

**ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672**  
**6560 SENATE RESOURCES**

969

EFFORT TO RETAIN FIS<sup>H</sup> AND GAME IN THE HANDS OF THOSE WHO  
KNOW BEST HOW TO MANAGE THEM - THE ALASKANS.

THANK YOU.

**PRE-REGISTRATION**

Name: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

YES, I DO plan to attend.

NO, I DO NOT plan to attend.

**ACCOMMODATIONS**

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

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

(907) 274-3611

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

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**SUBSISTENCE:  
A Strategy for Our Future**

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



*A Conference of the Native Community*

SUBSISTENCE: A Strategy for Our Future

# **SUBSISTENCE: A Strategy for Our Future**

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## ***THE PURPOSE OF THE SUBSISTENCE SUMMIT CONFERENCE IS:***

- \* To provide Alaska Native leaders with the best available **INFORMATION** on the current political and legal challenge to our subsistence way of life, and to present such information in ways which respect the diversity of interests within the Native community and empower Natives to act.
- \* To provide the opportunity for Native leaders to express their **POSITIONS, OPINIONS AND FEELINGS** on the subsistence issue, on its present and future impacts on the well-being of our people, and on effective strategies for protecting our long-term interests.
- \* To generate creative **IDEAS** on how the Alaska Native community can deal effectively with the political opposition on subsistence and related issues of public policy.
- \* To develop an effective network of **COMMUNICATION** in the statewide Native community between individuals, communities and organizations as we confront the external challenge to our subsistence economies and cultures.
- \* To encourage **TRUST AND COOPERATION** among all Alaska Natives and their organizations, while respecting the cultural, geographical and generational diversity of our people.

To Alaska Native People:

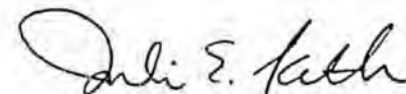
On behalf of the Alaska Federation of Natives, I invite you to attend an important statewide summit conference of the Alaska Native community on subsistence issues. The meeting will be held on April 10-11, 1990, at the Egan Convention Center in Anchorage. Its theme will be **SUBSISTENCE: A Strategy for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

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

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

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

Sincerely,



Julie Kitka  
President

# ALASKA FEDERATION OF NATIVES, INC.

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



## FEDERAL/STATE OPTIONS

The following is an outline of the major legal options which have been suggested to date for solving the current subsistence problem in Alaska, beginning with an historical review of how we got here.

### I. CHRONOLOGY OF EVENTS LEADING TO MCDOWELL V. STATE:

1960 - The *Federal government* transferred authority for management of fish and game in Alaska to the new State government.

1971 - The *Alaska Native Claims Settlement Act (ANCSA)* extinguished aboriginal hunting and fishing rights. No law was enacted on protection of subsistence, but the Conference Report stated Native subsistence and subsistence lands would be protected by the State of Alaska and Department of Interior.

1978 - The *State subsistence law* created a priority for subsistence over all other fish and game uses. It did not define subsistence users (e.g., as "rural residents," "Natives," or other).

1980 - The *Alaska National Interest Lands Conservation Act (ANILCA)* required a subsistence priority for rural residents on Federal "public lands." It also said the State of Alaska could manage fish and game on all lands if it enacted a law granting a subsistence priority to rural residents, in compliance with ANILCA.

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1982 - *Ballot Proposition 7* to repeal the State's subsistence priority was rejected by voters.

1985 - The *Madison* decision was issued by the State Supreme Court which ruled that the 1978 State law did not specifically allow the Boards to grant a subsistence priority to rural residents.

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## II. McDOWELL v. STATE DECISION

On December 22, 1989, the State Supreme Court ruled that the State law (1978, amended in 1986) granting a subsistence priority based solely on residency is unconstitutional under the Alaska State Constitution.

The impact of this decision is clear: State law is now out of compliance with ANILCA. The former rules remain in effect until July 1, 1990, as a result of the Supreme Court's stay. After that, if there is no State and/or Federal solution, "dual management" will occur: the Federal government will take over management of fish and game on its "public lands" (more than 60 percent of lands in Alaska), while the State will retain management on State and private lands (including Native corporation lands).

## III. LEGAL AND POLITICAL OPTIONS FOR SOLUTION

Over all, there are four kinds of choices: to amend the State Constitution, to amend ANILCA, to amend both the State Constitution *and* ANILCA, or to do nothing.

### A. AMEND THE STATE CONSTITUTION.

Process: The Alaska Legislature must pass an amendment resolution by 2/3 vote of both houses (at least 27 Representatives and 14 Senators). The amendment must then be approved by a majority of voters in the General Election on November 6.

Substance: At least two major options have been mentioned to date.

1. Amend the State Constitution to allow the Legislature to adopt a law giving a subsistence priority to rural residents, thus complying with ANILCA.

Advantage: This option would leave the current system in place. The State of Alaska could continue to manage fish and game on all lands. This option requires no amendment to ANILCA.

Disadvantage: This option still requires a definition of "rural" (Kenaitze decision). The definition chosen by the Federal District Court might exclude some Native communities from the subsistence priority (particularly the Kenai Peninsula, Southeast Alaska and perhaps some regional centers).

2. Amend the State Constitution to allow the State to retain fish and game management on all lands by permitting the Legislature to adopt laws consistent with valid Federal law (ANILCA).

Advantage: This option holds greater appeal for Alaska legislators and voters, stressing State management rather than allocation priorities. It also leaves the current system of management in place under the State, while requiring no amendment to ANILCA.

Disadvantage: This option still requires a definition of "rural."

B. AMEND THE STATE CONSTITUTION AND ANILCA TO AGREE.

Process: The Alaska Legislature must pass an amendment resolution by a 2/3 vote of both houses (at least 14 senators and 27 representatives). The amendment must then be approved by a majority of voters in the General Election on November 6. The U.S. Congress (both the House of Representatives and Senate) must then adopt an amendment to ANILCA, and this must be signed by the President.

Substance: At least three major options have been mentioned to date.

1. Amend the State Constitution and ANILCA to allow a subsistence priority for Alaska Natives.

Advantage: This option protects Natives' subsistence rights statewide and includes all Natives resident in Alaska. It does not require that "rural" be defined.

Disadvantage: This option excludes non-Native rural people who depend on subsistence (many of whom are members of Native families). This may be seen by legislators and voters as a racial distinction.

2. Amend the State Constitution and ANILCA to allow a subsistence priority for Natives and rural residents.

Advantage: This option protects both Native subsistence rights statewide and the interests of other rural residents who depend on subsistence.

Disadvantage: This option may be seen by legislators and voters as a partly racial distinction. It still requires a definition of "rural."

3. Amend the State Constitution and ANILCA to allow a subsistence priority for rural residents and members of identifiable groups with cultures and traditions of subsistence use.

Advantage: This option would probably protect both Native and non-Native rural subsistence rights.

Disadvantage: "Cultures and traditions" might be interpreted in ways which harm Native interests. This option may still be seen by legislators and voters as a de facto racial distinction. It still requires a definition of "rural."

#### C. AMEND ANILCA.

Process: The U.S. Congress (both the House and Senate) must adopt an amendment to ANILCA, and this must be signed by the President.

Substance: At least two major options have been mentioned to date.

1. Amend ANILCA to conform to the State Constitution, (e.g., permit system or other criteria).  
NOTE: This would require that a new State law implementing this system be adopted by the Legislature and signed by the Governor.

Advantage: Some urban subsistence users, such as urban Natives, might qualify.

Disadvantage: This option is not certain to satisfy the State Supreme Court's standards of constitutionality. It might also divide villages and Native families, according to the permit criteria chosen. It would be expensive, creating a large new bureaucracy and much paperwork.

2. Amend ANILCA to pre-empt State law, requiring a subsistence priority for particular groups (currently rural residents) on all lands in Alaska. (NOTE: This might be managed directly by Federal agencies or imposed by Congress on implementing State agencies.)

Advantage: This option unifies all fish and game management in Alaska under Federal law.

Disadvantage: Politically, it is very difficult to achieve, particularly without the agreement of the State and the Alaska Congressional Delegation.

D. DO NOTHING.

On July 1, 1990, the Federal government (Secretaries of Interior and Agriculture, with the U.S. Fish and Wildlife Service as lead) will take over management of fish and game on its "public lands," while the State of Alaska will have fish and game management on the remaining State and private lands.

Unresolved Issues:

1. Will the Federal government manage fish and game on its "public lands" directly (through the Federal agencies) or indirectly (by imposing Federal subsistence priority for rural residents on State agencies)?
2. Will Federal jurisdiction include only federally-owned "public lands," or more than that? Will Federal jurisdiction reach out for migratory salmon in navigable waters or migrating animals on any lands, in order to avoid management chaos?
3. Will the State and Federal management systems have very different regulations, making it difficult for subsistence users to follow? Will confusion and uncertainty lead to community disruption and/or management chaos?
4. How will the Federal government define "rural," and how will this impact the Kenai Peninsula, Southeast and perhaps regional centers?
5. Will the accumulation of problems and resentments from a dual management system have further negative impact on statewide politics and ethnic group relations in Alaska? Will the increased problems and resents be focused on Alaska Natives and the U.S. Congress, and will they lead to a repeal or watering down of federal subsistence law?

NOTE: A fifth strategy (judicial) has already been tried, without success. Both the State of Alaska and AFN petitioned the State Supreme Court to rehear the McDowell case and to reconsider its decision. The petitions were rejected.

# Natives reach consensus on subsistence

## Summit endorses Hoffman proposal

by Geoff Kennedy  
for the Tundra Times

Alaska Natives are now publicly speaking with one voice. They've agreed to seek a rural preference constitutional amendment in the immediate future and Native preference as a long-term solution to the state's subsistence problem.

### The people speak

—Page four

The Alaska Federation of Natives Subsistence Summit-Conference, which drew about 700 people, produced the long-awaited consensus after a three-hour, closed-door meeting Wednesday.

Conference participants endorsed a proposal by Rep. Lyman Hoffman, D-Bethel, to amend the State Constitution to allow the state to conform to federal law. The Alaska National Interest Lands Conservation Act of 1980 provided a subsistence priority for rural Alaskans.

The 1986 state subsistence law conformed to ANILCA, but the state Supreme Court last December declared that the law violated the State Constitution.

Hoffman's proposal doesn't endorse a rural preference in so many words, but does so indirectly by endorsing conformity to the federal law which provides the rural preference.

A member of Hoffman's staff says the proposal also would provide the state flexibility in case ANILCA is amended to provide a Native preference.

The conference also 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."

continuation of state management of fish and game on federal lands in Alaska. But it threatened to withdraw that support unless the state reviews and revises its subsistence management system.

In such a review, the state should define rural to include as many Alaska Natives as possible, the conference said, and it should establish a subsistence system for persons who don't live in rural areas but who can show a "traditional and customary" use of subsistence resources.

The review and revision process must include representatives of Native organizations, the conference said, and the state must devise a management system "that is responsive to the true subsistence needs of affected Alaskans."

If the state fails to enact a subsistence law that meets federal requirements, the conference wants the federal government to involve Native organizations directly in any federal takeover of fish and game management on federal lands in the state.

The conference doesn't want the state to contract with the federal government to manage such federal lands. Instead, it encourages the federal government to contract with tribal organizations to do that job.

Interior Secretary Manuel Lujan says federal law requires him to take over the management of federal lands in Alaska unless the state enacts a law that meets federal requirements. Lujan gave that message at least three times Wednesday: at an Anchorage Chamber of Commerce breakfast, at the summit conference and at a special evening legislative teleconference held at the site of the conference.

As the leadoff witness at the teleconference, Lujan told lawmakers there is "no better thing than for the Legislature to pass a constitutional amendment, and, of course, get it signed by the governor so that we can continue the arrangement which we have right now."

During the summit conference, Rep. Don Young, R-Alaska, and Gov. Steve Cowper endorsed a rural preference constitutional amendment. Sen. Ted Stevens, R-Alaska, sent a videotaped message urging participants to "let reason prevail" and support a rural preference.

Cowper and Rep. George Jacko, D-Pedro Bay, have also introduced measures to provide a rural preference constitutional amendment. Rep. Kay Wallis, D-Fort Yukon, has introduced a measure that would provide a Native-preference constitutional amendment.

Amending the constitution requires approval by two-thirds of each house of the Alaska Legislature and then approval by a majority of the state's voters.

Mike Lane of KSKO in McGrath assisted in this story.

# Native people speak out on subsistence

by Geoff Kennedy  
for the Tundra Times

It started as an informational meeting, but the flow of information soon reversed direction at the Alaska Federation of Natives subsistence conference last week in Anchorage.

AFN had drawn criticism from many rural Natives when it supported an amendment to the State Constitution to provide a subsistence preference for rural Alaskans. Critics complained that the AFN made the decision in Anchorage without consulting rural Natives who want a Native preference instead.

AFN maintains that such a proposal has almost no chance of getting by the first step in the legislative process, approval by two-thirds of both houses of the Legislature.

A Supreme Court justice has given the state until July to replace the subsistence law declared unconstitutional last December.

By the middle of the first day of the two-day conference, a number of participants grew impatient with the format, which consisted of panels of agency representatives briefing participants about recent court decisions, prospects of federal and state co-management of fish and game on federal and state lands in Alaska, implications of changing the Alaska National Interest Lands Act and prospects of changing the State Constitution to provide subsistence priorities for rural and Native residents.

Participants increasingly used the question-and-answer periods to communicate their thoughts and feelings instead.

Rudy James of Ketchikan took issue with Sen. Ted Stevens, R-Alaska, Rep. Don Young, R-Alaska, and Interior Secretary Manuel Lujan, all of whom warned Alaskans that the federal government would be forced to take over management of fish and game on federal lands in Alaska July

1, if the state does not devise a subsistence law that conforms to ANILCA. They said this would not be desirable.

James said Southeast Alaska Natives fared better before the state took over management of fish and game.

"Non-Natives control the Legislature. Our lifestyles have been crushed by (the state)," he said to Sen. Jack Coghill, R-Nenana.

The state doesn't have to answer to anyone for its treatment of Natives, he said, but the federal government has to answer to the United Nations. When President Bush mentions human rights violations in the Soviet Union, he knows Soviet President Mikhail Gorbachev can point out how the United States treats Natives, James said.

Coghill said he, like James, was an Alaska Native.

"What tribe?" James retorted.

Coghill said he comes from a clan in Scotland. The Nenana senator said he's aware of the mistreatment of Native Americans in other states and that's why he and others who drew up the State Constitution ensured no one would discriminate against Natives. When Alaska became a state, it prevented the federal government from taking Alaska's wealth out of the state, Coghill said.

Then, why is it, James asked, that before statehood 90 percent of the fishermen in his area were Native and now 90 percent are non-Natives?

Later, James answered his own question.

"It comes down to money. The fact that we've been doing it for thousands of years means nothing."

James blames the state government itself for what he considers the erosion of Native subsistence rights.

As an example, he said, his niece, Lillian Charles, was arrested once for scraping pitch from a tree for Native medicine.

The solution to all subsistence pro-



Jesse Foster of Quinhagak addresses the legislative teleconference Wednesday.

blems is a simple one, he said.

"You can't have tribal subsistence without tribal sovereignty. The answer to all these problems is for the state and the federal government to allow tribal sovereignty. One of the greatest crimes is they have taken away our way of living."

Politicians pass laws to govern Tlingit people without even taking the time to understand the culture they're trying to govern, said Matilda Kushnik of Saxman.

Alaska Natives cannot tell the peoples of Europe, Asia and Africa what to do; in the same way European settlers and their descendants cannot come to Alaska and tell Natives how to live, either, Kushnik said. Most non-Native Americans are decent people, she said, and if they understood the situation Alaska Natives are facing, they would permit Natives to carry out their lifestyles.

Elizabeth Keating, originally from Holikachuk, told a panel of Bush Caucus legislators, "We have a consensus in the Native community. We want a Native preference, but you're saying we can't have that."

Gov. Steve Cowper said he understands the sentiments behind the

support for a Native preference, but he said such a proposal is unrealistic.

"I cannot support any policy that has no chance of passage in the 16th Alaska Legislature," he said.

Cowper agreed with Stevens and Young that the state would be worse off trying to amend ANILCA because animal-rights activists in other states could seize the opportunity to ban all hunting and trapping in Alaska.

Doing nothing and allowing a federal takeover would result in two different forms of management of lands in Alaska, and that's poor public policy, Cowper said.

Earlier, Bud Burris of the Alaska Outdoor Council and Wayne Anthony Ross, vice president of the National Rifle Association, said all Alaskans should oppose both a rural and a Native subsistence priority. Ross considers any such priority discriminatory.

Walter Charley of Glennallen disagreed sharply. Charley said he was thrown out of a hotel and denied service at a restaurant in Anchorage in 1940 because he is Native. That, he said, is discrimination.

"Subsistence is not discrimination," he said.



## **SUBSISTENCE:**

### **A Strategy for Our Future**

**Egan Convention Center - Lower Level  
Anchorage, Alaska  
April 10-11, 1990**

## **Conference Guide & Agenda**

# ALASKA FEDERATION OF NATIVES, INC.

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



Open Letter to Alaska Native leaders:

On behalf of the Alaska Federation of Natives and its member organizations, I would like to extend a heart-felt welcome to you. Thank you for taking the time to attend this important two-day summit conference.

