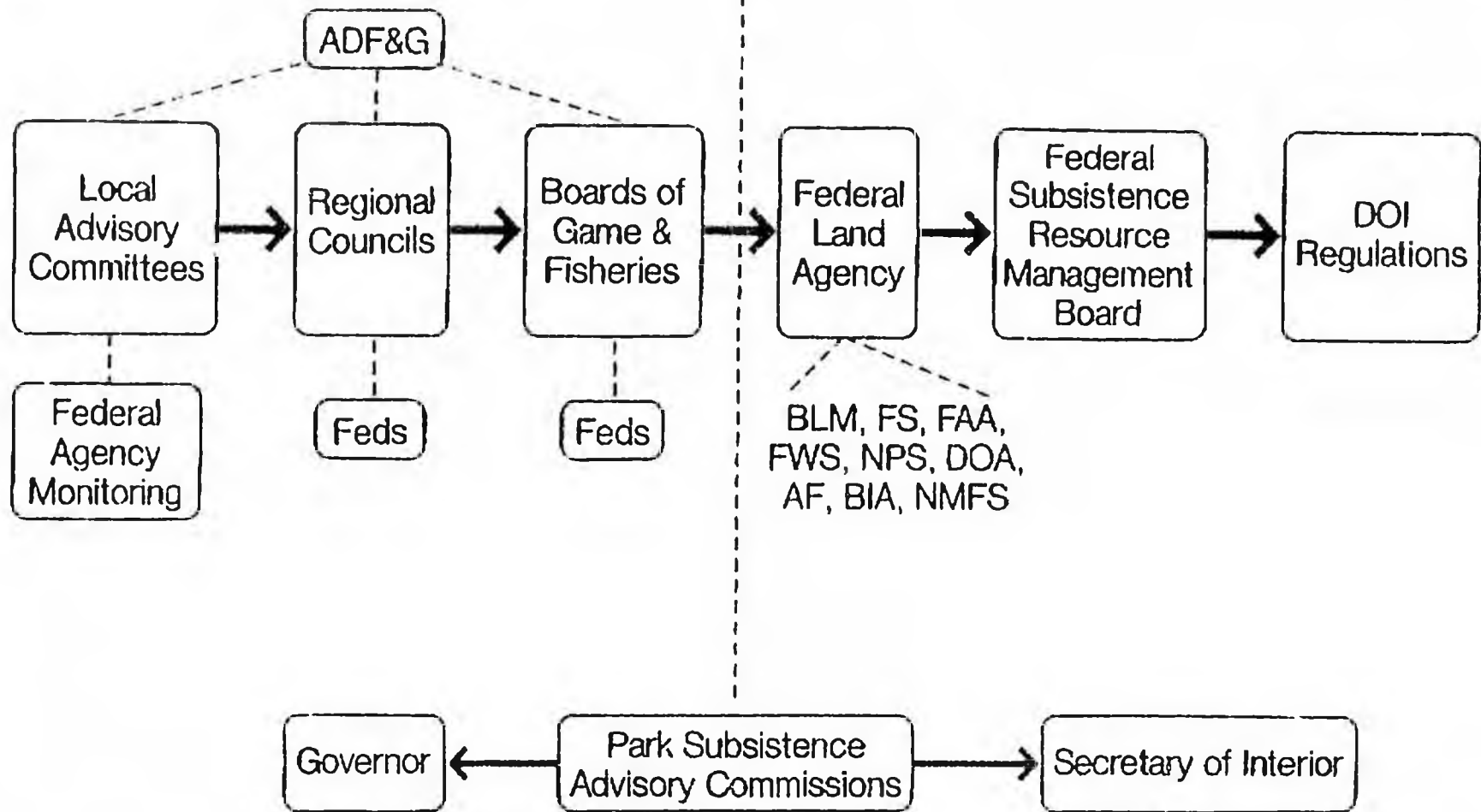


ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6559 SENATE RESOURCES

963

FEDERAL SUBSISTENCE RESOURCE MANAGEMENT PROGRAM



Existing State System

ATTACHMENT #3

NEWS

EXXON COMPANY, U.S.A.

PUBLIC AFFAIRS

P.O. BOX 196601 • ANCHORAGE, ALASKA 995 19-6601

FOR ADDITIONAL INFORMATION CALL: ANCHORAGE (907) 561-5331

February 22, 1990

For immediate release

MAR 2 1990

SUBSISTENCE SEAFOOD TESTS REPORT COMPLETE

ANCHORAGE, Alaska -- Studies of subsistence seafoods in Prince William Sound, Kenai Peninsula and Kodiak Island have provided findings that all sampled finfish and most of the sampled shellfish were safe for human consumption. The tests were conducted by the National Oceanic and Atmospheric Administration (NOAA) and funded by Exxon.

The final report on the studies was issued by NOAA this week and an Expert Committee of Toxicologists are meeting in Seattle, Washington, on Feb 21 and 22 to discuss the results.

Several hundred samples of finfish and shellfish were collected between July and September last year from 13 subsistence gathering areas used by native Alaskans. These were compared to samples taken from Angoon village, the designated clean reference area in southeast Alaska.

All 210 finfish samples collected showed levels of contaminants which are considered safe for consumption, when compared to the generally accepted Food and Drug Administration guidelines.

Most of the shellfish also showed low levels of aromatic contaminants comparable to those from Angoon. However, samples of mussels from oil-impacted Windy Bay and Kodiak city, near the harbor area, had much higher levels of aromatic contaminants and are considered unsafe for consumption.

Exxon will conduct a winter sampling program on the low tide cycle beginning Feb 25. Samples of shellfish will be taken from traditional subsistence areas near Chenega Bay, English Bay and Port Graham and also from the Windy Bay beach. The samples will again be analysed by NOAA.

###

EXXON COMPANY, U.S.A.

ALASKA OPERATIONS
POST OFFICE BOX 240409 • ANCHORAGE, ALASKA 99524-0409

O. R. HARRISON
GENERAL MANAGER

February 23, 1990

Michael Carey
Editorial Page Editor
Anchorage Daily News
Box 149001
Anchorage, Alaska 99514-9001

Dear Mr Carey:

I resent the Anchorage Daily News attempt to rewrite the history of what went on in Valdez last summer.

Contrary to your February 20, 1990 editorial "Cleanup Deceit", Exxon did not try to keep secret the findings of the results of the hot-water cleanup method study. As a matter of fact, I spent an hour or so with your reporter Charles Wohlforth in Valdez in August 1989, going over the preliminary information with him. We could not give him a copy of it since the data had not yet been analyzed at the time and there were no conclusive findings. And, as best I can determine, Wohlforth never asked anyone at Exxon for a copy of the final report.

Further, you need to make clear that the ANCHORAGE DAILY NEWS application under the Freedom of Information Act was made not to Exxon but to NOAA, since this Act applies only to public agencies, not the private sector. It was misleading for your editorial to suggest that Exxon had anything to do with suppressing or releasing the test results.

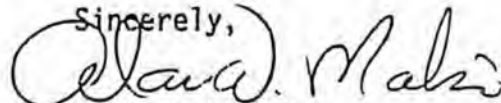
Certainly, the hot-water cleanup method did have a certain amount of impact on the shoreline organisms. We did not deny it last year; nor did we try to downplay the consequences. In fact, the study data were used to develop operations guidelines minimizing the damage while maximizing oil removal.

The extent of the impact of hot-water washing was weighed against the alternative, which was, to leave the heavy oil concentrations on the beaches, posing a greater threat to shoreline species. Data clearly indicate that while hot water washing caused some incremental localized impact on these species, the removal of heavy hydrocarbon concentrations stabilized the shoreline and will likely speed overall recovery of biota.

The finalized report on the tests results show a considerable variety of organisms still present on shorelines treated by the hot-water cleanup method. Although the numbers of several species were reduced significantly, enough remain to strongly suggest the ability to reproduce and the return of a viable shoreline ecology. This trend has been observed in several studies of other oil spills worldwide, showing that shoreline biota recovered in impacted areas within two to three years after the event.

The scientists from NOAA, ADEC, Exxon and other agencies who served on the Inter-Agency Shoreline Cleanup Committee were called on many times to make tough "balance" decisions like this. They deserve something better from the ANCHORAGE DAILY NEWS than your attempt to paint them as deceitful and uncooperative.

Sincerely,

A handwritten signature in cursive script that reads "Alan W. Maki". The signature is written in dark ink and is positioned above the printed name.

Alan W. Maki, PhD
Senior Environmental Advisor

AFN profoundly disappointed with court subsistence ruling

The recent decision of the Alaska Supreme Court invalidating a long-standing rural subsistence priority is, in the words of the new president of the Alaska Federation of Natives, "a profound disappointment which causes us great concern for the future of Alaska."

