

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 00/2

9399 HOUSE RESOURCES

Failure to provide subsistence preference to those who depend customarily and directly on fish and wildlife as the mainstay of livelihood, who are local residents, and have no alternative resources available, will mean the transfer of management of public lands to the federal government.<sup>8</sup>

### Conclusions

The conclusions drawn by David Case in his monumental study are worth quoting at length:

*statewide subsistence protections, structured in significant part to protect Native subsistence interests.*

*Although the umbrella of federal protection now shelters both Natives and non-Natives, the fact does not entail a diminishment of Native values so much as an acknowledgement that in Alaska significant numbers of non-Natives now share those values by their participation in the subsistence economy. Nor do recent federal enactments necessarily preclude the possibility of some tribal control of subsistence hunting and fishing. In fact, recent amendments to the Lacey Act imply that, even in Alaska, tribal fish and game management may*



*To some extent, federal treaties and statutes have protected Alaska Native subsistence interests for many years. Earlier enactments afforded minimal exemptions, often limited to specific species or wildlife taken by primitive hunting methods. In all likelihood more realistic forms of protection were unnecessary because there was little real conflict over the exercise of aboriginal hunting and fishing rights. However, Alaska statehood, the enactment of ANCSA and the relatively rapid development of the new state exacerbated these conflicts. The federal response has not been the abandonment of Native subsistence values, but the protection of those values in the form of exemptions from recent wildlife conservation treaties and statutes. Moreover, the state has been virtually compelled under ANILCA to adopt*

*receive additional support through federal enforcement. Particularly when faced with competing state interests, the courts have also concluded that this long and continuing history of federal protection constitutes statutory acceptance of a trust responsibility for the maintenance of subsistence culture.<sup>9</sup>*

### The Conflict

Last December 22, the Alaska Supreme Court ruled that Alaska's subsistence statute giving rural residents priority in hunting and fishing privileges discriminated against urban residents. The decision was based on the Alaska Constitution's "common-use" clause which provides that all residents have equal rights to use fish and wildlife.

On January 5, Alaska's Supreme Court Chief Justice Warren Matthews

issued a stay, postponing until July 1 the effects of the December 22 decision. This means that the State of Alaska has very little time to change either the State Constitution to accommodate the ANILCA protection of Alaska Native subsistence rights OR get Congress to change ANILCA to accommodate the Alaska Constitutional position, which has been supported by influential special interest groups of sports hunters and fishermen, commercial fishermen and hunters, environmental and animal rights groups.

In our view, the historic federal trust position of protecting traditional Native American subsistence culture and rights must prevail. The alternative would mean the extension of "the trail of broken treaties" to the remaining great land capable of keeping at least some of the promises of democracy made to the people who were here first.

It is important, of course, for Native Alaskans and other Alaskans who value the subsistence way of life to cooperate and - if possible - reach a consensus on the best way to ensure its preservation.

As Representative Eileen Panigeo MacLean of Barrow wrote recently,

*It is up to us Alaska Natives to be aware of subsistence issues and to understand the arguments as we advocate for our hunting and fishing rights. If we do not, we will lose control over our destiny and our culture shall not survive.*

*We must continue to stand up and speak for our needs, so that we will not wake up one day to find that we are no longer able to gather the resources which sustain us. We must keep our authority of local control.*

*We must give support and encouragement to the various groups and commissions that advocate for our way of life and show our appreciation for their efforts and dedication. They are working to protect our resources and our right to the resources not just for themselves, but for us and for our future generations.<sup>10</sup>*

### Alaska IMPACT Advocates

Alaska IMPACT adds its voice

to those who advocate for the Native Alaska subsistence way of life. As has been demonstrated time and again in the "South 48" and in Hawaii, it is easy for a dominant majority to ride roughshod over minority cultures and their rights and traditions.

Our hope is expressed in these wise words of our noted legal authority on the impact of American laws on Alaska Native peoples:

*Perhaps in Alaska, in the waning days of the twentieth century, we will at last find one place where the relationships between immigrant and aboriginal Americans can be structured so that each may enrich the other, and thereby ensure the diversity that is the hallmark of a free society.*<sup>11</sup>

### Towards a Solution

On February 1, 1990, the Board of Directors of the Alaska Federation of Natives adopted a position statement on subsistence, including the following:

*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 goal.*

### Senator Stevens



In his address to the Joint Session of the 16th Alaska Legislature on January 17, Senator Ted Stevens pointed out that a federal solution would risk serious losses to the state. "I would urge you not to think that the federal solution is the one that is easiest," he said, "because we will lose more than we gain."

### Governor Cowper

Governor Steve Cowper has stated that,

*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 (Alaska) Supreme*

*Court has dropped in our laps.*<sup>12</sup>

Several legislative measures have already been introduced in Juneau, including:

SCR 39 by Senator Jay Kerttula of Palmer which would establish a Commission to review the legal situation and identify possible options for a solution for the Senate

HB 415 by Representative Ramona Barnes of Anchorage, which would amend the Alaska subsistence law and base "subsistence user" criteria on 1) local residency and 2) direct dependency on subsistence resources and income below the national poverty level.

HJR 74 by Representative George Jacko would amend the Constitution by adding a section to give the legislature authority to grant a preference for subsistence use of fish and wildlife and State-owned renewable natural resources.

Very likely there will be many more measures by various pressure groups during this session. Alaska IMPACT will alert members to advocacy action possibilities as appropriate.

If you have information, questions or suggestions, please write or phone:

Richard K. Heacock, Jr.  
Alaska IMPACT  
3012 Riverview Drive  
Fairbanks, Alaska 99709  
(907) 474-0700

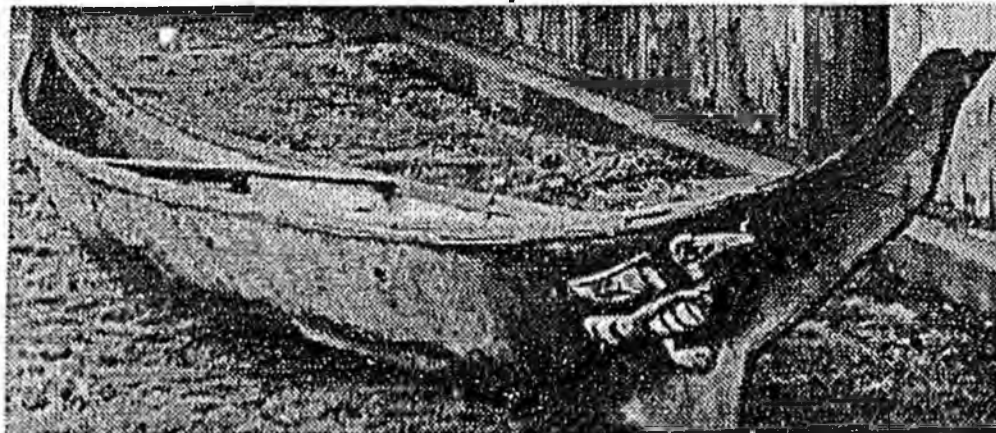
### Notes:

- <sup>1</sup>Village Journey. Thomas R. Berger, Hill & Wang, 1985, p. 52  
<sup>2</sup>Indians and Other Americans. Fay & McNickle, Harper, 1959, p. 26  
<sup>3</sup>Behind the Trail of Broken Treaties. Vine Deloria, Delta, 1974, p. 95  
<sup>4</sup>Alaska Natives & American Laws. David S. Case, U of A Press, 1984, p. 47  
<sup>5</sup>Ibid., p. 47 ff.  
<sup>6</sup>Senate Report 92-581, 92nd Congress, 1st Session, December 14, 1971 at 37  
<sup>7</sup>Case, op. cit., p. 300  
<sup>8</sup>Ibid., p. 303  
<sup>9</sup>Ibid., pp. 313, 314  
<sup>10</sup>Tundra Times, January 29, 1990, p. 29  
<sup>11</sup>Case, op. cit., p. 477  
<sup>12</sup>AFN Newsletter, Special Issue, February 1990, p. 7

This edition of Prepare has been researched and written by the Executive Director of Alaska IMPACT with the assistance of its Board of Directors and members.

Graphics courtesy of:

- Alaska Federation of Natives; Salmon Drying, page 1  
David Lindstrom's Sketchbook; Caribou & Walrus Drawings, page 3  
Alaska Federation of Natives, Ice Fishing, page 3  
Bishop's Museum, Halibut Meak, page 4  
Northwest Art, Tlingit Canoe, page 4



**Judith M. White**  
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*Distributed by*  
Rep. Patricia Barnes

January 31, 1998

Republican Party of Alaska  
1001 W. Fireweed Ln.  
Anchorage, Alaska 99503

Last week I received from the Republican Party of Alaska its *1998 Critical Issues Survey*. I'm sure I was only one of thousands who received this survey. However, since you asked about my positions, I am taking the time to write you about the subsistence issue.

First let me tell you about myself -- I'm 54 years old, live in Chugiak, have two grown children, grew up in a Democratic family in very rural Oklahoma, have lived in Alaska for 22 years. I'm an Episcopalian, a state employee, and occasional fisherman (I caught a 178 pound halibut once!). I'm also a conservative Republican. And I care passionately about subsistence.

For me the subsistence issue is a fundamental matter about what kind of principles we will uphold. I am just horrified by the arguments for the rural priority, and I put the blame for the terrible mess we are in on our Republican leaders, especially Senator Stevens. I think Senator Murkowski was wise to pass up a run for the governor's race; although I admire him for many of his stands, I think there was a distinct possibility that he might not even have won the Republican primary. Undoubtedly, subsistence will be a major issue in the governor's race, and there is a real possibility that the winner of that primary will be totally at odds with the position taken by Senator Stevens. What an embarrassment that will be.

I have listened to Senator Stevens on many occasions when he admonishes the Alaska legislature that they must address the subsistence issue. The most absurd argument he fervently made was that, after all, this priority would only go into effect when there is not enough game for everyone. So let me see if I understand this -- it's only when there's not enough to go around that the rules go into effect, and then those rules provide for the insufficient resources to go not to the needy but rather to the rural—including the rural rich. And it's just "Tough!" for the urban poor.

The second most absurd argument is the one most usually put out by Governor Knowles and Lt. Gov. Ulmer. They want us to solve the subsistence issue "like a family" and therefore grant a rural preference. The family they're referring to sounds like a very dysfunctional one to me. Their "family" reminds me of the Old Testament Bible story about Joseph. His coat of many colors signifying his father's favor resulted in his brothers' casting him into a pit and selling him into slavery. Whatever else that story is about, it certainly points out that there can be great perils associated with favoritism. Can you

really imagine a family that doesn't have enough of something for everyone and decides to give what it does have not to the family member who needs it most but rather to the one who lives in a certain locale? Forgive me, but I just never heard of such a family.

But the most offensive argument for the rural priority to me is the one most often repeated by Senator Stevens – the argument that we must have a rural priority because if we don't the Federal Government will take over management of our resources. It's ironic that in the survey you sent out, the final question was, "Should Republicans continue to press for ethical government . . . ?" Senator Stevens' argument for subsistence is that whatever we think about the morality of a rural priority, we should just give in to avoid Federal management. I'm generally proud to be a member of the Republican Party, but I really hate it when Republicans take the position that the end justifies the means. Let's leave that argument to our current disgraceful President. Most of us work hard to try to build character in our children. I can't remember how many times as my own children were growing up that I told them, "You know what's right. Don't give in to pressure to do something that you believe is wrong. You know right from wrong, and I expect you to do the right thing." For me, if the end result is going to be an unprincipled rural priority anyway, then I say let the Feds do it and let us continue to oppose it; that's a much more honorable role than for us to participate in this unprincipled position. Totally aside from the rural priority issue, when it comes to professional game management, I suspect that however the Feds performed 40 years ago bears little relationship to how they're likely to perform today, and, furthermore, they'll end up paying for it.

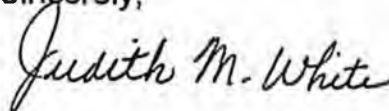
Ironically, this terrible fight is likely to work against the well being of rural Alaska in the long run. The vast majority of Alaskans are honorable, decent people who want to help their neighbors and who generously assist those who are in need—look at the reaction to the Miller's Reach fire. A rural priority does not appeal to our best instincts to help those in need, and it will engender a long lasting resentment. For many years, urban legislators and both Republican and Democratic governors have given rural Alaska much more than its fair share when it came to capital projects, school funding, energy grants, etc. I believe that the subsistence resentment will spill over to all these other areas.

The sad thing is, a rural priority doesn't even guarantee that the truly needy who get the priority will even get "enough." The only thing the rural needy –along with the rural rich—will get is just more than urban folks get. In the end, that's what the priority is – just a preference but not necessarily "enough" in any individual case. So the preference will probably cause enough resentment that it will work to the harm of many who got a preference but still didn't get "enough." Tell me – who will want to give them "enough"?

I also find Senator Stevens arguments that it would be impossible to change the federal law requiring the rural priority simply not credible. First, every time he told us we couldn't get the moratorium extended, when push came to shove, it got extended. Then, he never tells us the names of the other Senators who would insist on a rural priority; what Senator from what other state would want to be confronted with such a stand in his own state.

Of course I hope that the courageous state legislators – Masek, Halford, Kohring, and Barnes, just to name a few – who are standing for equality under the law for all Alaskans will continue to stand firm. But more than that, I keep hoping against hope that Senator Stevens will clean up the mess he created. Yes, the subsistence issue should be solved, and Senator Stevens should do it!

Sincerely,

A handwritten signature in cursive script that reads "Judith M. White". The signature is written in dark ink and is positioned below the word "Sincerely,".

Judith M. White

cc: Senators Ted Steveris and Frank Murkowski  
Senator Rick Halford  
Representatives Beverly Masek, Vic Kohring, Ramona Barnes  
Anchorage Times

## **An Open Letter To The Alaska State Legislature:**

**(First half of letter follows)**

**Whereas; 1) Each action of an Alaska state resident is either inherent right, or government-granted privilege. And, Whereas, 2) Government, when asked, must grant opinion. Therefore: The inquiry; is subsistence, a) a right (to be protected by government) or, b) mere privilege (granted by government to those who it declares worthy)? Wherefore, 3) Should the Alaska State Legislature grant opinion that subsistence is a right (naturally inherent within the individual), then should that activity not be addressed distinctly as a right and be respected and protected as such by government? Likewise, should government rather opine that subsistence is mere privilege, then too, it shall be handled distinctly - as a privilege - (contingent upon, perhaps, the place of individual residence or other arbitrary classification).**

**Under presently-proposed federally-granted privilege, fish and game would be taken by Alaskan residents in the fashion of subjects of the king of yore; privilege (permission) to take a deer from the royal forest dependent merely upon whether the subject is one of the kings chosen few.**

**The Alaska State Supreme Court has correctly ruled that subsistence (as addressed by the Alaska State Constitution) is an activity available to all eligible residents - as an individual right. (The State administration, congressional delegation, and others, however, are now suggesting that a vote be allowed to amend the State constitution). Why would one who is now protected by recognized right choose to agree to allow others a vote, thereby allowing possible change of right to a privilege?)**

**The feds have announced their list of the chosen; with hammer-in-hand they have threatened to force (if necessary) official state recognition of federal desire to grant privilege to these favored few. (Caveat; enrollment in the federal eligible-for-subsistence club is always subject to change: residents being thrown on and off as they gain or lose favor with the King of**

2/2

Washington).

The State court has determined that subsistence is a right; The feds refuse to exercise the worm which wends through their head... whispering the mistaken belief that subsistence is a mere privilege and the king, in fact, is clothed. The worm whispers, too, the mistaken belief that Alaskans will buckle under federal intimidation.

Subsistence is a natural activity - an inherent individual right. The importance of retaining individual right over the allure of privilege evades some Alaskans. These neighbors have forgotten that rights are the means by which government is kept under control of the individual; and that privilege is the means by which the individual is kept under the often oppressive authority and dominion of government.

The Alaska State legislature is presently, again, addressing the long-suffering "subsistence dilemma". The final solution, however, may not come from government. Rather, the solution may come through the actions of the individual.