As you know, on December 22, 1989, the Alaska Supreme Court ruled the State subsistence law unconstitutional. Since January, in meetings across the state, Native people have been reviewing the legal situation and the range of possible solutions to the serious situation we now face.

Over the course of these next two days, we hope to review the best possible information on the consequences of the McDowell decision as it affects Native people and hunting and fishing rights. We believe that if Native people are informed about political and legal developments which affect them, they can more effectively protect and promote their own interests and the public interest.

Immediately following the two-day meeting, the House and Senate Resources Committees of the Alaska State Legislature will hold a joint hearing on subsistence. The hearing is scheduled for Wednesday, April 11, from 5:30-9:00PM. It will be held at the Egan Convention Center in the same room as this conference. AFN strongly urges you to plan on testifying. Many legislators do not understand why subsistence is critical to the cultural and economic survival of Native families. This is an opportunity for you to share your knowledge and your views on how the situation should be resolved.

Protecting subsistence hunting and fishing will continue to be a challenge to Alaska Natives for some time. We urge you to continue to stay involved. Thank you.

Sincerely,

Julie E. Kitka  
President

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# AGENDA

Tuesday, April 10, 1990

- 8:00am WELCOME - Julie Kitka, AFN President  
INVOCATION - Rev. Anna Frank, Episcopal Diocese of Alaska
- 8:40 INTRODUCTION & PURPOSES - Ralph Eluska, AFN  
PRESENTATION - Walter Charley, Athabascan Elder
- 8:55 REVIEW OF AGENDA - Co-moderators Perry Eaton & Marlene Johnson
- 9:00 PANEL: "CHALLENGES FACING ALASKA NATIVES - SUBSISTENCE"  
Panel Moderators: Perry Eaton & Marlene Johnson Julie Kitka, AFN  
John Shively, NANA Bob Polasky, RurAL CAP Chris McNeil, SEALASKA
- Resource people: Don Mitchell, AFN Counsel  
Bill Caldwell, Alaska Legal Services  
Alan Mintz, DC Counsel  
QUESTIONS FROM THE FLOOR
- 10:30 Break
- ISSUE #1: FEDERAL PRE-EMPTION & DUAL MANAGEMENT OF FISH & GAME
- 10:45 FEDERAL/STATE PANEL: "HOW WOULD IT WORK?"  
Panel Moderator: Johnny Hawk  
Glenn Elison, USF&S Steve Behnke, ADF&G  
Tom Koester, Dept. of Law Stan Leaphardt, CACFA  
QUESTIONS FROM THE FLOOR
- 11:30 PANEL: "HOW WILL IT AFFECT US?"  
Panel Moderator: Chris McNeil, SEALASKA  
Trefon Angasan, BBNC, "Unanswered Questions & Continuing Litigation"  
Ken Johns, CRNA, "Impacts on Villages Surrounded by State & Federal Land"  
Myron Naneng, AVCP, "Impacts on the Y-K Delta"  
Clare Swan, Kenaitze Indian Tribe, "Kenaitze Lawsuit"  
Ed Thomas, T&H, "Co-Management under '638'"  
Walter Sampson, NANA, "Living with Federal Management"  
QUESTIONS FROM THE FLOOR
- 12:30pm Break for lunch

cont. on page 4

Conference Guide/3

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# AGENDA

## Tuesday, April 10, 1990

2:00pm REMARKS BY CO-MODERATORS (AGENDA/PRODEDURES)

### **ISSUE #2: CONGRESS & ANILCA**

2:05 PANEL: "OPENING ANILCA"

Panel Moderator: Edgar Blatchford

David Eluska, RurAL CAP

Cheryl Sutton, KPFA

Willie Kasayulie, ANC

Robert Willard, SENSC

Mitch Demientieff, TCC

Emily Barnett, Sierra Club

Bud Burris, Alaska Outdoor Council

Wayne Anthony Ross, Alaska Outdoor Council

QUESTIONS FROM THE FLOOR

4:00 PRESENTATION BY SENATOR TED STEVENS VIA TAPE

Marie Matsuno Nash, Senator Stevens' Staff Representative

4:20 PANEL: "CONGRESSIONAL STAFF QUESTIONS & ANSWERS"

Panel Moderator: Tim Vvallis

Greg Renkas, Chief of Staff, Senator Frank Murkowski

Greg Chapados, Chief of Staff, Senator Ted Stevens

Rick Agnew, Counsel, Congressman Don Young

CLOSING REMARKS. Eddie Hopson, Inupiat Elder

5:30 Recess

## Wednesday, April 11, 1990

8:30am REMARKS BY CO-MODERATORS (AGENDA/PROCEDURES)

8:40 OPENING REMARKS. Rev. Billy Sheldon, Sr., Inupiat Elder

### **ISSUE #3: STATE CONSTITUTIONAL AMENDMENT**

9:00 GOVERNOR STEVE COWPER

9:20 QUESTIONS & ANSWERS. Mike Irwin, Office of the Governor

9:45 CONGRESSMAN DON YOUNG

10:15 Break

cont. on page 5

# AGENDA

Wednesday, April 11, 1990

10:30am LEGISLATORS' PANEL: "THE NEXT FOUR WEEKS - OPTIONS AVAILABLE TO THE ALASKA STATE LEGISLATURE"  
Panel Moderator: Nels A. Anderson, Jr.  
Sen. Al Adams                      Rep. Eileen MacLean                      Rep. George Jacko  
Rep. Kay Wallis                      Sen. Jack Coghill                      Rep. Lyman Hoffman  
QUESTIONS FROM THE FLOOR

12:30pm Break for lunch

ISSUE #4: CONSTITUTIONAL AMENDMENT APPROACH

1:30 PANEL: VILLAGE PERSPECTIVES  
Dolly Garza, Southeast      Tom Tilden, Bristol Bay      Gary Oskolkoff, Southcentral  
Paul John, Western Alaska      Ronald Brower, Jr., North Slope      Will Mayo, Interior

2:20 PANEL: REGIONAL PERSPECTIVES  
Myron Naneng, AVCP      Robert Willard, SENS      Mitch Demientieff, TCC  
Trefon Angasan, BBNA      Sam Demientieff, FNA

3:10 Break

3:30 PANEL: "WHERE DO WE GO FROM HERE?"  
Ralph Eluska, AFN      Matthew 'ya, RARA      Dewey Skan, Jr., Rural CAP  
Bart Garber, NARF      Byron Mallott, SEALASKA      Willie Kasayulie, ANC

4:45 CLOSING REMARKS Dr. Walter Soboleff, Tlingit Elder

5:00 BENEDICTION Bishop Jacob Nelson, Moravian Mission of Alaska, Bethel

CONFERENCE CLOSING

5:30pm- JOINT HOUSE/SENATE RESOURCES HEARING  
9:00pm

**PLEASE TESTIFY:** This joint House/Senate Resources Committee Hearing is an excellent opportunity for Native people from throughout the State to make clear how critically important subsistence activities are to our cultures, economies and lifestyles. Please take advantage of it and testify.

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# FEDERAL/STATE OPTIONS

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Advantage: This option holds greater appeal for Alaska legislators and voters, stressing State management rather than allocation priorities. It also leaves the current system of management in place under the State, while requiring no amendment to ANILCA.

Disadvantage: This option still requires a definition of "rural."

#### B. AMEND THE STATE CONSTITUTION AND ANILCA TO AGREE.

Process: The Alaska Legislature must pass an amendment resolution by a 2/3 vote of both houses (at least 14 senators and 27 representatives). The amendment must then be approved by a majority of voters in the General Election on November 6. The U.S. Congress (both the House of Representatives and Senate) must then adopt an amendment to ANILCA, and this must be signed by the President.

Substance: At least three major options have been mentioned to date.

1. Amend the State Constitution and ANILCA to allow a subsistence priority for Alaska Natives.

Advantage: This option protects Natives' subsistence rights statewide and includes all Natives resident in Alaska. It does not require that "rural" be defined.

cont. on page 8

*Conference Guide/7*

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## FEDERAL/STATE OPTIONS

Disadvantage: This option excludes non-Native rural people who depend on subsistence (many of whom are members of Native families). This may be seen by legislators and voters as a racial distinction.

2. Amend the State Constitution and ANILCA to allow a subsistence priority for Natives and rural residents.

Advantage: This option protects both Native subsistence rights statewide and the interests of other rural residents who depend on subsistence.

Disadvantage: This option may be seen by legislators and voters as a partly racial distinction. It still requires a definition of "rural."

3. Amend the State Constitution and ANILCA to allow a subsistence priority for rural residents and members of identifiable groups with cultures and traditions of subsistence use.

Advantage: This option would probably protect both Native and non-Native rural subsistence rights.

Disadvantage: "Cultures and traditions" might be interpreted in ways which harm Native interests. This option may still be seen by legislators and voters as a de facto racial distinction. It still requires a definition of "rural."

### C. AMEND ANILCA.

Process: The U.S. Congress (both the House and Senate) must adopt an amendment to ANILCA, and this must be signed by the President.

Substance: At least two major options have been mentioned to date.

1. Amend ANILCA to conform to the State Constitution, (e.g., permit system or other criteria).  
NOTE: This would require that a new State law implementing this system be adopted by the Legislature and signed by the Governor.

Advantage: Some urban subsistence users, such as urban Natives, might qualify.

Disadvantage: This option is not certain to satisfy the State Supreme Court's standards of constitutionality. It might also divide villages and Native families, according to the permit criteria chosen. It would be expensive, creating a large new bureaucracy and much paperwork.

2. Amend ANILCA to pre-empt State law, requiring a subsistence priority for particular groups (currently rural residents) on all lands in Alaska. (NOTE: This might be managed directly by Federal agencies or imposed by Congress on implementing State agencies.)

cont. on page 9

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## FEDERAL/STATE OPTIONS

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Advantage: This option unifies all fish and game management in Alaska under Federal law.

Disadvantage: Politically, it is very difficult to achieve, particularly without the agreement of the State and the Alaska Congressional Delegation.

### D. DO NOTHING.

On July 1, 1990, the Federal government (Secretaries of Interior and Agriculture, with the U.S. Fish and Wildlife Service as lead) will take over management of fish and game on its "public lands," while the State of Alaska will have fish and game management on the remaining State and private lands.

### UNRESOLVED ISSUES:

1. Will the Federal government manage fish and game on its "public lands" directly (through the Federal agencies) or indirectly (by imposing Federal subsistence priority for rural residents on State agencies)?
2. Will Federal jurisdiction include only federally-owned "public lands," or more than that? Will Federal jurisdiction reach out for migratory salmon in navigable waters or migrating animals on any lands, in order to avoid management chaos?
3. Will the State and Federal management systems have very different regulations, making it difficult for subsistence users to follow? Will confusion and uncertainty lead to community disruption and/or management chaos?
4. How will the Federal government define "rural," and how will this impact the Kenai Peninsula, Southeast and perhaps regional centers?
5. Will the accumulation of problems and resentments from a dual management system have further negative impact on statewide politics and ethnic group relations in Alaska? Will the increased problems and resents be focused on Alaska Natives and the U.S. Congress, and will they lead to a repeal or watering down of federal subsistence law?

NOTE: A fifth strategy (judicial) has already been tried, without success. Both the State of Alaska and AFN petitioned the State Supreme Court to rehear the McDowell case and to reconsider its decision. The petitions were rejected.

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## UNANSWERED QUESTIONS & CONTINUING LITIGATION

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### **1. Assuming that on July 1, 1990, the State is not in compliance with Title VIII of ANILCA, how did Congress intend the Title VIII subsistence priority to be implemented?**

There are two possibilities. The first possibility is that Congress intended the Title VIII subsistence priority to take the place of State law and intended the U.S. Fish and Wildlife Service and other federal agencies to take the place of the Alaska Board of Fisheries and Board of Game. The second possibility is that Congress intended the Title VIII subsistence to take the place of State law, but intended the Alaska board of Fisheries and Board of Game to implement priority (subject to federal oversight). The first possibility results in dual regulation of the same fish stocks and game populations. The second possibility allows regulation of the taking of fish stocks and game populations to be done by one regulator using two legal standards.

### **2. What is the jurisdiction of the Title VIII subsistence priority?**

Section 804 of ANILCA establishes a federal subsistence priority for the taking of fish stocks and game populations on "public lands" in Alaska. 1) What stocks and populations did Congress intend the term "public lands" to include? 2) Does the section 804 priority apply fishing for fish stocks throughout their ranges (for example, to subsistence fishing for a Yukon River salmon stock up and down the entire Yukon River)? Or is the priority just limited to subsistence fishing that occurs on federal land (for example, fishing inside the boundaries of the Yukon Delta Wildlife Refuge)? 3) Similarly, does the section 804 priority apply to game animals only when they are hunted on federal land? Or does it apply to the hunting of game animals everywhere they roam?

### **3. Which hunters and fishermen did Congress intend the Title VIII subsistence priority to benefit?**

Section 803 of ANILCA limits the subsistence priority to hunters and fishermen who are "rural Alaska residents." In 1986, the Alaska Legislature enacted a law that says that "rural Alaska residents" live in communities and areas in which hunting and fishing for food is a principal characteristic of the economy of the community or area. The Ninth Circuit Court of Appeals has held that Congress intended "rural Alaska residents" to be hunters and fishermen who live in locations that are "sparsely populated, where the economy centers on agriculture or ranching." According to the court: "rural is the antonym of urban and includes all areas in between cities and towns of a particular size." Because of the conflict between these definitions - if the Alaska Constitution is amended to give the Legislature authority to enact laws that comply with Title VIII of ANILCA - the State must deal with the question of "rural." Three policy choices have been identified to date:

- 1) amend the State definition of "rural area" to conform to the Ninth Circuit definition,
- 2) Congress must amend section 803 of ANILCA to conform to the State definition,
- 3) or Congress and the State must amend both federal and state law to enact a new, mutually agreed upon "rural" definition.

*cont. on page 11*

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## Unanswered questions (cont.)

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### 4. *Should the Alaska Legislature pass, and should the voters adopt, a constitutional amendment that authorizes the Legislature to enact laws that comply with Title VIII of ANILCA?*

In 1978, and again in 1986, the Alaska Legislature passed laws of general applicability that the Legislature thought established a subsistence priority in Title VIII of ANILCA. ANILCA requires the benefits of the subsistence priority to be limited to "rural Alaska residents." In McDowell v. State, the Alaska Supreme Court held that the Alaska Constitution does not grant the Legislature authority to limit the benefits of a subsistence priority to rural residents." To give the Legislature the authority that the Court has said it lacks, the Governor and several legislators have introduced bills to amend the Alaska Constitution to allow the Legislature to establish a "rural resident" subsistence priority. The important unanswered questions include:

- 1) Should such an amendment be adopted? If not, should an amendment be adopted that allows the subsistence priority to be limited to Natives, Natives and non-Natives who live in ANCSA villages, or some other group of hunters and fishermen?
- 2) If such an amendment should be adopted, what is the likelihood that the Alaska Legislature, by a 2/3 vote of each house, would agree to put such an amendment on the 1990 election ballot?
- 3) And if it were to appear on the 1990 election ballot, what is the likelihood that such an amendment would be approved by a majority of the voters?

## COURT CASES

There are a number of cases in the federal and state courts in which subsistence users have challenged a variety of State restrictions on subsistence hunting and fishing practices. Some of the most important of these cases were described below. If the McDowell decision results in a dual management system after July 1, these cases will be affected in different ways.

### *THE "RURAL" RESTRICTION*

Kenaitze Indian Tribe v. Alaska (federal court). In this case, the federal court of appeals threw out the State Legislature's 1986 definition of "rural area" (as a place where subsistence is "a principal characteristic of the economy"). This definition had been used to deny subsistence fishing rights to the Kenaitze Tribe and most other subsistence users on the Kenai Peninsula. The court of appeals ruled that the definition was inconsistent with ANILCA's use of the "rural" classification, and that "rural" must be given its ordinary meaning. The federal district court is now considering whether the entire Kenai Peninsula, or only parts of it, are rural for subsistence purposes.

Last summer, the Kenaitze Indian Tribe was permitted, by a preliminary injunction, to operate a single tribal subsistence fishing net. A similar preliminary injunction for the upcoming season is currently being negotiated between the Kenaitze Indian Tribe and the State. The issue of whether the State or the federal government will have jurisdiction over the Kenai fisheries after July 1 has not yet been raised in this case.

## **RESTRICTIONS ON "CUSTOMARY AND TRADITIONAL" USES**

Kitka v. Alaska (federal court). This lawsuit was filed by residents of Sitka. Although the Joint Boards had determined that Sitka was a "rural area" under the State's definition, the Board of Fisheries, following an approach similar to the approach the Joint Boards follow in making the "rural area" determination, ruled that Sitka residents do not qualify for "customary and traditional" uses of any fish or shellfish species, except sockeye salmon and herring. The Board therefore refused to authorize any subsistence uses of shellfish, groundfish, four species of Pacific salmon, and all other finfish. The plaintiffs have challenged these restrictions as violations of ANILCA; they also allege that they are unconstitutional under the federal Constitution. On its own initiative, the federal court has indicated that it might find parts of the City and Borough of Sitka to be non-"rural."

