal government created the Federal Subsistence Resource Management Board consisting of officials from the Bureau of Land Management, National Park Service, Bureau of Indian Affairs, Forest Service and U.S. Fish and Wildlife Service. These federal agencies also drafted regulations defining the operation of the Federal Subsistence Resource Management Program to manage subsistence activities within Alaska. These regulations were never released for public review and were shelved when the State subsistence statute was passed.

It is my understanding that these same federal agencies are now taking another look at this program because of the recent Alaska Supreme Court decision in the McDowell v. State of Alaska case, which overturned the current State subsistence statute. It appears, that if the federal government assumes management of subsistence activities on federal lands, this or a similar program would be utilized. It would be beneficial for our legislators to be aware of this proposal and to understand some of its ramifications.

The purpose of this memo is to briefly outline some of the key points of the draft proposal and to give you some idea about how the federal agency would manage subsistence activities under a federal program. I have also attached some additional material which should help clarify a number of the points in the draft proposal. You also have Ric Davidge's letter to Walter Stieglitz which discusses development of the program.

Subpart A- General Provisions

§30.1 through §30.3- These sections outline the Federal governments authority to manage subsistence under Title VIII of ANILCA. The language is derived directly from Title VIII.

§30.4- Definitions. The definition of "rural Alaska residents" in §30.4(a)(1) is essentially the same definition contained in the 1986 state subsistence statute. As you know, the courts ruled in the Kenaitze decision that this definition was inconsistent with the definition of "rural" as used in ANILCA, Title VIII. It would appear that this definition would require revision if the federal program is implemented. (See attachment #1 for an explanation of the process used for identification of rural Alaskan residents)

Both ANILCA and its legislative history provide little useful guidance on the definition of "rural". In fact, the legislative history generally only mentions a number of communities that Congress considered to be non-rural and several that they believed may be considered rural. Davidge explains this more fully in his letter to Stieglitz.

In determining whether or not subsistence uses of a community or area are "customary and traditional", the federal program would utilize the same eight criteria developed by the State Boards of Fisheries and Game. (See attachment #2, under A(2) for additional information)

Another important point to be considered (see: §30.4(b)(2)) is the application of this program to those lands, not federally owned, but within the exterior boundaries of a conservation system unit (national parks, monuments, preserves, national wildlife refuges, Forest Service wilderness areas, wild & scenic river corridors, national conservation areas, and national recreation areas). This means that subsistence activities on millions of acres of State and Native owned lands within these federal conservation system units would be under federal management. I would question the legal authority of the federal government to regulate hunting and fishing activities on State owned land, even if that land is within the exterior boundaries of a federal conservation system unit.

§30.5- Policy. This general policy is derived from Sections 802 & 804 of ANILCA which established the federal governments policy on subsistence and the preference for subsistence uses.

Subpart B- Program Structure

§30.10- Program diagram. I have attached an organizational chart for the subsistence resource management program. (See attachment #3)

§30.11- Use of State entities. The federal program would utilize the existing State system of local fish and game advisory committees, regional fish and game councils, the Board of Fisheries, and the Board of Game.

§30.12- Local fish and game advisory committees. This section of the proposal authorizes the Secretary of the Interior to establish advisory committees in addition to those established by the State, if he determines that the establishment of such committees are necessary to satisfy the requirements of ANILCA Section 805.

§§30.12 & 30.13 also outline the functions and responsibilities of the local fish and game advisory committees and the regional fish and game councils. I am not familiar enough with their current functions and responsibilities to determine how they might differ under a federal program. You may want to consult the Division of Boards in the Department of Fish & Game for additional analysis on this point.

§30.14- State Boards of Fisheries and Game. Under the current system, the Boards of Fisheries and Game set subsistence seasons and bag limits and make determinations of customary and traditional use of subsistence resources for communities and areas of the State. In the proposed federal program, it appears that the Boards would only fulfill an advisory role with respect to subsistence activities on federal lands. §30.14(b) of the proposal states, in part:

> "With respect to the program, these State Boards may perform the following functions:
>
> (3) Make recommendations to Federal agencies and the Federal Board concerning the program."

§30.14(c) further points to the strictly advisory role of the Boards in the federal program:

> "Restrictions or other limitations established by the Boards of Fisheries and Game to govern the taking of fish and wildlife on lands under their jurisdiction, including but not limited to seasons, permit and license requirements, and quantity limits, may be adopted by the Secretary to regulate subsistence activities, to the extent that such measures are not in conflict with ANILCA or other applicable Federal laws or regulations."