(Second half of letter to follow)

Jack Polster  
1508 Ocean Drive  
Homer, Alaska 99603

907 235 2298

- 235-8777 store

TO: TAMARA MOORE

c/o REP. SCOTT DEAN

Fax 1-907-465-3265

- 1) PLEASE ACKNOWLEDGE RECEIPT OF THIS FAX
  - 2) PLEASE MAKE A COPY FOR EACH MEMBER OF HRC AS WELL AS ~~REP.~~ TORRESON  
SEN
- & REP. PHILLIPS

Theresa AP

H + S Resources Committee  
H a S State Affairs Committee  
H Fisheries Committee  
Subsistence: State of Alaska to license subsistence fishermen.

Governor Knowles Tele-Conference

2/11/98

I wish to address subsistence fishing. A subsistence plan for hunting may develop on a similar format.

Subsistence fishing could be a third category of licensed use of the fisheries resource, with commercial fishing and sports fishing being the first two groups.

As land uses entails the subdivision of lots for private use, so too may fish resources be subdivided.

Sports fisher persons are licensed to catch seasonal daily limits.

Commercial fishermen are licensed by limited entry permits to harvest a collective estimated quota during timed openings of derby fishing.

High seas fisheries are allotted Individual Fishing Quotas for halibut and cod. Quotas are based on an average of X number of year's catches for the vessel.

It follows that subsistence fisheries permittees of a newly created fisheries allotment entity, should be licensed to harvest a seasonal limit, quota, or allotment based on their historical catch whether it be for individual, family, village or region. Permittees would be subject to appropriate subsistence regulations, necessary documentation and monitoring of their catches.

Regulations have been modified many times to accommodate participants in commercial and sports fisheries. Subsistence fisheries need adapt to modern management technology, with reasonable consideration given to historical catch and traditional uses, and forget the rural preference arguments. Times have changed. Constitutional amendment not necessary.

Relative to subsistence fishing, dipnetting provisions need be expanded throughout the state, for balance and harmony in subdividing the fisheries resources.

KenHubbardBox 1703PallmerAK99645-907-745-3136

Subsistence Fishing:

Governor Tony Knowles Tele-conference

2/11/98

This Chart for Demonstration Only. SAMPLE (May not be accurate)

Example of fishing groups entries.

Type	Licensed	Limits	Quotas	IFQ's	Shares	Barter
Sport	Yes	Yes				
Commercial	Yes	Yes	Yes	Yes		
Coastal	Yes	Yes	Yes	Yes		
Maritime	Yes	Yes	Yes	Yes		
Subsistence Now	?	?	?	?	?	?
Subsistence New	Yes	Yes	Yes	Yes	?	?

This Chart for Demonstration Only. SAMPLE

SAMPLE ONLY

Ken Hubbard Box 1703 Palmer AK 99645-907-745-3136

Letter to the Editor

TRUTHS - SUBSISTENCE - Anchorage Daily News Editorial - 2/15/98

Rep. Scott Ogan cannot:

- (1) nor any other legislator, place on the ballot, UNTITLED PROPERTY RIGHTS, namely fish, wildlife and waters, which are held in COMMON, in TRUST by all Alaskans, the BENEFICIARIES. "Colorado Supreme Court", -- "Alaska Supreme Court, Pullen v. Alaska, 1996."
- (2) nor any other legislator, propose or pass legislation that will award specific exclusivity to specific USERS, harvesting fish and wildlife within Alaska. "Alaska Supreme Court, Metlakatla Indian Community V. William A. Egan, 1961", -- "Owsichek v. Alaska, 1988", -- "McDowell v. State, 1989."
- (3) nor any other legislator, propose or pass legislation that promotes PRESCRIPTION, (def. the acquirement of the title or right to something through its continued use or possession from time immemorial or over a long period). "Alaska Supreme Court, Madison v. Alaska, 1985." -- "Morry v. Alaska, 1992." -- "Payton v. Alaska, 1997."
- (4) nor any other legislator, propose or pass legislation that abrogates "Police Powers", the legislators SOVEREIGN RIGHT to manage fish, wildlife and waters for USERS. In other words, licensing, protection, seasons and bag limits, means and methods and all other management decisions for fisherman, hunters, trappers or other USERS are an EXCLUSIVE RESPONSIBILITY of the State of Alaska and it's TRUSTEES, the legislators. "Alaska Supreme Court, Michael Totemoff v. Alaska, 1995."
- (5) nor any other legislator, propose or pass legislation that removes PROPRIETARY RIGHTS of ownership, or the rights of management, administration, and development of Alaska's lands and natural resources. Federal Law, "Federal Submerged Lands Act, 1953."

I commend Representative Ogan for being knowledgeable of these truths and walking side by side with the Supreme Court of Alaska on Public Trust and Public Trust Doctrine.

  
Warren E. Olson



# Alaska State Legislature

## Written Testimony Form

Please enter into the record my testimony to the House Resources Committee  
(committee name)  
 committee on Fish and Game <sup>HB 406</sup> dated 2/28/98  
(bill/subject)

I am against HB 406. This does not provide a rural priority that we need to avoid a Federal Take-over. The non-local or state-wide harvest potential in this bill is not right. This Bill would put an unfair obligation on the local advisory committee members. The redistricting of Fish & Game Regions smacks of political reapportionment (changing boundaries to exert influence outside local areas). Please don't

Signed: John K. Renner  
 Testifier Name

JOHN K.  
 RENNER

Representing (Optional)

Bx 756 Cordova AK 99574  
 Address

474-7573  
 Phone Number

put a unfair burden on your volunteer local advisory committee.

Phone Number

TO: HOUSE RESOURCES COMMITTEE,

Feb.28,1998

CHAIRMAN: SCOTT OGAN  
MEMBERS

SUBJ.: HB406


My name is Cliff Judkins. I am a 36 year resident of Alaska. I live in Wasilla. I am testifying today as the President of the Alaska Boating Association. The Association members are ,mostly, hunters and fishers living in both urban and rural areas. Many of us hunt and fish for food.

First, I would like to commend the time, effort, and courage that you have put forth in putting together this bill. We certainly support your intent. We hope that the bill will not be rushed through the legislative process. The more people that review and comment on it, the more thought and discussion that goes into it , the better chance it has of gaining the confidence of the many Alaskans that are angered and frustrated over the subsistence issues that are presently being contemplated throughout the state. It would be nice to not have yet another law suit.

We feel that Alaska can, equitably and fairly, deal with the subsistence needs of all Alaskans within the frame work of our constitution; and HB 406 is a sound beginning in that direction.

We are solidly against amending the Constitution of the State of Alaska concerning the allocation of Fish and Wildlife Resources. We feel that HB 406 may provide an alternative to a constitutional amendment and the ever looming "federal takeover"

Again we would like to thank Chairman Ogan for his continual front line efforts on this issue. We know that many of you folks are working to get this job done. Scott has been the one in the kitchen. Again we say thanks.

  
Cliff Judkins, Pres,  
Alaska Boating Association



# Alaska State Legislature

Please enter into the record r. y testimony to the House Resources  
 committee name  
 committee on HB 406, dated Feb 28, 1998  
 bill/subject

*I read this letter into the record of the House Resources Committee hearing this AM (2/28) ~~over~~*

*Katie Hurley*

*I have permission from both Mary Nordale & Speaker Phillips to distribute this letter.*

Signed: \_\_\_\_\_

Testifier

Katie Hurley

Representing (Optional)

PCB

870157

Wasilla

99687

Address

(907)

376-5736

Phone No.

MARY A. NORDALE  
100 Cushman Street, Suite 311  
Fairbanks, Alaska 99701

February 12, 1998

Hon. Gail Phillips  
Speaker of the House of Representatives  
Alaska State Legislature  
State Capitol, Mail Stop 3100  
Juneau, Alaska 99801-1182

Dear Gail:

The apparent refusal of the Legislature to deal substantively with the subsistence issue dismays me. Those of us who lived under federal dominion in Territorial days and those of us old enough to remember the politics of that era have done a dismally poor job of teaching the latecomers and afterborns our history.

My mother was a member of the Constitutional Convention. During the Convention, I was overseas at school, so when I returned home, my mother sat me down one Sunday afternoon and went over the constitution section by section, sentence by sentence, to explain to me why the document was written as it was.

Subsistence was not an issue. The population was small, the pressure on subsistence resources was slight and the big problem facing the delegates was insuring that all Alaskans, regardless of race, had access to those resources. The delegates were well aware that in many respects, the federal government had worked to exclude Alaskans from utilization of the Territory's resources and they determined that exclusion on account of race would not occur. You may recall the virtual enslavement to the fur seal trade of the Natives resettled on the Pribilofs. You may also recall the prohibition enforced by the federal government of Native-owned power boats in the Bristol Bay fishery. That prohibition was based on the peculiar theory that Alaska Natives could not efficiently operate power boats and that, therefore, they should be restricted to sail boats.

The Fouke Fur Company had a very sweet deal with the Fish & Wildlife Service and the Bureau of Indian Affairs in harvesting fur seals. The Aleuts on St. Paul and, to a small extent, on St. George were required to harvest the seals for almost no wages and it took an Act of Congress to allow them to utilize the meat from the slaughtered animals. The Alaska Canned Salmon Industry

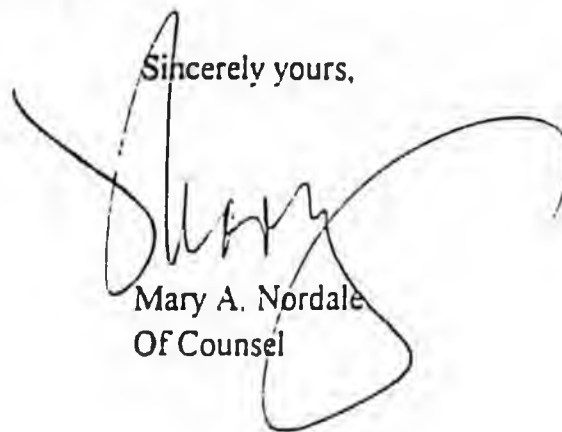
Hon. Gail Phillips  
Speaker of the House of Representatives  
February 12, 1998  
Page 3

Granting a rural priority for subsistence will have little, if any, appreciable effect on the vast majority of Alaskans. Allowing a federal takeover of management of Alaska's fish and game resources will, however, wreak havoc on those resources. There is simply no way that the federal government can resist the political pressures exerted by various special interest groups, be they commercial or environmental. We know that from our own history and from observation of current federal fish and game management techniques, and federal management of other resources as well. Management of fish and game should not be political, it should be scientific, with information developed not only by academic specialists, but also from the acute observations of the people who live with those resources.

Alaskans have been remiss in allowing the Department of Fish & Game to rely almost entirely upon academically trained scientists and technicians. We should long since have incorporated in our management programs the observations of the people who live with the managed resources and whose observations are based on techniques honed by centuries of experience.

The day the federal government takes over all rural management of Alaska's fish and game resources will be a day that will live in infamy. It is difficult for me to believe that Alaskans could, in less than 40 years, forget the dreadful lessons we learned from federal management of our fish and game resources so that we willingly submit ourselves again to that regime. I hope that the Twentieth Legislature will exercise the generosity of spirit, recognize the need for development of a community of all Alaskans and pass the necessary resolution that will allow all of us to vote to amend the constitution to grant the rural priority for subsistence.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Mary A. Nordale', with a large, sweeping flourish extending to the right.

Mary A. Nordale  
Of Counsel

cc: Hon. Tony Knowles  
Burke Riley  
Katie Hurley

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services  
Department of Education  
State of Alaska

MARY A. NORDALE  
100 Cushman Street, Suite 311  
Fairbanks, Alaska 99701

February 12, 1998

Hon. Gail Phillips  
Speaker of the House of Representatives  
Alaska State Legislature  
State Capitol, Mail Stop 3100  
Juneau, Alaska 99801-1182

Dear Gail:

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Hon. Gail Phillips  
Speaker of the House of Representatives  
February 12, 1998  
Page 2

controlled the Bristol Bay fishery and the sail boats to which the Natives were restricted meant that the catch went almost exclusively to the Brindle canneries. Nick Bez controlled almost all of the salmon in Southeastern Alaska and his fish traps were placed at the mouth of almost every major spawning stream in that region. The military use of caribou herds as strafing targets was, perhaps, not so well documented, but it was known.

With Statehood, Alaska's population has exploded well beyond what even the most dedicated dreamer among the constitutional delegates hoped. Moreover, its concentration in the Anchorage area has led many Alaskans to remain ignorant of the lives and lifestyles of people living in the bush. The availability of supermarkets and clothing stores in all of Alaska's towns and villages over 1,000 in population has disguised the need for reliance on subsistence for the many Alaskans, Native and non-Native alike, who live in areas where foodstuffs, clothing and other materials are very expensive and cannot be well maintained. Most of Alaskans have no idea what it means to live in a nearly cashless society.

We, who should know better, have failed to tell the stories and have failed to impress those who resist the granting of a rural priority with the realization that had subsistence been an issue when the constitution was written, subsistence would have been incorporated in the constitution for the benefit of those who must depend upon local resources for their very lives.

The delegates to the constitutional convention were deeply concerned by the racial divisions that beset the lower 48 states. Alaska's constitution contains many bars against racial discrimination for the reason that the delegates envisioned creating a society that treated everyone equally. The delegates intended provisions insuring equal access to fish and game to prohibit discrimination against Alaska Natives and to guarantee that Alaska Natives would never be denied the opportunity to maintain life. On its face, granting a rural priority for subsistence would seem to fly in the face of that principle of equality, but it was never the intent of the delegates to limit access to resources upon which Alaska Natives depend for their lives.

It is time now for us to grant that priority. It is wrong to elevate sport hunting and fishing to the level of or over hunting and fishing that supplies the necessities of life. It is wrong to say that the sport hunter's need for game is equal to the need of a person who must rely on game to survive. It is wrong to say that commercial interests must be served at the expense of people's very lives.

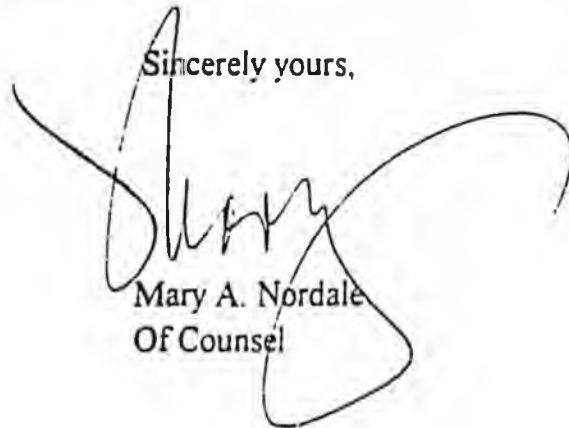
Hon. Gail Phillips  
Speaker of the House of Representatives  
February 12, 1998  
Page 3

Granting a rural priority for subsistence will have little, if any, appreciable effect on the vast majority of Alaskans. Allowing a federal takeover of management of Alaska's fish and game resources will, however, wreak havoc on those resources. There is simply no way that the federal government can resist the political pressures exerted by various special interest groups, they commercial or environmental. We know that from our own history and from observation of current federal fish and game management techniques, and federal management of other resources as well. Management of fish and game should not be political, it should be scientific, with information developed not only by academic specialists, but also from the acute observations of the people who live with those resources.

Alaskans have been remiss in allowing the Department of Fish & Game to rely almost entirely upon academically trained scientists and technicians. We should long since have incorporated in our management programs the observations of the people who live with the managed resources and whose observations are based on techniques honed by centuries of experience.

The day the federal government takes over all rural management of Alaska's fish and game resources will be a day that will live in infamy. It is difficult for me to believe that Alaskans could, in less than 40 years, forget the dreadful lessons we learned from federal management of our fish and game resources so that we willingly submit ourselves again to that regime. I hope that the Twentieth Legislature will exercise the generosity of spirit, recognize the need for development of a community of all Alaskans and pass the necessary resolution that will allow all of us to vote to amend the constitution to grant the rural priority for subsistence.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Mary A. Nordale', with a large, sweeping flourish extending to the right.

Mary A. Nordale  
Of Counsel

cc: Hon. Tony Knowles  
Burke Riley  
Katie Hurley



Fax 467

# ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE \_\_\_\_\_  
COMMITTEE NAME

COMMITTEE ON HB 406 DATED 2/28/98  
BILL SUBJECT

Sp. Chairman & Senate Resource Committee,

Thank you for listening to our testimony today

I was especially impressed with Sidney Huntington's testimony & Mary Nodal's letter. As always, elders have much wisdom to pass to us.