Sumner Strait Advisory Committee v. Alaska (federal court). In this case a local advisory committee and non-Native residents of Port Protection and Port Baker (on the northwest tip of Prince of Wales Island) challenge the finding of the Board of Fisheries that local residents do not qualify for "customary and traditional" subsistence uses of any species of fish (even though the Board of Game has found that they are entitled to subsistence uses of deer). Plaintiffs allege that the Board's action violates ANILCA. They also allege that the Board illegally refused to follow the recommendation of the regional advisory council.

Bobby v. Alaska (federal court). This is the Lime Village case in which the federal court ruled unlawful the Board of Game's closed-season and individual-bag-limit restrictions on subsistence moose and caribou hunting. The court held that the closed seasons were inconsistent with traditional hunting seasons, and that individual bag limits were in conflict with the communal system of sharing game resources. In response to the court's order, the Board eliminated individual bag limit, replacing them with a community harvest-reporting system (but individual harvest tickets are still required). The Board also eliminated the closed season on caribou, but retained two closed moose seasons. Lime Village has objected to the closed moose seasons and the requirement for individual harvest tickets, and the Board of Game has agreed to reconsider those restrictions at its next subsistence meeting. The hunting grounds of Lime Village include both federal and non-federal lands.

John v. Alaska (federal court). In this case residents of Mentasta and Dot Lake, along with the Mentasta Village Council, have successfully argued that ANILCA requires the Board of Fisheries to allow a subsistence fishery at the historic site of Batzulnetas on the upper Copper River, which has been closed to subsistence fishing since 1964. The court ruled that in refusing to permit the subsistence fishery, the Board had not taken the steps and made the findings necessary under the State subsistence law and ANILCA. The court therefore directed the Board to adopt new regulations consistent with the law. A subsistence fishery was conducted at Batzulnetas last summer under a preliminary injunction, and a new preliminary injunction for this upcoming season is currently being negotiated.

Native Village of Dot Lake v. Alaska & Kluti Kaah Native Village of Copper Center v. Alaska (federal court). These cases were filed the first week of January this year when the Alaska Department of Fish and Game, after the McDowell decision came down, issued emergency orders closing the winter Dot Lake subsistence moose hunt and the winter Nelchina subsistence caribou hunt. The hunts were reinstated when the Alaska Supreme Court stayed the effect of its McDowell decision until July 1. The plaintiffs in both cases allege that existing restrictions on their subsistence hunting violate ANILCA; they also allege that they have a constitutional right to engage in subsistence hunting. The Dot Lake moose hunting grounds include mostly non-federal lands, whereas subsistence hunting of the Nelchina caribou herd takes place on both federal and non-federal lands.

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## Continuing Litigation

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Morry and Kwethluk IRA Council v. State (State court at Barrow). In this case a resident of Anaktuvuk Pass and the Kwethluk Tribe challenge, under both ANILCA and the State subsistence law, the \$25.00 tag fee and the hide and skull sealing requirements as applied to the subsistence hunting of grizzly bears. The bear hunting grounds of both villages include mostly federal lands.

### CUSTOMARY TRADE

Tanana Fish and Game Association v. Alaska (federal court). In this case the people of Tanana challenge a Board of Fisheries regulation which prohibits them from selling the roe from Yukon River salmon lawfully taken for subsistence uses. The bulk of this incidental by-product is otherwise wasted. The Village fish and game association argues that limited exchanges of this incidental roe for cash qualifies as "customary trade" within ANILCA's definition of subsistence uses, and that the State therefore cannot lawfully prohibit this trade. The association has developed a program to regulate and limit the roe trade. The local advisory committee adopted the program, but the Board of Fisheries rejected it. The issue whether the Yukon River subsistence salmon fisheries should be managed by the State or the federal government has been raised in this case.

United States v. Sakurai (federal court). In this federal criminal prosecution under the Lacey Act for selling herring roe-on-kelp, the court dismissed the charges against two residents of Hydaburg, who had earned \$7,000 to \$9,000 for such sales during each of the previous two years. The court ruled that such sales were "customary trade" within the meaning of ANILCA, and that the amounts involved did not constitute a "significant commercial enterprise."

### SUSTAINED YIELD

Kwethluk IRA Council v. Alaska (federal court). This case was filed after the Board of Game in March rejected an emergency petition from the Kwethluk Tribe for an immediate, limited subsistence hunt of the Kilbuck Mountains caribou herd. The Board attempted to base its decision on the sustained yield principle. Last week the federal court granted a preliminary injunction requiring the State to make available to the Tribe between April 5 and April 15 a subsistence hunt, with a quota of 50 caribou. The court rejected the Board's sustained yield determination because the State did not have a game management plan for the Kilbuck herd and the Board had not adopted "an articulated and evenly applicable definition of sustained yield." The court criticized the Board for acting "in an *ad hoc* fashion, as though it had unfettered discretion to decide what meaning it would attribute to the sustained yield issue in any particular case." The court found that a hunt of 50 animals would not adversely affect the herd, and that Kwethluk had demonstrated an urgent need for the meat.

Tlingit and Haida Central Council v. State (State court). In this recently filed case, individual Tlingit and Haida Indians and Tlingit and Haida Central Council challenge the State's management of sea cucumbers harvests in Southeast Alaska. They allege that the State is mismanaging this resource by allowing commercial harvests in violation of the sustained yield principle, to the detriment of long-established subsistence uses of sea cucumbers throughout the region.

*THE FOLLOWING BILLS have been introduced by various legislators and the Governor in an attempt to provide a legislative solution to the current situation regarding subsistence. They are listed in order of when they were introduced. For more information on these proposals please contact the bill's sponsor.*

## SPONSORED BY REP. RAMONA BARNES

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 415  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SIXTEENTH LEGISLATURE - SECOND SESSION  
A BILL

For an Act entitled: "An Act relating to subsistence hunting and fishing." BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. AS 16.05.258(a) is amended to read:

(a) The Board of Fisheries and the Board of Game shall identify the fish stocks and game populations, or portions of stocks and populations, that are customarily and traditionally used for subsistence [IN EACH RURAL AREA IDENTIFIED BY THE BOARDS].

\* Sec. 2. AS 16.05.258(c) is amended to read:

(c) The boards shall adopt subsistence fishing and subsistence hunting regulations for each stock and population for which a harvestable portion is sufficient to accommodate the subsistence uses of the stock or population, then the boards may provide for other consumptive uses of the remainder of the harvestable portion. If it is necessary to restrict subsistence fishing or subsistence hunting in order to assure sustained yield or continue subsistence uses, then the preference shall be limited, and the boards shall distinguish among subsistence users on the basis of their [, BY APPLYING THE FOLLOWING CRITERIA:

(1)] customary and direct dependence on the fish stock or game population as the mainstay of livelihood [;

(2) LOCAL RESIDENCY;] and the

(3)] availability of alternative resources.

\* Sec. 3. AS 16.05.258 is amended by adding a new subsection to read:

(g) Methods and means employed in the pursuit, capture, and transport of fish or game for subsistence use may not include

(1) motorized vehicles, including motorized boats, aircraft, snow machines, trucks, and automobiles;

(2) poison or a similar substance;

(3) explosive devices or charges that could affect more than one animal at a time;

(4) gill nets, seines, or long lines;

(5) traps or snares that the Board of Fisheries or Board of Game determines to be inhumane.

\* Sec. 4. AS 16.05.940(29) is amended to read:

(29) "subsistence fishing" means the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources [BY A RESIDENT DOMICILED IN A RURAL AREA OF THE STATE] for subsistence uses with a dip net, spear [GILL NET, SEINE], fish wheel, [LONG LINE,] or other means defined by the Board of Fisheries;

\* Sec. 5. AS 16.05.940(30) is amended to read:

(30) "subsistence hunting" means the taking of, hunting for, or possession of game [BY A RESIDENT DOMICILED IN A RURAL AREA OF THE STATE] for subsistence uses by means defined by the Board of Game;

\* Sec. 6. AS 16.05.940(31) is amended to read:

(31) "subsistence uses" means the noncommercial, customary, and traditional uses of wild, renewable resources [BY A RESIDENT DOMICILED IN A RURAL AREA OF THE STATE] for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of non-edible by-products of fish and wildlife resources taken for personal or family consumption; in this paragraph, "family" means persons related by blood, marriage, or adoption living in the same household, and a person living in the household on a permanent basis;

\* Sec. 7. AS 16.05.940(26) is repealed.

PROPOSED LEGISLATION (cont.)

SPONSORED BY REP. GEORGE JACKO, REP. PETER GOLL  
HOUSE JOINT RESOLUTION NO. 74  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SIXTEENTH LEGISLATURE - SECOND SESSION

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

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

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

SECTION 19. SUBSISTENCE USE OF RENEWABLE NATURAL RESOURCES. The legislature may grant a preference for subsistence use of fish and wildlife and State-owned renewable natural resources. This constitution does not restrict the power of the legislature to allocate access among residents to fish and wildlife and State-owned renewable natural resources for subsistence uses on the basis of local residency, customary or traditional use, or dependence on the resources for food and other purposes.

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

INTRODUCED BY GOVERNOR COWPER

HOUSE JOINT RESOLUTION NO. 88 IN THE LEGISLATURE OF THE STATE OF ALASKA  
SIXTEENTH LEGISLATURE - SECOND SESSION

Proposing an amendment to the Constitution of the State of Alaska relating to subsistence uses of fish and wildlife by rural residents.

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

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

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

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

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

PROPOSED LEGISLATION (cont.)

SPONSORED BY REP. KAY WALLIS

HOUSE JOINT RESOLUTION NO. 90  
IN THE LEGISLATURE OF THE STATE OF ALASKA

**SIXTEENTH LEGISLATURE - SECOND SESSION**

Proposing an amendment to the Constitution of the State of Alaska relating to subsistence uses of plants, fish, and wildlife by rural residents.  
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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

**SECTION 19. SUBSISTENCE USES OF PLANTS, FISH, AND WILDLIFE.** Nothing in this constitution prohibits the legislature from limiting the taking of plants, fish, and wildlife for subsistence uses by rural residents, and from providing for the allocation of that taking among rural residents on the basis of local or community residence, availability of alternative resources or cultural, traditional, and customary uses of plants, fish, or wildlife, or dependence on plants or fish or wildlife population as the mainstay of livelihood.

\* Section 2. The amendment proposed by this resolution shall be placed before the voters of the State of Alaska at the next general election in conformity with Article XIII, Section 1, Constitution of the State of Alaska, and the election laws of the State.

*REP. LYMAN HOFFMAN'S PROPOSED AMENDMENT  
TO HB88 - GOVERNOR COWPER'S PROPOSAL*

**Section 19. RETENTION OF FISH AND WILDLIFE MANAGEMENT BY THE STATE.** Nothing in this constitution prohibits the legislature from enacting laws relating to the allocation for subsistence uses of fish and wildlife and wild renewable natural resources which are consistent with valid federal laws in order to retain management authority over such resources by the State of Alaska.

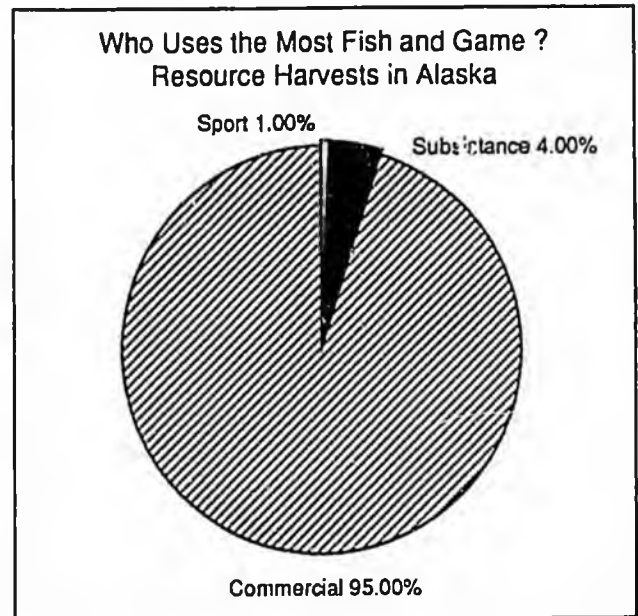
## APPENDIX

### Does subsistence take most of Alaska's fish & game?

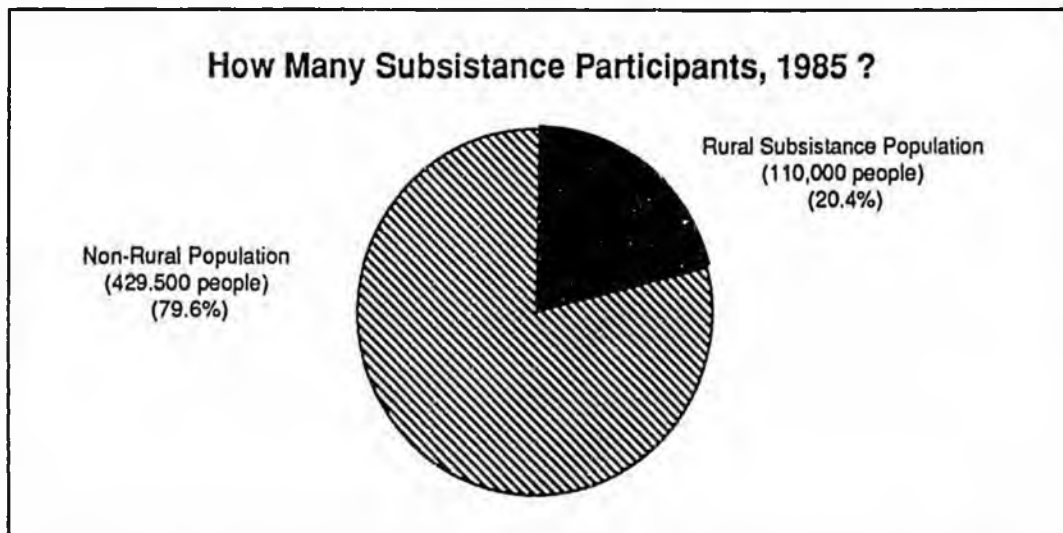
" As a general rule, no. Commercial fishing outstrips subsistence many times. In Alaska in 1986, commercial fisheries harvested about 908,500,000 pounds of salmon, halibut, herring and shellfish. This compares with a harvest of 40,305,449 pounds of subsistence foods and 7,072,046 of sport-caught fish and game. Thus, commercial fisheries took 95 percent, subsistence took 4 percent, and sport took 1 percent of the total statewide harvest. (This does not include commercial ground fish harvests, which totaled 2,995,200,000 pounds.)

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

*SOURCE: Alaska Fish & Game Magazine.*



### **How Many Subsistence Participants, 1985 ?**

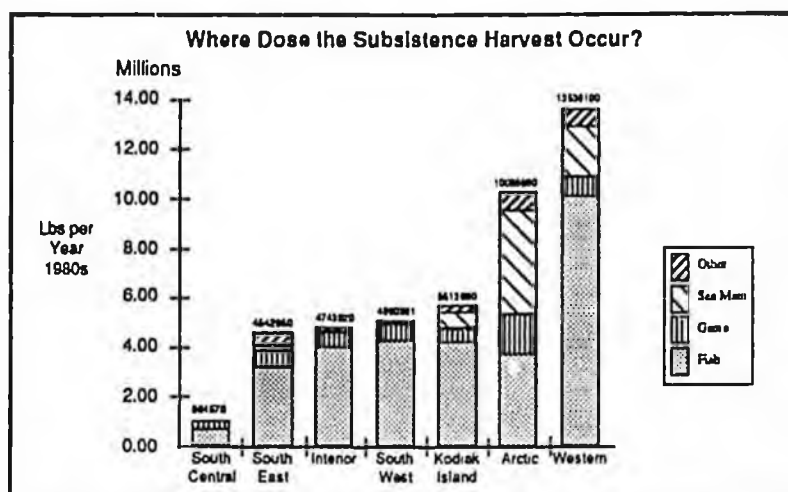


How many people participate in subsistence? " During the 1980s, our best estimate is that there were about 110,075 people in about 225 communities who participated in subsistence practices to some degree. Of these, about 50,000 were Alaska Native, and about 60,000 were not Alaska Native.

