

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9659 SENATE RESOURCES

extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, the Secretary may immediately close the public lands, or any portion thereof, to the subsistence uses of such population and shall publish the reasons justifying the closure in the Federal Register. Such emergency closure shall be effective when subsequently extended unless the Secretary affirmatively establishes, after notice and public hearing, that such closure should be extended.

A Cross Comparison of the Elements in ANILCA Changed by Public Law 105-83 and the Subsistence Task Force Proposal

<u>ANILCA PROVISIONS:</u>	ANILCA TODAY	PUBLIC LAW 105-83 (SENATOR STEVENS' AMENDMENTS)	SUBSISTENCE TASK FORCE PROPOSAL (September 1997)
Sec. 316(a): Moratorium		Extended until December 1, 1998	
Sec. 316(b): Amendments to ANILCA		Amendment or repeal refers to ANILCA in this section	
Sec. 316(c): Savings Clause		Does not affect Native governmental authority over lands or fish and wildlife; assertions of Indian Country in Alaska; assertion that ANILCA is Indian Law; or the authority of the Secretary of Interior under Sec. 1314(c) of ANILCA	Added as Sec. 816(c)(1),(2), and (3): Same as PL 105-83, except no provision regarding authority of Secretary of Interior
Sec. 316(d): Effective Date		State must adopt laws providing for the definition, preference, and participation specified in Sec. 's 803, 804, and 805 of ANILCA by December 1, 1998 or the amendments to ANILCA will be repealed. Secretary must certify that State is in compliance before amendments become effective	Adds Sec. 806(a): When State enacts state laws and constitutional amendment contained in proposal, it will immediately assume fish and game management.
Sec. 102(2): Definition of "Federal Land"	The lands the title to which is in the United States after the date of enactment of this Act	Lands the title to which is in the United States after December 2, 1980. 'Federal Lands' does not include lands the title to which is in the State, a Native Corporation, or other private ownership.	[Amended in Title I] The term "federal land" means land the title to which is in the United States after December 2, 1980. "Federal land" does not include lands the title to which is in the State after December 2, 1980, Native lands, other private lands, or Native Corporation and State land selections defined in subsection (3)(A) and (B) below

<u>ANILCA PROVISIONS:</u>	ANILCA TODAY	PUBLIC LAW 105-83 (SENATOR STEVENS' AMENDMENTS)	SUBSISTENCE TASK FORCE PROPOSAL (September 1997)
Sec. 801(b): Findings	Sec. 801(a): National interest in protecting the subsistence way of life for Natives and Non-Natives alike in rural areas of the state.	Sec. 801(b) added: (1) rural preference law formerly passed by Alaska accomplished goals of ANILCA; (2) <i>McDowell</i> case found preference unconstitutional; (3) no constitutional amendment since then; (4) in accordance with Title VIII, Secretary is required to manage on all public lands because state law failed to provide rural preference; (5) <i>State v. Babbitt</i> determined that priority applies to navigable waters in which U.S. has reserved water rights; (6) State of Alaska should have opportunity to manage its own resources	
Sec. 803: Definitions: Sec. 803(3): "Customary and Traditional Uses"		The noncommercial, long-term and consistent taking of, use of, or reliance upon fish and wildlife in a specific area and the patterns and practices of taking or use of that fish and wildlife that have been established over a reasonable period of time, taking into consideration the availability of the fish or game	Essentially the same as PL 105-83
Sec. 803(4): "Customary Trade"		Except for money sale of furs and furbearers, the limited, non-commercial exchange for money of fish and wildlife or their parts in minimal quantities	Essentially the same as PL 105-83
Sec. 803(5): "Rural Alaska Resident"		A resident of a rural community or rural area. A "rural community or area" means a community or area substantially dependent on fish and wildlife for nutritional and other subsistence uses	Essentially the same as PL 105-83