For myself, I have lived a rural subsistence lifestyle in Alaska for more than seventy years & elsewhere prior to that.

I would just like to bring to your attention the depth to which subsistence interweaves in our lives & especially for native Alaskans who have thousands of years of history involved in this lifestyle. It is literally who we are as well as what we do.

I am concerned that your bill as it stands is not in compliance w/ ADWCP, Title VII. I am concerned about applying for a \$6 permit to a local governing body who are my peers. I find this an unnecessary embarrassing & humiliating exercise which would make us feel "poor" when we do not while having the right to put food on our tables as things are now.

I am also concerned about the definition of "shortage" - we need the funds whether there is an abundance or not. Thank you for your consideration of all our testimony.

SIGNED Dorrie Friend  
TESTIFIER

REPRESENTING (OPTIONAL)

Box 724, Tok, AK 99780 (907) 883-4732  
ADDRESS/PHONE NUMBER

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 465-2075

March 2, 1998

The Honorable Scott Ogan, Co-Chair  
House Resources Committee  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Representative Ogan:

We understand that at the House Resources Committee hearing on Saturday, February 28, the question of the Governor's position on HB 406 - An act relating to fish and game was raised.

We are writing today to make it clear that the administration cannot support CS HB 406 (Res) for several reasons. First and foremost, it does not address the important goals stated by Governor Knowles when he appointed the Task Force on Subsistence last summer: 1) to ensure effective state authority over fish and game management on all lands and waters of Alaska; and 2) to recognize the paramount importance of the subsistence way of life to Alaskans. The bill does not fix what is broken, and it introduces several new problems that make it unacceptable to the administration.

The administration has serious concerns about several essential elements of the bill, among them the following:

- The bill does nothing to stop the federal takeover of fish and game management. Its definition of who will qualify for "sustenance" would exclude many who would qualify as "rural" residents under ANILCA. Because the two are inconsistent, the bill would require that ANILCA's rural resident priority be significantly amended. But, as Senator Stevens said in his recent speech to the legislature, any more amendments to ANILCA are very unlikely.

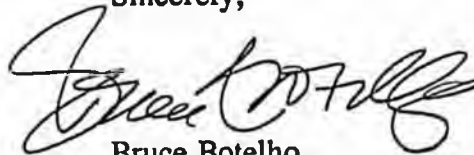
- An income-based program would be inconsistent with ANILCA. It would be an administrative, fish and game management, and enforcement nightmare.
- The bill introduces a set of burdensome government requirements and administrative steps to get a permit to hunt and fish for sustenance (a person is allowed to fish and hunt only if he or she earned or took in a certain amount of income, took a certain number of species, ate a certain amount of wild foods, and shared wild food with a certain number of others). This is big government at its worst.
- The bill would establish an individual eligibility system based on need, not a system that recognizes the traditional patterns of community cooperation and sharing that are the hallmarks of Alaska's subsistence economies.
- HB 406 would limit subsistence taking of fish and game to people on welfare or with annual family incomes of less than \$8,200 and require them to reveal personal financial and lifestyle details to a local advisory council in order to qualify.
- The bill would diminish the power of the Boards of Fish and Game and, at the same time, would add to their duties. It would do this by transferring their power to newly created regional boards and local advisory committees and, at the same time, by creating an extensive new, quasi-judicial governmental structure to handle the applications for a sustenance priority. The final administrative decision for each contested application would be made by the statewide boards, who are already overburdened with their rule-making duties.
- The bill allows a "regional area preference" that, by requiring that fish and game be eaten in the region where they are taken, effectively establishes a preference for residents who live in that region over residents who live outside of it. This would require amendment of the Alaska Constitution. The Alaska Supreme Court has said that "people who live near a fish or game population do not have a higher claim to that population than state residents whose domiciles are more distant." Thus, the "regional area preference" would require an amendment to Article VIII's common use and other "equal access" clauses.
- The bill says that sustenance is a "fundamental right" under the Alaska Constitution. However, our courts have called subsistence only a "highly important interest" - one that does not deserve the same constitutional protection as, say, freedom of speech or freedom of religion. If sustenance is established as a "fundamental right," any attempt by the legislature or the boards to distinguish between residents who are and who are not qualified to participate in the priority will require a higher level of scrutiny by the courts and will have to pass more rigorous tests to satisfy our equal protection clauses.

The Honorable Scott Ogan, Co-Chair  
House Resources Committee

March 2, 1998  
page 3

As you are aware, the basic elements included in the proposal submitted by the Task Force on Subsistence are critical to Governor Knowles and to this administration. Ensuring effective state authority over fish and game management on all lands and waters of Alaska is one of our two main goals. HB 406 will not do this, and for that reason we cannot support the legislation in its current form.

Sincerely,



Bruce Botelho  
Attorney General



Frank Rue, Commissioner  
Alaska Department of Fish and Game

cc: Members, House Resources Committee  
The Honorable Gail Phillips, Speaker, House of Representatives  
Pat Pourchot, Legislative Director, Office of the Governor  
Geron Bruce, Legislative Liaison, Department of Fish and Game  
Chrystal Smith, Legislative Liaison, Department of Law  
Steve White, Assistant Attorney General  
Mary Pete, Director, Subsistence Division, Department of Fish and Game

507 233 4008 PAGE

(Suggested language)

Hello...

My name is Patrick Church. I have been asked by Jack Polster of Homer to read his following words. Mr. Polster had a scheduling conflict which prevented his attendance at this teleconference hearing today but non-the-less<sup>HE</sup> felt that what he had to say should be placed on the record

THE FOLLOWING IS  
" (Please ~~read~~ An Open Letter To the Alaska State Legislature) "

~~As requested by Homer...~~  
"Last Tuesday I had occasion to sit here in the Homer Teleconference Office and listen to Mr. Greg Cook explain to the committee the Public Trust Doctrine. You will recall that Mr. Cook explained to you your duties under that doctrine, including loyalty to the public, dealing impartially with the beneficiaries, and not to delegate your responsibilities.

You will recall that Mr. Cook also stated that one of your fiduciary responsibilities was to provide information to the beneficiaries when requested.

For the last four years I have asked state government if it considers subsistence a right or a privilege. And never have I received an answer. And now I ask you. The question is significant. And the answer is awaited. Is subsistence a right or a privilege?

You will recognize that a substantial number of individuals within the borders of Alaska hold common-

law freeman-status. These individuals have no contracts of adhesion with government...they hold not license or permits from government...they live not because of government, but in spite of it.

In lines 9 through 12 on page number 4 of the 23 page CS406 working draft we find the following....

(c) A person is dependent on fish and game for personal and family use for sustenance if the person

(1) possesses a \$5 resident hunting, trapping, and sport fishing license issued under AS 16.05.340(a)(6)

I repeat my assertion; Subsistence Is A Right: Subsistence Is Not A Privilege. To ask for a license to exercise a right is ~~NOT IN ORDER~~. For example; if Teddy Kennedy and his kind had their way, I would be required to request a government permit or license to bear arms. By requesting and accepting the permit I would automatically destroy the right which I now hold. A person cannot exercise a right under permit or license.

Subsistence is a right, but the committee, through its language in 406 has indicated its belief that subsistence is a mere privilege. One cannot accept a license from government, which would be considered necessary to exercise subsistence, and retain the right which he held up until that point. I would like the committee to revisit that point in lines 9 through 12 of page 4 of CS406 and amend the bills language so that it will clearly state that subsistence is a right.

TO: REP. BILL HUDSON, CO-CHAIR  
REP. SCOTT OGAN, CO-CHAIR

RE: TESTIMONY FOR HOUSE RESOURCES  
PUBLIC HEARING HB 406

T/C # 80341  
FEB 28, 1998

Date 2/28/98		# of pages 1	
To H RES	From Homer LIO		
Co/Dept.	Co.		
Phone #	Phone # 235-7878		
Fax # 465-2273	Fax # 235-4008		

DEAR MR. HUDSON OR MR. OGAN:

THANK YOU FOR YOUR RESPONSE TO THE QUESTION  
BY MR. FOSTER, IL. — IS SUBSISTENCE A RIGHT OR  
A PRIVILEGE? (TESTIMONY FINISHED DURING HEARING)

THE TEXT OF YOUR ANSWER WAS MISSED!

PLEASE SEND THE ANSWER IN WRITTEN FORM  
FOR HIS EDIFICATION.

HIS ADDRESS: JACK FOSTER  
1506 OCEAN DRIVE  
HOMER, ALASKA 99603  
(907) 235-2273

THANK YOU FOR YOUR COURTEOUS ATTENTION.  
SINCERELY,  
FJC 2/28/98

Perry Mendenhall's HB 406 testimony, SNC, Nome, Alaska

## HB 406 Testimony given on Feb 28, 1998 pg 1/2

Perry T. Mendenhall  
via Nome Legislative Office Hearing

Sitnasuak Native Corporation finds this HB 406 to be a "bandaid bill" to fix a complex rural Alaskan lifestyle of dependency on fish and game for all seasons. This bill will not heal the wound of our good conscious in rural Alaska made on subsistence since 1979.

Over the years since 1959 my mother, Mrs. Dolly Spencer of Homer, said many times that she regretted she voted for "statehood". For they made the promise that rural subsistence lifestyle would not be lost if rural Alaskans voted for statehood then.

We feel that HB 406 helps state leadership in losing subsistence today, for my parent's generation, now to my generation and our children, and today to our grandchildren and their future families.

The Bering Straits region is truly a "economic depressed" area ever since statehood and dependent upon a subsistence menu: be it hunting, trapping, and fishing, as well as gathering both sea and land plants. *(With the growth of population and the lack of jobs has been referred to by the profile provided by the State Department and Community Regional Affairs. A recent "Economic Links" study also strongly puts rural regions subsistence dependency into perspective.*

Under State management, the Nome area rivers and shore waters' subsistence chum fisheries have been closed for the past ten years. This illustrates state commercial fisheries in another region (Area M) had priority impact on another region's subsistence chum fisheries (Northern Norton Sound - Nome area). This does not take

into account other high sea commercial fisheries which may also impact subsistence fisheries on chums and cohos in the Nome area. Today we are looking into Tier II for the Nome subsistence fisheries. My grandma said that Eskimos would take as much as they can during years of plenty in preparation for years of shortage. (In this manner we would also share with those who don't have much.) When our people try to do this with either game or fish, they are severely penalized by the system.

Another example is another village/region had a poor marine mammal winter hunt to date due to weather, and I had to send moose meat to that family so that they can eat.

HB 406 does not address issues like these, which are customary and traditional to Eskimos' economic and dietary lifestyle.

We find fault with HB 406 in these sections:

*Section 2*: in its entirety, *Section 5*: Procedures, *Section 12*: on Advisory committees and Boards (due to past practices of not really listening to local advisory committees), *Section 19:37* "Fish and Game dependent uses" definition in its entirety. As well as the actions taken on definitions in *sections 32- 36*.

We also feel that HB 406 :

1. Is not consistence to ANILCA for "rural perference"
2. Favor commercialism over subsistence lifestyles.

And with *Welfare Reforms* coming into enforcement, this forces rural Alaska to look closer to land, rivers, and sea subsistence activities in order to put customary and traditional food on our regional tables and fill our subsistence store houses with fish and game in preparation for times of shortage, as well as sharing.

2 pages-HB 406,

pg.2  
*Richard J. Jankowski*

## Perry T. Mendenhall's Testimony

with attachments

I'm representing the Nome Village Corporation on behalf of the Sitasuak Native Corporation's shareholders, as well as other Nome Subsistence users who are impacted by Area M and False Pass high sea Chum Salmon intercepts. The Nome subsistence chum fisheries have been closed since 1991 to 1997.

With the advent of "welfare reforms" coming into effect, our people will definitely become more dependent upon subsistence Chum fisheries. Also the Dept. of Labor recent report shows a Nome June 1997 unemployment rate of 13.7%, up from the Dept. of Regional Affairs Community Overview report for 1990 of 11%. More than twice the statewide rate of unemployment of 6.9%. In the same DCRA report, on page 2 and 4 are subsistence statements of dependency for our Nome people.

A multi-regional analysis recently done for rural Alaska make statements on subsistence, cost of living, purchasing power and the cost of services delivery, of which these two pages are attached from the "Alaska Economic Link". (pgs. 31-32)

The Nome Area and the rivers have shown customary and traditional use of Chum Salmon. We have been experiencing climatic changes during the sea mammal hunts to where it is shortened and unpredictable. Thus some families have not been able to procure the needed marine mammals meat needed to make dried meat and seal oil for the coming Winters. This forces us to look at the Chum Salmon to add to our local diet.

The State Commercial Fisheries, Management and Development Division have produced observed Chum Salmon escapement by aerial survey for 1961-97 for the following rivers, showing "poor aerial surveys" and "acceptable aerial surveys":

Sinuk River	Snake River	Nome River	Flambeau
River	Eldorado River	Bonanza River	and Solomon River

The numbers for 150,000 chum subsistence salmon is not showing up for our rivers and our subsistence users. The past seven years of Chum subsistence closures for the Nome area is not acceptable.

As a village native corporation we have tried to enhance our subsistence Chum fisheries, by having our shareholders and subsistence fisheries :

abide by the past seven years of closures.

work with state fish and game, federal agencies and other local groups in providing fish counting towers, incubators boxes for chum eggs

sending our subsistence users to Board of Fish meetings to testify, as well as sending SNC board members to this meeting in defense of subsistence fisheries for the Nome area.

To date, Sitasuak Native Corporation show on record 342 subsistence fish camps in the Nome area. On our land, we even closed campsite selection surrounding Eldorado and Flambeau Rivers to reduce the competition of natural resources, especially the chum salmon.

We would like for the Board of Fish to enact a Area M and False Pass commercial chum cap intercept as a conservative management plan so that the Chum Salmon can be returned to the Northern Norton Sound area for subsistence purposes.

Attachments:           Sept. 1997 Alaska Economic Trend, pg. 28  
                              DCRA 1990 Nome overview, pages 2 and 4  
                              Alaska Economic Link, page 31-2  
                              Commercial Fisheries/Observed Chum Salmon Escapement graphs  
                              Sitasuak Native Corporation's subsistence land brief

Rep. Ogan, Rep. Hudson, members of the House

Resource Committee, my name is Donne Harris-Fleagle,

Vice President of Tanana Chiefs Conference) and <sup>I am</sup> a

resident of McGrath. I am testifying this morning

on Committee Substitute House Bill 406. The issue is

a very important and very dear to those of us who

continue to practice an ancient and honorable

way of life. The outcome of this crisis will

shape and define fish and game resource

management for the future while attempting to

meet <sup>the</sup> Rural Priority Clause of ANILCA Title 8.

Our position remains to protect the intent of Title 8

and that speaks directly to a measurement

that protects rural Alaskans should a shortage

occur. It only makes common sense to us to have

such a provision. House Bill 406 does not accomplish that goal. Subsistence is defined by Alaska Native culture as a way of life, one that was practiced by our ancestors long before the appearance of the western culture in Alaska and a way of life that continues and will continue regardless of any attempts to sever that relationship. We will preserve that way of life and will continue to teach our children the ways to do so. By replacing the word "subsistence" with "sustenance", <sup>and clearly defined by cultural values foreign to ours.</sup> the meaning is eroded! Subsist in the Dictionary means "to remain in existence", or "to support or maintain WITH provisions". "Sustenance" in the Dictionary means is "something ESPECIALLY food, that

sustains life or health." Please consider how just a few changed "words" in a sentence can alter what is being said. The subsistence lifestyle will never by any stretch of the imagination be replaced with a sustenance lifestyle. By replacing the cultural-based tie to the land and its resources this becomes instead the classic western thinking description of what animals mean. By creating a system based on

4)

thereby  
need, opening subsistence to all Alaskans, regardless  
of ~~place~~ of residence; ANILCA Title 8 is not  
recognized or satisfied and with the passage of this  
bill, we would arrive back here to start over,  
an "unacceptable" solution. I spoke to a cab  
driver the other day when in Anchorage. He's been  
a resident for 43 years. He doesn't like moose  
meat. I wonder, how anyone can categorize this  
man as a "subsistence user." I urge you to  
consider the ramifications of such a solution  
that does not validate the cultural, traditional  
nutritional, medicinal & spiritual needs of  
Alaska's indigenous peoples. I urge you to  
consider voting against this bill. The  
issues facing Alaskans are diverse. It seems

5) that somewhere in all the "progress," as I look to the new millennium, moral responsibility has shifted to individual responsibility and rights. Decisions that will affect our families, I propose are decisions that should require Alaskans to set policy on. The one size fits all approach that is being advanced is not realistic or workable. Neither is it a sign of an advanced society finding ways to creatively and collaboratively form partnerships for the populace which reflect local and regional factors that are different but have historically been strengths. It is ordinary people that realize change is a process and not an event. Accommodating diversity is a strength. Where in all of this is an ethical

6) framework to dialogue and build a dignified reality? Lets work on a solution that meets the intent of federal law & truly provides for Alaska's rural subsistence needs and allow <sup>the</sup> People of Alaska to decide by voting on a constitutional amendment that would create a true Rural Priority of Fish & Game Allocation in times of shortages for local users. Perhaps then we can begin to work towards maintaining healthy populations of fish and game resources through sustained-yield & high levels of harvest principles and hopefully never actually have to find ourselves in times of shortages. Thank you for the opportunity to testify before you

7) today on this important issue. I wish you good luck in your endeavors to find an acceptable solution.