This represents the number of people living in rural areas having subsistence uses, as determined by the Boards of Fisheries and Game under the laws and regulations that existed during the 1980s. By comparison, there were about 429,500 non-rural residents, who could hunt and fish under sport, commercial, and personal use regulations, but not under subsistence regulations (Fig. 1). "

*SOURCE: Subsistence in Alaska: A Summary. Division of Subsistence, Alaska Department of Fish & Game, February 26, 1990.*

## APPENDIX



Where does the subsistence harvest occur? " Subsistence uses occur in all regions of the state. The largest annual harvests occur in the Western Region (about 13.5 million pounds) and Arctic regions (about 10 million pounds). Other sizable non-commercial harvests occur on Kodiak Island (5.5 million pounds), Southwest Region (5.0 million pounds), the Interior Region (4.7 million pounds), and the Southeast Region (4.5 million pounds). The smallest harvest occurs in the Southcentral Region (.9 million pounds), primarily in the Copper River Basin, Tyonek, English Bay and Port Graham (Fig. 3). "

*SOURCE: Subsistence in Alaska: A Summary, Division of Subsistence, Alaska Department of Fish and Game, February 26, 1990.*

**PUBLIC HEARING NOTICE:** The Joint House and Senate Resources Committee of the Alaska State Legislature is holding a Public Hearing at the AFN Subsistence Conference, Wednesday, April 11 from 5:30 to 9:00PM (see conference agenda, page 5). The hearing will take place in the Summit Room of the Egan Convention Center, on the lower level.

Although we realize this is short notice, this hearing is of GREAT importance to Alaska Native people. The Joint Committee needs to hear your views and testimony on various bills, proposals and options being considered by the Legislature.

We strongly urge you to attend and to present your views. Depending on the number of participants, testimony may have to be limited to 3 minutes per person. However, WRITTEN TESTIMONY IS WELCOME. If you have had time to prepare written testimony, please mail it to the Alaska State Legislature, Joint House/Senate Resources Committee, P.O. Box V, Juneau, AK 99811.

# AFN NEWSLETTER

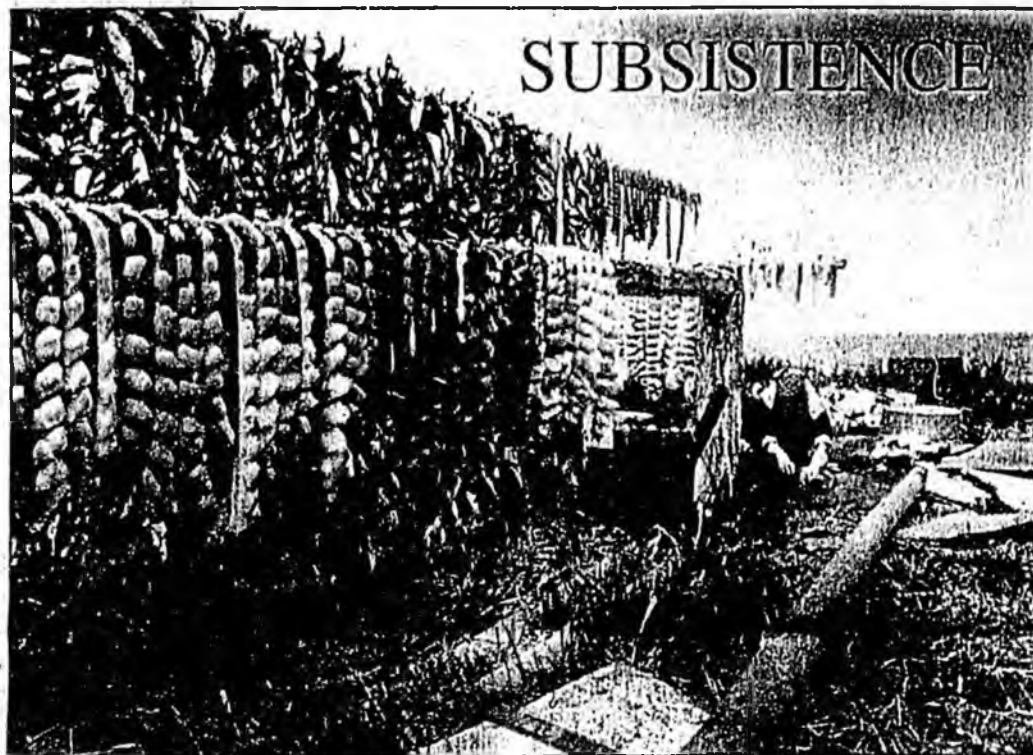
## SPECIAL ISSUE



Volume VIII, Number 2

Alaska Federation of Natives

February 1990



### THE CURRENT CRISIS: McDOWELL V. STATE

THE SITUATION of federal and state laws governing subsistence in Alaska was abruptly upset on December 22, 1989, when the Alaska Supreme Court issued its opinion in *McDowell v. State*. At issue in this case was whether the existing Alaska subsistence law, which provided priority subsistence hunting and fishing opportunities to rural Alaska residents, was permitted by the Alaska State Constitution.

The case had been started in 1983 by several individuals who had strongly supported the 1982 Ballot Proposition 7 to repeal Alaska's subsistence priority. After Proposition 7 was defeated by the voters, the *McDowell* suit was filed, claiming that the state subsistence law, originally adopted in 1978 and amended in 1986, was unconstitutional and should be thrown out.

Although the people who brought the suit lost their case in the Superior Court in early 1988, they appealed the decision; and

the Alaska Supreme Court, on December 22, 1989, reversed the decision of the lower court. The Supreme Court held that providing rural Alaskans special subsistence privileges violates Article VII, Sections 3, 15 and 17 of the Alaska Constitution. Section 3 reserves fish and wildlife in their "natural state" to the people of Alaska for "common use." Section 15 prohibits the Legislature from creating a fishery allocation system that results in an "exclusive right or special privilege of fishery." Section 17 requires statutes governing hunting and fishing to "apply equally to all persons similarly situated."

At the State's request, Chief Justice Warren Matthews, the author of the *McDowell* decision, stayed the effect of the decision until July 1, 1990. Justice Matthews also granted the State and the AFN an extension of time to February 9, 1990 to file petitions for a rehearing of the *McDowell* case by the Supreme Court. AFN has filed its petition for rehearing, explaining to the court why it should reconsider the case. If rehearing is granted, the Supreme Court will take

up the case again. If rehearing is denied, the case will be sent back to the Superior Court to determine the practical consequences of this new rule of constitutional law.

One of the first things the Superior Court will have to decide is which part or parts of the Alaska subsistence law the Supreme Court struck down. Did the Supreme Court intend to invalidate the entire subsistence priority, or did it throw out only the rural resident limitation, leaving the subsistence priority intact?

In either case, state law is once again out of compliance with the rural subsistence priority in Title VIII of ANILCA. Again, the state finds itself in a

position in which, if no remedy can be found by July 1, the Secretary of the Interior has a legal responsibility under Title VIII of ANILCA to assume fish and game management (with the federal rural subsistence priority) on public lands and waters in Alaska. If this should happen, the geographical extent of the Secretary's jurisdiction and his various options for management systems remain to be decided.

Various remedies for this legal dilemma have been suggested in Alaska during the last several weeks. The substantive results and political processes of each are discussed, without comment or analysis, in the article on "options" on page 5 of this newsletter.

Alaska Federation of Natives  
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# HISTORY OF SUBSISTENCE

## NATIVE HERITAGE

Subsistence hunting, fishing and gathering activities of Alaska Natives reach back thousands of years in history. Although the methods used to take fish and game have changed over the centuries, subsistence remains an absolute necessity for the economic survival of modern Native families. Moreover, it is the cultural nucleus of Native life.

## NON-NATIVE LAW

The history of subsistence in twentieth century Alaska is the story of how federal laws made by the Congress in Washington, D.C., and Territorial and State laws made by the Legislature in Juneau, have tried to affect these age-old Native practices. Some laws have protected subsistence rights; others have diminished the freedom of Native people to take what they need.

In general, it is the state government which has the legal power and responsibility for most fish and game management. But state action is often influenced - or even determined - by the encircling power of the federal government, which owns 60 percent of the land in Alaska and maintains a special obligation towards Native Americans. (Indeed, the active involvement of the U.S. Congress in subsistence goes back as far as 1902.) Public policy on subsistence is thus a constant back-and-forth power game between the United States and the State of Alaska - with the economy and cultures of Native people at stake.

## PRIORITY USES VS. EQUAL ACCESS

The central issue of subsistence law since Statehood is simple to understand. There are too many people - Native and non-Native - who want to harvest Alaska's fish and game resources. There are not enough animals to let everyone take everything he or she wants. So, the power of state law must decide who gets to take:

- \* which animals (species),
- \* where (game units and fisheries),
- \* when (seasons),
- \* how (methods and means), and
- \* for what purposes (uses).

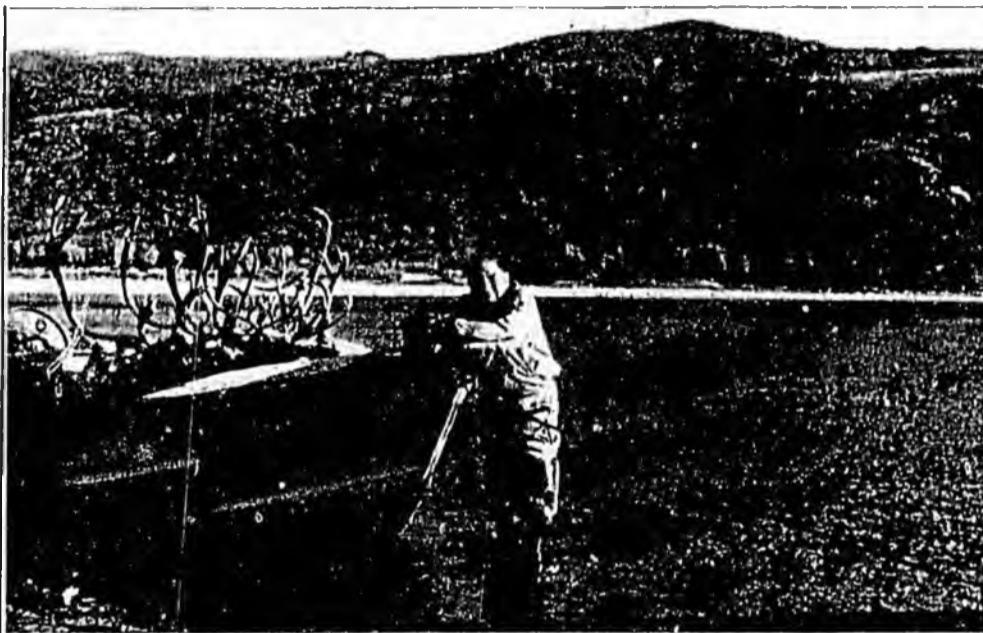


photo courtesy Tommy Ongtooguk/Maniilaq

To do this, the State Legislature must choose one of two alternatives. It can open up any fish stock or game population to all Alaska residents, with no special preference for anyone ("first-come, first-served"), until all available surplus animals are taken; or it can allocate fish and game among defined groups of Alaskans, according to whatever public purposes it decides are most important - as long as it does not violate the Alaska Constitution in doing this.

Between 1960 and 1978, the State Legislature, through the Board of Fish and Game, managed hunting and fishing on the "first-come, first-served" basis. Everyone in Alaska could take these resources until the surpluses were exhausted each year. No one group had priority over another. This caused serious problems for many Native villages, which were impacted by urban, non-Native fishermen and hunters, particularly during the pipeline population boom of the late 1970's.

## ANCSA: A FEDERAL STATEMENT OF CONCERN

As early as 1971, during its consideration of the Alaska Native Claims Settlement Act, Congress was aware that the State of Alaska was not protecting Native village hunters and fishermen. Although section 4(b) of ANCSA extinguished all "aboriginal hunting or fishing rights that may

exist," various settlement bills which had been considered in prior years had contained specific language to protect subsistence. One had proposed setting aside "subsistence use units" of public lands around Native villages, to be administered by the Department of the Interior. Another contained a policy declaration protecting "Native subsistence hunting, fishing, trapping and gathering rights." Neither was included in the final version adopted by the Congress.

In their place, language was inserted in the ANCSA Conference Report (an official document which accompanies a final bill to the floor of Congress, explaining its history, provisions and intent) which stated that Native subsistence interests and subsistence resource lands would be protected. It was assumed that the federal government, through the Department of the Interior, would guarantee this. But Congress expected the state to take similar responsibilities: "The Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives."

## THE 1978 STATE LAW: A SUBSISTENCE PREFERENCE

The decade of the 1970's saw increasing non-Native, urban pressure on subsistence resources around Native communities. By 1978, the

Alaska Legislature had come to a point where it felt it must enact its own law giving a clear preference to subsistence over other uses of fish and game. In part, the Legislature did this in response to hearings and debates in the U.S. Congress over subsistence protections then being considered for inclusion in the Alaska National Interest Lands Conservation Act (which would finally be adopted by the Congress in 1980).

The 1978 state subsistence statute did not define subsistence users as "Natives." Nor did it limit subsistence to "rural Alaska residents," as did ANILCA two years later. What it did was to state that subsistence uses, reflecting the dependency of subsistence hunters and fishermen on limited resources, would have priority over commercial and sport uses. It was unclear about who or where the subsistence users were in Alaska.

## ANILCA: THE CRITICAL FEDERAL LAW

At the same time, the U.S. Congress was involved in several years of policy debate over the Alaska National Interest Lands Conservation Act. This is the law which was to set the major outlines of federal land ownership and management over the 60 percent of Alaska lands which remain owned by the United States. In many ways, ANILCA was the second chapter of ANCSA, completing the legal structure of public land

## History of Subsistence cont.

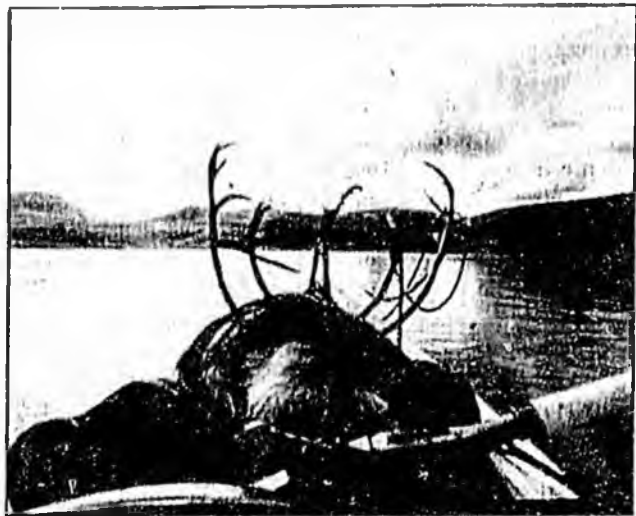


photo courtesy Tommy Ongtooguk/Maniilaq

allocations, purposes and uses. But in addition to its land provisions, ANILCA showed that Congress was determined to adopt clear language protecting subsistence rights.

Here Congress chose to define subsistence users by geography, rather than race. The Senate Committee Report stated that "by its nature, a 'subsistence use' is something done only by Native and non-Native residents of 'rural' Alaska." The Committee included in its definition of rural areas such communities as Bethel, Nome, Kotzebue, Barrow, etc. However, it recognized that the rural nature of communities can change, leaving open the possibility that population growth and economic development might move a community out of the rural category (with its subsistence preference) over time.

The text of ANILCA states that "the continuation of the 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." It notes that rural Alaska residents are dependent on subsistence resources, having no practical alternative food supplies. It concludes, therefore, that "it is necessary for Congress to invoke its constitutional authority over Native affairs and its constitutional authority under

the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native residents." Accordingly, "non-wasteful subsistence uses shall be given preference on the public lands over other consumptive uses . . ."

However, Congress also wanted Alaska's fish and game management to be done by one level of government in one unified, statewide system. It hoped to avoid a situation in which the Secretary of the Interior managed fish and game on federal lands and the Alaska Department of Fish and Game managed similar resources, but with different regulations, on state and private (mainly Native) lands. In order to encourage a unified system, ANILCA gave the State of Alaska one year in which to enact its own rural subsistence priority to conform with the new federal law. If it did so, the state would be allowed to manage fish and game on both federal and non-federal lands. This is an excellent example of how the power of federal law - in this case based on the general supremacy of the Congress, the federal ownership of more than half of Alaska and the congressional obligation to Natives - can require a state to take certain actions it might not otherwise have taken. The ANILCA rural subsistence priority on federal lands, with its management incentive for state compliance, is the bedrock on which the system of subsistence law currently rests.

### FIRST STATE COMPLIANCE WITH ANILCA, BY REGULATION

The State of Alaska soon acted to come into compliance with the new federal law and to maintain a single system of management in its own hands. Its own subsistence preference law, previously adopted in 1978, had not specifically limited subsistence uses to "rural Alaska residents." Technically, the state was immediately out of compliance with ANILCA. Rather than amend the 1978 law in the Legislature, it was decided in 1982 that the Board of Fisheries and the Board of Game would jointly adopt a regulation which added the "rural Alaska resident" limitation to the state's definition of subsistence uses. When this was done, it was assumed that the state had complied with ANILCA.

### A POLITICAL ASSAULT ON SUBSISTENCE

The passage of ANILCA and subsequent efforts of the state to comply with its mandated rural subsistence preference had the effect of bringing anti-subsistence interests together in the early 1980's. Since before statehood, various individuals and organizations - often involved in the political defense of sport hunting and fishing activities - had objected to the very idea of a subsistence preference, particularly one that favored either rural residents or Alaska Natives.