<u>ANILCA PROVISIONS:</u>	ANILCA TODAY	PUBLIC LAW 105-83 (SENATOR STEVENS' AMENDMENTS)	SUBSISTENCE TASK FORCE PROPOSAL (September 1997)
Sec. 804(b): "Reasonable Opportunity"	Sec. 804(a) provides that subsistence taking of resources is afforded a priority over other purposes. When necessary to restrict subsistence taking, priority and limitations are based on customary and direct dependence, local residency, and the availability of alternative resources	Adds Sec. 804(b) which states that the priority afforded under this section is for a reasonable opportunity to take fish and wildlife only. "Reasonable opportunity" means an opportunity, consistent with customary and traditional uses, to participate in a subsistence hunt or fishery with a reasonable expectation of success, and does not mean a guarantee that fish and wildlife will be taken	Essentially the same as PL 105-83

<u>ANILCA PROVISIONS:</u>	ANILCA TODAY	PUBLIC LAW 105-83 (SENATOR STEVENS' AMENDMENTS)	SUBSISTENCE TASK FORCE PROPOSAL (September 1997)
Sec. 805: Local and Regional Participation	Established at least six subsistence resource regions, local advisory committees, and regional advisory councils	<p>Adds Sec. 805(d): when Secretary certifies that State has passed laws consistent with 803, 804, and 805, state shall assume management on public lands. Secretary shall then not implement sections a,b, and c (federal management structure) unless a court of competent jurisdiction determines that state is out of compliance</p> <p>Secretary may bring a judicial action to enforce this subsection</p> <p>(2)(A) regional councils will present recommendations to state boards, which may choose not to follow recommendations which are not supported by substantial evidence, violate recognized principles of fish and wildlife conservation, or are detrimental to the satisfaction of rural subsistence needs</p> <p>(B) members of each regional advisory council appointed by Governor. 10 members, 4 selected from nominees who live in region and presented by tribal councils; 6 from nominees submitted by local governments and advisory committees. 3 of the 6 are subsistence users who live in the region; 3 of 6 are sport or commercial users who live in any subsistence region. 3 year staggered term on councils</p>	<p>Sec. 806(b) added which essentially mirrors 805(d) except that sections (a), (b), and (c) (the federal management structure) shall not be implemented unless a court of competent jurisdiction determines that the State has <u>substantially failed</u> to implement the provisions of Title VIII</p> <p>No similar provision in Task Force Proposal</p> <p>Adds two additional grounds upon which the Boards may base a rejection of a recommendation: 1.) involves an unresolved statewide or inter-regional subsistence management issue; or 2.) is contrary to an overriding statewide fish or wildlife management interest.</p> <p>Essentially the same as PL 105-83</p>

<u>ANILCA PROVISIONS:</u>	ANILCA TODAY	PUBLIC LAW 105-83 (SENATOR STEVENS' AMENDMENTS)	SUBSISTENCE TASK FORCE PROPOSAL (September 1997)
Sec. 807: Judicial Enforcement	Individuals aggrieved by State's failure to implement provisions of Title VIII may, upon exhaustion of administrative remedies, file a civil action in U.S. District Court for enforcement	Adds Sec. 807(b): State agency actions may be declared invalid by the court only if they are arbitrary, capricious, or an abuse of discretion, or otherwise not in accordance with law. When reviewing any action within the specialized knowledge of a State agency, the court shall give the decision of the State agency the same deference it would give the same decision of a comparable Federal agency	Essentially the same as PL 105-83, except does not contain the added phrase "or otherwise not in accordance with law"
Sec. 814: Regulations	The Secretary shall prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title	The Secretary, and the State at any time the State has complied with section 805(d), shall prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title. During any time that the State has complied with section 805(d), the Secretary shall not make or enforce regulations concerning section 805(a), (b), or (c)	Essentially the same as PL 105-83
Sec. 815: Limitations, Savings Clauses	Title is consistent with conservation of healthy fish and wildlife populations; no assignment of rights; no hunting in permanently closed areas; no restricting non-subsistence uses unless necessary to continue subsistence uses or to maintain healthy populations; does not modify or repeal other federal lands Acts	Adds Sec. 815(5): Nothing prohibits Secretary or the State from entering into co-management agreements with native organizations or other local or regional entities when either is managing fish and wildlife on public lands in Alaska for subsistence uses	

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1997 AFN CONVENTION

SUBSISTENCE REVIEW AND ANALYSIS

(OCTOBER 23, 1997)