Feb 17 1998

The Alaska Resources Committee

Subject H13 406

Eventually there comes a point in time when it must be declared that enough is enough. After nearly 20 years of the insidious deceit of ANILCA Title VIII, the fraudulent singularized federally mandated inequalities against Alaska as an orphan state and Alaskans as second class citizens, must be obliterated.

Alaska's Constitution is proudly and honestly democratic. While ANILCA is politically designed to dictatorally discriminate; by imposition of a scheme that creates an exclusionary class of priority USEFS of Alaska's public trust common property fish, wild life and water resources.

To change Alaska's Constitution is not an honest option. To indicate that it is easier to subjugate the common use, no exclusive right or special privileges, uniform application and equal protection clauses of the state constitution and the equal footing, privileges and immunities, state's police powers,

equal protection and due process doctrines of the United States Constitution; then it is to eliminate the federal mandated inequalities of ANILCA, it is the ultimate hypocrisy.

It is always politically propogandized that it can be easier to voluntarily surrender the State's and peoples equal constitutional protected rights than to oppose dictorial federal oversight; but this is totally false in fact and purpose. To destroy the fundamentals of democracy one only needs to submit to tyranny; but to protect human equality the battle must never end. If any generation fails it's responsibility to the present it leaves even less for the future.

Any legislative or executive action or inaction that will prejudice the fundamental rights assured under the Alaska and US constitutions, and impinges upon the public trust common property resources' broad and equally open access for all personal consumptive USFRS, will be judicially challenged. This is not a threat but a fact.

Whenever the executive and or legislative branches of our democracy fails in their

their responsibilities and obligation, the

Judicial avenues are the public's only

answer. The Alaska Supreme Court has

repeatedly found that these political

schemes to circumvent constitutional

equality will not fly. The Court recently

by-passed these politically motivated

non responsive branches; and in *Plyton*

*v. Alaska*, directly remanded their findings

to the more immediate public's voice,

the Board of Fisheries.

The Courts' frustration was explicitly

voiced as follows. "Despite repeated legal

challenges to and multiple revisions of

the subsistence laws, 'subsistence uses

have long been defined in terms of

customary and traditional uses" Accord-

ingly, we consistently have interpreted

"customary and traditional" to refer to

"uses" rather than to "users";

The case of *Totemoff v. Alaska*, the

Court was even more blunt but still

equally ignored. The Alaska Supreme

Court stated: "For a number of reasons..

.. the federal government has no

authority to regulate hunting and

fishing in Alaska's navigable waters." (2)

Even more explicitly the court further stated: "We are not obligated to follow (the 9th Circuit Court's ruling) since this court is not bound by decisions of federal courts other than the United States Supreme Court."

Responsible state executive and/or legislative branches would have accepted this Alaska's highest legal opinion and then taken immediate and direct action to assume Alaska's sovereign police power's management over the State's public trust common property fish, wild life and water resources. Such actions would force federal authorities to either accept Alaska's sovereign management authority or pursue final judgement in the United State Supreme Court.

Instead the Governor refuses, by stating he did not accept the Alaska Supreme decision; and instead continues to demand voluntary capitulation to deny Constitutional equality of All Alaskans

His continuous rhetoric to deny the total public's due process protection and strip individual equal rights, is an

improperly addressed subject to be based on the out come of a vote. Any such State and/or federal attempted fraudulent vote will also be immediately challenged in court to seek and win injunctive relief.

The only acceptable answer is equal consideration for All personal consumptive USEFRS of Alaska's public trust common property fish, wildlife and water resources. The present Alaska court challenge must be responsibly supported and pursued by the legislature and/or public to a fair and honest solution; because a political decision will never be accepted by those who claim equality.

Submitted by

Nale Bandurant

H.C.-1 Box 1197

Soldotna AK 99669

**JUNEAU ANB CAMP 2**

**LEGISLATIVE INFORMATION OFFICE**

**320 W. Willoughby Avenue**

**Juneau, AK 99801**

**Phone (907) 586-3706**

**Fax (907) 586-3301**

DATE: March 2, 1998

TO: Mr. Ogan

FAX NO.: \_\_\_\_\_

Mr. Hudson

HB 406

FROM: Robert Willard, Jr.

Number of Pages: 9 (including cover sheet)

As you requested, copy of statement  
attached. I was asked for section by  
section report. That will be done by  
Wednesday. Thank you for hearing  
from us. RW

**STATEMENT OF ROBERT WILLARD, JR.  
BEFORE THE HOUSE RESOURCES -  
HB 406 SUBSISTENCE USES**

FEBRUARY 28, 1998

Thank you Mr. Chairman. My name is Robert Willard, Jr. ; I am from Angoon, but I reside in Juneau where I am employed by the Juneau Camp of the Alaska Native Brotherhood. I also serve on the Executive Committee of the Southeast Native Subsistence Commission, to which I served as President from 1989 - 1993.

When speaking of Subsistence, permit me to put things into perspective:

The Southeast population is set at:

74, 118

Of that number, 14, 481 are Alaska Natives. The Urban population of the Southeast (Juneau & Ketchikan), is set at 44,252 total.

There are 5,628 Alaskan Natives that live in the urban Southeast.

In the Rural Southeast, there are 29,876 people.

The Rural Southeast is comprised of:

Non - native - 20,331

Native - 8,851

That means, rural Natives in the Southeast are out - numbered by Non - natives close to 3 to 1. So when the Alaska Population is reported, the news reports, and also by people in responsible positions, they make it sound as if only Alaska Natives live in Rural Alaska. On a Statewide basis, the Rural Native is outnumbered by Non - natives, by a ratio of about 5 to 1. So when you hear a Rural Subsistence Preference, it is not a native preference, therefore it is not a racial issue.

On a Statewide basis, subsistence users take less than 4% of the wild renewable resources. Here now are the Southeast harvest of Salmon - on an annual basis; in one calendar year;

Commercial Harvest;	Sports/ Personal;	Subsistence;
29,880,800	158,800	40,100

Also on a Statewide basis, there are 38,865 Alaska Natives that are denied subsistence opportunity because they reside in an urban community area. This is from the records of the Alaska Department of Fish & Game.

To address the "Rural Preference", in Title VIII of the Alaska National Interest Lands Conservation Act, or ANILCA. The Congress intended that the rural preference be invoked only when the fish or wildlife population is declining. Since 1980, when ANILCA was implemented in Alaska, in the Southeast, the "Rural Preference", has never been invoked. Never! There has never been a time when commercial, sport, personal users were closed and only subsistence harvest allowed to continue. When an opening of the season occurs, all harvests are in common. In the event a Rural Preference is invoked, such a preference would apply to both Native and Non - native. And, we'd have it no other way. And while we are not authorized to speak for them we are aware that the rural residents in Point Baker, Port Alexander, Pelican, Meyers Chuck and other rural Southeast communities also depend on uses of the wild renewable resources, and we don move to protect their needs.

Of primary interest to the Southeast Alaska Native Tribes is the subsistence harvest and subsistence uses have upon the cultures. any allocation include amount you should know that this for cultural purposes subsistence fight that we are engaged in is

known to us as "Cultural Survival", and, more importantly, our concern is our children and grandchildren. The next generation, is foremost in our minds and our endeavors. In the final analysis, it is our Cultural Existence that is imperiled when we examine proposed subsistence legislation. I will address now, at cultural events, our own natural foods are served, and we never think of serving turkey, ham, or Campbell soup. House Bill No. 406 that is before you.

If HB 406 is enacted and implemented, it will sound the death knell of the Subsistence lifestyle and the subsistence culture that Congress designed to protect in the enactment of Title VIII of ANILCA.

I address first, page 2, Chapter 16, Sec. 16.16.020 (1), which would impose income or economic considerations.

"The policy also requires that regulatory systems which employ income requirements NOT be imposed upon rural residents. Income requirements are by their very nature capricious classifications in rural Alaska, and consequently can be invidious destructive to the Alaska Native Cultures."

I didn't say that, Congressman Morris K. Udall did. Mr. Udall was the Chairman of the Interior and Insular Affairs Committee that marshalled Title VIII of ANILCA in Congress until it passed.

HB 406, page 4 has a number of criteria that a person would have to prove to be eligible for subsistence. Chairman Udall addressed this as well. Subsistence opportunity be on a community basis, and not individually. If done on an individual basis, it would have a destructive effect on the knowledge that kept our cultural existence

alive all these thousands of years. You must understand that we have the tribal obligation to pass the knowledge of our subsistence lifestyle on to the next generation.

As regard to references to the Local Advisory Committees and the Regional Councils, we feel that under Sec. 801 (5) and Sec. 805, these local persons serving there, were to participate in the actual management of the resources. Congress saw the value of having persons serving in these capacities because of their personal knowledge of local conditions and requirements to have a meaningful role in management of fish and wildlife and of subsistence uses on the public lands in Alaska. We do not feel that a person who has applied for a subsistence permit need ~~not~~ go through to process of attaining approval of the local advisory committee, the Regional Advisory Council, the Board of Fish, the Board of Game and meet whatever other criteria the Boards may adopt pursuant to page 6.

We believe that changing the term subsistence to sustunance is wrong; We believe that customary and traditional should remain in any State legislation and direct dependence in any form removed.

We believe that Title VIII of ANILCA has been misinterpreted from the very outset on the meaning of Rural Preference. Federal and State managers believe that it meant subsistence eligibility. Because of that interpretation, Juneau and Ketchikan were determined to be ineligible. And when William P. Horn, Assistant Secretary of the Interior agreed, when he appeared before the State Senate Resources Committee in March 1986. We believe that Juneau and Ketchikan are eligible for subsistence, albeit without a preference when the resource declines.

This means that the Native child born in 1975 or the period, grew - up without knowledge of where to fish; where to hunt for deer, seal, ducks or geese; where to go dig for clams; where to pick blueberries, salmon berries, thimble berries, or other berries; more than that, when to do all these vital things that must be passed on to their children. More than that, even if we harvest the deer, seal, or other resource, the proven methods of preparation and/ or preservation is against the Law in the City & Borough of Juneau; we are unable to teach that Juneau Native child what type of wood is to be used, or the temperture in the smoke/ drying process/ to maintain. In short, the Cultural Existence of the Juneau and Ketchikan is being systematically destroyed by the public policy.

House Bill 406 as written, or even amended, will certainly destroy the Cultures of the Southeast Native tribes.

There is no provision for hunting or fishing permits for a widow with children; or an eligible family without a water craft.

Mr. Chairman, if it is your intent to destroy the cultures of the Alaska Native, you should state so - publicly.

Let the people vote.

Senate Resources Committee  
March 5, 1986  
1:30 p.m.

SENATE RESOURCES COMMITTEE MEMBERS PRESENT

Senator Arliss Sturgulewski, Chairman  
Senator Bettye Fahrenkamp, Vice Chairman  
Senator Jack Coghill  
Senator Rick Halford  
Senator Vic Fischer  
Senator Fred Zharoff  
Senator Dick Eliason

OTHER LEGISLATORS PRESENT

Senator Mitch Abood  
Representative Adelheid Herrmann  
Representative Kay Wallis  
Representative Peter Goll  
Representative Roger Jenkins  
Representative Drue Pearce  
Representative Jack Fuller  
Representative Alyce Hanley  
Representative Mike Davis  
Representative Steve Rieger  
Representative Virginia Collins

COMMITTEE CALENDAR

Testimony by William P. Horn, Assistant Secretary,  
Department of the Interior on Subsistence, with reference  
to SCS for HB 288 "An Act relating to the taking of fish  
and game for subsistence and personal use"

Senator Sturgulewski called the meeting to order in the Senate Finance Room. In introductory remarks, the chairman stated she feels it is vital to take a sensible approach to subsistence to protect the people who are dependent on fish and game, the rights of all Alaskans to hunt and fish, and to ensure retention of state control of our own resources. She stated the bill is fair, constitutional, enforceable, and in compliance with ANILCA. She noted that Bob Gilmore, Regional Director of the U.S. Fish & Wildlife Service, and David Gayer, attorney with the solicitor's office in the Department of the Interior, were present in the audience.

understanding is that you don't have committee reports the way the Congress does, that without it, it would be very hard for us to accept that type of a declaratory statement. Now, we would need the facts to go with it. Now, the State Board of Fish & Game, if my recollection is correct, in 1982 adopted a regulation much like that, but in the process, tended towards a lot of information about how they came to that conclusion, and we could accept it, not because of the declaration, but because of the facts.

Senator Halford: You accepted that and it was within the certified plan that was approved and operational under the Department of the Interior, was it not?

Mr. Horn: Yes, my recollection is that they did have that regulation.

Senator Halford: If, for example, that was provided and based upon the findings of fact that were included in the legislation, it would then be permissible, probably.

Mr. Horn: We certified it in '82 and the facts haven't materially changed at least in the direction of some of those communities moving in a rural as opposed to an urban direction. We probably could, but it would require us to have those findings of facts accompanying the measure.

Senator Halford: The current status under Alaska law under Madison is that, basically, all Alaskans who need it, have a subsistence preference. The conflict with that in the federal law is that there has to be a tier above that which says that all rural subsistence users before you get into the subgroup of rural dependent, subsistence users.

Mr. Horn: Well, it's not all rural. It's rural and customary and traditional use. I think that's an important distinction that needs to be made. Yes, the problem was that when you create this group, Section 803 says to establish this category of rural, customary and traditional subsistence users. Those are the areas and those are the people who are supposed to get the preference. Of course, the difficulty with Madison is that Madison permits urban residents to qualify to get into this particular box. That's violative of 803.

Senator Halford: So, the problem is that there is no distinction between rural and non-rural subsistence users?

Mr. Horn: Under the present state law in the wake of Madison, that is correct.

Senator Halford: Is there any prohibition in the federal law in providing that there be a distinction between rural and non-rural subsistence users and thereby maintain the current framework of Madison?

Mr. Horn: From the federal perspective, once the State of Alaska has, basically, provided for the 803 group and taken care of the rural, customary and traditional users, how the state cares to array all other user groups and whatever preference they want is immaterial institutionally to the federal government. Our obligations are very focused, just to the 803 group. When you take all the other using groups, personal users, urban subsistence, non-rural subsistence, commercial fishing, sport, trophy, non-resident, you array that whole list of users out there, how the state cares to array those users in any other order is totally immaterial to us. I mean that our obligations don't speak to that at all.

Senator Halford: The state then could maintain the condition of Madison as long as it has provided some distinction between rural and non-rural subsistence users in the framework of existing law and the Madison decision?

Mr. Horn: It would have to, basically, ensure that first, the priority of the preference went to the rural, customary and traditional users, and then, of course, the 804 subgroup in case there wasn't enough to take care of that particular group. Then, basically, a line was drawn. That is all that the federal government's interests relate to. That is all that Title 8 directs us to look at. We are not interested in meddling in any form in what the state cares to do once it takes care of those two. If you want to put other subsistence folks second, or personal users third, or commercial fourth, or sports fourth, I mean, you pick the pecking order, whichever. That pecking order is immaterial to the Interior Department of the federal government.