While it does appear that under a federal subsistence management program the Boards of Fisheries and Game will have only an advisory role with respect to subsistence activities on federal lands in Alaska, it is not clear whether they would still be able to establish regulations for sport fishing, sport hunting or commercial fishing activities on those same federal lands.

§30.16 Federal monitoring. Section 806 of ANILCA requires that federal agencies, on behalf of the Secretary of the Interior, monitor the functions of the local advisory committees and regional councils in providing for a preference for subsistence activities. The federal agencies would also monitor the actions of the State Boards of Fisheries and Game with respect to subsistence uses.

30.17 Park and park monument subsistence resource commissions. These commissions have already been established for seven park and park monument areas, as required by Section 808 of ANILCA. The proposal defines their responsibilities under a federal management program. Those responsibilities would remain essentially the same as they are under the current system.

One very important point that needs to be brought out is the fact that these subsistence resource commissions for the park units have been severly mismanaged by the National Park Service over the last six years. The agency has provided very little in the way of technical or administrative support which has served to delay the commission's development and implementation of subsistence hunting plans. Many of the commissions have submitted recommendations on subsistence activities to the Secretary of the Interior and with very few exceptions those recommendations have been rejected. The only recommendations that have been accepted are those which could actually result in a decrease in the number of people who could engage in subsistence activities in a given park unit.

The Secretary of the Interior has the responsibility to appoint 3 members to each of the subsistence resource commissions. In several cases these appointments have not been made for up to two years, again hindering the functioning of the commissions. In addition, the agency often dictates what items the commissions can place on their agendas for discussion and, in at least one instance, has failed to forward a recommendation to the secretary for consideration. In short, I have grave concerns about the future of subsistence activities within national park units if the federal government, in this case the National Park Service, assumes management.

§30.18 Federal land management agencies. This section of the proposal authorizes federal agencies to develop "(s)uch agency-specific regulations as are required to carry out agency responsibilities under the Program." Depending upon agency policies, programs and statutes other than ANILCA, this may also result in significant change in the current system. This may be one of the

most critical aspects of this proposed program. (See Attachment #2, page 3, Item E.)

§30.19 Federal Subsistence Resource Management Board. This is the entity that will govern the federal subsistence program if the federal government assumes control of subsistence activities on the federal lands in Alaska. The Board will consist of: the regional director for the U.S. Fish & Wildlife Service (chair and lead official for developing and implementing the program), the area director of the Bureau of Indian Affairs, the state director of the Bureau of Land Management, the regional director of the National Park Service, and the regional forester for the U.S. Forest Service.

The board will coordinate interagency implementation of the program, review recommendations of other entities in the program, develop policies and procedures necessary to operate the program and recommend to the Secretary of the Interior such regulations as are necessary to carry out the functions of the board and discharge the Secretary's responsibilities under Title VIII of ANILCA.

§30.20 Federal regulations. This section states that in the event that the Secretary of the Interior assumes control of subsistence activities, the regulations establishing the federal board and program will be supplemented by such additional regulations as are found to be necessary to implement federal control of these activities.

Subpart C- General Requirements

§30.31 Rural residents. This sections clearly states that subsistence activities are limited to rural Alaska residents, as previously defined (§30.4(b)) and in accordance with supplementary criteria established by the board. (Again, see Attachments #1 & #2 for the supplementary criteria that would likely be used.)

§30.32 Aircraft Use. This section prohibits, except in extraordinary cases, any use of aircraft of any type for access to or from public lands for subsistence activities. This represents a significant departure from the current situation. Currently the only categorical prohibition of aircraft use for subsistence activities applies to national parks and park monuments. This proposal apparently would apply to all federal public lands, regardless of their designation.

Subpart D -Subsistence Hunting and Trapping
Subpart E- Subsistence Fishing

These sections contain specific guidelines on means and methods of harvest as well as area specific regulations. Again, I do not have sufficient knowledge of the current State regulations to determine if significant changes are proposed under a federal program. These

proposals are also subject to change on an annual basis, if the board determines changes are necessary.