Julie Kitka, in a recent statement, placed AFN's response to an imminent fish and game crisis in an historical context.

As yet, no changes in state policy have been made, awaiting action by the legislature.

"For years, Native leadership at the village, regional and statewide level has consistently supported a unified, comprehensive system of statewide fish and game management under the jurisdiction of the State of Alaska," Kitka said. "We have worked for a decade to keep management of fish and game in Alaskan hands, and to keep federal involvement at a minimum. But now, unless Natives and non-Natives can find some way to resolve the legal impasse created by the McDowell decision, we are heading into a sad and divisive period of history."

"In 1982, we campaigned hard to defeat a ballot initiative which would have repealed the Legislature's statutory subsistence preference, and we won. In 1985 and 1986, after the State Supreme Court issued its Madison decision, we went all out to secure legislative changes so that Alaskan statutes could be brought into compliance with federal law.

"If we had failed in either of these efforts, state law would undoubtedly have been found to be out of compliance with federal law, and we would have witnessed a federal takeover of fish and game management on those 60 percent of Alaska's lands which are in federal ownership. The Secretary of Interior, operating 4,000 miles away, would have become the de facto commissioner of fish and game over almost two-thirds of Alaska. This would have created a divided system without adequate resources to manage the species and habitats which migrate across the state without regard to land ownership.

"The Native community has worked consistently with governors, legislators, commissioners and members of the Boards of Fish and Game toward two mutually-reinforcing goals: to protect the subsistence economy on which the lifestyles of all rural Alaskans depend, and to do so within the context of the unified state management system. Until now, the effort has succeeded.

"Today, in light of the McDowell case, we see that these goals may no longer be compatible. Alaska's court system has spoken, and the 1990 fishing season will soon be upon us. In a recent letter to Governor Cowper, I indicated that AFN has no choice but to inquire of the Secretary of the Interior his plans for assuming his responsibility under Title VIII of ANILCA. However, we look forward to working with the Secretary and the Governor to resolve this situation."

RIC DAVIDGE
3501 ADMIRALTY BAY
ANCHORAGE, ALASKA 99515
349-7329H 563-1912W

SUBSISTENCE: FACT AND FICTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NEWS RELEASE

STATE OF ALASKA

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

STEVE COWPER,
GOVERNOR



FOR INFORMATION CONTACT

DAVID RAMSEUR
PRESS SECRETARY

TERRENCE O'MALLEY
DEPUTY PRESS SECRETARY

(907) 465-3500

FOR IMMEDIATE RELEASE

March 2, 1990

No. 90-40

COWPER INTRODUCES SUBSISTENCE CONSTITUTIONAL AMENDMENT

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

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

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

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

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

-MORE-

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

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

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

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

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

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

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



ALASKA OUTDOOR COUNCIL, INC.

MAR 6 1990

March 1, 1990

Senator Bettye Fahrenkamp
Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

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

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

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

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

Wayne Anthony Ross
Attorney at Law



ALASKA OUTDOOR COUNCIL, INC.

MEMORANDUM ON FISH AND WILDLIFE MANAGEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ALASKA FEDERATION OF NATIVES, INC.

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



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ALASKA FEDERATION OF NATIVES, INC.



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

THE ALASKA FEDERATION OF NATIVES

The Alaska Federation of Natives (AFN) is a statewide advocacy organization working on behalf of 80,000+ Eskimos, Aleuts and Indians. It is the largest Alaska Native organization with a membership of 137 villages, 13 Alaska Native regional corporations, and 10 regional non-profit organizations.

The mission of AFN is to enhance and promote the cultural, economic and political voice of the entire Alaska Native people, their governments and organizations, with respect to federal, state and local laws; to foster and encourage preservation of Alaska Native cultures; to promote understanding of the economic needs of Alaska Natives and encourage development consistent with those needs; to protect, retain and enhance all lands owned by Alaska Natives and their organizations; and to promote and advocate programs and systems which instill pride and confidence in individual Alaska Natives.

HISTORY

The Alaska federation of Natives was formed in October of 1966 when Alaska Natives came together for a statewide conference to address the need for a settlement of Alaska Native aboriginal land claims.

Between 1966 and 1971, AFN worked to attain passage of the Alaska Native Claims Settlement Act (ANCSA). When this goal was achieved in December of 1971, it was not an end for AFN but a new beginning.

As Alaska Natives began the task of implementing ANCSA, AFN offered technical assistance and managed a number of statewide human service programs. As the strength and independence of the regional associations grew, the human service programs were transferred to these associations.

A responsive AFN organization evolved to address the new challenges and issues facing Alaska Natives. Funds collected through membership fees allowed AFN to become a prime negotiator in the federal legislative process to ensure Alaska Native interests were addressed, clarified and protected under the development and passage of the Alaska National Interest Lands Conservation Act of 1980; the 1987 Amendments to the Alaska Native Claims Settlement Act (1991 legislation) and other federal legislation impacting Native Americans.

AFN BACKGROUND
PAGE 2

AFN assumed an active role in the Alaska State legislative process by promoting legislation for funding new and/or maintaining existing rural programs in the areas of health, education, resource development, labor and government.

AFN CONVENTION

Since 1966, the annual AFN convention has become a traditional meeting place for over 3,000 Alaska Natives. Each October, the convention provides delegates from each Alaska community with an opportunity to discuss current issues of importance to the Native community, to establish the AFN priorities for the upcoming year, to renew old friendships, and, most importantly, to strengthen common bonds among the diverse ethnic group of the state. Each voting delegate is authorized by resolution to participate in the decision-making process of the convention. During the convention, delegates act on resolutions received from the many entities and individuals, elect the AFN Chairman and the village representatives to the AFN Board of Directors. The Board, in turn, directs AFN staff to carry out the direction set by the delegates. AFN becomes the VOICE OF THE PEOPLE.

ALASKA FEDERATION OF NATIVES, INC.

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



April 16, 1990

The Honorable Steve Cowper
Governor - State of Alaska
Pouch A
Juneau, Alaska 99811

Dear Governor Cowper:

On behalf of the AFN Board of Directors, I would like to express our appreciation to you for making time in your schedule to attend the recent AFN statewide subsistence conference. As you know, the Native leaders who attended spent two days discussing the subsistence issue, and, prior to adjourning, passed several resolutions, copies of which are enclosed, that urge the AFN Board to adopt and implement a comprehensive subsistence policy. The thoughts you shared with those in attendance about how best to achieve our mutually shared goals were both informative and helpful.

In your presentation to the conference, you reiterated what you have publicly stated on many occasions - "any proposal, if it is to go anywhere, must enjoy the support of both the Native community and myself. In short, we have to be together on this one."

I applaud you for your commitment to the people most affected by the McDowell decision - the Native people of Alaska. On behalf of AFN, I pledge our continued cooperation and assistance to a timely resolution of the situation facing us today.

In your presentation you outlined three requirements for an acceptable solution.

- (1) The approach must be along the lines of a constitutional amendment;
- (2) the constitutional amendment must, at a minimum ensure the continued subsistence priority for rural Alaskans on both state and federal lands; and

(3) passage of the constitutional amendment cannot be put at risk by the inclusion of language that will meet with opposition from those - legislators and voters alike - who might otherwise endorse a rural subsistence preference.

As a result of our deliberations over the two-day meeting, I believe we are in agreement with your three requirements.

In that regard, by a unanimous vote, on April 11 the conference adopted a resolution that urges AFN to support an amendment to the Alaska Constitution to grant the legislature authority to regulate subsistence resources consistently with federal laws and retain fish and game management authority on federal lands. The amendment that Representative Lyman Hoffman recently proposed would achieve that result.

However, the resolution's support for a constitutional amendment is not unconditional. Rather, the amendment conditions support on the State, prior to July 1, initiating a review of "all State subsistence statutes, policies, regulations, programs and practices in every area of State jurisdiction in order to establish all overall subsistence management regime that is responsive to the true subsistence needs of affected Alaskans." Such a review has an important purpose. The Alaska subsistence statute merely establishes state policy. The statute delegates implementation of that policy to the Alaska Board of Fisheries and Board of Game, whose members have broad administrative discretion to exercise independent judgment. For that reason, no matter how wise the policy it codifies and no matter how carefully it is drafted, over time, no subsistence statute is any better or worse than the people who implement it.

As you know, in the early 1980s several Board members exercised their administrative discretion in a manner purposely and repeatedly calculated to prove that the State subsistence law was unworkable. While considerable progress has been made since then, both during your and during the previous administration, to ensure that individuals appointed to the boards are committed to exercising administrative discretion to implement the Alaska subsistence statute in good faith and with appropriate sensitivity to the needs and lifestyle of Alaska Natives and other residents who depend upon fish and game for their sustenance, at best, the boards' implementation has been uneven, particularly in southeast Alaska.