In 1982, a coalition of such groups succeeded in placing before the voters an initiative which, if adopted by a majority of those voting in the November general election, would have repealed the state subsistence preference. Organized as Alaskans for Equal Fish and Game Management, this coalition raised thousands of dollars for a media campaign designed to persuade the electorate to vote YES on Ballot Proposition 7.

The opposing group, composed of Native people and organizations, as well as many non-Natives sympathetic to rural subsistence needs, fought back under the banner of Alaskans for Sensible Fish and Game Management. These two groups competed for months - in speeches, debates, newspaper columns, TV ads and voter registration campaigns across Alaska.

In the end, the voters spoke - and resoundingly rejected Proposition 7, keeping a unified system of fish and game management in state hands by retaining the subsistence priority. If the vote had gone the other way, state law would again have been out of compliance with ANILCA's rural subsistence preference, requiring the Secretary of the Interior to assume fish and game management on public lands in Alaska. Rural residents had survived a powerful political assault on the foundation of their village economies and lifestyle.

cont. on page 4



photo courtesy Tommy Ongtooguk/Maniilaq

## History of Subsistence, continued

### SECOND STATE COMPLIANCE WITH ANILCA, BY STATUTE

The "rural Alaska resident" regulation, which the Boards of Fisheries and Game adopted in 1982 to comply with the same standard in ANILCA, worked for three years, until the State Supreme Court decided the *Madison v. Alaska Department of Fish and Game* case. The court said that the Boards of Fisheries and Game had gone beyond their legal authority in making a regulation limiting subsistence to "rural Alaska residents" - because the Legislature had not specifically stated such preference in its 1978 law. The court threw out the regulation. Again, Alaska was out of compliance with the "rural Alaska resident" subsistence preference in ANILCA and faced the possibility that the Department of the Interior would have to come into Alaska and set up a separate system of fish and game management on federal lands.

To solve this, in 1986 the State Legislature amended the 1978 state subsistence law, limiting subsistence use to hunters and fishermen residing in "rural areas." Now, for the time being, the State of Alaska was back in compliance with ANILCA and continued to manage fish and game statewide.

### THE DEFINITION OF "RURAL"

Although the 1986 amendment made state law conform to federal law, it also contained the seeds of another political controversy. It defined the term "rural area" as a "community or area of the state in which the non-commercial, customary and traditional use of fish or game for personal or family consumption is a significant characteristic of the economy of the community or area." In other words, the state's definition of "rural" depended on the nature of the community - its culture and economy - rather than on mere size of population.

Some people were not happy with this definition. In particular, residents of the Kenai Peninsula - one of the most heavily affected areas of competing fish and game uses - were categorized by this state definition as being non-rural, and there was no priority for subsistence in their area. The Kenaitze Indian Tribe filed suit in U.S. District Court, claiming that the state's definition of "rural," was not in compliance with ANILCA.

The Kenaitze Tribe lost its case in the District Court but won an appeal to the Ninth Circuit Court. The appellate court stated that the word "rural" in the ANILCA "subsistence uses" definition refers to "areas of the country that are sparsely populated, . . . more broadly, rural is the antonym of urban and includes all areas in between cities and towns of a particular size." As a result of this decision, thousands of residents of the Kenai Peninsula, may now be considered "rural residents" and,

therefore, subsistence users. This may result in future management difficulties, particularly in allocations of fish along the coasts and in the rivers of the Peninsula.

A temporary solution in 1989 was a negotiated agreement between the Kenaitze Tribe and the State of Alaska in which the Department of Fish and Game issued an "educational permit" enabling the Tribe to operate one subsistence set net in the Kenai River and to catch a limited number of salmon for subsistence uses. This is only a short-term arrangement and is already being challenged in federal court.

This was the situation of state and federal subsistence laws when, on December 22, 1989, the Alaska Supreme Court handed down its decision in the case of *McDowell v. State*. The implications of that case are discussed in the article on page one of this newsletter.

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## State & Federal management responsibilities

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) sets out the subsistence rights of rural Alaska residents. Title VIII ensures that the subsistence way of life will continue and that the customary and traditional harvest of fish and wildlife of village residents will change as little as possible.

Title VIII recognizes that rural Alaskans live a lifestyle different from that of Alaskans who live in urban areas such as Anchorage. Rural residents depend on fish, wildlife and plant resources on a daily basis to meet their nutritional needs. It was essential that they not be stopped from hunting, fishing and gathering on the lands and waters in their immediate areas.

If Native culture is to survive the intrusion of non-Native ways into village life, the opportunity for Alaska Natives and other rural residents to continue to hunt and fish must be protected.

Subsistence is also an important part of the economic life of rural communities, with

the dollar-replacement value of the subsistence foods consumed by Native villages exceeding \$40 million per year.

### SUBSISTENCE: The State's Traditional Role

**Wildlife management:** Traditionally, each of the 50 states has been responsible for regulating hunting and fishing within its borders. Since statehood in 1959, hunting and fishing in Alaska have been regulated by the Alaska Department of Fish and Game according to policies set by the Board of Fisheries and Board of Game.

**Exception:** The federal government, rather than the state, regulates migratory bird hunting and marine mammal hunting.

**Federal management authority:** In a case brought by the State of New Mexico, in 1972, the U.S. Supreme Court decided that the United States Constitution allows the federal government to manage wildlife on public lands. However, as a matter of federal policy, Congress has regarded fish and game management as a state responsibility.

**Protection of subsistence uses:** In 1977, village residents told Congress that the State of Alaska was not regulating hunting and fishing in a manner that adequately protected subsistence uses. In response, Congress included

ANILCA to require that the priority use of fish and wildlife resources on public lands and waters in Alaska.

**State Advisory Councils:** Concerned that village residents were not being provided ample opportunity to participate in the development of State regulations that affect subsistence hunting and fishing, in Title VIII of ANILCA Congress required the State to establish advisory councils to advise the Board of Fisheries and Board of Game on hunting and fishing regulations.

To comply with Title VIII, the State divided Alaska into six geographical regions and established a regional council in each region to hear suggestions from local fish and game advisory committees. Unfortunately, the regional council system needs to be strengthened at the local level.

One difficulty has been the lack of adequate staffing to provide technical and scientific information to council and advisory committee members.

### SUBSISTENCE: The Federal Role

Title VIII of ANILCA guarantees rural residents, when subsistence hunting and fishing on federal lands and waters, the right to use snowmobiles, motorboats and dog teams for transportation. Rural residents **DO NOT** need a permit to use snowmobiles, motorboats and dog teams while subsistence hunting and fishing.

Title VIII of ANILCA requires the federal government to monitor the Board of Fisheries and Board of Game's development of hunting and fishing regulations. Title VIII requires the Secretaries of Interior and Agriculture to advise the State whether the Board are effectively providing the priority for subsistence uses and to report annually to Congress.

# STATE AND FEDERAL OPTIONS: What can be done about the subsistence problem?

The following is an outline of the major legal options which have been mentioned, to date, as methods by which the current subsistence dilemma in Alaska might be remedied:

## A. JUDICIAL REMEDY

The Alaska Supreme Court could reconsider and vacate its December 22, 1989 decision in McDowell v. State. The State of Alaska and AFN have both filed petitions for rehearing with the Alaska Supreme Court asking that the court do so.

Process: Court Action

## B. LEGISLATIVE OR CONGRESSIONAL REMEDIES

1. Amend the Alaska Constitution to allow the Legislature greater flexibility to provide a subsistence priority. Two alternative models which have been suggested are:

a) a rural subsistence priority, which would protect customary and traditional uses of fish and game by Alaska Natives and other rural residents;

b) a Native subsistence priority, which would protect customary and traditional uses of fish and game by Alaska Natives in all locations in Alaska.

Process: The Alaska State Legislature must pass an amendment by a two-thirds (2/3) vote in both the Senate and the House of Representatives. The amendment must then be approved by a majority (50% plus 1) of the voters. Also, in the case of a constitutional amendment that provides a Native subsistence priority, the U.S. Congress would have to amend Title VIII of ANILCA to conform to the amendment and the Alaska Legislature would have to enact a state law to implement the amendment.

2. Amend Title VIII of ANILCA to conform to the Alaska Constitution, as interpreted by the Alaska Supreme Court. Two alternative models which have been suggested are:

a) an individual test of income;

b) an individual test of dependency, availability of alternative

resources, and traditional uses.

Process: The U.S. Congress would have to amend Title VIII of ANILCA, dropping the existing rural subsistence priority and allowing a different priority to be implemented by the state on public lands and waters in Alaska. In addition, the Alaska State Legislature would have to enact a subsistence law implementing such a priority.

3. Amend Title VIII of ANILCA to preempt totally the Alaska Constitution on all lands and waters in Alaska.

Process: The U.S. Congress would have to take action to amend Title VIII of ANILCA.

4. Amend ANILCA to repeal Title VIII.

Process: The U.S. Congress would have to take action to repeal Title VIII of ANILCA.

## C. IF NO REMEDY IS POSSIBLE BY JULY 1, 1990

1. The Secretary of the Interior exercises his responsibilities under Title VIII of ANILCA.

a) The Secretary could directly regulate the taking of fish and game on public lands and waters, with the geographical extent of his jurisdiction still unclear.

b) The Secretary may have authority to contract fish and game management functions on public lands and waters to Native contractors, pursuant to the Indian Self-Determination Act.

c) The Secretary could require the State to regulate the taking of fish and game on public lands and waters, in conformity with the U.S. Congress' policy goals enacted in Title VIII of ANILCA

2. The Secretary elects not to exercise his responsibilities under Title VIII of ANILCA. Alaska Natives would be compelled to sue the Secretary, requesting the United States District Court to compel him to implement Title VIII.

## AFN'S POSITION ON SUBSISTENCE:

**AS THEY HAVE** for generations, Alaska Natives continue to depend upon hunting and fishing and gathering to obtain food to feed their families.

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

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

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

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

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

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

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

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

APPROVED AND ADOPTED BY THE BOARD OF DIRECTORS, FEBRUARY 1, 1990.

## Interior Secretary Lujan, AFN discuss federal management responsibilities.

Following the Alaska Supreme Court's decision in *McDowell v. State*, and the Court's stay of its decision until July 1, 1990, AFN asked Secretary of the Interior Manuel Lujan to describe the Department's plan for implementing Title VIII of ANILCA, if no legal solution is reached between Title VIII and the Supreme Court's decision prior to July 1.

On January 15, 1990, AFN President Julie Kitka wrote to Secretary Lujan, reviewing Title VIII's preemption of State fish and game regulation on public lands. She also noted that, since the State of Alaska's voluntary compliance with ANILCA has been effectively prohibited by the *McDowell* decision, the Department of the Interior must begin implementing Title VIII no later than July 1.

On January 24, AFN representatives met with Secretary Lujan. Following this meeting, the Secretary sent a letter to Ms. Kitka, reprinted here. In her response, she reiterated AFN's commitment to work with Governor Cowper to resolve the subsistence conflict, noting, however, that "if, despite our collective efforts, on July 1 the State cannot continue to implement Title VIII, the Title imposes a non-discretionary duty on the Department of the Interior to implement the policy in the State's stead."

AFN has requested a follow-up meeting with Secretary Lujan in late February or early March to discuss the State's efforts to find a solution and the Department of the Interior's future plans.



THE SECRETARY OF THE INTERIOR  
WASHINGTON

January 30, 1990

Ms. Julie Kitka,  
President  
Alaska Federation of Natives, Inc.  
411 West 4th Avenue  
Suite 301  
Anchorage, Alaska 99501

Dear Julie:

Thank you very much for your letter of January 15, 1990, and your January 24th visit with me on your concerns involving the future of the State subsistence program in light of the State Supreme Court decision in *McDowell v. State of Alaska*.

As you know, this Department has previously certified the State's subsistence program under Title VIII of the Alaska National Interest Lands Conservation Act. It is my hope that, by July 1, 1990, the State will be able to devise a solution to the issues raised in the *McDowell* decision to permit it to continue to administer the subsistence program consistent with the Act. You may be certain that this Department would give its full consideration to any timely State effort to resolve this problem.

Again, thank you for your input on this most important issue for Alaska.

Sincerely,

cc: The Honorable Steve Cowper

### Alaska National Interest Lands Conservation Act

Sections 801-804 of Title VIII of ANILCA, reprinted here, illustrate Congress' recognition of the importance of protecting subsistence uses of fish and game by rural residents of Alaska. Title VIII implements this important congressional policy by establishing a rural subsistence use hunting and fishing priority.

#### Title VIII -- Management & Use

##### Findings

SEC. 801. The Congress finds and declares that—

(1) the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the 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;

(2) the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses;

(3) continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened by the increasing population of Alaska, with resultant pressure on subsistence resources, by sudden decline in the populations of some wildlife species which are crucial subsistence resources, by increased accessibility of remote areas containing subsistence resources, and by taking of fish and wildlife in a manner inconsistent with recognized principles of fish and wildlife management;

(4) in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress to invoke its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native residents; and

(5) the national interest in the proper regulation, protection, and conservation of fish and wildlife on the public lands in Alaska and the continuation of the opportunity for a subsistence way of life by residents of rural Alaska require that an administrative structure be established for the purposes of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.

##### Policy

Sec. 802. It is hereby declared to be the policy of Congress that—

(1) consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for each unit established, designated, or expanded

by or pursuant to titles II through VII of this Act, the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so.

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

(3) except as otherwise provided by this Act or other Federal laws, Federal land managing agencies, in managing subsistence resources on the public lands and in protecting the continued viability of all wild renewable resources in Alaska, shall cooperate with adjacent landowners and land managers, including Native Corporations, appropriate State and Federal agencies, and other nations.

##### Definitions

Sec. 803. As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. For the purposes of this section, the term—

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

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

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

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

##### Preference for Subsistence Uses

Sec. 804. Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria:

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

(2) local residency; and

(3) the availability of alternative resources.

### **AFN Board actions on subsistence:**

AFN is committed to keeping Native people informed of the on-going developments of the subsistence issue. Subsistence remains the absolute necessity for the cultural and economic survival of Native families. Therefore, threats to the subsistence way of life demand the serious attention of all Native people.

With the critical importance of this issue in mind, the AFN Board of Directors met in Juneau on January 31-February 1 to discuss the current situation, and all available options. The result was a clear position statement, reprinted on page 5, as well as the following actions:

- \* The AFN Board authorized the filing of a petition for rehearing before the Alaska State Supreme Court in the McDowell case. The petition was filed by AFN's counsel on February 9, 1990.
- \* The AFN Board endorsed the request to Secretary of Interior Manuel Lujan to fulfill his obligations under Title VIII of ANILCA, provided a solution is not reached by July 1, 1990.
- \* The AFN Board went on record opposing any attempt to repeal Title VIII of ANILCA.
- \* The AFN Board authorized the AFN Legislative Committee to continue working on the subsistence issue, including all interested Native organizations in meetings on the subject.
- \* The AFN Board directed the AFN Legislative Committee to review all options consistent with AFN's policy.
- \* The AFN Board directed staff to convene a special AFN Board meeting to focus specifically on subsistence, no later than 30 days prior to the end of the Alaska State Legislative Session.

The process to find a suitable solution to the current situation has just begun. It will take all our best efforts, working together, to accomplish our goals. AFN and its member organizations are committed to protecting Native subsistence activities in the most effect and responsible way.

### **Gov. Cowper on subsistence:**

Governor Steve Cowper and members of his administration met at length with the AFN Board of Directors in Juneau on February 1, 1990. Following productive discussions of various options to solve the current problem of subsistence law in Alaska, Governor Cowper stated:

*"Subsistence is a way of life for thousands of Alaskans, not a weekend hobby, and we've got to do everything possible to protect that way of life. I'll be working with the Alaska Federation of Natives, other Native groups and the legislature to shape a solution to this latest problem that the Supreme Court has dropped in our laps. But to find an answer, we've first got to reach a consensus with the Native community about what will work best for those with a personal stake in subsistence."*

### **Sen. Stevens on subsistence:**

In an address to a Joint Session of the Sixteenth Alaska Legislature on January 17, 1990, U.S. Senator Ted Stevens emphasized the readiness of the Alaska Congressional Delegation to work with the State on remedies for the subsistence situation. He then responded to a question from the floor concerning the difficulties of Congressional action:

"My fear is that, if we are required, as Alaska's Congressional Delegation, to obtain enactment of legislation to deal with this... we will face the necessity of getting a bill through. Added to that bill will be several subjects: the closure of ANWR, the transition of Tongass into a non-productive timber area. We will lose our conventional access to federal lands — particularly in parks and wildlife refuge areas — that we obtained under the 1980 Act... 80 percent of the goals we attained under the 1980 Act... are going to be disappearing if you have to go to Congress and, in effect, amend the 1980 Act to deal with this single issue.

"I think the subsistence question can be dealt with here at home, and it should be. In my judgement, it is possible that there is still the avenue that has not been pursued...

"I would urge you not to think that the federal solution is the one that is easiest — because we will lose more than we gain. Even the Native people would lose more than they gain, because many of those rights that would be curtailed are rights that are utilized intensively by people in rural areas."