Subpart F-Procedures for Issuance of Annual Regulations. This section provides guidance for the issuance of annual regulations and directs the board to develop regulations in consideration of the following:

1) The policies established by ANILCA to provide for a preference for subsistence uses of fish and wildlife,
2) Public input, scientific information, and recommendations received from the general public and from agencies and bodies such as local advisory committees, park and park monument subsistence resource commissions, regional councils, the State Boards of Fisheries and Game, the Alaska Department of Fish and Game, and federal land management agencies, and
3) Applicable non-conflicting State and federal laws and regulations.

§§30.101 & 30.102 provide for annual seasons and bag limits on hunting and fishing activities and for annual seasons and taking and possession limits for aquatic plants and finfish.

Conclusion

In developing this plan, the federal agency have proposed adoption of many of the existing definitions, guidelines and advisory mechanisms in the State's program. The obvious, most important change, is the fact that the federal government, not the State, would be setting policy and establishing regulations for subsistence activities on all federal lands in Alaska. The State would be relegated to an advisory role in the decisions made regarding subsistence activities on some 218 million acres of land.

Promulgation of federal regulations requires a nation-wide review before implementation. This, in my opinion, increases the risk that the federal agencies will be subjected to considerable public pressure to develop increasingly more restrictive regulations. An example that comes to mind is the national park units in Alaska. There are a considerable number of people who view consumptive uses in national parks as inappropriate, regardless of what ANILCA says. In fact, as a hunter yourself, you must be aware of the growing opposition to hunting anywhere! There is already pressure to limit the levels of subsistence activities that occur in the park units. Federal management, I believe would ultimately result in the elimination of much, if not all, subsistence hunting and fishing in the Alaskan park units.

Finally, a dual system of fish and game management in Alaska would be very complicated and confusing. The complicated land ownership patterns virtually ensure conflict between State hunting and

fishing regulations and those developed by the federal agencies for the lands under their control. I simply believe that a federal takeover of subsistence activities on federal lands would not be in the best interest of Alaskans.

DRAFT

ATTACHMENT #1

United States Department of the Interior

IN REPLY REFER TO

FISH AND WILDLIFE SERVICE
1011 E. TUDOR R.D.
ANCHORAGE, ALASKA 99503

PRIORITY

May 7, 1986

Process for Identification of Rural Alaska Residents

"Rural Alaska residents" are defined as those persons whose principal residence is in a community or area of Alaska in which a significant portion of the economy and culture is dependent on uses of fish or wildlife characterized by the following criteria:

1. a long-term consistent pattern of use of fish or wildlife populations, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions
2. use patterns that usually recur in specific seasons of each year
3. use patterns consisting of methods and means of harvest that are characterized by efficiency and economy of effort and cost, conditioned by local circumstances
4. the consistent harvest and use of fish or wildlife near, or at locations reasonably accessible to, the residence of the persons taking such fish or wildlife
5. the handling, preparing, preserving and storing of such fish and wildlife in a manner that has traditionally been used by past generations, but not excluding recent technological advances in appropriate instances
6. use patterns that include the handing down of knowledge of fishing, trapping, or hunting skills and values from generation to generation
7. use patterns in which the products derived from such fish or wildlife are distributed or shared among others within a definable community of persons, including customary trade (excluding significant commercial enterprises) barter, sharing, gift-giving.
8. use patterns that include reliance upon the wide diversity of fish and wildlife populations of an area for personal and family consumption and that provide substantial benefits to the economic, cultural, social, and nutritional well-being of persons who take or consume fish and wildlife for their sustenance.

The Federal Subsistence Resource Management Board shall periodically review communities and areas of Alaska to determine whether they comply with these eight criteria. In the absence of adequate evidence documenting conformance with these criteria, the Federal Board shall determine whether or not a community or area is rural according to the definition of "rural" employed by the U.S. Bureau of Census. Those communities or areas with populations less than 2,500, as determined by the most recent certified State or Federal census, will be considered rural, and those communities or areas with populations greater than 2,500 will be considered non-rural until information related to the aforementioned eight criteria is presented to the Board to indicate otherwise.