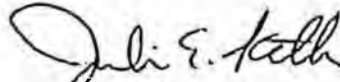
In addition, time and time again, problems between subsistence users and the State regulatory system escalate and

turn into conflicts which eventually end up in court. This costs both the State and the subsistence users much time, energy and money. In our view, litigation should be an avenue of last resort. A thorough review of the State regulatory system as it affects real people could provide us both an opportunity to make government work better for people and cut down the costs in continuing to litigate problems.

For these reasons, the Native leaders who attended the statewide subsistence conference were of the strong opinion that a thorough independent review of the boards' implementation of the Alaska subsistence statute is long overdue.

To be effective, such a review must involve Native organizations whose membership has been adversely affected by board implementation decisions. On behalf of AFN, I would like to commit our organization to working with you, Commissioner Collinsworth, ADF&G staff, the boards and all other interested parties to ensure that such a comprehensive review can proceed as soon as possible.

Sincerely,


Julie E. Kitka
President

cc: AFN Board of Directors
AFN Legislative Committee
RurAL CAP
Association of Village Council Presidents
Tanana Chiefs Conference
Southeast Native Subsistence Commission

ALASKA FEDERATION OF NATIVES, INC.

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



SUBSISTENCE SUMMIT CONFERENCE
ALASKA FEDERATION OF NATIVES
RESOLUTION NO. 90-1
APRIL 11, 1990

ENTITLED: Alaska NATIVE SUBSISTENCE RIGHTS:
AN AFFIRMATION AND A STRATEGY

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

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

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

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

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

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

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

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

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

NOW THEREFORE BE IT RESOLVED that the Alaska Federation of Natives is directed by the delegates herein assembled at the Subsistence Summit Conference to adopt as its principal direction and recommends to all appropriate Native organizations the following:

- Act to continue to support the inherent Native rights to subsistence resources and uses.
- Act to gain approval of an amendment to the Constitution of the State of Alaska that allows the State to exercise management jurisdiction over all fish, wildlife, plant and other renewable natural resources within its boundaries and provides that the State shall exercise management of subsistence resources therein in accordance with applicable federal law.
- Act prior to July 1, 1990, to have the State of Alaska review and revise as necessary all State subsistence statutes, policies, regulations, programs and practices in every area of State jurisdiction in order to establish an overall subsistence management regime that is responsive to the true subsistence needs of affected Alaskans. Such review and revision shall include representation from Native organizations that represent those Alaskans directly affected. This review shall seek to establish a definition of "rural" which includes as many Alaska Native people as possible and that the State administration adopt a subsistence system for individuals not in "rural" areas who can demonstrate traditional and customary utilization of natural resources. Such review and revision shall be undertaken with the fundamental intent to allow those Alaskans who by custom, tradition, location, and circumstance have practiced subsistence use of Alaska's resources up to the present and will in the future, to do so in an appropriately responsive, sensitive, comprehensive, timely and continuing manner.

- Act immediately to request and to take action to involve affected Native organizations directly and fully in development, promulgation and implementation of any federal subsistence management regime developed for federal lands in the event State management is terminated. Native organizations shall resist, with all possible force, any attempt by the State of Alaska to contract with the federal government for any role in managing federal lands for subsistence uses. Tribal contracting for management of federal lands for subsistence uses will be strongly supported.
- Act to initiate a vigorous campaign to educate and familiarize public officials and legislators with all aspects of subsistence resources and uses.
- Act to initiate a vigorous registration campaign across the State of Alaska.

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

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

Passed and approved unanimously by delegates to the AFN Subsistence Summit Conference this 11th day of April, 1990.



Julie E. Kitka
President

ALASKA FEDERATION OF NATIVES, INC.

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



SUBSISTENCE SUMMIT CONFERENCE
ALASKA FEDERATION OF NATIVES
RESOLUTION NO. 90-2
APRIL 11, 1990

ENTITLED: ALASKA NATIVE SUBSISTENCE RIGHTS: A PRIORITY FOR
ALASKA NATIVE TRIBAL MEMBERS

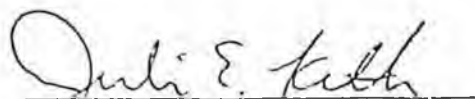
WHEREAS, Alaska Native tribes have managed fish and game in their traditional areas since before anyone can remember, and both the Native people and the animals benefited from tribal management; and

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

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

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

Passed and approved unanimously by the delegates to the AFN Subsistence Summit Conference this 11th day of April, 1990.


Julie E. Kitka
President

ALASKA FEDERATION OF NATIVES, INC.



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

SUBSISTENCE SUMMIT CONFERENCE
ALASKA FEDERATION OF NATIVES
RESOLUTION NO. 90-3
APRIL 11, 1990

WHEREAS, the McDowell v. State decision by the Alaska Supreme Court puts the State out of compliance with the federal subsistence preference found in Title VIII of ANILCA and will lead to a federal assumption of fish and game management authority on federal lands in the State after July 1, 1990, unless the law is changed; and

WHEREAS, there is a substantial doubt that the law can be changed in time to avoid federal takeover of fish and game management on federal lands; and

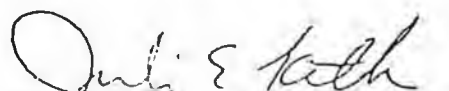
WHEREAS, joint State and federal planning for implementing a dual fish and game management system in the State after July 1, 1990, has taken place without participation or over consultation with the Alaska Federation of Natives or other Native organizations; and

WHEREAS, the sound management of Alaska's fish and game resources is inseparable from Native culture and tradition and must be protected by all possible means; and

WHEREAS, Representative Lyman Hoffman has proposed a State constitutional amendment which would allow the State to manage subsistence resources in accordance with federal law and retain fish and game management authority on federal lands.

NOW THEREFORE BE IT RESOLVED that the body assembled herein directs the Alaska Federation of Natives to work towards amending the State constitution to allow the State to manage subsistence resources consistently with federal laws and retain fish and game management authority on federal lands.

Passed and approved unanimously by the delegates to the AFN Subsistence Summit Conference this 11th day of April, 1990.


Julie E. Kitka
President

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific Name	Common Name					
Boreognathidae—Borage family						
<i>Cryptanthe creasipes</i>	Tongva Creeper cat's-eye	USA (TX)	E		NA	NA

Dated: February 28, 1990
 Richard N. Smith,
 Acting Director, Fish and Wildlife Service.
 [FR Doc. 90-8577 Filed 4-12-90; 8:45 am]
 BILLING CODE 4310-05-M

50 CFR Part 36

RIN 1018-AB43

Intention To Propose Interim Rules Implementing Title VIII of the Alaska National Interest Lands Conservation Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to propose rules and request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that it will be developing interim regulations pertaining to the implementation of the subsistence priority for rural residents of Alaska under title VIII of the Alaska National Interest Lands Conservation Act of 1980. The Alaska Supreme Court recently ruled that the laws used by the State of Alaska to provide the subsistence priority required by title VIII violated the Alaska Constitution. The Alaska Supreme Court stayed its decision until July 1, 1990. Should the State be unable to rectify the situation, the Federal government may be required to take over the implementation of title VIII on public lands on July 1, or potentially sooner.

DATES: For written comments to be considered in the initial drafting of the rules, they should be received by May 14, 1990.

ADDRESSES: Comments should be addressed to the Regional Director, ATTN: Glenn Ellison, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Glenn Ellison, 1011 E. Tudor Road, Anchorage, Alaska 99503, telephone (907) 788-3542.

SUPPLEMENTARY INFORMATION: Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3128) requires the Secretary of the

Interior to implement a program to grant preference in favor of subsistence users of fish and wildlife on public lands unless the State of Alaska implements a subsistence program consistent with ANILCA's requirements. The State of Alaska has implemented such a program since the enactment of ANILCA in 1980 pursuant to findings by the Department of the Interior that the State subsistence program is consistent with ANILCA. In December 1989, however, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural limitation in the State subsistence definition, which is required by ANILCA, violates the Alaska Constitution. The Court stayed the effect of the decision until July 1, 1990.