Senator Halford: A final question on implementation of a federal program. We tend to look at that in the worst case scenario. What would happen in southeast Alaska, for example, if there were no legislation passed? What would federal management entail in southeast Alaska?

Mr. Horn: In a hypothetical sense, I've never really looked at southeast, and I'd have to go talk to my good friends from the forest service, but I'll try to give you at least my first impression. I'd like to attach lots of caveats because I haven't talked to the forest service, and they are the federal land manager, by and large, in southeast. Essentially, related to fisheries, we'd have to identify what the rural, customary, and traditional communities were and what their level of use and subsistence uses were on particular fish runs, and then we would have to set up a regulatory regime that would ensure that those particular groups get the subsistence level of fish that they need. If that required us to preempt in large degree some of the state commercial fish regulations

"Mr. Burle Beard

"1721 Moose Tr

"Fairbanks AK, 99709 479-3640

"Non Constituent

"BILL#:

"SUBJECT: SUBSISTENCE

"MESSAGE: PLEASE HONOR YOUR OATH OF OFFICE TO DEFEND OUR STATE CONSTITUTION. SUE THE FEDS FOR OUR STATE'S RIGHT TO GOVERN OURSELVES. EACH OF YOU WILL BE LONG REMEMBERED AS HAVING SUPPORTED OUR CONSTITUTION, OR HAVING SOLD OUT TO FEDERAL THREATS. SUE ON EVERY ISSUE OF FEDERAL SEIZURE REGARDING STATE'S RIGHTS.

"DISTRIBUTION: 60

*letter 3/13  
D/B*

"Ms Marilyn Wilson

"P O Box 871706

"

"Wasilla AK, 99687 495-7700

"

"Non Constituent Supports

"BILL#: HB 406 SUBSISTENCE USES OF FISH AND GAME

"SUBJECT:

"MESSAGE: I SUPPORT THIS BILL WHOLEHEARTEDLY. WE NEED THIS BILL VERY BADLY. I HOPE YOU ALL WILL SUPPORT IT ALSO.

"DISTRIBUTION: 60

"

"

"Mr Ron Wilson

"P O Box 871706

"

"Wasilla AK, 99687 373-6700

"

"Non Constituent Supports

"BILL#: HB 406 SUBSISTENCE USES OF FISH AND GAME

"SUBJECT:

"MESSAGE: I STRONGLY SUPPORT THIS BILL. VOTE IT IN. PASS IT. WE WANT IT.

"DISTRIBUTION: 60

"

"

*letter 3/13  
DB*

Author: bspearman@customcpu.com (Wm. J. Spearman) at CC2MHS1  
Date: 3/2/98 5:54 PM  
Priority: Normal  
TO: Representative Scott Ogan at LAA\_TRANS  
Subject: Re: subsistence  
3910 Malaspina, #1  
Anchorage, AK 99517

*letter*  
*DB*

Representative Scott Ogan wrote:

> Thank you for your message, please send us your mailing address.  
> We  
> would like to mail you more information.  
>  
> Representative Ogan's Office  
>  
> \_\_\_\_\_ Reply Separator  
>  
> Subject: subsistence  
> Author: bspearman@customcpu.com (Wm. J. Spearman) at CC2MHS1  
> Date: 3/1/98 3:14 PM  
>  
> I am writing to let you know that you and your fellow legislators are  
> on  
> the right track in challenging federal authority to take over fish and  
>  
> game management in the State. When the Anchorage Daily News (1Mar98)  
> invests in a feature smear article that is devoid of journalistic  
> substance and written to discredit your efforts, you know that you are  
>  
> doing something right.  
>  
> The tactics being used to promote the federal takeover are clearly out  
>  
> of the Communist textbook on psychopolitics. The federal government  
> introduces a problem that creates conflict, chaos and confusion,  
> special  
> interest groups then agitate for resolution creating the illusion of  
> popular support, and the people then ask the federal government to  
> step  
> in with a solution, not realizing that the poison and the antidote  
> were  
> prepared in the same kitchen. Of course, opponents of their agenda  
> are  
> demonized through the news media. To further neutralize opposition,  
> the  
> Alaskan people are being divided against one another on this issue.  
> preventing us from presenting united opposition to the federal  
> takeover. As a result, State powers are being further eroded and  
> federal powers are being further expanded. Joe Stalin would be  
> impressed with the implementation of this unfolding strategy.  
>  
> How can a federal law override a state constitution in an area where  
> the  
> federal government has no Constitutional jurisdiction and is in clear  
> conflict with Amendment 10?!! It is unsettling that the federal  
> government continues to claim jurisdiction where there is none  
> according  
> to the U.S. Constitution. And it is not only with this issue, e.g.,  
> there is no authorization for federal involvement in education,  
> welfare,  
> health, U.N. 'peace keeping', child care, etc. Clearly, the federal  
> government has jumped the Constitutional fence and is now roaming  
> without  
> constraint, that is, without being bound down by the "chains of the  
> Constitution".  
>  
> I think that it is time for the Alaska State Legislature to stand on  
> Constitutional principle and assert our State's rights. It is time to  
>  
> herd the federal government back inside the confines of the  
> Constitutional fence.  
>

Mr. Bernard G Johnson  
2410 Foxhall Dr

Anchorage AK, 99504 333-5225

✓ Letter 2/28

Non Constituent

BILL#:

SUBJECT: SUBSISTENCE

MESSAGE: ACCORDING TO FEDERAL LAW WEALTHY NATIVES AND OTHERS IN RURAL AREAS WILL BE ENTITLED TO SUBSISTENCE PREFERENCE, WHEREAS POOR NATIVES AND OTHERS IN URBAN AREAS WILL NOT BE ENTITLED TO SUBSISTENCE. IS THIS CORRECT?

DISTRIBUTION: 03

"Mr William Thomas

"P O Box 3627

"Palmer AK, 99645 000-0000

Letter 3/13  
DB

"Constituent

"BILL#:

"SUBJECT: SUBSISTENCE

"MESSAGE: I WOULD LIKE TO EXPRESS MY OPINION ON THE SUBSISTENCE ISSUE. MOST OF US WHO HAVE LIVED IN THE BUSH KNOW HOW IMPORTANT GAME IS TO THE PEOPLE INVOLVED. PLEASE MAKE EVERY EFFORT TO GET THIS PROBLEM CLEARED UP. THERE WILL BE MANY UNHAPPY PEOPLE IF THE FEDS TAKE OVER. THANK YOU.

"DISTRIBUTION: 02

# Alaska State Legislature

Please enter into the record my testimony to the House Resources  
committee on Draft CSHB 406 (RES) version P (committee name), dated 3-5-98  
bill/subject

1.) I believe that this bill is going down the right track. It is the approach we need to make the situation fair to all.

2.) HOWEVER the individual preference based on income should be changed to preference for every permanent year-round resident of the dependent use area.

3.) The question of the constitutionality of the bill under Alaska's constitution seems to be dicey enough so that passage of this bill should be accompanied by a constitutional amendment that makes the bills' provisions clearly constitutional.

Signed: Eric Muench ERIC MUENCH Phone: 225-5372

Testifier Self

Representing (Optional)  
P.O. Box 16811, Ketchikan 99901  
Address

Fax transmitted from Ketchikan Legislative Information Office  
Phone: 225-9675 Fax: 225-8546

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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PHONE: (907) 451-2811  
FAX: (907) 451-2846

P.O. BOX 110300-DIMOND COURT HOUSE  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 465-6735

February 27, 1998

The Honorable Jean Nicholia  
Alaska House of Representatives  
State Capitol, Room 409  
Juneau, AK 99801-1182

Re: CS HB 406 (Resources)

Dear Representative Nicholia:

You have asked several questions about CS HB 406 (Resources), a bill dealing with subsistence. Your questions, and our responses, are set out below.

1. Does this legislation comply with Title VIII of ANILCA and if not, why?

In Title VIII of the Alaska National Interest Lands Conservation Act ("ANILCA"), nonwasteful subsistence uses of fish wildlife are the priority, consumptive uses of those resources on the federal public lands of Alaska. 16 U.S.C. § 3112. When it is necessary to restrict harvest of those resources, subsistence uses have a preference over other uses, like sport hunting and commercial fishing. 16 U.S.C. § 3114.

ANILCA defines "subsistence uses" as uses by rural Alaska residents. 16 U.S.C. § 3113. In its present form, ANILCA defines "rural Alaska resident" as "a resident of a rural community or rural area." A "rural community or area" is defined as "a community or area substantially dependent on fish and wildlife for nutritional and other subsistence uses. Pub.L. No. 105-83 (1997).<sup>1</sup>

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<sup>1</sup> The ANILCA definitions will be repealed on December 1, 1998, if by that date the state has not adopted laws that provide for the subsistence definition, preference, and participation specified in that law. Pub.L. No. 105-83 (1997). In that event, ANILCA will not  
(continued...)

In contrast to ANILCA, CS HB 406 does not define eligibility for the "sustenance" priority in terms of the characteristics of communities or areas. Instead, the bill sets out individual criteria for that eligibility. Under those criteria, a person must: (1) possess a hunting, fishing, or trapping license which is only available to persons who have received public assistance or who have lower income; (2) depend on fish and game for sustenance or lack an alternative means of sustenance; (3) have consumed within the past 12 months a certain number of species of fish and game; and (4) have shared or received fish and game from other households. All of the individual criteria must be met before a resident will be entitled to enjoy the "sustenance" priority. Proposed AS 16.16.020(c), section 2 of CS HB 406.

Under ANILCA, the state is entitled to manage subsistence hunting and fishing on federal public lands if it adopts laws "which are consistent with, and which provide for the definition, preference, and participation specified in . . ." that federal law. 16 U.S.C. § 3115(d), emphasis added. The question, then, is whether the two sets of criteria for participating in subsistence/sustenance -- the rural residency criteria of ANILCA and the individual criteria of CS HB 406 -- are "consistent."

The question can best be answered by examining the judicial treatment of an earlier "consistency" dispute. In 1988, the Ninth Circuit Court of Appeals compared the state's definition of "rural," which looked at whether traditional uses were a principal characteristic of an area, with a definition of rural that the court could derive from ANILCA.<sup>2</sup> The court concluded that the state's definition was not consistent with the common understanding of "rural," i.e., areas of sparse population. Its conclusion was based on a comparison of the geographic areas that would qualify under each. *Kenaitze Indian Tribe v. State of Alaska*, 860 F.2d 312, 316-318 (9th Cir. 1988) The court noted that the Kenai Peninsula would qualify under its interpretation of "rural," but that it did not qualify under the state's definition. Because the state's definition would exclude practically all areas that would be commonly thought of as rural, the court concluded that the definition was not consistent with ANILCA. *Id.*

We believe that a court would follow a similar approach to determine if the individual criteria of CS HB 406 are consistent

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<sup>1</sup> (...continued)  
have a statutory definition of "rural."

<sup>2</sup> At that time, ANILCA had no statutory definition of "rural."

with ANILCA's definition. A court could not compare geographic areas because CS HB 406 does not use a person's place of residence as a qualifier. Instead, a court would likely compare the two groups who would qualify. If the membership of the group qualifying under the rural residency criteria differed significantly from the membership of the group qualifying under the individual characteristics criteria, it is likely that a court would find them inconsistent.

It is probable that the makeup of the two groups would be different. Under ANILCA, residents of all rural communities and areas qualify. Under the individual criteria of CS HB 406 some urban residents would qualify, and some rural residents would not qualify. Although not certain, it is likely that the number of sustenance users qualified by CS HB 406 would be fewer than the number qualified by ANILCA. Because of this probable difference in group makeup and size, we believe that a court would conclude that the bill does not "provide for the . . . participation specified in . . ." ANILCA (16 U.S.C. § 3115(d)). Thus, the two would be found inconsistent, and the state would not be entitled to manage subsistence on federal public lands in Alaska.

2. Does this legislation raise constitutional issues and if so, what are they?

CS HB 406 has a "regional area preference." Under section 2, "In a time of shortage of fish or game resources, the appropriate board may adopt a regional preference among beneficial uses of fish and game by requiring that the flesh or meat of fish and game be consumed within the region where the fish or game was taken."

Representative Ogan said that this is a key element of the bill. He believes that it is constitutional because it is a "preference among beneficial uses."<sup>3</sup>

Presumably, the "beneficial use" contemplated by the bill is the consumption of subsistence fish and game. To date, the Alaska Supreme Court has not recognized consumption as a "use" under the Alaska Constitution. The only recognized uses are commercial, sport (recreational), subsistence, and personal use. That is not to say, however, that the Court would not accept

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<sup>3</sup> Article VIII, section 4, of the Alaska Constitution allows "preferences among beneficial uses." the Alaska Supreme Court has held that because those preferences do not restrict admission to a resource user group, they are permissible under that clause and the other "equal access" clauses. *Gilbert v. Department of Fish & Game*, 803 P.2d 391 (Alaska 1990).

consumption as a beneficial use.

A constitutional problem arises because "consumption" must be in a particular geographic place, specifically the region where the fish and game are harvested. If the Boards adopted such a regional preference, it would significantly restrict the opportunity of residents living outside of a region to harvest subsistence resources in the region. For example, a person living outside a region who shot a subsistence moose would have to either: (1) remain in the region until the person or the person's family consumed the moose; or (2) give the moose away to non-family persons who do live in the region. The first option is impractical. Few persons would find it reasonable to set up a temporary household for weeks or months in a different region just to consume fish and game harvested there. The second option is contrary to the purpose of HB 406. If the harvester had to give the fish and game away to non-family members, the activity would no longer be "the harvest of fish and game for personal and family use for sustenance." CS HB 406, § 1.

Essentially, the "regional area preference" provision establishes a preference for subsistence harvest based on one's place of residence. Although it does not, on its face, exclude harvest by persons outside of a region, in its practical application, the only persons who could consume the fish and game in the region are those who live there. They would have a significant advantage, if not a monopoly, to those resources because of their closer proximity. Indeed, Representative Ogan said the purpose for the amendment is to make sure that, in times of shortage, persons are given a preference for harvesting fish and game in their own regions.

Since *McDowell*, the Alaska Supreme Court has said that, under the present Article VIII "equal access" clauses of the Alaska Constitution -- the clauses guaranteeing common use, prohibiting exclusive rights of fisheries, and requiring uniform application of natural resource laws -- the right to harvest subsistence resources cannot be based upon the location of a person's residence. Most recently, the Court, when discussing *McDowell*, said, "We both quoted and stressed language holding that people who reside near a fish or game population do not have a higher claim to that population than state residents whose domiciles are more distant. . . . Just as eligibility to participate in all subsistence hunting and fishing cannot be made dependent on whether one lives in an urban or rural area, eligibility to participate in Tier II subsistence hunting and fishing cannot be based on how close one lives to a given fish or game population." *State v. Kenaitze*, 894 P.2d 632, 638 (Alaska 1995). Under that principle, the Court struck down the Tier II proximity criterion. *Id.*

The Honorable Jean Nicholia  
Alaska House of Representatives  
Re: CS HB 406 (Resources)

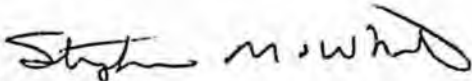
February 27, 1998  
Page 5

The intended purpose and the practical effect of the "regional area preference" is to give certain residents a "higher claim" to subsistence resources because they live closer to them. For that reason, it is unlikely that the preference would survive a legal challenge under the present "equal access clauses." For the preference to be constitutional, Article VIII would have to be amended to allow a priority for subsistence hunting and fishing that is based upon a person's place of residence.

Please contact me if I can assist you further.

Sincerely yours,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:   
Stephen M. White  
Assistant Attorney General

SMW:1mt:pch  
J:\WHITE\NICHOLIA.WPD

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

February 26, 1998

**SUBJECT:** CSHB 406(RES); Consistency with ANILCA (CSHB 406(RES))

**TO:** Representative Irene Nicholia  
Attn: Paula Terrel

**FROM:** George Utermohl *GU*  
Legislative Counsel

You have asked whether CSHB 406(RES), version H, if enacted, would satisfy the requirements of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) for resumption of state management of subsistence uses of fish and game on federal public lands.

The short answer is no.