### **Sen. Murkowski on subsistence:**

The following statement is excerpted from Senator Frank Murkowski's remarks to the Alaska State Legislature on January 18, 1990:

*"The State must again face this difficult problem. Our plan must: provide for the needs of those Alaskans critically dependent upon fish and game for their nutritional and cultural needs; maintain continuity of state management on federal lands as well as on State and private lands; and meet the demands of sport and commercial users.*

*We can meet this challenge by working together with an abiding respect for the rights of all citizens and a deep concern for the welfare of current and future generations of fellow Alaskans.*

*This issue has the potential to carve ugly divisions among interest groups in our State. If we allow this to occur, all Alaskans will suffer. However, I think we have the ingenuity, the commitment and the capability to work this issue out. To resolve this problem will take cool heads, and it can not be expected that any of us can resolve this problem today. I will be traveling around the State, meeting with interested Alaskans who have different points of view on this issue, in the hopes that we can develop a meaningful consensus."*

## Proposed legislative solutions:

In the past month three bills have been introduced in the Alaska Legislature to deal with the conflict between the Alaska Constitution, the State subsistence law and Title VIII of ANILCA. **HOUSE RESOLUTION NO. 74**, sponsored by Rep. George Jacko of Pedro Bay, amends the Alaska, Constitution to allow the Legislature to enact a subsistence priority that complies with Title VIII of ANILCA.

**SENATE CONCURRENT RESOLUTION NO. 39**, by Sen. Jay Kerttula of Palmer, establishes a Commission to review the legal situation and identify options available to the Senate to resolve the issue.

**HOUSE BILL NO. 415**, sponsored by Rep. Ramona Barnes of Anchorage, amends the Alaska subsistence law to change the definition of which hunters and fisherman qualify for the subsistence priority from "rural residents" to "subsistence users." The bill then bases the identification of "subsistence users" on two criteria: 1) local residency, 2) direct dependency on subsistence resources - an annual income below the national poverty level (\$10,000 or less a year).

All three bills are currently in various committees of the Legislature for review.

### **HJR NO. 74 - Introduced by Rep. Jacko**

This is an example of what a constitutional amendment might look like. As AFN continues its work with Governor Steve Cowper and the Legislature leadership technical language for a constitutional amendment will probably change.

#### **SAMPLE CONSTITUTIONAL AMENDMENT**

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

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

**SECTION 19. SUBSISTENCE USE OF RENEWABLE NATURAL RESOURCES.** The legislature may grant a preference for subsistence use of fish and wildlife and State-owned renewable natural resources. This constitution does not restrict the power of the legislature to allocate access among residents to fish and wildlife and State-owned renewable natural resources for subsistence uses on the basis of local residency, customary or traditional use, or dependence on the resources for food and other purposes.

\* Section 2. The amendment proposed by this resolution shall be place before the voters of the state at the next general election in conformity with article XIII, Section 1, Constitution of the State of Alaska, and the election laws of the State.



#### **RESOURCE PEOPLE WHO CAN HELP YOU UNDERSTAND WHAT'S GOING ON:**

- \* *Your Regional Non-profit Association*
- \* *Alaska Federation of Natives (274-3611)*
- \* *RurAl CAP, Subsistence Division, Bob Polasky or Eric Smith (279-2511)*
- \* *Alaska Legal Services (276-6282)*
- \* *Bureau of Indian Affairs, Agency offices or Juneau Area Office (586-7177)*
- \* *Alaska Department of Fish & Game, Commissioner's Office, Norman Cohen (465-4100)*
- \* *Alaska Department of Fish & Game, Subsistence Division, Steve Behnke or Ethel Lund (465-4147)*

*AFN Newsletter - Janice Ryan, Editor  
For additional copies, call 274-3611.*

**S J R**

**79**

DATE: 3/12/90

FURTHER:

Date of 5-Day Notice: 3-22-90  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3-26-90

Resources \_\_\_\_\_ Committee considered \_\_\_\_\_ SJR 79

Supporting the designation of the existing Bering Land Bridge National Preserve as part of a Joint Alaska-Siberia International Park.

and recommended:

- replace with \_\_\_\_\_ CS SJR 79 (Res)  same title
- attached amendment(s)  new title
- \_\_\_\_\_ letter of intent adopted

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date: \_\_\_\_\_

Department(s)/Date: \_\_\_\_\_

fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

zero fiscal note(s) committee  
\_\_\_\_\_  
\_\_\_\_\_

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

[Signature]  
\_\_\_\_\_  
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OTHER RECOMMENDATIONS:

[Signature] No Rec  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Chair: Signature and Recommendation

[Signature]

4/4/90

The Resources CS for SJR 79:

On Page 2, Line 13 and 14:

Adds the Mayor of the City of Savoonga, and the Mayor of the City of Gambell to those receiving copies of this resolution.

The resolution supports the designation of the existing Bering Land Bridge national Preserve as part of a Joint Alaska-Siberia International Park.

The U.S. and Soviet Union completed a feasibility study proposing an international park along the Bering Strait; the park designation includes the existing Bering Land Bridge National Preserve; an international park should help to foster friendly exchange and develop tourism and trade between the U.S. and the Soviet Union.

The National Park Service supports this resolution.

Henry

## FISCAL NOTE

**REQUEST:** \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: Bering Land Bridge Preserve

Agency Affected: \_\_\_\_\_  
BRU: \_\_\_\_\_

Sponsor: Sen. Sturgulewski  
Requestor: Senate Resources Committee

Components: \_\_\_\_\_

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

CAPITAL						
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REVENUE	0	0	0	0	0	0
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**FUNDING:** (Thousands of Dollars)

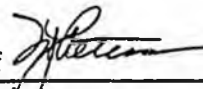
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

There is no state fiscal impact.

Prepared by: Nancy Petersen, Staff  Phone: 465-3834  
Division: Senate Resources Committee Date: 3/26/90

Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
Agency: \_\_\_\_\_

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

Changes in CS SJR 79 (Res)  
have no fiscal impact. This  
fiscal note is appropriate.  
Projections of no fiscal impact  
would continue through 1996.

## FISCAL NOTE

REQUEST: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: Bering Land Bridge Preserve

Agency Affected: \_\_\_\_\_  
BRU: \_\_\_\_\_

Sponsor: Sen. Sturgulewski  
Requestor: Senate Resources Committee

Components: \_\_\_\_\_

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

**FUNDING:** (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

There is no state fiscal impact.

Prepared by: Nancy Petersen, Staff  
Division: Senate Resources Committee

Phone: 465-3834  
Date: 3/26/90

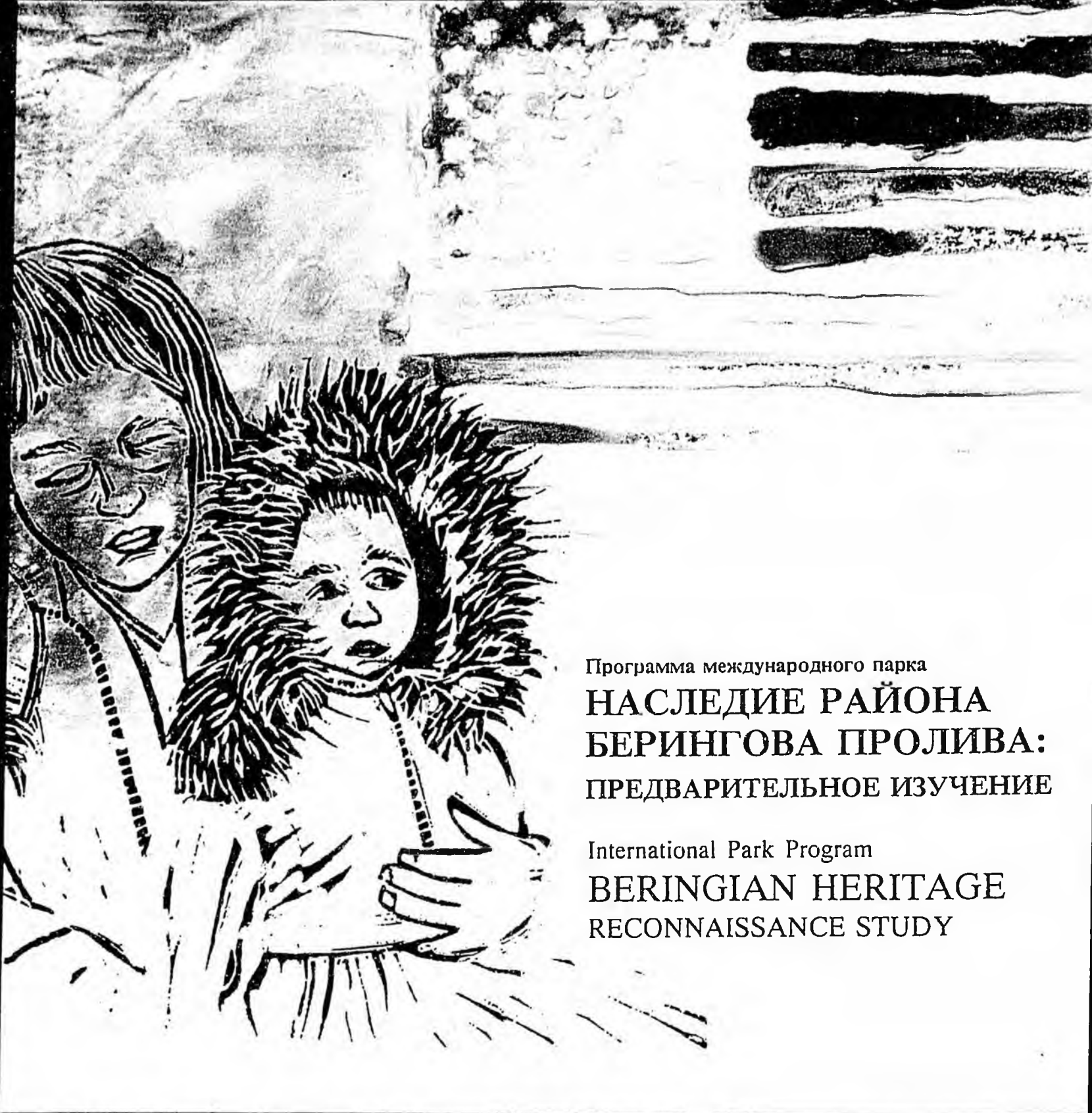
Approved by Commissioner: \_\_\_\_\_  
Agency: \_\_\_\_\_

Date: \_\_\_\_\_

Distribution (by preparer):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

THE FOLLOWING DOCUMENT HAS  
NOT BEEN FILMED BUT IS  
AVAILABLE IN THE ORIGINAL  
FILE



Программа международного парка  
**НАСЛЕДИЕ РАЙОНА  
БЕРИНГОВА ПРОЛИВА:  
ПРЕДВАРИТЕЛЬНОЕ ИЗУЧЕНИЕ**

International Park Program  
**BERINGIAN HERITAGE  
RECONNAISSANCE STUDY**

Original sponsor(s): Resources Committee

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE JOINT RESOLUTION NO. 79 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 Supporting the designation of the exist-  
6 ing Bering Land Bridge National Preserve  
7 as part of a Joint Alaska-Siberia Inter-  
8 national Park.

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

10 WHEREAS on January 9, 1990, the governments of the United States and  
11 the Soviet Union completed a joint feasibility study proposing an interna-  
12 tional park along the Bering Strait; and

13 WHEREAS international park designation would not result in any new  
14 national park land in the state, but would include the existing Bering Land  
15 Bridge National Preserve and land on the Chukotskiy Peninsula in Siberia;  
16 and

17 WHEREAS international park designation, with United States park head-  
18 quarters at Nome, and the resulting increase in communication and travel  
19 between the two nations would support the state's interest in friendly  
20 exchange and in developing tourism, air and ferry travel, and trade with  
21 the Soviet Union; and

22 WHEREAS the people of the Bering Strait region have an ancient heri-  
23 tage of connection through trade, language, family ties, common experience,  
24 and other aspects of their culture; and

25 WHEREAS the continents were once connected by land at the Bering  
26 Strait, and the proximity and common natural and cultural resources of  
27 Northwest Alaska and Siberia offer a special opportunity to cooperate in  
28 scientific research and in protection of a shared heritage; and

29 WHEREAS the designation of an international park would allow for

1 increased cooperation and coordination among park managers and researchers,  
2 and would encourage greater international visitation without affecting the  
3 authorities of each nation to manage its own park land;

4 BE IT RESOLVED that the Alaska State Legislature supports the interna-  
5 tional park proposal and encourages continuing professional and technical  
6 exchanges between the two nations; and

7 BE IT FURTHER RESOLVED that the Alaska State Legislature encourages  
8 the discussion of the Joint Alaska-Siberia International Park by President  
9 Bush and President Gorbachev at the June, 1990, Summit.

10 COPIES of this resolution shall be sent to the Honorable George Bush,  
11 President of the United States; to the Honorable Manuel Lujan, Jr., Secre-  
12 tary of the U.S. Department of the Interior; to James M. Ridenour, Director  
13 of the National Park Service; to the Mayor of the City of Savoonga; to the  
14 Mayor of the City of Gambell; and to the Honorable Ted Stevens and the  
15 Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S.  
16 Representative, members of the Alaska delegation in Congress.

SJR 79

# ALASKA REGIONAL OFFICE

National Park Service  
2525 Gambell Street, Room 107  
Anchorage, Alaska 99503-2892

Telecopier #:  
Commercial: (907) 257-2510  
FTS: (907) 257-2510

TELEFAX MESSAGE

SEND TO: Senator Sturgulewski

DELIVER TO: Frank Homan

DATE: 3-19-90

SUBJECT: STR-79-Alaska-  
Siberia International  
Park

NUMBER OF PAGES TO FOLLOW: 2



**SPECIAL INSTRUCTIONS:** Washington office wanted Resources Committee to be aware of Congressional visit in late May. It would be good to have the legislature's resolution for that visit as well as the summit in late June.

FROM: (Sender): Tanet McCabe

SENDER'S PHONE NUMBER: 907 257-2697

If any problems with this transmission, call: Commercial (907) 257-2603 or (907) 257-2513  
FIS (907) 257-2603 or (907) 257-2613

## TENTATIVE ITINERARY

Joint Delegation from  
The Committee on Interior and Insular Affairs of  
The U.S. House of Representatives and  
The U.S. Department of the Interior

\*\* Visit to the Soviet Union \*\*

May 28 - June 8, 1990

<u>DAY/DATE</u>	<u>SCHEDULE</u>
<p style="text-align: center;"><b>Day 1</b> Friday, May 25 (USA time) Saturday, May 26 (USSR time)</p>	<p>U.S. delegation flies to Nome, Alaska, via refueling stops in North Dakota and Sitka, Alaska (Boeing 727 aircraft); U.S.S.R. delegation arrives in Nome, Alaska; <u>(Overnight in Nome)</u>. [Sunset - 1:00 a.m.]</p>
<p style="text-align: center;"><b>DAY 2</b> Saturday, May 26 (USA time) Sunday, May 27 (USSR time)</p>	<p>[Sunrise - 5:02 a.m.] Joint breakfast briefing with guests from the Supreme Soviet and appropriate U.S.S.R. Ministries and/or State Committees regarding areas within the Beringian Heritage International Park proposal; fly to Kotzebue, Alaska; overfly Kobuk National Park, Nostuk National Preserve, Selawik National Wildlife Refuge and Cape Krusenstern National Monument; Visit NANA Native Corporation Museum; Travel to several Native villages; <u>(Overnight in Nome)</u>.</p>
<p style="text-align: center;"><b>Day 3</b> Sunday, May 27 (USA time) Monday, May 28 (USSR time)</p> <p>[Cross International Dateline - lose one day]</p>	<p>Fly to Provideniya, USSR (across Bering Strait from Nome, Alaska (1 hr. flight); overfly Wales, USA, and Uelen, USSR en route; overfly, in Mi-8 helicopters, parts of the Beringian Heritage study area, landing at archaeological sites at Arakamchechen, Ytygran, and Mechigmen (helicopters refuel at Lavrentiya); Return to Provideniya; depart Provideniya; fly to Anadyr (45 min. flight); transfer to a larger jet aircraft; Fly to Yakutak (3 hr. 10 min. flight); <u>(Overnight in Yakutak)</u>. [Sunset 9:42 p.m.]</p>