As a result, the Department of the Interior may be required to take over the implementation of title VIII of ANILCA on public lands on July 1, 1990. The Service, as the lead agency is in the process of writing interim regulations for subsistence management on public lands. These rules would impact the subsistence use of fish and wildlife resources on public lands in Alaska managed by the Fish and Wildlife Service, National Park Service, Bureau of Land Management, Forest Service, Air Force, Army and various other Federal land managing agencies. This notice solicits comments and suggestions from resource users, other Alaskans and the general public on how title VIII should be implemented on public lands. Due to the uncertain nature of the situation and short time available, the development of these regulations is a contingency against the sudden requirement for the Federal government to take over implementation of title VIII on public lands. The mandates under which the regulations must operate include, but are not limited to the following:

- (1) Ensure the maintenance of healthy fish and wildlife populations;
- (2) Define subsistence uses as the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the

making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; and for customary trade;

(3) Provide for nonwasteful subsistence uses of fish and wildlife and other renewable resources as the priority consumptive use of such resources on public lands, when it is necessary to restrict consumptive uses;

(4) Provide subsistence users reasonable access; and

(5) Provide for a system of regional participation.

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

The potential need for quick action precludes a longer comment period than would normally be the case. Should Federal management become reality, it is the Federal government's intention to work in close cooperation with the State and minimize disruption to fish and wildlife users and historical state management of resident fish and wildlife. Title VIII allows reasonable regulations to provide access and to protect the viability of all wild renewable resources. The protection of wild renewable resources and the opportunity to utilize those resources by rural Alaskan residents on public lands for subsistence purposes are of paramount importance to the Federal government and to the public as a whole.

If Federal management appears to be required beyond December 31, 1990, the development of permanent regulations will commence in early July 1990. Permanent regulations will provide for regional councils and extensive public involvement in development of the permanent regulations and annual rule making. This regulation writing effort will include a Notice of Intent, public comment period and the acceptance of written and verbal comments throughout the process.

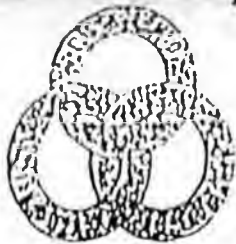
Dated: April 6, 1990.

John F. Turner,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 90-8534 Filed 4-12-90; 8:45 am]

BILLING CODE 4310-05-M



Integrity. Pride in Heritage. Progress.

NEWS RELEASE

FOR IMMEDIATE RELEASE
April 13, 1990

CONTACT: Janice Ryan
274-3611

NATIVE SUBSISTENCE CONFERENCE ADOPTS RESOLUTION

More than 700 Alaska Natives, representing villages, regional and statewide organizations, gathered at the Egan Convention Center in Anchorage this week for two days of intensive discussions of the current subsistence issue. The Conference, to which all Native people and organizations were invited, was hosted by the Alaska Federation Natives on April 10 and 11. It concluded with a five-hour public hearing before the House and Senate Resources Committees of the Alaska State Legislature.

The issue at stake is continued Federal and State protection of subsistence uses for Alaska Natives and other rural residents throughout the State.

During the first day and one-half, participants listened to speakers and panelists, including Governor Steve Cowper, Senator Ted Stevens (by pre-recorded videotape), Congressman Don Young, Interior Secretary Manuel Lujan, State legislators, Native leaders and representatives of commercial fishing, environmental and sport hunting and fishing groups. Among the topics presented and submitted for discussion on the floor:

- the recent Alaska Supreme Court decision in McDowell v. State which declared that the State subsistence law of 1986 - providing a subsistence priority to all rural Alaskans, Native and non-Native alike - was unconstitutional;
- the imminent prospect of a Federal takeover of fish and game management on Federal lands, if no State solution to the constitutional crisis can be found by July 1, 1990;
- how such a system of "dual management" (with the Federal government implementing a rural subsistence priority on Federal lands and the State government an as-yet unknown subsistence policy on State and private lands) would actually work, given unknown plans of the Federal agencies and unresolved issues in Federal and State courts;

more

- the political risks to Alaska Natives and the State as a whole of persuading the U.S. Congress to open the Alaska National Interest Lands Conservation Act (ANILCA) to amend the federal subsistence law; and,
- various options and legislative processes by which the State Constitution might be amended to bring Alaska back into compliance with Federal law and avoid Federal intervention.

On Wednesday, Secretary Lujan addressed the Conference, stating that the Federal government will fulfill its non-discretionary obligations under ANILCA and is already deeply involved in planning for that contingency on July 1. However, the Secretary strongly urged that the State of Alaska act expeditiously to solve the problem at the State level, and to avoid the necessity of a Federal takeover. Governor Cowper echoed this point in his remarks, while making it clear that he would not support a state measure which was not politically viable and did not have the backing of the Native community. Senator Stevens and Congressman Young reiterated previous public statements on the dangers of opening ANILCA in the Congress, and urged that the State Legislature and the Governor solve the problem in Juneau before the end of the legislative session.

On the final afternoon of the Conference, a lengthy debate within the Native community was held and a variety of positions were presented and argued. Prior to adjournment, conferees unanimously adopted several resolutions representing a balance of viewpoints, recommending that all Native organizations seek:

- to continue to support the inherent Native rights to subsistence uses and resources;
- to gain approval of a State constitutional amendment allowing the State of Alaska to continue exercising fish and game management on all lands within its boundaries in accordance with applicable Federal law (ANILCA);
- to advocate a thorough review of the entire system of State management of subsistence, involving Native individuals and organizations directly affected, addressing the definition of "rural," emphasizing the needs and rights of customary and traditional subsistence users, and recommending necessary changes in statutes and regulations to improve State operation of subsistence management - and to make such a review process a prerequisite for continued Native support of a constitutional amendment to retain fish and game management in State hands;

- to involve Native people and their organizations directly in the development and implementation of any Federal subsistence management regime on Federal lands, in the event that dual management occurs after July 1, with specific intention to resist any attempt by the State of Alaska to contract with the Federal government for any role in managing subsistence on Federal lands and to maximize opportunities for the contracting of federal management responsibilities to Native tribal organizations;
- to initiate a campaign of public education to familiarize legislators, other officials and the general public with the facts of subsistence resources and uses;
- to initiate a vigorous campaign of voter registration throughout Alaska.

****3****

CORRECTION

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

State of Alaska
CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS
230 Cushman Street, Suite 4H
Fairbanks, Alaska 99701
(907) 456-2012

F A X T R A N S M I T T A L M E M O
TO: NANCY PETERSON - SEN. FAHRENKRAMP
DEPT: _____ FAX #: 463-4867
FROM: S. LEAPHART PHONE: 456-2012
CO: CACFA FAX: 456-2039
Post-it brand fax transmittal memo 767

NO. OF
PAGES

12

TO: Nancy Peterson
FROM: Stan Leaphart *SL*
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 take-over 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 severely 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.



IN REPLY REFER TO

DRAFT

ATTACHMENT #1

United States Department of the Interior

FISH AND WILDLIFE SERVICE
1011 E. TUDOR RD.
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

DRAFT



United States Department of the Interior

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

PRIORITY

IN REPLY REFER TO.

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

DRAFT

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.

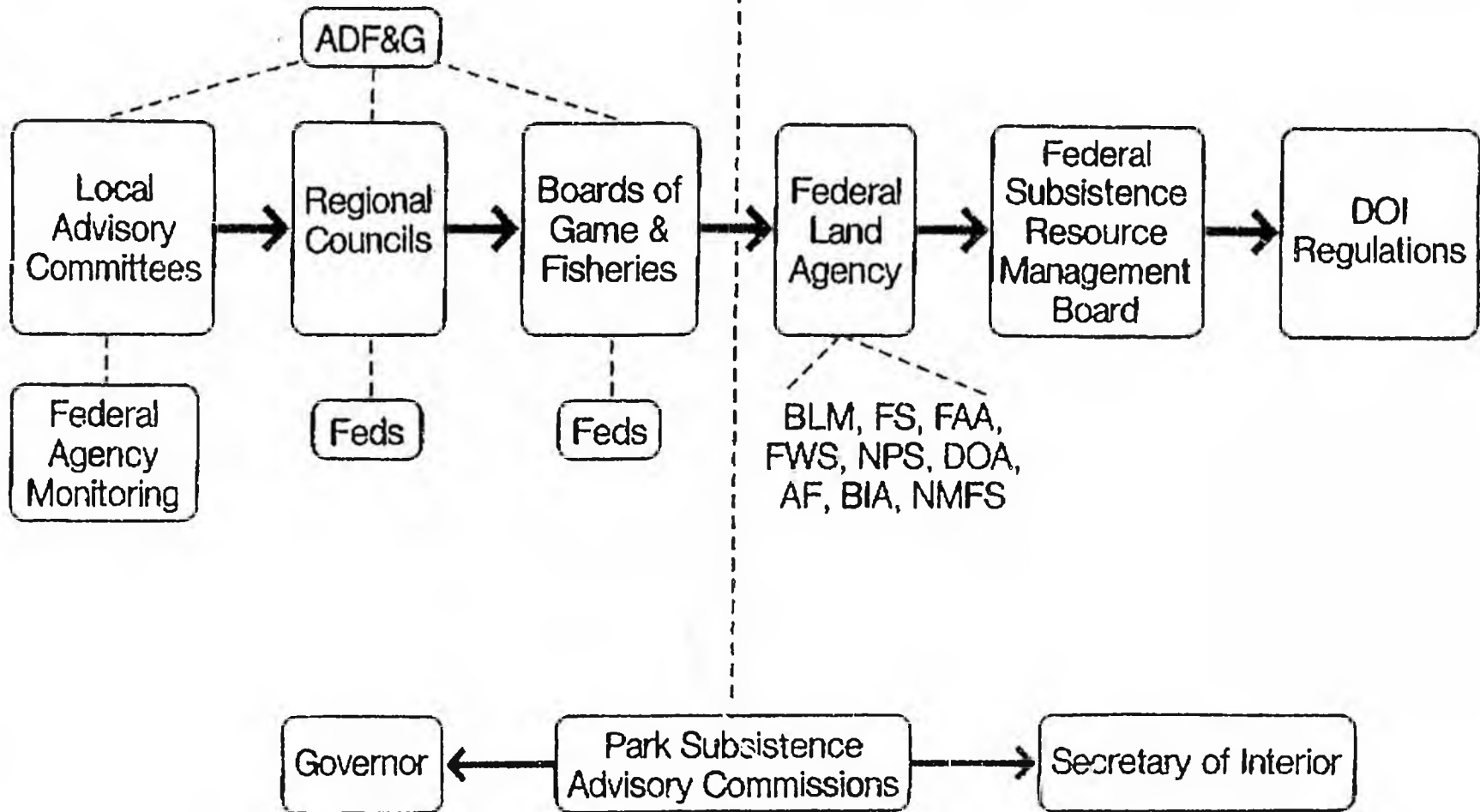
B. The board may, in cooperation with the State of Alaska, recommend to the Secretary of the Interior regulations that provide an opportunity for non-subsistence uses of the resource, to the extent that the non-subsistence uses do not jeopardize or interfere with the conservation of healthy populations 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.