Under 16 U.S.C. 3115, as amended by P.L. 105-83, sec. 316(e)(6), the State of Alaska "may immediately assume management for the taking of fish and wildlife on the public lands for subsistence uses" if the Secretary of the Interior and the Secretary of Agriculture certify that the state has "enacted and implemented laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in [16 U.S.C. 3113, 3114, and 3115]".

CSHB 406(RES) does not provide for either the definition, preference, or participation necessary to satisfy the current requirements of Title VIII of ANILCA.

**DEFINITION.** ANILCA defines "subsistence uses" as the customary and traditional uses by rural Alaska residents of wild renewable resources for certain specified purposes.

CSHB 406(RES) provides for the use of fish and game for personal and family use for sustenance (fish and game dependent uses). Such uses are available to all Alaska residents without regard to whether they reside in rural areas or urban areas. Even in times of shortage, use of fish and game for fish and game dependent uses is not limited to rural residents.

Representative Irene Nicholia

February 26, 1998

Page 2

ANILCA provides that subsistence uses of fish and game include customary trade. CSHB 406(RES) does not authorize customary trade of fish and game taken for fish and game dependent uses.

PREFERENCE FOR SUBSISTENCE USES. ANILCA provides that subsistence uses shall be accorded a priority over the taking of fish and game for other purposes. ANILCA also provides that, when necessary to protect fish and game populations or to protect continued subsistence uses of fish and game, access to the fish or game by subsistence users be limited in accordance with the subsistence user's customary and direct dependence on the fish or game population as a mainstay of livelihood, local residency, and the availability of alternative resources.

CSHB 406(RES) does not accord a preference for fish and game dependent uses of fish and game over all other uses of fish and game. In the event of shortage of fish or game, such that there is not sufficient fish or game to reasonably provide for the sustenance needs of persons who are dependent on fish and game for personal and family use for sustenance, then the Board of Fisheries or the Board of Game, as appropriate, may reserve a portion of the resource for fish and game dependent uses of fish and game and establish a preference to provide a reasonable opportunity to satisfy the need for fish and game dependent uses. Under CSHB 406(RES) the establishment of a preference for fish and game dependent uses is discretionary with the boards and would apply only in a situation that is considered to be a Tier II situation under ANILCA. The criteria for determining who may benefit from the establishment of a preference for fish and game dependent uses is tied to the person's financial or economic status and the person's recent dependence upon and use of fish and game for personal and family use for sustenance. Unlike ANILCA, eligibility for fish and game dependent uses is not tied to rural residency, customary dependency on fish and game, or proximity of residence to the resource.

LOCAL AND REGIONAL PARTICIPATION. ANILCA provides for the establishment of at least six subsistence resource regions. Each region is to have a regional advisory council of ten members. Four of the members of the council are to be residents of the region who have been nominated by tribal councils in the region. The remaining six members are to be nominated by local governments and local advisory committees in the region. Three of the remaining six members are to be subsistence users who reside in the region and the last three members are to be sport or commercial users who may reside in any subsistence resource region in the state. ANILCA also provides that there should be as many local advisory committees as the Secretary of the Interior and the Secretary of Agriculture determine necessary to assist the regional advisory councils in performing their duties.

CSHB 406(RES) provides that a maximum of five fish and game management regions be established in the state. Each region is to have a regional fish and game board consisting of nine members. Each of the members of the regional boards is to be appointed by the governor, subject to confirmation by the legislature, from lists of persons submitted by the

Representative Irene Nicholia

February 26, 1998

Page 3

local fish and game advisory committees. The members of the regional boards are not required to be from specific areas of the state or region or to be members of particular user groups. CSHB 406(RES) provides that there be a maximum of nine local fish and game advisory committees in each region.

There are also many additional details regarding local and regional participation that are addressed by ANILCA and CSHB 406(RES). In some matters the two pieces of legislation agree, in other matters they take different approaches, and in still other matters one or the other pieces of legislation is silent on.

In conclusion, there are such differences between what CSHB 406(RES) does in regard to fish and game dependent uses of fish and game and the requirements imposed under ANILCA as prerequisite for resumption of state management of subsistence uses of fish and game on federal public lands, that CSHB 406(RES) does not provide a basis on which the state may resume management of fish and game on federal public lands. Either CSHB 406(RES) or ANILCA, or both, would have to be changed before HB 406 could provide a basis on which the State of Alaska could resume management of fish and game on federal public land in Alaska.

If I may be of further assistance, please advise.

GU:glc  
98-107.glc



P.O. Box 20761, Juneau, Alaska 99802

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Phone/FAX (907) 789-2399

September 22, 1997

Senator Rick Halford, Chairman  
Senate Resources Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801

and

Representative Scott Ogan, Co-chair  
Representative Bill Hudson, Co-chair  
House Resources Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801

Dear Senator Halford and Representatives Ogan and Hudson:

Both the Senate and House Resources Committees have scheduled hearings around the state to address the escalating "subsistence crisis." Although we were unable to testify at the Ketchikan hearing, the Territorial Sportsmen intend to testify at future public hearings on this issue.

The Territorial Sportsmen Board of Directors met September 16, 1997 to review our organization's position regarding solutions to the subsistence conflicts. Our major focus has been on the Governor's Subsistence Task Force proposal and the various positions being adopted by organizations on both sides of the debate.

We have attached for the information of your committees, our position sent to Governor Knowles concerning the Task Force's proposal. It is our understanding that there may have been some modifications to that proposal based on their stakeholders meeting on September 13, 1997. However, our Board has decided, at this time, to essentially maintain the position reflected in our July 18, 1997 transmittal.

As you can see from our position paper, our organization is dedicated to taking whatever steps necessary to develop a rational solution to this crisis. Although we have always

opposed a Constitutional Amendment discriminating against Alaskan residents, we have reluctantly agreed under some conditions, an Amendment to our Constitution may be crafted which does not completely dismantle the other equal protection and common use provisions of our Constitution.

The Territorial Sportsmen have consistently supported state management of our fish and wildlife resources and are strongly opposed to any provision which provides federal agency or federal court oversight over state management programs on state and private lands and waters. We concede that federal oversight over federal lands and waters is inevitable.

One of the major purposes of this transmittal is to encourage the legislative leadership and the Governor to immediately prepare a course in preparation for intense litigation. Our Board of Directors are convinced, after examining the positions of the Regional Native Subsistence Committees and the results of the recent Subsistence Summit that there is no conceivable possibility of an acceptable consensus position on this issue. Continued delays in hopes of finding a magic solution are only playing into the hands of those who are committed to complete preemption of state management.

We have in fact concluded, that the so called "middle ground" keeps moving farther and farther away from a position that we feel is in the best interests of everyone in our state. We also want to make it clear that we are not willing to accept "a solution at any cost." If a subsistence compromise cannot be developed which returns effective state management without federal oversight and provides a nondiscriminatory mechanism to meet the needs of "true subsistence users", then we fully support a massive litigation effort to protect the management rights of our state.

In light of the obvious stalemate and because of the grave consequences of federal management, the Territorial Sportsmen urge the Legislature and The Governor to immediately establish a "States Rights" litigation fund of at least \$25 million designed to protect the rights of every citizen of our state from federal preemptive regulations now set for adoption soon after October 1, 1997.

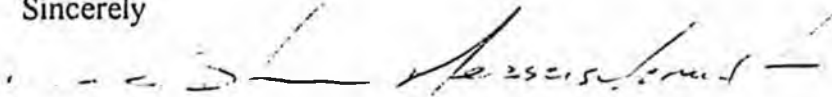
It is our opinion that the state has not exhausted its litigation options and in fact may have an excellent chance of succeeding in court once the federal regulations are in place. It is imperative that Alaska get its case before the U.S. Supreme Court. The Territorial Sportsmen still maintains that the Alaska Native Claim Settlement Act extinguished aboriginal claims, including hunting and fishing rights, and Congress provided no authority for federal preemption of state management on state and private lands and waters, including navigable waters.

We advocate aggressively pursuing a Supreme Court ruling on these issues and, if necessary, litigate federal violations of the State Compact and Statehood Act. To wait any longer in hopes that a possible solution could be crafted which is acceptable to all sides is irresponsible. Regardless of our personal feelings about the issue, the only

alternative available to the state is to protect its interests and the interests of all its citizens. We support doing whatever necessary to accomplish that task.

We all agree that the issue of state management of its fish and game resources was the motivation behind the statehood battle just under 40 years ago. It is time to defend that principle with every resource at our disposal.

Sincerely



Dr. Steve Messerschmidt  
Secretary/Treasurer

Attachment

cc: Senator Ted Stevens  
Senator Frank Murkowski  
Congressman Don Young  
Governor Tony Knowles  
Senate President Mike Miller  
House Speaker Gail Phillips



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Alaska Boating Association \* PO Box 871310 \* Wasilla, Alaska 99687 \* 373-3591  
E-Mail to .....cljodkins@customcpu.com Fax -376-6390

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2/23/98


TO: ALASKA LEGISLATORS  
FROM: THE ALASKA BOATING ASSOCIATION  
SUBJECT: LEGISLATIVE AFFAIRS OFFICER

ON FEB. 23, 1998 THE ALASKA BOATING ASSOC. APPOINTED JUNE AND ROY BURKHART TO ACT AS LEGISLATIVE AFFAIRS OFFICER FOR THE 1998 SESSION.

JUNE & ROY BURKHART  
PHONE 1-907-459-6337  
FAX; 1-907-459-6338  
E-MAIL; rjburk@alaska.net

PLEASE INCLUDE THEM IN YOUR CIRCULATION OF BILLS AND HEARINGS THAT MAY BE OF INTEREST TO OUR ASSOCIATION. WE ARE SERIOUSLY CONCERNED ABOUT LEGISLATION AND ADMINISTRATIVE REGULATIONS THAT EFFECT BOATING SAFETY, BOATING AND ALL MOTORIZED ACCESS, HUNTING, FISHING, AND RECREATIONAL USE BY MOTORIZED EQUIPMENT, AND OR COURSE SUBSISTENCE ISSUES.

THANK TO ALL OF THEM THAT CONTINUE TO REPRESENT THE CAUSE OF KEEPING ALASKA LANDS AND WATERS OPEN TO ALASKANS.

  
CLIFF JODKINS  
PRESIDENT

Jim Rearden  
413 E. Lee Drive  
Homer, Alaska 99603

Phone/fax: (907) 235-8543

Member, American Society  
of Journalists & Authors

Feb. 20, 1998

Representative Gail Phillips  
Room 208  
Alaska State Capitol  
Juneau, Alaska 99801

Dear Gail:

You are on the wrong track on the subsistence issue. The Governor's plan, if implemented and accepted by the voters (a change in our constitution), would not give us control over our fish and game. The feds would oversee our every move, and our management programs would suffer endlessly.

The true significance of the subsistence issue is not who gets to hunt/fish, but whether our fish and game dept. can concentrate on scientific biological management -- instead of wasting time as a quasi-welfare agency trying to determine who gets what, which it has been doing for the past 20 years.

A good example of how we would be treated if the governor's plan were implemented is the way the feds treated us under the Marine Mammal Act when management of walrus was returned to the state. I was on the Game Board at the time, and the "overseeing" by the feds was so impossible that the board had virtually no management control -- and eventually said to hell with it and returned management to the feds.

Rep. Scott Ogen is on the right track. He's fighting an uphill battle, and I'd sure like to see you support him. The only way Alaska will ever regain full control of our fish and game management will be to eliminate the rural priority provision of Anilca.

Sen. Stevens met with the Game Board several times when I was a member. (I spent 12 years on the board). Each time we asked him to attempt to modify Anilca. "Impossible," he told us. Yet within months he did just that. In fact, Anilca has been amended 23 times and he has been involved in every one of those changes. But, to my knowledge, Stevens has never attempted to amend the rural priority provision.

You swore to uphold Alaska's Constitution when you took office. Now you are supporting an attempt to undermine one of the most significant parts of the constitution. It seems to me you have changed parties or philosophies.

Talk with Rep. Ogen about his plans. You might be surprised at what you learn.

Sincerely,

Jim Rearden

Blind copy to Ogen

Tanana Tribal Council  
PO Box 130  
Tanana, Alaska 99777  
Phone: (907) 366-7170 or 7160  
Fax: (907) 366-7195

March 10, 1998

House Resource Committee  
State Capital  
Juneau, Alaska 99801

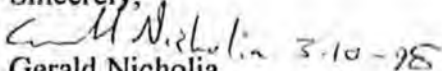
#### Subsistence Dilemma

This situation for rural residents is no better with urban minded coalitions having more say in an issue that is generally considered Rural. What Representative Scott Ogan is proposing is not in the context of ANILCA title VIII, and is trying to make an amendment to ANILCA Title VIII. Senator Stevens stated to the Alaskan Legislature that it is not acceptable by the Congressional Delegation in Washington DC for ANILCA to be amended. The general Alaskan public should be allowed to vote on this issue. It was by the vote of the Alaskan public that the legislation was voted in. The rural preference in Title VIII is the only means that rural residents have to compete with other user groups for depleting wildlife resources in certain areas of Alaska. With both State and Federal regimes fighting for control of management the wildlife resources in many areas may not be addressed and may be in jeopardy. Another factor of no control, how are both the State and Federal management regimes going to co-manage wildlife resources when they hardly comply with each other's regulations and laws. With the Alaskan Legislature as it is now it looks like Alaska's wildlife resources are going to be managed from Washington and if that is going to happen, then why even have a Alaskan Legislature.

With urban-minded ideology many rural Alaskans are not fully represented by the Alaskan Legislature. With Alaskan politicians being led by sport hunting and fishing coalitions and righteous groups (animal rights) who is really going to understand the situation today's legislative body put rural Alaskans in. It is not right for urban Alaskans to manipulate rural Alaskans. The city has never been the same as the country and it will never be.

For too long native Americans have been dealt a losing hand when it comes to native lands and their distinct way of life. No one can understand the life Native Alaskans are living to date and it is only getting worse. Our livelihoods are not being considered by the Alaskan legislature, our way of life is blatantly being disrespected by ignorance of our voices. To say that Alaskan native's livelihoods are fully being represented by the Alaskan Legislature would be a flat out lie. Thank you for hearing my concerns for my people.

Sincerely,

  
Gerald Nicholia 3-10-98  
Realty Director

Jim Sykes  
338-5551

TapeAlaska Transcripts, PO Box 240001, Anchorage, AK 99524-0001

## HOLDING OUR GROUND

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"SUBSISTENCE--A WAY OF LIFE"

(Part 3 Of 15)

[Nelson Frank] The relationship between the native population and the resource of the land and sea is so close that an entire culture is reflected.

[Jonathon Solomon] I share what's on my table with you. When I share with you my heart is happy, so is yours, and this is the way of subsistence way of life.

[Narrator] 'SUBSISTENCE' MEANS MORE TO ALASKA NATIVES THAN HUNTING AND HARVESTING. IT IS AN INTRICATE BOND BETWEEN PEOPLE AND THE LAND THAT CONTINUES TODAY. AS THIS ANCIENT WAY OF LIFE CHANGES, IT FACES AN UNCERTAIN FUTURE. IN THIS PROGRAM ALASKA NATIVES TELL WHAT SUBSISTENCE MEANS TO THEM AND WHY IT IS ESSENTIAL. THIS IS HOLDING OUR GROUND.

FUNDING FOR HOLDING OUR GROUND IS PROVIDED BY THE ALASKA HUMANITIES FORUM, THE NATIONAL ENDOWMENT FOR THE HUMANITIES, RURAL ALASKA COMMUNITY ACTION PROGRAM, THE NORTH SLOPE BOROUGH, AND ZIONTZ-PIRTLE LAW FIRM.

I never heard the word subsistence until 1971 under the Native Land Claims Act. Before that time, when I was brought up in the culture of my people, it's always been our culture and our land.

THE WORD MAY BE NEW, BUT TO JOHNATHON SOLOMON, CHIEF AMONG THE GWITCHEN PEOPLE OF THE YUKON FLATS, SUBSISTENCE REACHES BACK THOUSANDS OF YEARS TO SPIRITUAL BELIEFS, COMMUNITY TRADITIONS, AND SURVIVAL SKILLS.