<p><b>DAY 4</b> Tuesday, May 29</p>	<p>[Sunrise 2:55 a.m.] Visit to and briefing at Permafrost Institute, gold mining site, the USSR Academy of Sciences station, and reindeer herding site; <u>(Overnight in Yakutsk).</u></p>
<p><b>Day 5</b> Wednesday, May 30</p>	<p>Fly to Norilsk (2 hr. 45 min. flight); bus and walking tour of Norilsk with briefing en route on mining activities in the region; Return to airport; Fly to Novyy Urengoy (40 min. flight). Helicopter tour by Members of delegation of gas fields in the area; if possible, visit a Nentsy Reindeer herding site; <u>(Overnight in Novyy Urengoy).</u> [Sunset - 11:12 p.m.]</p>
<p><b>Day 6</b> Thursday, May 31</p>	<p>[Sunrise - 2:18 a.m.] Fly to Nizhnevartovsk (45 min. flight); Air and ground tour of oil fields; Reboard aircraft; Fly to Sverdlovsk (1 hr. 30 min.); <u>(Overnight in Sverdlovsk).</u> [Sunset - 9:32 p.m.]</p>
<p><b>Day 7</b> Friday, June 1</p>	<p>[Sunrise 4:19 a.m.] Fly to Moscow (2 hr. 10 min. flight); Meet with Representatives of the Supreme Soviet, appropriate Ministries, and State Committees; Briefing on historic preservation and tour of the Kremlin; <u>(Overnight in Moscow).</u> [Sunset 8:38 p.m.]</p>
<p><b>Day 8</b> Saturday, June 2</p>	<p>[Sunrise 3:53 a.m.] Visit to and briefing on Bishop's House at Zagorsk, U.S.S.R. and the urban park area of Moose Island National Reserve (Loalny Ostrov). <u>(Overnight in Moscow).</u></p>
<p><b>Day 9</b> Sunday, June 3</p>	<p>Fly to Leningrad (1 hr. 15 min. flight); Briefing on historic and archaeological preservation work at the Hermitage and the Peter and Paul Fortress; Return to airport and depart for Copenhagen, Denmark (2 hr. flight); <u>(Overnight in Copenhagen).</u> [Sunset 8:36 p.m.]</p>

**S J R**

**80**

DATE: 3/12/90

FURTHER:

Date of 5-Day Notice: <sup>waived</sup> 3-12-90  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3-16-90

Resources Committee considered SJR 80

Urging the American Petroleum Institute to locate a regional oil spill equipment cache in the State of the Alaska.

and recommended:

- replace with \_\_\_\_\_ CS \_\_\_\_\_  same title
- attached amendment(s)  new title
- \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

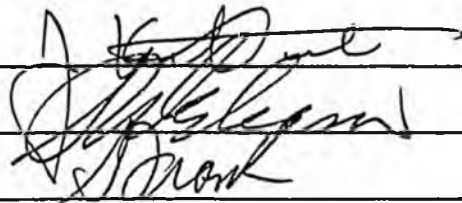
zero fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

\_\_\_\_\_  
  
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 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
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 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Fabrizio De Pass  
 Chair: Signature and Recommendation

**FISCAL NOTE**

**REQUEST:**

Revision Date: 3-16-90 Agency Affected: \_\_\_\_\_  
 Title: Urging the American Petroleum BRJ: \_\_\_\_\_  
Institute to locate a regional oil spill cache  
 Sponsor: Senate Special Committee on O & G Components: \_\_\_\_\_  
 Requestor: Senate Resources Committee

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>						
<b>REVENUE</b>	0	0	0	0	0	0

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

This resolution has no state fiscal impact.

Prepared by: Tom Moyer *Tom Moyer* Phone: 465-3834  
 Division: Staff, Senate Resources/Committee Date: \_\_\_\_\_

Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
 Agency: \_\_\_\_\_

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: 3-16-90  
 Title: Urging the American Petroleum  
 Institute to locate a regional oil spill cache  
 Sponsor: Senate Special Committee on O & G  
 Requestor: Senate Resources Committee  
 Agency Affected: \_\_\_\_\_  
 BRU: \_\_\_\_\_  
 Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This resolution has no state fiscal impact.

Prepared by: Tom Moyer *Tom Moyer* Phone: 465-3834  
 Division: Staff, Senate Resources/Committee Date: \_\_\_\_\_

Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
 Agency: \_\_\_\_\_

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

would continue through 1990.

Changes in CS SJR 80 (Res)  
 have no fiscal impact.  
 This fiscal note is  
 appropriate.

# Alaska State Legislature

Senator Drue Pearce, Chair  
Senator Tim Kelly  
Senator Rick Halford  
Senator Paul Fischer  
Senator Al Adams



WHILE IN JUNEAU:  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-4993

3111 C STREET, SUITE 150  
ANCHORAGE, ALASKA 99503  
(907) 561-2038

## SENATE SPECIAL COMMITTEE ON OIL AND GAS

TO: Senator Bettye Fahrenkamp, Chair  
Senate Resources Committee

FROM: Senator Drue Pearce *Drue Pearce*

DATE: March 13, 1990

RE: Senate Joint Resolution 80

Attached is a copy of SJR 80 requesting the American Petroleum Institute (API) to set up a regional oil spill response center in the State of Alaska. I would appreciate your scheduling SJR 80 for a hearing in your committee as soon as possible.

After discovering that the Petroleum Industry Response Organization (PIRO) had not chosen Alaska as one of the five nationwide regional oil spill equipment cache areas, I felt it was important for the legislature to urge PIRO to reexamine its preliminary choices.

SJR 80 requests that PIRO reconsider its findings and place a regional response center in the State of Alaska.

*and page 2 line 3*

On page 1, line 29 of the resolution PIRO's name is incorrect. It should read . . . "Petroleum Industry Response Organization." I would appreciate you making that change when the resolution is scheduled before your committee.

If you have any questions, please call me or Kirsten Schenker of my staff.

Thank you.

Attachment

DP:ks

SJR 80

APR 3 1990



**KENAI PENINSULA BOROUGH**

144 N. BINKLEY • SOLDOTNA, ALASKA 99669  
PHONE (907) 262-4441

**DON GILMAN**  
MAYOR

March 28, 1990

Senator Bettye M. Fahrenkamp  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Senator Fahrenkamp:

I want to thank you and the Senate Resource Committee for your quick consideration and approval of SJR 80. The resolution encouraging the American Petroleum Industry to consider Alaska in their Petroleum Industry Response Organization plan. Location of oil spill equipment that can be readily mobilized throughout the state will be a positive addition to our overall oil spill response capability.

Sincerely,

A handwritten signature in cursive script that reads "Don Gilman".

Don Gilman  
Mayor

Statement of  
Jim Butler, Special Assistant to the Mayor  
Kenai Peninsula Borough  
before the Alaska Senate Resource Committee  
SJR No. 80  
Juneau, Alaska

March 16, 1990

Madam Chair and committee members. My name is Jim Butler and I work as a special assistant to Mayor Don Gilman of the Kenai Peninsula Borough. Since the grounding of the Exxon Valdez nearly one year ago, the Kenai Peninsula Borough has been actively involved in responding to and dealing with the impact of oil on the communities of the Kenai Peninsula Borough.

Because of the many issues that surfaced as a result to the spill, Mayor Gilman brought me on board his staff. For the past year I have coordinated the borough's activities associated with the ongoing response effort. I have also begun to work closely with the local oil industry in Cook Inlet, along with the Alaska Department of Conservation, to look for new ways to prevent and respond more effectively to oil spills in Cook Inlet.

Previously, I have worked as a U.S. Senate staffer in Washington D.C. on transportation, fisheries and commerce issues of importance to Alaska. During my staff work in Washington, D.C. I continued to return home and work in the local Kenai congressional district office in the summer, as well as commercial fish. My background in Cook Inlet includes 12 years as a commercial salmon and halibut fisherman, the past 7 yrs. running my own fishing boat. I also participated in the 1987 Glacier Bay oil spill incident by acting as a liaison to the Alaskan Congressional Delegation.

Today I would like to address your committee on SJR 80, a resolution encouraging the American Petroleum Institute, Petroleum Industry Response Organization (PIRO) to locate a oil spill response equipment cache in Alaska.

As you are probably aware, after the grounding of the Exxon Valdez, it became painfully obvious that a lack of oil spill response equipment in Alaska contributed significantly to the delayed mobilization of an adequate oil control, containment and recovery effort. Many familiar with Cook Inlet also remember the same frustration of equipment shortages from the 1987 response to the Glacier Bay oil spill in Cook Inlet.

While it is clear that the Alaskan oil industry should be better prepared to respond to medium and large size oil spills in Alaska, and in fact they are becoming better prepared, the costs associated with the initial capitalization of large inventories of equipment which are likely to be used seldomly, often run so high many operators simply cannot afford it.

Initial attack oil spill equipment may be available in the area of a spill but if the spill is larger than local resources can handle, valuable time is wasted while equipment is mobilized from the lower 48 to help the cleanup effort. All the variables of the logistical equation of moving big equipment far distances must add up just right or you end up with a tragically slow response and a far greater likelihood of major environmental impact.

The American oil industry has recognized the need to pool the cost of acquiring and holding major oil spill response equipment in regional centers so it might be readily available to local response co-ops that are faced with a spill that over taxes their response capabilities. With the lessons of the Exxon Valdez fresh in the collective national industry mind,

the API has begun to explore how through the Petroleum Industry Response Organization Inc, or PIRO, the oil industry might develop equipment caches with response experts in regional centers around the nation. Unfortunately, Alaska has not been identified at this point as a location for such a response center.

While the API and PIRO have made great strides in developing a concept that addresses acquiring and holding regional inventories of major oil spill response equipment using many of the lessons of the Exxon Valdez to support their positions, it seems rather short sighted to exclude Alaska from their plan. Given the role Alaska plays in the production and transportation of a large part of the nations oil and the likelihood of major oil spills in remote locations associated with this activity, the Kenai Peninsula Borough agrees that a closer examination of the needs of the Alaska oil production region is in order.

The Kenai Peninsula Borough has felt the impacts of oil spills on its environment and economy in two of the last three years and we continue to experience impacts of the most recent oil spill. We know to well that all to often valuable time is lost during the critical first few hours and

days of a oil spill searching for more equipment as local initial attack equipment is overtaxed.

We recognize that much of the Cook Inlet field is in decline and facing narrowing operating margins. We also recognize that more and more fields in Alaska are in decline and that it is these marginal fields that will continue to employ Alaskans and contribute significantly to our economic base. A centralized inventory of large spill equipment that can be mobilized throughout the state when needed will help industry better afford the new cost of higher levels of oil spill response preparedness and hopefully, keep them economically viable and employing Alaskans longer.

More importantly, the citizens and communities that face the highest risk of environmental and economic impact in the areas of potential oil spills will benefit if response equipment can be rapidly deployed from an Alaskan based location.

With the still developing local response corps integrated with regional response plans, Alaska should be able to provide a system that can effectively utilize a central major oil spill equipment cache. Alaskans

should not have to wait for equipment from the west coast to be mobilized to Alaska by suppliers unfamiliar with Alaska's unique logistical challenges.

On behalf of the Kenai Peninsula Borough, I would like to thank your committee for considering SJR 80 and would encourage you to support it. This positive statement from the Alaska State Legislature will send a clear message to the nations oil spill planners.

With the nations most promising prospects for future oil exploration and development in Alaska, the State of Alaska and its citizens will continue to bear the frontline risk of oil spills. By encouraging the API and PIRO to take a closer look at Alaska's contribution to the nations oil consumption and the role Alaska could play in the PIRO strategy, we believe you are doing a service not only for the citizens of the Kenai Peninsula Borough but for the citizens of the State of Alaska as well.

That concludes my comments and I would be glad to answer any questions that the committee might have.

EXECUTIVE SUMMARY

OF KEY RECOMMENDATIONS OF THE

STEERING COMMITTEE REPORT

AND RECOMMENDATIONS ON THE IMPLEMENTATION OF PIRO

VOLUME I

JANUARY 5, 1990

I. INTRODUCTION

A. On June 14, 1989, the American Petroleum Institute's Task Force Report on Oil Spills concluded that, neither government nor industry "has the equipment nor the response personnel in place and ready to deal with catastrophic tanker spills." Accordingly, the API Report recommended the establishment of an industry funded Petroleum Industry Response Organization (hereinafter "PIRO") capable of responding to catastrophic spills from a tanker in waters contiguous to the United States and within

the 200 mile Exclusive Economic Zone, including harbors and river mouths.

B. After six months of deliberations, the PIRO Implementation Steering Committee is pleased to submit this report on its conclusions and recommendations, and on its progress on the tasks assigned to it. The reasons supporting each of the Steering Committee's recommendations are set out in the following report.

C. The Steering Committee unanimously concurs in the API Report's recommendation to establish PIRO as an industry-wide catastrophic oil spill response organization. Our recommendation to proceed with the implementation of PIRO in the manner we have proposed, however, is expressly conditioned upon the validity of our assumption that several critical, but as yet unresolved, factors will turn out as we currently anticipate:

1. First, we have assumed that Congress will pass legislation that is supportive of the concept of an industry-wide catastrophic spill response organization like PIRO, and that the ultimate legislation will not render PIRO duplicative of the federal strike teams or unduly expose PIRO and its creators to liability that rightfully should remain with the spiller. A critical

factor in this respect will be the retention of limited legislative immunity for spill responders.

2. Second, for the Steering Committee's recommendations to stand, it is imperative that the Coast Guard be deputized under the pending legislation, and be willing through agreements with PIRO and other spill responders, either to coordinate and direct or to assume federal funding of all catastrophic spills in U.S. waters.

3. Third, it is critical in the view of the Steering Committee that PIRO continue to have the support of a broad segment of the industry.

4. Fourth, it is important that PIRO obtain tax rulings that are consistent with the Steering Committee's recommendations regarding the corporate structure of PIRO.

5. Finally, to be viable as the bold, fast reacting response organization we have proposed for catastrophic spills, PIRO will have to be able to obtain insurance in amounts commensurate with the risks it will be bearing and at rates that are not unduly prohibitive.

II. KEY LEGISLATIVE PROPOSALS AFFECTING THE STEERING COMMITTEE'S  
ENDORSEMENT OF THE RECOMMENDATION TO FORM PIRO

A. DUPLICATION

In the view of the Steering Committee, the legislation currently pending in Congress will not inherently lead to duplication between the federal strike teams and the PIRO regions. If PIRO is established as we propose, it will become a mainstay of the federal response arsenal and duplicative federal strike teams will be neither required nor proposed.

B. THE NEED FOR PIRO UNDER THE PROPOSED LEGISLATION

Given the scope of the vessel and facility owner contingency plan obligations proposed in the pending federal legislation on oil spills, and the absence of any existing U.S. cooperatives capable of handling offshore spills larger than 25,000 barrels, the pending legislation gives rise to an industry-wide need for an organization like PIRO.

C. THE COAST GUARD'S OBLIGATION UNDER THE PENDING  
LEGISLATION TO COORDINATE AND DIRECT ALL PUBLIC AND PRIVATE  
RESPONSE EFFORTS IN THE EVENT OF A MAJOR SPILL

1. The Steering Committee recommends that the Coast Guard remain free to elect simply to "monitor" the overwhelming preponderance of small (i.e., 1,200 barrels or less) and medium (i.e., less than 24,000 barrel) spills where (i) the spiller is known and (ii) the Coast Guard has determined that the owner or operator has the financial resources and technical capability to undertake the response properly.

2. Where, however, the Coast Guard determines that the spill is beyond local capabilities (excluding PIRO) or where an open sea spill exceeds 25,000 barrels or a protected water spill is larger than 40,000 barrels (i.e., the capacity of the largest existing U.S. cooperatives), the Steering Committee recommends that the Coast Guard be required, at a minimum, to "coordinate and direct" the spill.

3. In exercising this proposed new role of "coordination and direction", the Steering Committee recommends that the Coast Guard be required to perform the same functions it is merely authorized to perform under its "monitoring" role pursuant to the Marine Safety Manual, Vol. VI, Sec. 7.B.3.a., Commandant's Instruction M16000.11.

4. In the view of the Steering Committee, the statute and regulations defining the concept of "coordination and direction" should assign to the Coast Guard appropriate authority, and the obligation to exercise it, to resolve disputes between conflicting federal and state regulatory agencies.

D. THE ALLOCATION OF RISK BETWEEN THE SPILLER AND THE CLEANUP RESPONSE ORGANIZATION UNDER THE PROPOSED LEGISLATION

1. The Steering Committee recommends adoption of the House proposal regarding the allocation of risk as between the spiller and the spill responder. The House bill provides that, when the President retains or directs a person to engage in spill response activity, that person is not liable for removal costs or damages arising from that person's removal activities unless that person is grossly negligent or acted with willful misconduct.

2. The Steering Committee recommends adoption of the Coast Guard's proposal to extend the House risk allocation provision to responders even when the Coast Guard is only "monitoring" the spill.

3. The Steering Committee recommends that the states be required by federal law to ensure that their laws are

not inconsistent with the proposed House risk allocation provision. Alternatively, the Steering Committee recommends that the PIRO board pay special attention to state oil spill immunity laws in determining the precise role PIRO is willing to undertake within the boundaries of any given state.