FEDERAL SUBSISTENCE RESOURCE MANAGEMENT PROGRAM



Existing State System

NEWS

EXXON COMPANY, U.S.A.

PUBLIC AFFAIRS

P.O. BOX 196601 • ANCHORAGE, ALASKA 99519-6601

FOR ADDITIONAL INFORMATION CALL: ANCHORAGE (907) 561-5331

February 22, 1990

For immediate release

MAR 2 1990

SUBSISTENCE SEAFOOD TESTS REPORT COMPLETE

ANCHORAGE, Alaska -- Studies of subsistence seafoods in Prince William Sound, Kenai Peninsula and Kodiak Island have provided findings that all sampled finfish and most of the sampled shellfish were safe for human consumption. The tests were conducted by the National Oceanic and Atmospheric Administration (NOAA) and funded by Exxon.

The final report on the studies was issued by NOAA this week and an Expert Committee of Toxicologists are meeting in Seattle, Washington, on Feb 21 and 22 to discuss the results.

Several hundred samples of finfish and shellfish were collected between July and September last year from 13 subsistence gathering areas used by native Alaskans. These were compared to samples taken from Angoon village, the designated clean reference area in southeast Alaska.

All 210 finfish samples collected showed levels of contaminants which are considered safe for consumption, when compared to the generally accepted Food and Drug Administration guidelines.

Most of the shellfish also showed low levels of aromatic contaminants comparable to those from Angoon. However, samples of mussels from oil-impacted Windy Bay and Kodiak city, near the harbor area, had much higher levels of aromatic contaminants and are considered unsafe for consumption.

Exxon will conduct a winter sampling program on the low tide cycle beginning Feb 25. Samples of shellfish will be taken from traditional subsistence areas near Chenega Bay, English Bay and Port Graham and also from the Windy Bay beach. The samples will again be analysed by NOAA.

###

EXXON COMPANY, U.S.A.

ALASKA OPERATIONS
POST OFFICE BOX 240409 • ANCHORAGE, ALASKA 99524-0409

O. R. HARRISON
GENERAL MANAGER

February 23, 1990

Michael Carey
Editorial Page Editor
Anchorage Daily News
Box 149001
Anchorage, Alaska 99514-9001

Dear Mr Carey:

I resent the Anchorage Daily News attempt to rewrite the history of what went on in Valdez last summer.

Contrary to your February 20, 1990 editorial "Cleanup Deceit", Exxon did not try to keep secret the findings of the results of the hot-water cleanup method study. As a matter of fact, I spent an hour or so with your reporter Charles Wohlforth in Valdez in August 1989, going over the preliminary information with him. We could not give him a copy of it since the data had not yet been analyzed at the time and there were no conclusive findings. And, as best I can determine, Wohlforth never asked anyone at Exxon for a copy of the final report.

Further, you need to make clear that the ANCHORAGE DAILY NEWS application under the Freedom of Information Act was made not to Exxon but to NOAA, since this Act applies only to public agencies, not the private sector. It was misleading for your editorial to suggest that Exxon had anything to do with suppressing or releasing the test results.

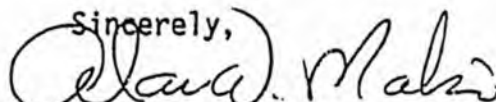
Certainly, the hot-water cleanup method did have a certain amount of impact on the shoreline organisms. We did not deny it last year; nor did we try to downplay the consequences. In fact, the study data were used to develop operations guidelines minimizing the damage while maximizing oil removal.

The extent of the impact of hot-water washing was weighed against the alternative, which was, to leave the heavy oil concentrations on the beaches, posing a greater threat to shoreline species. Data clearly indicate that while hot water washing caused some incremental localized impact on these species, the removal of heavy hydrocarbon concentrations stabilized the shoreline and will likely speed overall recovery of biota.

The finalized report on the tests results show a considerable variety of organisms still present on shorelines treated by the hot-water cleanup method. Although the numbers of several species were reduced significantly, enough remain to strongly suggest the ability to reproduce and the return of a viable shoreline ecology. This trend has been observed in several studies of other oil spills worldwide, showing that shoreline biota recovered in impacted areas within two to three years after the event.

The scientists from NOAA, ADEC, Exxon and other agencies who served on the Inter-Agency Shoreline Cleanup Committee were called on many times to make tough "balance" decisions like this. They deserve something better from the ANCHORAGE DAILY NEWS than your attempt to paint them as deceitful and uncooperative.

Sincerely,

A handwritten signature in cursive script that reads "Alan W. Maki". The signature is written in dark ink and is positioned above the typed name and title.

Alan W. Maki, PhD
Senior Environmental Advisor

AFN profoundly disappointed with court subsistence ruling

The recent decision of the Alaska Supreme Court invalidating a long-standing rural subsistence priority is, in the words of the new president of the Alaska Federation of Natives, "a profound disappointment which causes us great concern for the future of Alaska."

Julie Kitka, in a recent statement, placed AFN's response to an imminent fish and game crisis in an historical context.

As yet, no changes in state policy have been made, awaiting action by the legislature.

"For years, Native leadership at the village, regional and statewide level has consistently supported a unified, comprehensive system of statewide fish and game management under the jurisdiction of the State of Alaska," Kitka said. "We have worked for a decade to keep management of fish and game in Alaskan hands, and to keep federal involvement at a minimum. But now, unless Natives and non-Natives can find some way to resolve the legal impasse created by the McDowell decision, we are heading into a sad and divisive period of history."

"In 1982, we campaigned hard to defeat a ballot initiative which would have repealed the Legislature's statutory subsistence preference, and we won. In 1985 and 1986, after the State Supreme Court issued its Madison decision, we went all out to secure legislative changes so that Alaskan statutes could be brought into compliance with federal law.

"If we had failed in either of these efforts, state law would undoubtedly have been found to be out of compliance with federal law, and we would have witnessed a federal takeover of fish and game management on those 60 percent of Alaska's lands which are in federal ownership. The Secretary of Interior, operating 4,000 miles away, would have become the de facto commissioner of fish and game over almost two-thirds of Alaska. This would have created a divided system without adequate resources to manage the species and habitats which migrate across the state without regard to land ownership.

"The Native community has worked consistently with governors, legislators, commissioners and members of the Boards of Fish and Game toward two mutually-reinforcing goals: to protect the subsistence economy on which the lifestyles of all rural Alaskans depend, and to do so within the context of the unified state management system. Until now, the effort has succeeded.

"Today, in light of the McDowell case, we see that these goals may no longer be compatible. Alaska's court system has spoken, and the 1990 fishing season will soon be upon us. In a recent letter to Governor Cowper, I indicated that AFN has no choice but to inquire of the Secretary of the Interior his plans for assuming his responsibility under Title VIII of ANILCA. However, we look forward to working with the Secretary and the Governor to resolve this situation."