Subsistence living was not only a way of life, also a life-enriching process. (NELSON FRANK) Conservation and perpetuation of subsistence resources was part of the way of life and was mandated by the traditional law and custom. The traditional law was passed from

generation to generation, intact through the repetition of legends and observance of ceremonials which were largely concerned with the use of land, water, and resources contained therein.

THOSE SAME KINDS OF TRADITIONS AND SKILLS WERE LEARNED AMONG THE SIBERIAN YUPIK ESKIMOS ON WINDSWEPT ST. LAWRENCE ISLAND. EDNA APATIKI LEARNED MANY SKILLS THE TRADITIONAL WAY .....

I am so thankful that I have knowledge I have gained from listening. That was my way of education from my family. We were first naturalists, scientists, environmentalists, natural healers, conservationists, survivors, and philosophers, and many more, way before non-natives who studied to acquire our skills. We have our own ethnicity, a knowledge and conscience of what we see as reality as native people.

THAT REALITY INCLUDES A SUBSISTENCE ECONOMY WHICH IS NOT EASILY UNDERSTOOD BY OUTSIDERS. CANADIAN JUDGE THOMAS BERGER VISITED OVER SIXTY COMMUNITIES AROUND ALASKA, AND HE LISTENED TO HUNDREDS OF DESCRIPTIONS OF VILLAGE LIFE. BERGER SAYS WITHOUT LISTENING, ONE HAS FEW CLUES TO THE COMPLEX BOND BETWEEN PEOPLE AND THE LAND.

When a white stranger visits a village in Alaska for a short time he can no more recognize the subsistence economy on which it is based, than a village person entering a major city for the first time can understand how its economy can work. The stranger to the village will see only the equipment used for subsistence; the snowmobiles, skiffs, nets, sleds, snowshoes, oildrums, and so on. And of course the products of subsistence, racks of drying fish, skins being scraped, smokehouses full of meat. He might guess that the villagers are busy because he probably would find very few of them at home.

VILLAGERS USUALLY TRAVEL WITH THE SEASONS TO GATHER AND PREPARE THEIR FOOD. THE HARVEST IS DIFFERENT IN EVERY PART OF ALASKA. BUT THE WORK IS ALWAYS DEMANDING.

In our Eskimo way of life, getting food was a daaaay-ly effort. It had to be done every day, it could be bad weather, it could be a nice day, but it was an everyday effort that Eskimo had to go out and gather his own food so he could survive.

Just like, you know, making an earning, like a white man works, he makes his earning he feeds his family. The native people for a long time have survived from the land, it's just like having a job. That's what they know and they can teach it to their kids.

JASPER JOSEPH AND MICHAEL ACOVAK SENIOR LIVE IN WESTERN AND SOUTHWESTERN ALASKA VILLAGES, WHERE SALMON RUNS MEAN CONSTANT WORK AT SUMMER FISH CAMPS. IN THE ARCTIC VILLAGE OF ALAKAKET NEAR THE BROOKS RANGE PEOPLE LIKE LINDA DUNTON ARE ALSO AT WORK.

In the spring time we had our spring camps where we hunt ducks and got the fish in the springtime and the muskrats and then to another place later in the summer to go fishing salmon and then in the fall time you go to another place to get your moose and set up your camp for the winter.

My people in the summer time (MICHAEL HUNT OF KOTLIK) they go out to their fish camps, they put up fish for the wintertime make dryfish and they put them away in the barrels. They do their subsistence way of life, and then they go out and pick salmonberries, prepare for the winter as their subsistence. In wintertime they put out sheefish nets and put out blackfish traps.

THE CYCLE OF SEASONS DEMANDS DIFFERENT SKILLS THROUGHOUT ALASKA'S RUGGED TERRAIN. SPRING IS A TIME OF RENEWAL AND CELEBRATION. IN SOUTHEAST, THE HAIDA PEOPLE CELEBRATE THE RETURN OF THE SALMON--WHICH MEANS MORE THAN A TIME TO FISH.

In the spring months, when the salmon return home, (WOODROW MORRISON) the first ones, when we see them jump, we holler, "Aiyoo! Aiyoo!" That's a celebration, our relatives have returned again. The Creator is making it possible for us to continue our life in that same cycle.

LUCY WESTLOCK FROM EMMONAK

In the springtime we hunted and gathered food from the tundra including most food which are special roots gathered underground. We gathered food from the lakes, the plants that grow there. We gather wood from the area to cook our food. I'm still practicing those things that are practiced to get food for my children.

THE CLIMATE IS HARSH, BUT THE LAND PROVIDES FOOD, CLOTHING, SHELTER, AND EVEN TRANSPORTATION. JUDY BAUMAN OF FAIRBANKS REMEMBERS A GIFT HER GREAT UNCLE MADE....

When I was young my great uncle came to live with us and he asked my mother, "what would you like me to make for you." And she said, "I'd like a dog sled." And he went outside and chopped some trees down and he didn't even use an electric drill. He showed me how he made it with a stick, a stick with a nail on the end of it and a little bow. And he put it in his mouth and he moved that bow and it would drill a hole. He made everything that he worked on that sled with, he made everything that he used from nothing. I mean he could go out, ninety-six years old, he could go out in the woods and he could make whatever he wanted to. He didn't have to go to the store and buy anything.

PEOPLE LIVING IN COASTAL COMMUNITIES DEPEND LARGELY ON MARINE LIFE FOR SUBSISTENCE FOODS. ALICE KULOWIYI LIVES IN GAMBELL ON THE NORTHWEST TIP OF ST. LAWRENCE ISLAND. MUCH OF HER FOOD COMES FROM THE BERING SEA.

We St. Lawrence Islanders, are just like those farmers on the outside. We eat from the plants of the sea just like farmers eat from their farm. We collect the plants that grow on the water and we collect them when they are washed up on the shore.

The Bering Sea and the Chukchi Sea are our gardens...

FOR JONAH TOKIENNA, THE BOUNTY OF THOSE GARDENS IS THE GREAT BOWHEAD WHALE. PEOPLE ALONG THE ARCTIC COAST HUNT BOWHEADS TWO TIMES A YEAR. ALICE SOLOMON DESCRIBES IN HER INUPIAQ LANGUAGE HOW TRADITIONAL WHALING BOATS ARE MADE IN THE SPRING.

The hunters who catch bearded seal, that women prepares the skin, cuts it up, butchers it. And this is the role of the women. And when they return she takes care of them, working very hard because there are so many skins that have to be put together into a boat, to make a boat.

IN RECENT YEARS, ALUMINUM BOATS HAVE BEEN USED, BUT SOME HUNTERS STILL PREFER BEARDED SEALSKIN. FOR CENTURIES THE PEOPLE OF THE ARCTIC COAST HAVE DEPENDED ON THE WHALE FOR SURVIVAL...THEY KNOW ITS MIGRATION AND BEHAVIOR PATTERNS. BURTON REXFORD IS A MEMBER OF THE ALASKA ESKIMO WHALING COMMISSION. HE SAYS A WHALING CAPTAIN RELIES ON THE KNOWLEDGE HANDED DOWN FROM GENERATIONS OF EXPERIENCE.

A whaling captain is faced with great responsibilities; his number one priority is of course the immediate concerns of safety while out on the hazardous and icy Arctic waters. It is his knowledge and preparation that the people depend upon for their daily food. If a village did not catch a whale, then we knew, beyond the shadow of a doubt, that we would experience extreme hardship and fear the oncoming hunger that would strike us. We know that when we caught a whale we then would be able to sleep easily and eat well.

ON THE FIRST DAY OF A WHALING FESTIVAL, THE PEOPLE TRADITIONALLY BRING THE WHALING CAPTAIN'S BOAT ASHORE AND ALL THE PEOPLE ARE FED INCLUDING THOSE UNABLE TO TAKE PART IN THE HUNT. NO ONE GOES HUNGRY, BECAUSE SHARING IS A STRONG PART OF THE TRADITION.

The people are happy, they're smiling, they're excited and you think about it. Boy they caught a whale. They get really excited and the happiness extends all the way from the deep inside. And when you go into the house that caught a whale, that happiness, that excitement, that crying for joy and because they are glad that they have been given that gift.

LORI KINGIK OF POINT HOPE.

We the Inupiaq people have always shared and divided our food, and that is our way of life. We have practiced our whaling traditions and we are still using them today. When they catch one whale everybody in Point Hope has a share of the muktuk the whale and everybody is fed.

JOE HOTCH IS A TLINGIT FROM THE SOUTHEAST COMMUNITY OF KLUKWAN.

Klukwan interpreted in Tlingit means 'always a community.' We share our subsistence foods with one another.

It's more than food, it's the ingestion of the spirit of that animal, also, or that fish (WOODROW MORRISON) and also those fish and the other game, are a gift that was given to us. And therefore, when any person would come into my house, and I had fish, I had meat, whoever came in was also entitled to that. And so we give to each other. People never kill anything, they go out and they catch a moose, they don't go out and kill a moose. They catch some birds. The animal has a spirit of its own. And many times, the old way, people would say to that animal, after they had shot it, "I thank you for giving up your spirit so that my family could live." And then they would treat it with respect.

THE GWITCHEN PEOPLE OF THE YUKON FLATS PAY THE SAME RESPECT TO THE CARIBOU.

The Caribou, as my people believe for many years, is part of the Gwitchen people religion. (JONATHON SOLOMON) We eat it, we use their parts of their fur and stuff for our own clothing. But we also believe that the population of the Gwitchen people in the Yukon Flat goes up and down with the numbers of these animals... This is why it is very important to us when we talk about the Porcupine Caribou Herd, that it be protected for our generations to come, because this is our belief... We are not a visitor upon these lands, we are in the same ecosystem as the animal on these lands.

WHETHER IT'S CARIBOU, SEAL OR SALMON, PEOPLE ARE ALWAYS AWARE OF FUTURE NEEDS. BONNIE MCCORD OF TYONEK,

The people down here know how much fish they have to take for the year to carry themselves thru the winter...we've been taught that by our elders. So we never take any more from the sea or the land than what we can use.

FURTHER NORTH, ON THE KOYUKUK RIVER, WILSON SAM OF HUSLIA USES THE SAME PRINCIPLES WHEN HE HUNTS.

My parents always used to say--make sure you try to get the male, if you're going to go out and get a bird, don't try to get the female because they take care of the eggs and then they have the young ones. So make sure you get the male. That's the way you preserve your country.

We hold in trust for our children (ANTOINETTE HALMER) the use of mother earth's garden. If we do not tend to our garden with nurturing strokes, she will not produce for our survival. That is the supreme law.

NURTURING STROKES ARE NO LONGER ENOUGH. FEW PEOPLE MAKE THEIR LIVING EXCLUSIVELY FROM THE LAND. THE LAND BASED ECONOMY IS NOW MIXED WITH THE CASH ECONOMY. IT TAKES SEVERAL HUNDRED DOLLARS TO PAY FOR TRANSPORTATION, AMMUNITION, MOTORBOATS AND OTHER SUPPLIES, WHETHER THE HUNT IS SUCCESSFUL OR NOT. BUT MONEY IS HARD TO COME BY IN MOST VILLAGES, BECAUSE THERE ARE FEW REGULAR JOBS. THE VILLAGE SCHOOL, POST OFFICE, STORE, AND SOMETIMES LOCAL GOVERNMENT EMPLOY A HANDFUL OF

PEOPLE. FISHING, FIREFIGHTING, AND OCCASIONAL CONSTRUCTION PROVIDE TEMPORARY CASH-PAYING JOBS. PEOPLE STILL DEPEND ON THE LAND FOR MANY BASIC NEEDS. SHIELA AGA THEIRIAULT LIVES ON KODIAK ISLAND.

Our economic stability in villages is very bad. The unemployment is extremely high, there's no place else in the United States and maybe in the world where you are going to find such unemployment statistics as you will in villages. I look out here in the bays we go out there and we fish, we go out among the bays and we hunt. We get our food there. We depend on the food that we get for ourselves.

ANUSKA PETLA ESTIMATED THE CASH VALUE OF THAT FOOD. SHE PRESENTED HER FINDINGS TO JUDGE THOMAS BERGER WHEN THE ALASKA NATIVE REVIEW COMMISSION VISITED THE VILLAGE OF NEW STUYAHOK.

All the meat and all the fish that we eat every year per household, it would come to about six to seven thousand dollars. I know most of us we can't afford it because there's no jobs in the villages for everyone.

Are hunting and fishing important here? (ANDREW KELLY OF EMMONAK) That question shouldn't even be asked, without hunting and fishing we cannot live, we cannot expect to feed our families.

VILLAGE STORES AND SOCIAL SERVICES HAVE PROVIDED A FEW BASIC NEEDS THAT USED TO COME ONLY FROM THE LAND. THERE ARE FEWER SUBSISTENCE ACTIVITIES IN SOME VILLAGES. THESE DEVELOPMENTS HAVE NOT REDUCED THE IMPORTANCE OF SUBSISTENCE ACCORDING TO JUDGE THOMAS BERGER.

Even in villages where subsistence activities appear to have declined people speak of subsistence with the same passion as they do in villages where it is flourishing. In Alaska, native societies, large and small were erected on a subsistence base. Today subsistence gives continuity to village life, and Alaska natives still regard subsistence as their birthright. Even those not engaged in subsistence regard it as essential to their future wellbeing.

URBAN DWELLERS LIVING IN A CASH-BASED ECONOMY, MIGHT SUPPLEMENT THEIR STORE-BOUGHT FOODS WITH FRESH CAUGHT FISH AND GAME. IT IS THE OTHER WAY AROUND FOR THOSE WHO LIVE MAINLY IN A LAND-BASED ECONOMY, WHERE CASH IS A SUPPLEMENT. ACCORDING TO ANTOINETTE HALMER OF CRAIG, SUBSISTENCE LIVING IS NOT A MATTER OF CHOICE. IT IS A NECESSITY.

Living off the land and sea is not only traditional, but owing to the scarcity of cash income, it is required for our families to survive.

#### GLADYS DERENDOFF OF HUSLIA

I'd like to quote this one Eskimo lady. She said if we ever lose our subsistence ways, the older people, they wouldn't be able to eat store-bought food. They're so used to living on seal-oil. She said that if they don't get to have seal oil and things like that, you know, they'd probably die early or something. She also said that seal oil is the blood of their life, she said.

CONGRESS ABOLISHED SUBSISTENCE RIGHTS IN 1971, AS A PART OF ANCSA, THE ALASKA NATIVE CLAIMS SETTLEMENT ACT. IN 1980, CONGRESS PASSED A LANDS BILL, CALLED ANILCA, THAT APPEARED TO RESTORE SOME OF THOSE RIGHTS. BUT THE STATE MAINTAINS CONTROL OF MOST FISH AND WILDLIFE SPECIES. PERMITS ARE REQUIRED IN AREAS WHERE PEOPLE ONCE HUNTED FREELY. THE LAND CLAIMS ACT ALSO REDUCED THE LAND AREA TO ABOUT ONE-TENTH OF THE TRADITIONAL SIZE. ANCSA GAVE THOSE LANDS TO CORPORATIONS. ALTHOUGH ALASKA NATIVES CAN HUNT EXCLUSIVELY ON THIS CORPORATE PROPERTY, THE STATE OF ALASKA STILL SETS THE SEASONS AND THE LIMITS.

Those laws,(JUDGE BERGER) coming from a different tradition, have the effect of undermining the Native society founded on subsistence, because those laws don't take into account the fact that there is a whole web of moral, and spiritual, and economic relationships founded on subsistence that a whole society is dependent on. So it seems to me that the issue of subsistence is not one of competition for resources, not simply a question of allocation of resources, it is rather an issue of a different order of magnitude: the survival of village Alaska.

BERGER HAS URGED NATIVE PEOPLES TO TAKE CONTROL OF SUBSISTENCE RESOURCES AS MUCH AS POSSIBLE. TRADITIONAL LAWS COULD THEN BE IMPLEMENTED. FORMER DIRECTOR OF THE ALASKA ESKIMO WHALING COMMISSION MARIE ADAMS.

There are traditional subsistence laws within the communities. They have their own laws, basically their own structure on how they hunt, what is acceptable, what is not. What's been happening the last several years, several decades, is with the new federal government, the state government coming in and basically imposing laws without clearly understanding or going

out to see what is out there has created a lot of confusion. Many times we had to clarify what is meant by which law.