1997 has been a difficult year for the Native community's effort to maintain and improve federal subsistence protections. This critical period began with Senator Stevens' April speech to the Alaska Legislature. It produced the Governor's Task Force's deliberations and proposed package in the summer. It continued through the statewide Native Subsistence Summit in late August. **Above all, it resulted, on September 30, 1997, in a congressional extension of the *Katie John* moratorium and the passage of several amendments to Title VIII of ANILCA.**

CHRONOLOGY

On April 2, Senator Stevens gave his annual address to a joint session of the Legislature in Juneau. He warned that another congressional moratorium against implementation of the *Katie John* decision (federal management of subsistence fishing on reserved navigable waters) would not be possible this year. He told them that, if they wanted to avoid such a federal takeover, the only solution was a consensus in state politics. Governor Knowles and legislative leaders (e.g., Senate President Miller and House Speaker Phillips) took the Senator at his word; and the Governor began building momentum for a negotiating process among Alaskans.

On May 6, the Governor met with the AFN Board and other Native leaders in Anchorage. He reiterated his commitment to two overriding principles: resuming state management and keeping the rural preference. He added a third principle: "...that I will not support any resolution of that problem that does not have the support of Native Alaskans." The Governor then proposed a "stakeholders" process involving competing user groups. Fearing another round of inconsequential speechmaking, AFN urged that his process involve "decision makers" - officeholders with the power to make law. AFN never suggested that the process exclude stakeholders - merely that the decision makers be involved.

Throughout May, the Governor put together his seven-member Task Force (in addition to himself, Lieutenant Governor Ulmer, Senate President Miller, House Speaker Phillips, former Governor Hammond, former Attorney General Cole and Byron Mallott). It held the first of its several meetings in early June. What became clear at the outset was that this Alaskan negotiating process would exclude any and all representatives chosen by Native people. The Task Force process was never a negotiation by or with us; it was a negotiation about us. What unfolded was a series of bargaining sessions that placed the Governor on one side of the table and Gail Phillips, Mike Miller, Ted Popely and Ron Somerville on the other. Anti-subsistence stakeholders were abundantly represented at the table - indeed, it was primarily with them that the Governor was negotiating. What emerged from this process was a list of policy losses for village people that the legislative leadership got as the price of their support for a constitutional amendment.

The Alaska Native community got its first complete look at the Task Force's draft package (composed of amendments to Title VIII, a complying state statute, and a state constitutional amendment to permit the latter) when it was publicly released on July 9. The deadline for public comment was July 23. AFN, RurALCAP, AI-TC and others wrote to Attorney General Boteiho requesting an extension of the deadline until the Native community could hold a Subsistence Summit to consider the Task Force's complex package. That request was granted, although the only workable dates for the Summit were at the end of August.

AFN, RurALCAP and AI-TC sponsored the Summit on August 26-28 because that brief window between late subsistence fishing and the opening of subsistence hunting was literally the only time we could get village people into Anchorage and provide them with meeting space during a busy tourist season. AFN invited the legislative leadership to attend; all had other commitments. But the response from our own people was overwhelming: **nine hundred** Native people and their advisors met for three solid days and worked through a maze of issues and proposals. What did we accomplish? We held the Native community together and achieved consensus; we educated our own people; we debated, amended and voted on every issue before us; we shaped twelve specific recommendations to the Task Force on its proposal; and we adopted a resolution and guiding principles offering to sit down and negotiate same.

The Summit's 12 policy recommendations were:

- 1) to extend federal subsistence protections to urban Natives - especially those living in "formerly rural" Native communities (i.e. that lose the preference by non-Native in-migration and socio-economic change);