RIC DAVIDGE
3501 ADMIRALTY BAY
ANCHORAGE, ALASKA 99515
349-7329H 563-1912W

SUBSISTENCE - FACT AND FICTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NEWS RELEASE

STATE OF ALASKA

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

STEVE COWPER,
GOVERNOR



FOR INFORMATION CONTACT:

DAVID RAMSEUR
PRESS SECRETARY

TERRENCE O'MALLEY
DEPUTY PRESS SECRETARY

(907) 465-3500

FOR IMMEDIATE RELEASE
March 2, 1990
No. 90-40

COWPER INTRODUCES SUBSISTENCE CONSTITUTIONAL AMENDMENT

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

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

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

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

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

-MORE-



ALASKA OUTDOOR COUNCIL, INC.

MAR 6 1990

March 1, 1990

Senator Bettye Fahrenkamp
Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

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

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

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

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

Wayne Anthony Ross
Attorney at Law

CORRECTION

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

NEWS RELEASE

STATE OF ALASKA

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

STEVE COWPER,
GOVERNOR



FOR INFORMATION CONTACT

DAVID RAMSEUR
PRESS SECRETARY

TERRENCE O'MALLEY
DEPUTY PRESS SECRETARY

(907) 465-3500

FOR IMMEDIATE RELEASE
March 2, 1990
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-MORE-

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

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

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

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

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

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

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

ALASKA OUTDOOR COUNCIL, INC.



MAR 6 1990

March 1, 1990

Senator Bettye Fahrenkamp
Pouch V
Juneau, Alaska 99811

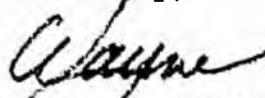
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Attached hereto is a MEMORANDUM ON FISH AND WILDLIFE MANAGEMENT which constitutes the formal and official position of the ALASKA OUTDOOR COUNCIL, INC. on the Subsistence issue. This position paper was extensively reviewed by the AOC Board of Directors,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

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

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

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


Wayne Anthony Ross
Attorney at Law



MEMORANDUM ON FISH AND WILDLIFE MANAGEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ALASKA FEDERATION OF NATIVES, INC.

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



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THE ALASKA FEDERATION OF NATIVES

The Alaska Federation of Natives (AFN) is a statewide advocacy organization working on behalf of 80,000+ Eskimos, Aleuts and Indians. It is the largest Alaska Native organization with a membership of 137 villages, 13 Alaska Native regional corporations, and 10 regional non-profit organizations.

The mission of AFN is to enhance and promote the cultural, economic and political voice of the entire Alaska Native people, their governments and organizations, with respect to federal, state and local laws; to foster and encourage preservation of Alaska Native cultures; to promote understanding of the economic needs of Alaska Natives and encourage development consistent with those needs; to protect, retain and enhance all lands owned by Alaska Natives and their organizations; and to promote and advocate programs and systems which instill pride and confidence in individual Alaska Natives.

HISTORY

The Alaska federation of Natives was formed in October of 1966 when Alaska Natives came together for a statewide conference to address the need for a settlement of Alaska Native aboriginal land claims.

Between 1966 and 1971, AFN worked to attain passage of the Alaska Native Claims Settlement Act (ANCSA). When this goal was achieved in December of 1971, it was not an end for AFN but a new beginning.

As Alaska Natives began the task of implementing ANCSA, AFN offered technical assistance and managed a number of statewide human service programs. As the strength and independence of the regional associations grew, the human service programs were transferred to these associations.

A responsive AFN organization evolved to address the new challenges and issues facing Alaska Natives. Funds collected through membership fees allowed AFN to become a prime negotiator in the federal legislative process to ensure Alaska Native interests were addressed, clarified and protected under the development and passage of the Alaska National Interest Lands Conservation Act of 1980; the 1987 Amendments to the Alaska Native Claims Settlement Act (1991 legislation) and other federal legislation impacting Native Americans.

AFN BACKGROUND
PAGE 2

AFN assumed an active role in the Alaska State legislative process by promoting legislation for funding new and/or maintaining existing rural programs in the areas of health, education, resource development, labor and government.

AFN CONVENTION

Since 1966, the annual AFN convention has become a traditional meeting place for over 3,000 Alaska Natives. Each October, the convention provides delegates from each Alaska community with an opportunity to discuss current issues of importance to the Native community, to establish the AFN priorities for the upcoming year, to renew old friendships, and, most importantly, to strengthen common bonds among the diverse ethnic group of the state. Each voting delegate is authorized by resolution to participate in the decision-making process of the convention. During the convention, delegates act on resolutions received from the many entities and individuals, elect the AFN Chairman and the village representatives to the AFN Board of Directors. The Board, in turn, directs AFN staff to carry out the direction set by the delegates. AFN becomes the VOICE OF THE PEOPLE.

ALASKA FEDERATION OF NATIVES, INC.

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



April 16, 1990

The Honorable Steve Cowper
Governor - State of Alaska
Pouch A
Juneau, Alaska 99811

Dear Governor Cowper:

On behalf of the AFN Board of Directors, I would like to express our appreciation to you for making time in your schedule to attend the recent AFN statewide subsistence conference. As you know, the Native leaders who attended spent two days discussing the subsistence issue, and, prior to adjourning, passed several resolutions, copies of which are enclosed, that urge the AFN Board to adopt and implement a comprehensive subsistence policy. The thoughts you shared with those in attendance about how best to achieve our mutually shared goals were both informative and helpful.

In your presentation to the conference, you reiterated what you have publicly stated on many occasions - "any proposal, if it is to go anywhere, must enjoy the support of both the Native community and myself. In short, we have to be together on this one."

I applaud you for your commitment to the people most affected by the McDowell decision - the Native people of Alaska. On behalf of AFN, I pledge our continued cooperation and assistance to a timely resolution of the situation facing us today.

In your presentation you outlined three requirements for an acceptable solution.

- (1) The approach must be along the lines of a constitutional amendment;
- (2) the constitutional amendment must, at a minimum ensure the continued subsistence priority for rural Alaskans on both state and federal lands; and

(3) passage of the constitutional amendment cannot be put at risk by the inclusion of language that will meet with opposition from those - legislators and voters alike - who might otherwise endorse a rural subsistence preference.

As a result of our deliberations over the two-day meeting, I believe we are in agreement with your three requirements.

In that regard, by a unanimous vote, on April 11 the conference adopted a resolution that urges AFN to support an amendment to the Alaska Constitution to grant the legislature authority to regulate subsistence resources consistently with federal laws and retain fish and game management authority on federal lands. The amendment that Representative Lyman Hoffman recently proposed would achieve that result.

However, the resolution's support for a constitutional amendment is not unconditional. Rather, the amendment conditions support on the State, prior to July 1, initiating a review of "all State subsistence statutes, policies, regulations, programs and practices in every area of State jurisdiction in order to establish all overall subsistence management regime that is responsive to the true subsistence needs of affected Alaskans." Such a review has an important purpose. The Alaska subsistence statute merely establishes state policy. The statute delegates implementation of that policy to the Alaska Board of Fisheries and Board of Game, whose members have broad administrative discretion to exercise independent judgment. For that reason, no matter how wise the policy it codifies and no matter how carefully it is drafted, over time, no subsistence statute is any better or worse than the people who implement it.

As you know, in the early 1980s several Board members exercised their administrative discretion in a manner purposely and repeatedly calculated to prove that the State subsistence law was unworkable. While considerable progress has been made since then, both during your and during the previous administration, to ensure that individuals appointed to the boards are committed to exercising administrative discretion to implement the Alaska subsistence statute in good faith and with appropriate sensitivity to the needs and lifestyle of Alaska Natives and other residents who depend upon fish and game for their sustenance, at best, the boards' implementation has been uneven, particularly in southeast Alaska.

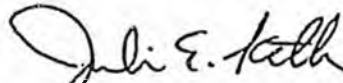
In addition, time and time again, problems between subsistence users and the State regulatory system escalate and

turn into conflicts which eventually end up in court. This costs both the State and the subsistence users much time, energy and money. In our view, litigation should be an avenue of last resort. A thorough review of the State regulatory system as it affects real people could provide us both an opportunity to make government work better for people and cut down the costs in continuing to litigate problems.

For these reasons, the Native leaders who attended the statewide subsistence conference were of the strong opinion that a thorough independent review of the boards' implementation of the Alaska subsistence statute is long overdue.

To be effective, such a review must involve Native organizations whose membership has been adversely affected by board implementation decisions. On behalf of AFN, I would like to commit our organization to working with you, Commissioner Collinsworth, ADF&G staff, the boards and all other interested parties to ensure that such a comprehensive review can proceed as soon as possible.