STATE SUBSISTENCE LAWS HAVE ALREADY BEEN TESTED. A STATEWIDE VOTE PRESERVED RURAL PRIORITIES FOR FISH AND GAME IN 1982, BUT NEW COURT CHALLENGES AND PRESSURE FROM URBAN HUNTERS IS AGAIN FORCING THE SUBSISTENCE WAY OF LIFE INTO ANOTHER HEATED POLITICAL BATTLE. KOTZEBUE HIGH SCHOOL STUDENT BOBBY WELLS ...

I remember our fathers, our forefathers, how they survived in this world, in strong winds, in cold temperatures, because they knew how to survive. They were taught to share, they were taught to help each other, for thousands of years. And today we are in this same situation, but this time we're not surviving against nature. We're in a time where we're searching, we're fighting to survive among different people in this Western civilization.

WHEN THE UNITED STATES TRIED TO STOP BOWHEAD WHALE HUNTING IN 1977 WHALING CAPTAINS IN NORTHERN ALASKA FORMED THE ALASKA ESKIMO WHALING COMMISSION. MARIE ADAMS RECALLS WHAT HAPPENED IN BARROW.

People were deeply hurt, when they were asked to stop whaling, it was incomprehensible. I remember listening to the meeting and listening to it, people were very upset. Men and women were all crying after the whaling commission got together. One of the things that we ran across were people did not believe that we were still whaling traditionally, the way we were and still carrying on the traditions that we did.

THE ALASKA ESKIMO WHALING COMMISSION HAS FINALLY PREVAILED. THEIR MANAGEMENT PLAN IS NOW RECOGNIZED BY THE U.S. GOVERNMENT AND SEVERAL FOREIGN NATIONS. ALASKA NATIVES HAVE ALSO CREATED MANAGEMENT PLANS TO REGULATE CARIBOU, WALRUS AND MIGRATORY BIRDS. LATER IN THIS SERIES WE LOOK AT HOW PEOPLE VIEW THE STATE, FEDERAL AND TRADITIONAL LAWS THAT AFFECT SUBSISTENCE; THE POLITICAL CHALLENGES, AND WHAT ALASKA NATIVES ARE DOING TO MANAGE SUBSISTENCE RESOURCES. PLEASE JOIN US. FOR HOLDING OUR GROUND, THIS IS ADELINE RABOFF.

THIS PROGRAM WAS PRODUCED BY JIM SYKES, WRITTEN BY JEFF BERLINER, EDITED AND RESEARCHED BY SUE BURRUS. MARY KANCEWICK IS OUR SCRIPT CONSULTANT. SPECIAL THANKS TO THE COMMUNITY OF GAMBELL FOR DANCING AND SINGING, AND ALSO SPECIAL THANKS TO THE INUIT CIRCUMPOLAR

CONFERENCE. FOR MORE INFORMATION ON THIS AND OTHER PROGRAMS IN THIS SERIES WRITE TO WESTERN MEDIA CONCEPTS, P.O. BOX 215, ANCHORAGE, ALASKA, 99510. HOLDING OUR GROUND IS A PRODUCTION OF WESTERN MEDIA CONCEPTS WHICH IS SOLELY RESPONSIBLE FOR THE CONTENT.

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Jim Sykes  
338-5551

HOLDING OUR GROUND

"SUBSISTENCE AND THE LAW"

(Part 8 of 15)

[Jasper Joseph] We do not put the limit on how many cattle or how many cows or how much food should outsiders have. We do not make any regulations on that. When we try to hunt and provide ourselves and feed our family, our children, somebody comes around and tells us, "If you catch birds, if you catch moose, or if you gather food, we will put you in jail." We have been promised punishment for trying to survive.

[NARRATOR] THE SUBSISTENCE WAY OF LIFE CONTINUES TO BE VITAL TO VILLAGES ALL OVER ALASKA. MONUMENTAL CHANGES IN LAW CAME WITH ALASKA STATEHOOD. AND THEN IN 1971, CONGRESS PASSED ANCSA, THE ALASKA NATIVE CLAIMS SETTLEMENT ACT, WITH MORE REGULATIONS. NOW ALASKA'S NATIVE PEOPLES ARE TRYING TO DEVELOP LAWS THAT MEET THEIR NEEDS. THIS IS HOLDING OUR GROUND.

[Peter Goll, Juneau]

The people would go out to a certain area, they would harvest the abalone. In would come the divers from the commercial vessels and they would move into this area and clean it out. The people went to the Department of Fish and Game and they said "We are going to our traditional area to get abalone and we are being com- peted with unfairly by people with more elaborate equipment", and they were told to get some diving equipment themselves. Well, the solution isn't to get some diving equipment themselves, the solu- tion is to develop a legal mechanism to protect the local indi- genous use from outside intervention, if you will, or outside ex- ploitation. And the issue that's raised is, whose resource is it? Is it the public's resource? Is it the States resource? Is it the Nation's resource?"

NATIVE PEOPLES NEVER HAD TO CONSIDER SUCH QUESTIONS UNTIL RUSSIA SOLD ALASKA TO THE UNITED STATES. THERE IS PLENTY OF EVI- DENCE SUGGESTING THE RUSSIANS THOUGHT THEY WERE SELLING ONLY TRADING RIGHTS AND A FEW FORTS. THE AMERICANS THOUGHT THEY BOUGHT ALL OF ALASKA AND ITS RESOURCES. TOM LONNER.

With the coming of American dominion over the land, and without the consent or knowledge of Alaska Native people, their wealth had been usurped by the American government. Lands, waters, fish, wildlife, minerals, and forests all passed into government hands and were converted into common property resources, that is, wealth held by the government on behalf of all Americans. Over the last two centuries, millions of immigrants from Europe and elsewhere have come to America and were awarded citizenship. To my knowledge, none have been required to surrender at their point of entry into the country, all of their wealth to the government for common use in order to obtain citizenship. That seems to me to be the unwritten contract: an exchange of great wealth for simple citizenship.

AS MORE IMMIGRANTS CAME TO ALASKA, LANDS WERE USED LESS AND LESS FREELY BY THE NATIVE PEOPLES. THE MOST DRAMATIC CHANGES CAME WITH STATEHOOD IN 1959. A YEAR LATER, THE STATE TOOK CONTROL OF FISH AND GAME MANAGEMENT FROM THE FEDERAL GOVERNMENT. IN 1971, CONGRESS PASSED ANCSA, THE ALASKA NATIVE CLAIMS SETTLEMENT ACT. THAT ACT EXTINGUISHED ABORIGINAL LAND TITLE ALONG WITH ABORIGINAL HUNTING AND FISHING RIGHTS. ALASKA NATIVES WERE LEFT WITH ABOUT ONE-TENTH OF THE LAND THEY HAD TRADITIONALLY USED AND OCCUPIED. BUT THE LAND WAS NOT GIVEN TO INDIVIDUALS OR TRIBAL GROUPS, IT IS HELD INSTEAD BY PROFIT-MAKING NATIVE CORPORATIONS, CREATED BY THE CLAIMS ACT. TWO MAJOR FORCES ACCELERATED THE LAND CLAIMS SETTLEMENT ACT. ALASKA WANTED TO SELECT STATEHOOD LANDS AND OIL COMPANIES WANTED NORTH SLOPE OIL. THERE WAS A GREAT DEAL OF PRESSURE TO SETTLE.

The purchasing party, the United States was interested primarily in extracting resources from the land, not settling on the land. TOM LONNER. The compensated party, Alaska Natives, was relinquishing rights to the rewards of that extraction, but did not intend to relinquish rights to chase and harvest the wild resources which traversed or inhabited all the lands.

NATIVE CORPORATION LANDS ARE NOW TREATED AS PRIVATE PROPERTY IN THE EYES OF THE LAW. THE CORPORATION DECIDES WHAT HAPPENS ON NATIVE LANDS. BETTY THOMAS-DENNY OF TANACROSS ...Because of the land claim I think it restricted the land use to many of our people. I know that currently people can't trap, hunt, fish, or even pick berries anywhere because they have this fear of trespassing.

We cannot live without our land, without trapping, without fishing, without hunting. KATHERINE ATTLA OF HUSLIA. If they ever tell us where not to go or where not to trap that's

when it's it's going to get tough, because we've been living like our ancestors all these years and if we cannot do that no more it's going to be a lot of unhappy people, unhealthy mostly.

MARIE ADAMS OF BARROW ... There are traditional subsistence laws within the community and they have their own laws, basically their own structure, and how they hunt, what is acceptable, what is not. And what's been happening the last several years is with the new federal government, the state government coming in and basically imposing laws without clearly understanding or going out to see what is out there has created a lot of confusion.

SUBSISTENCE IS MORE THAN HUNTING, FISHING, AND GATHERING. IT IS THE WORK OF MANY PEOPLE IN THE VILLAGES, AND IT CARRIES WITH IT CULTURAL AND SPIRITUAL TRADITIONS. CHIEF JONATHON SOLOMAN OF FORT YUKON:

We are not a visitor upon these lands, we are in the same ecosystem as the animal on these lands. The caribou is part of the Gwitchen people religion, but we also believe that the population of the Gwitchen people in the Yukon Flat goes up and down with the numbers of these animals. This is why it is very important to us when we talk about the Porcupine Caribou herd that it be protected for our generations to come, because this is our belief.

WHEN THE CLAIMS ACT EXTINGUISHED SUBSISTENCE HUNTING AND FISHING RIGHTS, THE STATE WAS LEFT TO HANDLE IT. ALASKA NATIVES WORKED VERY HARD TO GET SUBSISTENCE ACTIVITIES RECOGNIZED BY STATE AND FEDERAL LAW. CALEB PUNGOWIYI OF NOME.

This extinguishment should not have been accepted. It is surprising though, that after the Alaska Native Claims Settlement Act there were several acts that were passed by the Congress that either provided for protection or provided for provisions of subsistence hunting and fishing for Alaska Natives.

PUNGOWIYI REFERS TO ANILCA, THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT, PASSED BY CONGRESS IN 1980. IT DEFINES SUBSISTENCE USERS AS RURAL RESIDENTS AND DEMANDS THEY GET PRIORITY. THE STATE OF ALASKA KNEW ANILCA WAS COMING, AND IN 1978, THE STATE LEGISLATURE PASSED A SUBSISTENCE PRIORITY ACT WHICH GAVE SUBSISTENCE USERS PREFERENCE IN TIMES OF SCARCITY. ASSISTANT ATTORNEY GENERAL LARRI SPENGLER.

Before 1978, as long as you caught it and ate it, basically, it was subsistence, it was personal use. But now subsistence use was defined as customary and traditional use.

THE STATE HAS TROUBLE DEFINING CUSTOMARY AND TRADITIONAL USE, THE LANGUAGE USED IN THE ANILCA LAW. TOM LONNER WAS THE FIRST TO HEAD THE ALASKA FISH AND GAME SUBSISTENCE DIVISION, WHEN IT WAS CREATED IN 1979.

While it talks about customary and traditional uses, it very rapidly reduces those to economic uses only, and then proceeds to limit those.

LONNER'S SUBSISTENCE DIVISION CREATED REGULATIONS TO DEFINE SUBSISTENCE CRITERIA, BASICALLY A LONG TERM PATTERN OF CONSISTENT RESOURCE USE NEAR THE USERS HOME, TRADITIONAL METHODS OF HANDLING AND PRESERVING, ALONG WITH SHARING THE RESOURCE AND THE TRADITIONAL KNOWLEDGE HANDED DOWN THROUGH GENERATIONS.

We were trying to get back into patterns of tradition and custom and so on and get off of this purely economic mode that the State had adopted in its very protective subsistence law. Laws that were used to control subsistence prior to the State's subsistence law were done essentially without any specific recognition for subsistence and what would be meant by customary and traditional use, or just the basic necessities of life in rural Alaska.

SOME URBAN HUNTERS DISAGREED WITH THE STATE REGULATIONS. IN 1982, AN INITIATIVE TO REPEAL THE STATE SUBSISTENCE LAW WAS BROUGHT BEFORE ALASKA VOTERS AND SOUNDLY REJECTED. STATE REGULATIONS REMAINED INTACT. SOME URBAN SUBSISTENCE USERS HAD ALREADY BEEN ACCOMMODATED UNDER THE EXISTING RULES, BUT IN 1985, THE STATE'S HIGHEST COURT BROADENED THE SUBSISTENCE USE CATEGORY TO MORE URBAN RESIDENTS. THAT DECISION DID NOT COMPLY WITH THE FEDERAL ANILCA LAW, WHICH CLEARLY STATES SUBSISTENCE IS DONE BY RURAL RESIDENTS. STATE SENATOR MITCH ABOOD MADE SURE NO ACTION WAS TAKEN IN 1985 ON NINE SUBSISTENCE BILLS INTENDED TO CORRECT THE LAW.

Yes, I guess you could call it my fault. I said those bills are going to stay right in this committee until someone will come to their senses and come together from all walks of this thing, this problem, and sit down and discuss it and each one give a little bit.

IN THE ABSENCE OF A NEW LAW EMERGENCY REGULATIONS WERE PUT IN PLACE BY THE FISH AND GAME BOARDS, REGULATIONS THAT EMPHASIZE HISTORICAL USE AND LOCAL RESIDENCE. SOME URBAN HUNTERS FELT SLIGHTED BY THOSE

EMERGENCY REGULATIONS, AND RURAL SUBSISTENCE USERS FEARED INCREASED COMPETITION. ASSISTANT SECRETARY OF THE INTERIOR, WILLIAM HORN, NOTIFIED THE GOVERNOR THAT ALASKA'S OUT OF COMPLIANCE WITH FEDERAL LAW REGULATING SUBSISTENCE BECAUSE IT HAS BEEN EXTENDED TO URBAN HUNTERS AND FISHERS. UNLESS THE STATE COMES BACK INTO COMPLIANCE BY JUNE 1, 1986, THE FEDERAL GOVERNMENT WILL TAKE OVER FISH AND GAME MANAGEMENT. SENATOR ABOOD SAYS HE WILL INTRODUCE A SUBSISTENCE BILL EARLY IN 1986 TO COMPLY WITH THE FEDERAL LAW.

CUSTOMARY AND TRADITIONAL USE MUST BE DEFINED BY THE STATE, ALONG WITH A SYSTEM THAT RECOGNIZES DIFFERENT SITUATIONS. SUBSISTENCE DIVISION CHIEF BEHNKE SAYS THAT SUBSISTENCE USERS CAN BE PROTECTED ON A PRIORITY BASIS AND THERE WILL BE PLENTY OF OPPORTUNITY FOR OTHER HUNTERS AND FISHERS AS WELL. SOME URBAN HUNTERS DISAGREE AND SAY THEY WILL TAKE THEIR CASE OF EQUAL ACCESS TO STATE AND FEDERAL COURTS. IN SEVERAL OTHER STATES WHERE INDIANS LOST SUBSISTENCE RIGHTS, THEY HAVE BEEN REINSTATED.

STATE, FEDERAL, AND CORPORATION RULES DON'T ALWAYS MAKE SENSE TO PEOPLE LIVING IN THE VILLAGES. WHILE MOST NON-NATIVE HUNTERS ARE ACCUSTOMED TO GETTING A PERMIT FOR ONE ANIMAL, TRADITIONAL CUSTOMS ARE QUITE DIFFERENT. DARRYL TRIGG OF NOME.

It has always been our custom to allow the good hunters to catch more than the current limits and share with people who are berry pickers or green pickers or fishermen, who in turn would share their crop and catch with the hunters. The lands that were to be ours are now controlled by a Board of Directors with restrictions on the use of that land by about every Federal and State agency that exists. Now, they don't seem to recall that the Eskimo has lived and survived up here for thousands of years without scarring the land. Before they came with their laws and regulations, there was always a good balance of game to feed our people. It is proven that the Eskimo has never hunted themselves out of game, and probably never will.

Subsistence is a living, breathing, dynamic human activity. TOM LONNER. Regulatory regimes tend to place the steel web of exactness on the activity, in the form of exact definitions, exact locations, exact numbers. This exactness cannot respond to the ever-changing human needs or ever-changing environmental conditions which comprise subsistence.

THE ARBITRARY SETTING OF SEASONS BY THE STATE IS SOMETIMES SEEN AS INAPPROPRIATE. THE TRADITIONAL REASON FOR HUNTING AT A CERTAIN TIME IS