- 2) to assure that subsistence regulations mirror local customary and traditional harvest and use patterns, without limiting the definition of "customary and traditional" to that in state law;
- 3) to maintain ANILCA's standard of protection ("least adverse impact" on C&T), rather than replacing it with the Task Force's "reasonable opportunity" to harvest for subsistence;
- 4) to rely on the federal courts, rather than the language of the current State statute, plus the discretion of the State Boards, to define "customary trade;"
- 5) to add "cultural and religious" uses to ANILCA's standard list of protected subsistence uses of fish and game;
- 6) to reform the State's management structure - by using effective regional advisory councils (possibly empowering them as regional regulatory boards), by restructuring the Boards of Fisheries and Game, and by the possible creation of a State Subsistence Board;
- 7) to require real co-management agreements between the State and the Native tribes as co-equal partners in running the system;
- 8) to ensure that federal jurisdiction, during State non-compliance, cover:
 - all federal public lands, including all reserved navigable waters,
 - selected/unconveyed lands under ANCSA and the Statehood Act,
 - federal "extraterritorial" reach off such lands to protect subsistence practiced on such lands;
- 9) to impose no State-sponsored limitation on the powers of the federal courts and/or the Secretary of the Interior to enforce the federal law;
- 10) to make the State constitutional amendment for a rural preference mandatory, rather than permissive, and to recognize in its text the political status of Alaska Natives;
- 11) to ensure that federal and State laws permit a subsistence defense in court; and
- 12) to enact no ANILCA amendments that weaken current federal subsistence protections.

On Saturday, September 13, AFN, RurALCAP and AI-TC finally got the chance to testify before the Task Force, and we all presented the results of the Summit. When the hearing ended, the Task Force went back into deliberations, which were open to the public but provided no further opportunity for public comment,

negotiation or debate. Thus, the direct participation of representatives chosen by Natives, as required by the Summit, was reduced to a single opportunity for three organizations to testify for 20 minutes each. On September 23, after incorporating a few comments from the Native community, the Task Force adopted its final package and discontinued its work.

With the Legislature deliberately stalling consideration of any subsistence solution before October 1, the Alaska Congressional Delegation informed AFN that they felt the ball was now in their court. They reiterated that they would never allow federal management of fisheries on any navigable waters of Alaska. But that was precisely what was looming. Clearly, the Delegation intended to extend the moratorium; but a simple extension, without some additional action to address the federal-state impasse itself, was not likely, since Senator Stevens had told the Legislature in April that they would not do that. Indications were that the Senator would use the House-passed rider on the Interior Department's FY '98 appropriation in his Conference Committee to extend the moratorium - but would combine that with congressional enactment of the ANILCA amendments proposed by the Governor's Task Force. That way, he could keep federal managers off navigable waters, deliver his part of the Task Force's proposal (supported by Governor Knowles, President Miller and Speaker Phillips), and hold the Legislature's feet to the fire on delivering its part.

That is why AFN, RurALCAP, AI-TC and other Native organizations went to Washington, D.C. and worked for ten straight days - from September 22 to October 2. Among those present were AFN's Albert Kookesh, Julie Kitka and staff; attorneys Norman Cohen, Sky Starkey, David Case, Carol Daniel, Mike Walleri, Alan Mintz, and Dick Agnew; AFN Subsistence Committee members Rosita Worl, Will Mayo and Myron Naneng; AFN Board members Bert Griest and Morris Thompson; Vernita Herdman, Carl Jack, Jonathon Solomon and Myra Olsen from RurALCAP; Steve Ginnis from AI-TC and Harold Martin from Tlingit & Haida Central Council. Other Native leaders were in continual contact with us from Alaska; and we held a teleconferenced meeting of the full AFN Board (with Senator Stevens and Secretary Babbitt attending in D.C.) on October 1.

When it became clear that we could not stop the amendatory thrust by the Task Force and the Senator, our urgent task shifted to changing the Task Force's amendments as much as possible to reflect the Summit's recommendations. By the end of our effort, we had achieved parts of that goal - even though, as we had expected, we could not keep ANILCA from being amended.