Sincerely,



Julie E. Kitka
President

cc: AFN Board of Directors
AFN Legislative Committee
RurAL CAP
Association of Village Council Presidents
Tanana Chiefs Conference
Southeast Native Subsistence Commission

ALASKA FEDERATION OF NATIVES, INC.

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



SUBSISTENCE SUMMIT CONFERENCE ALASKA FEDERATION OF NATIVES RESOLUTION NO. 90-1 APRIL 11, 1990

ENTITLED: Alaska NATIVE SUBSISTENCE RIGHTS:
AN AFFIRMATION AND A STRATEGY

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

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

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

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

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

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

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

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

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

NOW THEREFORE BE IT RESOLVED that the Alaska Federation of Natives is directed by the delegates herein assembled at the Subsistence Summit Conference to adopt as its principal direction and recommends to all appropriate Native organizations the following:

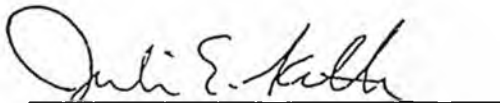
- Act to continue to support the inherent Native rights to subsistence resources and uses.
- Act to gain approval of an amendment to the Constitution of the State of Alaska that allows the State to exercise management jurisdiction over all fish, wildlife, plant and other renewable natural resources within its boundaries and provides that the State shall exercise management of subsistence resources therein in accordance with applicable federal law.
- Act prior to July 1, 1990, to have the State of Alaska review and revise as necessary all State subsistence statutes, policies, regulations, programs and practices in every area of State jurisdiction in order to establish an overall subsistence management regime that is responsive to the true subsistence needs of affected Alaskans. Such review and revision shall include representation from Native organizations that represent those Alaskans directly affected. This review shall seek to establish a definition of "rural" which includes as many Alaska Native people as possible and that the State administration adopt a subsistence system for individuals not in "rural" areas who can demonstrate traditional and customary utilization of natural resources. Such review and revision shall be undertaken with the fundamental intent to allow those Alaskans who by custom, tradition, location, and circumstance have practiced subsistence use of Alaska's resources up to the present and will in the future, to do so in an appropriately responsive, sensitive, comprehensive, timely and continuing manner.

- Act immediately to request and to take action to involve affected Native organizations directly and fully in development, promulgation and implementation of any federal subsistence management regime developed for federal lands in the event State management is terminated. Native organizations shall resist, with all possible force, any attempt by the State of Alaska to contract with the federal government for any role in managing federal lands for subsistence uses. Tribal contracting for management of federal lands for subsistence uses will be strongly supported.
- Act to initiate a vigorous campaign to educate and familiarize public officials and legislators with all aspects of subsistence resources and uses.
- Act to initiate a vigorous registration campaign across the State of Alaska.

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

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

Passed and approved unanimously by delegates to the AFN Subsistence Summit Conference this 11th day of April, 1990.



Julie E. Kitka
President

ALASKA FEDERATION OF NATIVES, INC.

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



SUBSISTENCE SUMMIT CONFERENCE
ALASKA FEDERATION OF NATIVES
RESOLUTION NO. 90-2
APRIL 11, 1990

ENTITLED: ALASKA NATIVE SUBSISTENCE RIGHTS: A PRIORITY FOR
ALASKA NATIVE TRIBAL MEMBERS

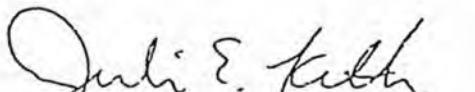
WHEREAS, Alaska Native tribes have managed fish and game in their traditional areas since before anyone can remember, and both the Native people and the animals benefited from tribal management; and

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

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

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

Passed and approved unanimously by the delegates to the AFN Subsistence Summit Conference this 11th day of April, 1990.


Julie E. Kitka
President

ALASKA FEDERATION OF NATIVES, INC.



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SUBSISTENCE SUMMIT CONFERENCE
ALASKA FEDERATION OF NATIVES
RESOLUTION NO. 90-3
APRIL 11, 1990

WHEREAS, the McDowell v. State decision by the Alaska Supreme Court puts the State out of compliance with the federal subsistence preference found in Title VIII of ANILCA and will lead to a federal assumption of fish and game management authority on federal lands in the State after July 1, 1990, unless the law is changed; and

WHEREAS, there is a substantial doubt that the law can be changed in time to avoid federal takeover of fish and game management on federal lands; and


WHEREAS, joint State and federal planning for implementing a dual fish and game management system in the State after July 1, 1990, has taken place without participation or over consultation with the Alaska Federation of Natives or other Native organizations; and

WHEREAS, the sound management of Alaska's fish and game resources is inseparable from Native culture and tradition and must be protected by all possible means; and

WHEREAS, Representative Lyman Hoffman has proposed a State constitutional amendment which would allow the State to manage subsistence resources in accordance with federal law and retain fish and game management authority on federal lands.

NOW THEREFORE BE IT RESOLVED that the body assembled herein directs the Alaska Federation of Natives to work towards amending the State constitution to allow the State to manage subsistence resources consistently with federal laws and retain fish and game management authority on federal lands.

Passed and approved unanimously by the delegates to the AFN Subsistence Summit Conference this 11th day of April, 1990.


Julie E. Kitka
President

Scientific Name	Common Name	Historic range	Status	When listed	Critical habitat	Special rules
Boreognathae—Borago family						
<i>Cryptantha crassipes</i>	Teringue Creek cat's-eye	U.S.A. (TX)	E		NA	NA

Dated: February 28, 1990
 Richard N. Smith,
 Acting Director, Fish and Wildlife Service.
 [FR Doc. 90-8577 Filed 4-12-90; 8:45 am]
 BILLING CODE 4310-06-M

50 CFR Part 35
RIN 1018-AB43

Intention To Propose Interim Rules Implementing Title VIII of the Alaska National Interest Lands Conservation Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to propose rules and request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that it will be developing interim regulations pertaining to the implementation of the subsistence priority for rural residents of Alaska under title VIII of the Alaska National Interest Lands Conservation Act of 1980. The Alaska Supreme Court recently ruled that the laws used by the State of Alaska to provide the subsistence priority required by title VIII violated the Alaska Constitution. The Alaska Supreme Court stayed its decision until July 1, 1990. Should the State be unable to rectify the situation, the Federal government may be required to take over the implementation of title VIII on public lands on July 1, or potentially sooner.

DATES: For written comments to be considered in the initial drafting of the rules, they should be received by May 14, 1990.

ADDRESSES: Comments should be addressed to the Regional Director, ATTN: Glenn Ellison, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Glenn Ellison, 1011 E. Tudor Road, Anchorage, Alaska 99503, telephone (907) 788-3542.

SUPPLEMENTARY INFORMATION: Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3128) requires the Secretary of the

Interior to implement a program to grant preference in favor of subsistence uses of fish and wildlife on public lands unless the State of Alaska implements a subsistence program consistent with ANILCA's requirements. The State of Alaska has implemented such a program since the enactment of ANILCA in 1980 pursuant to findings by the Department of the Interior that the State subsistence program is consistent with ANILCA. In December 1989, however, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural limitation in the State subsistence definition, which is required by ANILCA, violates the Alaska Constitution. The Court stayed the effect of the decision until July 1, 1990.

As a result, the Department of the Interior may be required to take over the implementation of title VIII of ANILCA on public lands on July 1, 1990. The Service, as the lead agency in the process of writing interim regulations for subsistence management on public lands. These rules would impact the subsistence use of fish and wildlife resources on public lands in Alaska managed by the Fish and Wildlife Service, National Park Service, Bureau of Land Management, Forest Service, Air Force, Army and various other Federal land managing agencies. This notice solicits comments and suggestions from resource users, other Alaskans and the general public on how title VIII should be implemented on public lands. Due to the uncertain nature of the situation and short time available, the development of these regulations is a contingency against the sudden requirement for the Federal government to take over implementation of title VIII on public lands. The mandates under which the regulations must operate include, but are not limited to the following:

- (1) Ensure the maintenance of healthy fish and wildlife populations;
- (2) Define subsistence uses as the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the

making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; and for customary trade;

(3) Provide for nonwasteful subsistence uses of fish and wildlife and other renewable resources as the priority consumptive use of such resources on public lands, when it is necessary to restrict consumptive uses;

(4) Provide subsistence users reasonable access; and

(5) Provide for a system of regional participation.

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

The potential need for quick action precludes a longer comment period than would normally be the case. Should Federal management become reality, it is the Federal government's intention to work in close cooperation with the State and minimize disruption to fish and wildlife users and historical state management of resident fish and wildlife. Title VIII allows reasonable regulations to provide access and to protect the viability of all wild renewable resources. The protection of wild renewable resources and the opportunity to utilize those resources by rural Alaskan residents on public lands for subsistence purposes are of paramount importance to the Federal government and to the public as a whole.