### III. THE ROLE OF PIRO

#### A. RECOMMENDATIONS RELATING TO PIRO'S RESPONSE ROLE

##### 1. SPILLS TO WHICH PIRO WILL RESPOND

The Steering Committee recommends:

a. That each PIRO region be designed to respond primarily to catastrophic (defined for purposes of this report as open sea spills in excess of 25,000 barrels, and protected water spills in excess of 40,000 barrels) oil spills of up to 216,000 barrels in the coastal zone or tidal waters of the United States;

b. That each PIRO region be staffed and equipped to respond to any oil spill in U.S. coastal zone and tidal waters judged by the U.S. Coast Guard to

be in excess of the local (i.e., non-PIRO) oil spill response capacity; and

c. That each PIRO region be staffed and equipped to respond to any spill of a tanker cargo traversing inland U.S. waters upstream from a river mouth on its way to or from an upstream facility, provided the tanker cargo would otherwise be (or have been) covered by PIRO during the open sea, coastal zone or tidal waters portion of its voyage, and provided the spill is judged by the U.S. Coast Guard to be in excess of the local (i.e., non-PIRO) oil spill response capacity;

d. That each PIRO region be authorized to respond to any other oil spill where PIRO is retained by the Coast Guard and directed to respond.

e. As an overriding precondition, the Steering Committee also recommends that PIRO be prohibited by charter from responding to any spill in excess of 1,200 barrels, unless the Coast Guard has first initiated its authority to "coordinate and direct" the spill or to "assume federal funding of the spill."

f. For minor spills (defined for purposes of this report as less than 1,200 barrels), wherein the Coast Guard has judged that the spill exceeds local oil spill response capabilities (again excluding PIRO), the Steering Committee recommends that PIRO be authorized to participate in the spill response as a subcontractor responsible only for providing equipment and equipment supervision, provided PIRO has received acceptable indemnification assurances from the spiller.

## 2. THE PIRO TIERED RESPONSE CONCEPT

The Steering Committee recommends that PIRO management undertake a review of its cross-regional response capability and, particularly its ability under local law to move response personnel and equipment outside of a given PIRO region. Specific guidelines should be developed governing the representations PIRO is willing to make for purposes of contingency plan development or otherwise.

## 3. THE PIRO HEADQUARTERS, REGIONAL CENTERS, AND STAGING AREAS

The Steering Committee recommends adoption of the API Report's recommendation to establish the PIRO

Headquarters in Washington, D.C., and to establish five regional centers located in the North East, Central/South Atlantic, the Gulf, the Pacific Southwest, and the Pacific Northwest regions of the United States.

The Steering Committee has not completed its evaluation of the specific locations for supplemental staging areas. In the interim, however, the Steering Committee recommends adoption of the API Report's recommendation to establish 19 staging sites within the area of responsibility of the five proposed regional centers. We also recommend consideration of two to four additional staging areas which may prove necessary to ensure coverage within PIRO's area of operations.

The Steering Committee recommends that the question of the number of response centers for PIRO be reviewed as events evolve with the pending legislation to determine whether additional centers or staging areas are warranted.

#### 4. PERFORMANCE STANDARDS

The Steering Committee recommends that PIRO management clearly and consistently declare its position that:

- the technology to enable anyone, even under the best of circumstances, to "remove" all of the oil discharged in a catastrophic spill either from the water or from the shoreline does not currently exist.

- That in "adverse weather", it is often impossible or far too dangerous to allow response equipment and personnel to leave the shoreline even when the equipment is locally staged and ready to begin the response. Thus, PIRO cannot promise to be able to remove any oil in truly "adverse weather."

- That, in light of these concerns, the Steering Committee recommends that PIRO be authorized to represent only that it will make its very best effort in responding to any spill.

##### 5. PIRO'S RELATIONSHIP WITH EXISTING COOPERATIVES AND OIL SPILL SUBCONTRACTORS

The Steering Committee recommends that existing local cooperatives maintain and, ideally, expand their present capabilities throughout the country thereby leaving PIRO better able to concentrate on developing

and improving its ability to respond to open sea catastrophic spills.

The Steering Committee recommends a full time PIRO staff of 303, including a complement of 52 for each of the five PIRO regional centers.

6. PIRO IN THE CONTEXT OF A "FEDERALIZED" SPILL

The Steering Committee recommends that PIRO and the Coast Guard develop appropriate procedures to ensure that the Coast Guard expeditiously reconsiders its initial determination not to federalize a spill where the spiller does not, or cannot, pay the responder's operating costs on a current basis.

7. PIRO'S ROLE IN THE DEVELOPMENT OF VESSEL AND FACILITY OWNER CONTINGENCY PLANS

The Steering Committee recommends:

- a. That PIRO be authorized to enter into contracts obligating PIRO to provide oil spill response services under terms consistent with the recommendations contained in the report, and authorizing covered vessel and facility owners to cite PIRO as their catastrophic spill

subcontractor in the preparation of the proposed oil spill contingency plans.

b. That PIRO be precluded by charter from participating directly or otherwise in the development of individual vessel or facility owner contingency plans.

c. That PIRO be expressly precluded from advising on or approving the adequacy of any vessel or facility owner's contingency plan except in regard to PIRO's capabilities.

8. PIRO'S CONTRACTUAL RELATIONSHIP WITH THE SPILLER/RESPONSIBLE PARTY

The Steering Committee recommends that PIRO develop and carefully utilize special procedures and contractual provisions consistent with those suggested in the body of the report to define and limit PIRO's relationship to the spiller and, hence, its exposure to subsequent claims for damages or mismanagement.

9. PIRO'S ROLE IN THE DISPOSAL OF WASTE AND HAZARDOUS MATERIAL DURING A SPILL RESPONSE

The Steering Committee recommends that, to the extent possible, PIRO should avoid undertaking shoreside management of the disposal of waste oils and other materials once they have been collected during clean-up and removal operations.

With respect to the removal of waste oils and other regulated materials, the Steering Committee recommends that PIRO delegate these removal obligations to subcontractors to the maximum extent permissible under law.

B. PIRO'S READINESS AND TRAINING ROLE

The Steering Committee recommends that PIRO management develop formal selection, training and inspection criteria to include classroom training, equipment familiarization, regular field exercises, unannounced drills and periodic inspections. These exercises and drills should include actual field deployment of personnel and equipment and joint exercises with relevant local, state and federal representatives. The operating vessel and facility owning companies who contract with PIRO should be required, periodically to participate in training exercises to further clarify their understanding of their role and responsibility during a spill.

### C. PIRO'S RESEARCH AND DEVELOPMENT ROLE

1. The Steering Committee recommends a broad-based research and development program involving the expenditure of \$30 to \$35 million over the first five years of PIRO's operations.

2. The Steering Committee recommends that PIRO rely, to the extent practicable, on the resources of contract researchers performing under the supervision of PIRO. The Steering Committee also recommends that any patents flowing from PIRO's research and development efforts be placed in the public domain so that the contribution to the world's oil spill cleanup capability will be maximized.

### IV. STEERING COMMITTEE'S RECOMMENDATIONS REGARDING THE STRUCTURE OF PIRO

The Steering Committee recommends that PIRO's services and membership be extended broadly to the owners and operators of tankers and coastal facilities who will be required to comply with the newly proposed certification requirements set out in the pending oil spill legislation.

A. TWO-ENTITY STRUCTURE

The Steering Committee recommends that two not-for-profit corporations be organized. One entity (PIRO) would be a non-membership operating company. The second entity (a to-be-named funding association hereinafter referred to as "Association") would be a membership company, and the dues from the members of Association would be used to fund the operations of both entities. Persons desiring to designate PIRO as their response organization for purposes of proposed contingency plan obligations would be required to become members of Association. Members using PIRO on an ongoing basis would be voting members of Association, while members using PIRO on a per-voyage basis would become non-voting members. Dues paid to Association would consist of an initial amount to provide capital and annual charges calculated to cover operating expenses of PIRO (to which Association would contribute funds).

B. COLLATERAL ISSUES.

1. TAXES. The Steering Committee recommends that a tax ruling that both entities are exempt from income tax be sought, with the result that, if obtained, the periodic dues paid to Association would be currently deductible by the member companies. Whether initial payments

V. STEERING COMMITTEE'S RECOMMENDATIONS RE FUNDING

PIRO will function in two different modes and will obtain funds for each in different ways: 1) Readiness mode -- PIRO will obtain funds from Association. Association will collect initial cash contributions and periodic dues from members; 2) Spill response mode -- PIRO will recover all its expenses either from the spiller or, where the spiller cannot pay or where the spiller's limits have been exceeded, from the Federal Oil Spill Compensation Fund.

A. THE READINESS MODE.

Association will recover all of its costs through member dues which will be calculated separately for each member by multiplying a per barrel amount (the same for all members) times the volume of oil covered for that member by PIRO. Tanker operators and cargo owners may obtain coverage either directly by becoming members of Association, or indirectly by being deemed to be covered under the membership of the facility to which they are delivering the oil.

1. INITIAL CASH CONTRIBUTIONS

PIRO will require substantial amounts of cash to purchase capital equipment and to meet operating expenses incurred during start-up. Association will

obtain these funds through a combination of direct cash contributions from its members and debt financing from private financial institutions. At first, member guarantees may be needed to secure Association borrowings. Members who join Association after initial cash contributions have been collected will pay their pro rata share of such contributions and guarantees with an adjustment for the time value of money.

## 2. MEMBER DUES IN ASSOCIATION

On-going cash requirements of PIRO will be met by member dues paid into Association and subsequently contributed to PIRO. These payments will cover cash operating expenses, including debt service, R&D expenditures and ongoing capital requirements.

### B. THE SPILL RESPONSE MODE.

PIRO will function as an agent acting on behalf of the spiller. Consequently, all PIRO outlays during a clean-up will be repaid by either the spiller, the Coast Guard or the Federal Oil Spill Fund, as specified in the pending oil spill legislation. While PIRO will seek to recover these costs at the earliest possible date, in practice this may take 60 to 90 days or more to accomplish. Accordingly, either PIRO or Association will obtain a \$20 million credit

facility from a private financial institution to provide interim funding during a spill. A small portion, perhaps \$1 million will be maintained as a cash reserve.

VI. PROPOSED PIRO BUDGET

A. The Steering Committee recommends the following initial funding for PIRO:

PIRO BUDGET ESTIMATES  
(THOUSANDS OF DOLLARS)

	<u>CURRENT</u>	<u>ORIGINAL</u> <u>API</u>	<u>EXPLANATION</u>
Employee Expenses	\$ 20,910	\$ 15,725	Additional people/ benefits
Mails, Supplies, Util. Purch Services & Work Contracts	5,870	2,600	greater footage, etc.
Fees & Taxes	10,590	3,700	
Misc Costs	600	0	
	3,000	6,000	API included many items under misc now broken out
Depreciation	0	7,400	Current budget cash basis only. Capital items included as they arise each budget cycle.
Dept Service	22,000	0	API assumed 0 debt.
Startup Expenses	2,900	0	
Operating Budget (est)	\$ 65,870	\$ 35,425	
R&D Budget	\$ 6,725	\$ 6,725	Same scope
Capital Budget			
Cash portion	\$ 21,750	\$100,000	Greater scope brought total up, although only 15% is cash
Total Budget-Annual	\$ 94,245	\$ 94,345	
5 Year	\$393,370	\$275,000	

5 year budget figure includes initial capital, R&D plus operating costs escalated 4-5%/year

B. Actual cash requirements for the first calendar year will be somewhat less than the totals shown because of less than full year operation. An initial cash call amounting to one (1/3) of this total budget estimate would be due as soon as it is decided to proceed with the formation of PIRO.

VII. CONCLUSION

A. There remains a substantial body of work to be completed before PIRO can be brought into formal existence as an oil spill response organization. The Steering Committee believes the major strategic considerations relating to the ultimate questions of whether and how to form PIRO have now been addressed. Based upon our study of the issues and the needs of the country, the Steering Committee unanimously and strongly recommends proceeding immediately with the formation of PIRO along the lines we have proposed.

B. To effectuate this recommendation, the Steering Committee recommends that each company interested in participating in the formation of PIRO carefully review the enclosed report and its recommendations. We urge the members of PIRO Implementation, Inc. and any other interested companies to indicate their interest in proceeding with the recommendations by the end of February 1990 so that we may begin the process of hiring a staff, ordering long lead time equipment, and attending to the myriad other organizational and procedural steps required to get PIRO underway. The Steering Committee recognizes that it is unlikely that Congress will have completed its work on the pending legislation by this date. There are, however, numerous

matters that should be begun now, even if subsequent events force us to reconsider or modify the role proposed for PIRO.

C. The Steering Committee was supported in its work by subcommittees covering functional and business aspects of the ultimate PIRO Organization. Approximately 75 executives from the Implementation Group companies were involved in this subcommittee work. Their efforts greatly assisted the Steering Committee in developing the concepts and specific proposals contained in this report. Executive Summaries of the individual subcommittee reports are found in Appendix 4 of the report, and the subcommittees' complete reports are found in Volume II of the report.

D. The Steering Committee recommends that the members of the PIRO subcommittees be requested to continue their efforts towards the implementation of PIRO until February 28, 1990. Assuming a final decision to proceed with PIRO has been reached by that date, PIRO will be able to proceed with the hiring of its own initial staff component and the executives presently working on the subcommittees can be relieved of their responsibilities. Finally, it is recommended that the present members of the Steering Committee continue serving in their present capacity as directors of PIRO Implementation, Inc. until further notice.

**S J R**

**81**

SENATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERRAL

DATE: 3/19/90

FURTHER:

Date of 5-Day Notice: 3-22-90  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3-27-90

Resources Committee considered SJR 81

Relating to the United Nations resolution on pelagic driftnet fishing and research on the pelagic driftnet fisheries of the North Pacific Ocean.

and recommended:

- replace with \_\_\_\_\_ CS \_\_\_\_\_  same title
- attached amendment(s)  new title
- \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

zero fiscal note(s) 7+6  
\_\_\_\_\_  
\_\_\_\_\_

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

[Signature]  
[Signature]  
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OTHER RECOMMENDATIONS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature]  
Chair: Signature and Recommendation



STATE OF ALASKA  
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Fish & Game	DIVISION Commissioner's Of.	BILL NUMBER SJR 81	SPONSOR Rules Committee
SHORT TITLE OF BILL U.N. resolution on pelagic driftnet fishing			
DEPARTMENT POSITION Support			
PREPARED BY Molly McCammon	DATE 3/26/90	COMMISSIONER'S SIGNATURE <i>Arnold A. Wiley</i>	DATE 3 27 90

SUMMARY

OTHER AGENCIES AFFECTED BY BILL None	CONSTITUENT GROUP(S) AFFECTED BY BILL Alaska commercial, subsistence and sport fishermen
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The United Nations has passed a resolution calling for a scientific review of large-scale pelagic driftnet fishing by June 30, 1991, and moratoria on all large scale pelagic driftnet fishing by June 30, 1992, unless effective conservation measures are in effect.

ANALYSIS OF BILL/PROGRAM EFFECTS

This resolution expresses legislative support for the U.N. resolution and urges the U.S. government to undertake and adequately fund a major scientific research program to provide the scientific data needed to protect the interests of U.S. fishermen and to demonstrate the harmful effects of large scale pelagic driftnet fishing on salmon, steelhead and other marine life.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: Relating to U.N. resolution  
on pelagic driftnet fishing  
 Sponsor: Rules Committee  
 Requestor: \_\_\_\_\_

Agency Affected: Dept. of Fish & Game  
 BRU: \_\_\_\_\_  
 Components: \_\_\_\_\_

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

**FUNDING:** (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

No FY 90 impact.

Prepared by: Molly McCammon  
 Division: Spec. Asst. to the Commissioner  
 Approved by Commissioner: *[Signature]*  
 Agency: AK Dept. of Fish & Game

Phone: 465-4100  
 Date: 3/26/90  
 Date: 3/27/90

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

# MEMORANDUM

# State of Alaska

DEPARTMENT OF FISH AND GAME


TO: Senate Special Committee  
on High Seas Salmon  
Interception

DATE: March 1, 1990

FILE NO.:

TELEPHONE NO.: 465-4100

SUBJECT: Information  
Regarding CSSJR6

FROM:  David Benson  
Director of External  
and International Fishery Affairs  
Department of Fish and Game

During the 1989 legislative session, the Alaska State Legislature passed CSSJR6, "Relating to the Interception of Alaska Salmon and Steelhead on the High Seas." This resolution listed several specific actions which the Legislature believed would help address this problem. The Department of Fish and Game, as the agency charged to lead the state's efforts to end high seas interception, mounted an aggressive campaign to tackle this problem. This memo briefly reports on our efforts to date regarding the actions specifically identified by the Legislature in the resolution.

## High Seas Salmon Fisheries of Japan

The International North Pacific Fisheries Commission (INPFC) has historically been the forum for addressing the interception of Alaska salmon by the directed high seas salmon fleets of Japan. The state has been an important player in this forum over the years. Resolution CSSJR6 stated:

BE IT RESOLVED that the Alaska State Legislature respectfully requests the American section of the International North Pacific Fisheries Commission to hold firm in negotiating with the Japanese and to oppose expansion of the Japanese salmon and squid fishing areas, as well Japan's proposal to convert its mothership fleet on the high seas to land-based fleet; and be it

FURTHER RESOLVED that the Alaska State Legislature respectfully requests the Congress not to allow the Japanese to fish for salmon and steelhead within the United States Exclusive Economic Zone...

**Status:** One of the most controversial issues at the 1988 INPFC meeting was the Japanese proposal to convert their mothership fishery to a landbased style fishery, with freezer capacity on the catcherboats and direct deliveries from the catcherboats to shore. Several rounds of talks took place in late 1988 and early 1989. The State adopted a very tough stand regarding the conversion proposal, and attended all of