Just before arriving in D.C., AFN was contacted by Secretary Babbitt, who tried at the same time to contact RurALCAP and AI-TC. He told us that, after talking with Senator Stevens, he was going to get involved in negotiating what Congress would do on Title VIII. Although the Secretary of the Interior has a traditional trust responsibility to protect Native American peoples, the Clinton Administration also has to deal with the Alaska Delegation and the Governor of Alaska. Interior

initially seemed willing to bring Native representatives to the table with the State and the Delegation in order to get the Summit's recommendations considered before Congress acted. What ensued in the next ten days involved hundreds of phone calls, a dozen media interviews, four face-to-face meetings with Solicitor Leshy, repeated consultations with the Delegation and its staffs, and our own strategy sessions several times a day. Our lawyers provided Interior with a stream of draft language and policy justifications in order to change the Task Force's ANILCA amendments to conform to the Summit's recommendations. In the end, Interior never brought Native representatives to the table itself. Instead, their lawyers met at length with the State's lawyers and, using our group's materials, negotiated the package of ANILCA amendments that both the State and Interior would recommend to Senator Stevens. Alaska Natives were again kept out of the room and allowed only to slip recommendations under the door. Some of our ideas were accepted, in whole or in part; others were simply dismissed by those at the table.

Following congressional passage of the Stevens amendments, AFN, along with other Native organizations, wrote to President Clinton, requesting a White House veto of the FY '98 Interior Department appropriation as long as it has these amendments in it. Because Secretary Babbitt and Governor Knowles have concurred in the Stevens action, the President is not expected to veto the bill over our issue.

POLICY SUBSTANCE

Here is what came out of Senator Stevens' ANILCA amendments, organized by the Summit's 12 issues, listed above:

1. **Federal Protections for Urban Natives.** The Stevens amendments maintain ANILCA's subsistence preference for rural Alaska residents. But they define a rural community or area as one that is "...substantially dependent on fish and wildlife for nutritional and other subsistence uses."

By not stating a quantifiable percentage of a rural community's or area's nutrition that must come from fish and game, this leaves the term "substantially dependent" to the discretion of the State Boards. Does "substantially dependent" mean 50% of the community's or area's nutrition? Is it more than 50%? Is it less? The higher it is set, the fewer the communities and areas that will qualify; the lower it is set, the greater the number of communities and areas that will be designated as rural.

Once nutritional dependency has been considered, the Boards would have to evaluate the community's or area's non-nutritional subsistence uses of fish and game (e.g., clothing, transportation, handicrafts, customary trade, sharing, barter, etc.). It is possible that a community or area with a high nutritional

dependency on subsistence could still fall out of the "rural" category for failing to exhibit a sufficient level of non-nutritional subsistence uses. Defining all of that is also left to the State Boards' discretion.

This amendment has the effect of overturning the *Kenaitze* ruling, which added a more objective population criterion to that of socio-economic characteristics. Population counts are now out, making the process of rural designations by the State Boards more subjective and making it harder for anyone to challenge them for violating ANILCA. Depending on how this is implemented by the State Boards, it may be more - or less - restrictive than was the definition struck down by *Kenaitze*.

All communities and areas now on the State's list of non-subsistence use areas (e.g., Saxman, certain Railbelt communities that have been rural under the original ANILCA, and others) will not be rural.

The Task Force's alternative of educational permits for communities that fail to meet this standard can be granted only at the discretion of the Alaska Department of Fish and Game and are accorded no preference in federal law. The Stevens amendments do not contain it, and whether it remains in State law depends on the Legislature.

The "proxy hunting and fishing" provisions of the Task Force's proposal would allow a non-rural resident (either Native or non-Native) to return to his or her customary and traditional use area to hunt or fish for a local resident. The catch would belong to the person for whom the hunting or fishing was done - but the non-rural resident would be allowed to bring some of the catch back to his or her non-rural residence as customary and traditional sharing, as long as a majority of the catch remains in the rural community or area. While this would be a definite step forward for some urban Natives, the proxy provisions would be included only in the State statute. As with educational permits (above), the Stevens amendments do not contain the proxy provisions, and whether they ever become law depends on the Alaska Legislature.

2. Defining C&T. ANILCA, without defining the term, has always required that subsistence regulations mirror "customary and traditional" methods, means, and uses (including locations, seasons, bag limits, proxy hunting and fishing). The Stevens amendments, reflecting the Task Force's proposal and ignoring the recommendations of the Summit, now define C&T as "...the noncommercial, long-term, and consistent taking of, use of, or reliance upon fish and wildlife in a specific area and the patterns and practices of taking or use of that fish and wildlife that have been established over a reasonable period of time, taking into consideration the availability of the fish and wildlife." This new federal definition is basically from the current State law, with the exception of the words "and practices," which we were able to insert. That insertion made the Stevens amendment better than what the Task Force had proposed.