If Federal management appears to be required beyond December 31, 1990, the development of permanent regulations will commence in early July 1990. Permanent regulations will provide for regional councils and extensive public involvement in development of the permanent regulations and annual rule making. This regulation writing effort will include a Notice of Intent, public comment period and the acceptance of written and verbal comments throughout the process.

Dated: April 6, 1990.
 John F. Turbot,
 Director, U.S. Fish and Wildlife Service.
 [FR Doc. 90-8534 Filed 4-12-90; 8:45 am]
 BILLING CODE 4310-06-M



Integrity, Pride in Heritage, Progress

NEWS RELEASE

FOR IMMEDIATE RELEASE
April 13, 1990

CONTACT: Janice Ryan
274-3611

NATIVE SUBSISTENCE CONFERENCE ADOPTS RESOLUTION

More than 700 Alaska Natives, representing villages, regional and statewide organizations, gathered at the Egan Convention Center in Anchorage this week for two days of intensive discussions of the current subsistence issue. The Conference, to which all Native people and organizations were invited, was hosted by the Alaska Federation Natives on April 10 and 11. It concluded with a five-hour public hearing before the House and Senate Resources Committees of the Alaska State Legislature.

The issue at stake is continued Federal and State protection of subsistence uses for Alaska Natives and other rural residents throughout the State.

During the first day and one-half, participants listened to speakers and panelists, including Governor Steve Cowper, Senator Ted Stevens (by pre-recorded videotape), Congressman Don Young, Interior Secretary Manuel Lujan, State legislators, Native leaders and representatives of commercial fishing, environmental and sport hunting and fishing groups. Among the topics presented and submitted for discussion on the floor:

- the recent Alaska Supreme Court decision in McDowell v. State which declared that the State subsistence law of 1986 - providing a subsistence priority to all rural Alaskans, Native and non-Native alike - was unconstitutional;
- the imminent prospect of a Federal takeover of fish and game management on Federal lands, if no State solution to the constitutional crisis can be found by July 1, 1990;
- how such a system of "dual management" (with the Federal government implementing a rural subsistence priority on Federal lands and the State government an as-yet unknown subsistence policy on State and private lands) would actually work, given unknown plans of the Federal agencies and unresolved issues in Federal and State courts;

****more****

- the political risks to Alaska Natives and the State as a whole of persuading the U.S. Congress to open the Alaska National Interest Lands Conservation Act (ANILCA) to amend the federal subsistence law; and,
- various options and legislative processes by which the State Constitution might be amended to bring Alaska back into compliance with Federal law and avoid Federal intervention.

On Wednesday, Secretary Lujan addressed the Conference, stating that the Federal government will fulfill its non-discretionary obligations under ANILCA and is already deeply involved in planning for that contingency on July 1. However, the Secretary strongly urged that the State of Alaska act expeditiously to solve the problem at the State level, and to avoid the necessity of a Federal takeover. Governor Cowper echoed this point in his remarks, while making it clear that he would not support a state measure which was not politically viable and did not have the backing of the Native community. Senator Stevens and Congressman Young reiterated previous public statements on the dangers of opening ANILCA in the Congress, and urged that the State Legislature and the Governor solve the problem in Juneau before the end of the legislative session.

On the final afternoon of the Conference, a lengthy debate within the Native community was held and a variety of positions were presented and argued. Prior to adjournment, conferees unanimously adopted several resolutions representing a balance of viewpoints, recommending that all Native organizations seek:

- to continue to support the inherent Native rights to subsistence uses and resources;
- to gain approval of a State constitutional amendment allowing the State of Alaska to continue exercising fish and game management on all lands within its boundaries in accordance with applicable Federal law (ANILCA);
- to advocate a thorough review of the entire system of State management of subsistence, involving Native individuals and organizations directly affected, addressing the definition of "rural," emphasizing the needs and rights of customary and traditional subsistence users, and recommending necessary changes in statutes and regulations to improve State operation of subsistence management - and to make such a review process a prerequisite for continued Native support of a constitutional amendment to retain fish and game management in State hands;

- to involve Native people and their organizations directly in the development and implementation of any Federal subsistence management regime on Federal lands, in the event that dual management occurs after July 1, with specific intention to resist any attempt by the State of Alaska to contract with the Federal government for any role in managing subsistence on Federal lands and to maximize opportunities for the contracting of federal management responsibilities to Native tribal organizations;
- to initiate a campaign of public education to familiarize legislators, other officials and the general public with the facts of subsistence resources and uses;
- to initiate a vigorous campaign of voter registration throughout Alaska.

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AFN TESTIMONY TO STATE HOUSE RESOURCES COMMITTEE BY JULIE KITKA

(APRIL 20, 1990)

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

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

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

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

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

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

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

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

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

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

IS POLITICS. ALL THE AMENDMENT ITSELF WOULD DO IS TO CLEAR AWAY THE CONSTITUTIONAL OBJECTION FOUND BY THE SUPREME COURT IN MCDOWELL AND TO GIVE THE LEGISLATURE A POLITICAL OPTION IT CANNOT NOW CHOOSE, EVEN TO SAVE ITS OWN CONTROL OF FISH AND GAME.

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

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

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

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

I CANNOT OVERSTATE, MR. CHAIRMAN, THE IMPORTANCE OF ACTING EXPEDITIOUSLY. ADJOURNMENT OF THIS SESSION IS SCHEDULED IN LESS THAN THREE WEEKS. SEVEN DAYS AGO THE UNITED STATES FISH AND WILDLIFE SERVICE PUBLISHED IN THE FEDERAL REGISTER ITS FORMAL NOTICE OF "INTENTION TO PROPOSE INTERIM RULES IMPLEMENTING TITLE VIII OF THE ALASKA NATIONAL

INTEREST LANDS CONSERVATION ACT." WHY? AS INTERIOR SECRETARY LUJAN STATED AT OUR CONFERENCE LAST WEEK, THE UNITED STATES DOES NOT WISH TO COME INTO ALASKA AND TAKE OVER FISH AND GAME MANAGEMENT ON FEDERAL LANDS. BUT IT WILL DO SO IF THERE IS NO SOLUTION AT THE STATE LEVEL BY JULY 1. THE INTERIOR DEPARTMENT IS NOW GEARING UP TO DO JUST THAT, AND FEDERAL LAW REQUIRES IT TO GO THROUGH A PUBLIC CONSULTATION PROCESS ON INTERIM AND PERMANENT RULE - MAKING. THE DEADLINE FOR RECEIPT OF RECOMMENDATIONS AND COMMENTS AT INTERIOR IS MAY 14.

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

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

BE PERSUADED TO ADOPT SOME FORM OF STATUTORY LANGUAGE WHICH, WHILE PERHAPS SATISFYING THE STATE CONSTITUTION, WOULD STILL BE OUT OF COMPLIANCE WITH FEDERAL LAW. I URGE THE COMMITTEE TO SEE THAT EITHER OF THE LAST TWO OPTIONS REPRESENTS A FAILURE OF POLITICAL WILL AND WILL PRECIPITATE A LONG-TERM CRISIS OF FISH AND GAME MANAGEMENT IN ALASKA WHICH WE SHALL ALL COME TO REGRET.

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

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

LATER DESCRIBE IT AS HAVING BEEN UNAVOIDABLE OR UNINTENDED.

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

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

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

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

MR. HOPSON SAID:

"WE ALL HAVE A RESPONSIBILITY TO MANAGE THE RESOURCES AND THE ANIMALS GOD HAS PUT ON THIS EARTH. WE MIGHT ASK OURSELVES WHO ARE WE MANAGING IT FOR. IS THIS AN ISSUE OF WHO GETS TO TAKE THE LAST SEAL OR THE LAST CARIBOU? IS THIS AN ISSUE OF RETURNING TO A LIFESTYLE WHICH HUNTS WITH BOWS AND ARROWS OR LIVES WITHOUT MODERN CONVENIENCES? OR IS IT, MORE APPROPRIATELY, AN ISSUE OF KEEPING OUR CULTURE ALIVE

AND DYNAMIC, NOT A MUSEUM RELIC? A CULTURE IS TO BE LIVED AND EXPERIENCED, NOT STUDIED AND OBSERVED.

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

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

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

FROM THAT PERSPECTIVE, WE STRONGLY URGE THE LEGISLATURE TO ACT EXPEDITIOUSLY, TO ADOPT A CONSTITUTIONAL AMENDMENT IN COMPLIANCE WITH FEDERAL LAW AND TO MOVE FORWARD IN THE