DRAFT

ATTACHMENT #2

DRAFT

United States Department of the Interior

IN REPLY REFER TO

FISH AND WILDLIFE SERVICE
1011 E. TUDOR RD
ANCHORAGE, ALASKA 99503

PRIORITY

FEDERAL SUBSISTENCE RESOURCE MANAGEMENT BOARD
SUBSISTENCE POLICY

I. SUBSISTENCE USES

MAY 7 1986

The Federal Subsistence Resource Management Board (Board) will implement the Federal Subsistence Resource Management Program (Program) to ensure the conservation of the fish and wildlife resources on federal lands in Alaska pursuant to existing federal laws and policies. The program will be consistent with the purposes of the conservation system units as defined by ANILCA.

A. The Program will be implemented as follows:

(1) The board will assess the biological status of fish and wildlife resources and determine whether a portion of a fish or wildlife population may be harvested during a regulatory year consistent with the conservation, protection and utilization of healthy populations of these resources as required by ANILCA.

(2) The board will identify subsistence uses of fish and wildlife resources, recognizing the customary and traditional subsistence uses by rural Alaska residents of renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. Subsistence uses shall be considered to be customary and traditional for a community or area conforming to the following criteria:

a. a long-term consistent pattern of use of fish or wildlife populations excluding interruption by circumstances beyond the user's control such as regulatory prohibitions

b. use patterns that usually recur in specific seasons of each year

c. use patterns consisting of methods and means of harvest that are characterized by efficiency and economy of effort and cost, conditioned by local circumstances

d. the consistent harvest and use of fish or wildlife near, or at locations reasonably accessible to, the residence of the persons taking such fish or wildlife

e. the handling, preparing, preserving, and storing of such fish and wildlife in a manner that has traditionally been used by past generations, but not excluding recent technological advances in appropriate instances

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f. use patterns that include the handing down of knowledge of fishing, trapping, or hunting skills and values from generation to generation

g. use patterns in which the products derived from such fish or wildlife are distributed or shared among others within a definable community of persons, including customary trade (excluding significant commercial enterprises), barter, sharing, gift-giving

h. use patterns that include reliance upon the wide diversity of fish and wildlife populations of an area for personal and family consumption and that provide substantial benefits to the economic, cultural, social, and nutritional well-being of persons who take or consume fish and wildlife for their sustenance.

(3) After identifying subsistence uses based upon the criteria as set out in A.(1) & (2) of this section and in accordance with section 805 of ANILCA, the board will determine the amount of fish and wildlife necessary to provide for reasonable opportunities to engage in these customary and traditional uses.

(4) The board will recommend to the Secretary of the Interior regulations that provide an opportunity for the subsistence taking of fish and wildlife resources in amounts sufficient to provide for the customary and traditional uses identified in A (2) of this section, while being consistent with sound conservation and management principles and the laws, regulations and policies governing the management of the conservation system units and other Federal Lands. In no instance will the level of subsistence uses of fish and wildlife within a conservation system unit be inconsistent with the conservation of healthy populations.

(5) When circumstances such as increased numbers of user, weather, predation, or loss of habitat may jeopardize fish or wildlife populations, the board will exercise all practical options for restricting non-subsistence harvest before subsistence uses are restricted. If all available restrictions for non-subsistence uses have been implemented and further restrictions are needed, the board will reduce the take for subsistence by giving maximum protection to subsistence users who:

(1) live closest to the resources;

(2) have fewest available alternative resources; and

(3) have the greatest customary and direct dependence upon the resource.

B. The board may, in cooperation with the State of Alaska, recommend to the Secretary of the Interior regulations that provide an opportunity for non-subsistence uses of the resource, to the extent that the non-subsistence uses do not jeopardize or interfere with the conservation of healthy populations of fish or wildlife resources or with the opportunity for taking these resources for customary and traditional subsistence uses as provided in A (4) of this section.

C. Except in extraordinary situations, aircraft shall not be used for access to fish and wildlife populations for subsistence purposes. Section 811 of ANILCA authorizes the use of snowmachines, and motor boats for subsistence purposes and also allows for the use of other means of surface transportation that have been traditionally used for subsistence.

D. In its discussions regarding implementation of the Program with regard to lands within the National Park System and the National Wildlife Refuge System, the Board shall, in conformance with the requirements of ANILCA, limit subsistence activities to use by local rural residents.

E. The Board shall, in making decisions or recommendations concerning the Program, consider and ensure compliance with specific statutory requirements regarding the management of resources on each type of conservation system unit or other type of Federal land, recognizing that the management policies applicable to some units may entail methods of resource and habitat management different from methods appropriate for other units.