3. **Standard of Subsistence Protections.** The original ANILCA standard, as interpreted by the federal courts in *Bobby*, was that subsistence regulations must be consistent with customary and traditional patterns and practices (season, bag limits, methods and means). The federal courts have also required that subsistence be regulated so as to have the "least adverse impact" on C&T harvest and use patterns. The Governor's Task Force proposed changing this to "reasonable opportunity" (to participate in a subsistence fishery, or hunt with a reasonable expectation of success). The Summit expressed strong support for the standards traditionally recognized by the federal courts and opposed any ANILCA amendment that would weaken them. The Stevens amendments changed ANILCA to "reasonable opportunity." We managed to add the qualifier that "reasonable opportunity" regulations must be consistent with customary and traditional uses (defined above).

This improvement reduces the State Boards' discretion in important ways, but it remains to be seen how the Boards will implement the new standard. It also remains to be seen how the federal courts will interpret "reasonable opportunity," particularly in how much deference they will give to the Boards under the new standard of judicial review (Section 9 of this memo). Finally, it remains to be seen how "reasonable opportunity" will affect the courts' standard of "least adverse impact."

"Least adverse impact" on C&T still remains in the original FINDINGS of Title VIII - which were added to, but not deleted by, Senator Stevens' amendments.

4. **Defining Customary Trade.** The Stevens amendments put the State's definition into federal law: "...the limited noncommercial exchange for money of fish and wildlife or their parts in minimal quantities." This change is more restrictive than the original ANILCA, which had no statutory definition and therefore depended on the federal courts to draw the line, case-by-case, between a legitimate subsistence use and a commercial activity in the guise of subsistence. The inclusion of three subjective words ("limited," "noncommercial," and "minimal") hand considerable discretion to the State Boards. Note: The new definition does not apply to the sale of furs and furbearers.

5. **Cultural and Religious Uses of Subsistence.** The Stevens amendments did not add "cultural and religious" uses to ANILCA's list of protected subsistence uses, contrary to the recommendation of the Summit. The federal list remains:

- direct personal or family consumption (food, shelter, transportation, fuel, clothing tools);
- handicrafts production/sale;
- barter;
- sharing for personal or family consumption; and

--customary trade for cash.

6. **Reforms of State Management.** The Task Force's package proposed that the State Boards establish at least six 10-member advisory councils, appointed by the Governor:

- 4 members from lists submitted by tribal councils in the region;
- 6 members (3 must be subsistence users from the local region, and 3 sport and commercial users from any region) from lists submitted by local governments and local advisory committees.

The Stevens amendments do not specify a minimum number of regional advisory committees that must be established, but they do specify the same membership and appointments as proposed by the Task Force (above) - when the State is in compliance. Council members will have three-year staggered terms, with no limit on the terms a member may serve. A quorum is a simple majority. When the State is out of compliance, the regional council provisions of the original ANILCA would be in force.

The Stevens amendments require the State Boards to "consider the advice and recommendations" of the regional councils for regulations within their respective regions. As in the original ANILCA, the Boards may choose not to follow such recommendations only if they are not supported by substantial evidence, violate recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of rural subsistence needs. The Governor's Task Force proposed to add two more grounds on which a State Board could refuse to follow a regional council's recommendation: because it involves an unresolved statewide or inter-regional subsistence management issue, and because it is contrary to an overriding fish or wildlife management interest. But the Stevens amendments did not add these, for reasons unknown. As a result, it is unlikely that they can be placed in State law, for fear of being inconsistent with ANILCA. Note: It is unclear, under the Task Force's proposed changes to the State law, whether council recommendations will be given such deference if they are not unanimous.

7. **Co-Management.** Despite the critical recommendation of the Summit that federal and State laws mandate co-management agreements and relationships, no such thing was contained in either the Task Force proposal or the Stevens amendments. The Stevens amendments merely confirm the status quo by saying that nothing in ANILCA prohibits the Secretary or the State from entering into such agreements. That is precisely the situation of the last 17 years, and so this represents no progress on co-management.

8. **Extent of Federal Jurisdiction.** The Governor's Task Force had proposed to amend the definition of "federal lands" to exclude State and Native selected-but-unconveyed lands. The intent of that amendment was to limit the

ability of the Secretary, in times of State non-compliance, to apply the federal subsistence program to such lands, as he had indicated he would do in his preliminary regulatory notice for the federal subsistence fishing program under *Katie John*. Through Interior-State negotiations, we were able to get that portion of the "federal lands" definition dropped. The new definition enacted by Congress is "lands the title to which is in the United States after December 2, 1980." It specifically exempts from federal jurisdiction "lands the title to which is in the State, a Native Corporation, or other private ownership" (i.e., conveyed State and ANCSA lands), but it does not specifically exempt selected/unconveyed lands.

The Governor's Task Force and Senator Stevens have stated that this change is not intended to exempt navigable waters from the definition of "public lands," thereby overturning *Katie John*. We are informed that the congressional Conference Committee Report will clarify that the new definition does not affect subsistence fishing and does not overturn *Katie John*. The danger in this is that courts tend to look at legislative history only when the statutory language is unclear, and therefore the assurances in the Report may not be determinative.

9. ANILCA Oversight Authority of Secretary and Federal Courts.

Secretarial Certification of State's Return to Compliance: Under the Task Force's proposal, the State could have immediately regained management, once it had passed a constitutional amendment and the new statute. But that process could have permitted the State to pass a statute substantially different from the requirements of ANILCA and still be deemed as complying with the federal law. This provision was removed and replaced with a requirement of Secretarial certification. In order for the State now to come back into compliance, the Secretary must certify that the Alaska Constitution has been amended to permit a complying statute and that such a complying statute has been enacted. This is definite improvement over the Task Force's original ANILCA amendment.

AUGUST 28, 1997

NATIVE SUBSISTENCE SUMMIT

RESOLUTION 97-01

Concerning the subsistence rights of the Alaska Native
People.

Whereas, representatives of the Alaska Native peoples and their tribal governments, corporations, and other organizations from throughout the State of Alaska assembled at the Native Subsistence Summit co-sponsored by the Alaska Federation of Natives, the Alaska Inter-Tribal Council and the Rural Community Action Program in Anchorage, Alaska, on August 26-28, 1997, to consider proposals to amend state and federal laws relating to subsistence hunting, trapping, gathering and fishing; and

Whereas, the delegates to the Native Subsistence Summit expressed their deep concern over the need to protect and promote the customary and traditional ways of taking fish and wildlife, and other subsistence activities in connection with any proposals to change subsistence laws, regulations and policies; and

Whereas, the delegates to the Native Subsistence Summit carefully reviewed, discussed and carefully considered numerous proposals to resolve the current subsistence impasse;

Now, therefore, be it resolved, by the representatives of the Alaska Native people assembled at the Native Subsistence Summit, that:

1.

(a) Appreciation is extended to the many Native delegates who came despite pressing unfinished subsistence work to demonstrate their deep commitment to the preservation of their customary and traditional subsistence lifestyle.

(b) The delegates to the Native Subsistence Summit express their appreciation for the hard work and dedication of Governor Knowles and the other members of the Governor's Task Force in developing its proposal and

for the attendance of the Governor and other members of the Task Force at the Native Subsistence Summit.

2. The delegates to the Native Subsistence Summit express their appreciation to the members of the Alaska Congressional delegation for their efforts to resolve the subsistence impasse and their support for a State Constitutional amendment which will allow the State of Alaska to comply with the provisions of Title VIII of the Alaska National Interest Lands Conservation Act.

3. The delegates to the Native Subsistence Summit express the willingness of the Alaska Native community to work for the development of a consensus on a package to address subsistence.

4. In order to ensure an acceptable resolution of the current impasse on the subsistence issue, the delegates to the Native Subsistence Summit demand that the development of any further proposal to resolve this issue of crucial importance to the future of the Alaska Native people be accomplished only with the full participation and endorsement by representatives of the Alaska Native people chosen by the Alaska Native people themselves and with the consent of Alaska Native tribes.

5. In order to effectuate the recommendations set forth in this resolution, the delegates to the Native Subsistence Summit authorize and direct the leadership of the Alaska Federation of Natives, the Alaska Inter-Tribal Council and the RurAL Community Action Program:

a) To continue the work of the Native Subsistence Summit to resolve the subsistence impasse; and

b) To work with Governor Knowles, the members of the Governor's Task Force, the members of the Alaska Legislature, the members of the Alaska Congressional Delegation and other interested parties to develop a resolution to the subsistence impasse consistent with the guiding principles adopted by the delegates to the Native Subsistence Summit.

6. Any resolution negotiated by the representatives must be ratified through the full and informed consent of the Alaska native tribes and other organizations.

7. The delegates to the Native Subsistence Summit call upon the Governor, the members of the Alaska Legislature, the members of the Alaska Congressional Delegation and other interested parties to work with the representatives of the Alaska Native people to reach consensus to resolve the current subsistence impasse.

GUIDING PRINCIPLES

Establishment of a legal system based upon principles which achieve:

1. Full participation and consent of the Alaska Native Community, including hearings in villages in each region;
2. A subsistence priority based on Alaska Native community, religious/spiritual, nutritional, medicinal and cultural practices rather than an individualized or a needs based system;
3. Only amendments which enhance subsistence rights and maintain federal oversight to at least its current level;
4. Co-management including state, federal and tribal co-equal involvement;
5. Full recognition of customary and traditional uses including religious/spiritual and ceremonial;
6. Effective comprehensive reform of the State management system;
7. Recognition that subsistence is a basic human right.

Subsistence Proposal Comparisons

Issue:	Present Situation Dual Management	AFN No Net Loss	3) TCC Proposal	4) AVCP/Calista Proposal	5) AITC/Rural CAP Proposal	6) Southeast Proposal	7) North Slope Proposal	8) Northwest Proposal	9) Kodiak Proposal
<p>A The Priority: Who is eligible?</p>	<p><u>Federal Lands:</u> Rural residents with C&T uses. "Rural defined by Federal Subsistence Board, based on population and rural characteristics of community/area.</p> <p><u>State, Private Lands:</u> All Alaska residents. Only priority is for subsistence <u>use</u> over other <u>uses</u>, not for any Alaska residents over other Alaskan residents.</p>	<p>Residents of Alaska communities that are <u>rural</u> (as defined in <i>Kenaitze</i> case); priority applies only to specific fish stocks and game populations customarily and traditionally used by community. Applies to communities and areas: no individual qualification.</p>	<p>Alaska Natives only.</p>	<p>AVCP will provide information before the presentation.</p>	<p>Members of federally recognized tribes within their customary and traditional hunting and fishing grounds. The priority would apply to all tribes, including those currently located within "non-subsistence" areas. No individual qualification.</p>	<p>Rural, plus urban Natives; repeal Sec 4(b) of ANCSA.</p>	<p>SUPPORT <u>GOVERNOR'S TASK FORCE PROPOSAL FOR STATE MANAGEMENT IF IT IS MODIFIED AND AMENDED AS SET FORTH BELOW</u>, and in August 19, 1997 North Slope Subsistence Workshop and Summit Resolution. Governor's proposal must make it clear that larger communities like Barrow and Bethel qualify as "rural," and that residents receive a Rural subsistence priority.</p>	<p>Native preference is the best option, but a rural preference is acceptable.</p>	<p>Alaska Natives and their descendants, and those Alaska residents having a customary and traditional use.</p>
<p>B Definition: "Customary & Traditional"</p>	<p><u>Federal Lands:</u> No definition in ANILCA. Regulations' definition: "A long-standing, consistent pattern of use, incorporating beliefs and customs, transmitted from generation to generation...use plays important role in economy of community."</p> <p><u>State, Private Lands:</u> "... Non-commercial, long term taking of, use of, and reliance upon fish or game in a specific area and the se patterns of that fish or game that have been established over a reasonable period of time, taking into consideration the availability of the fish or game."</p>	<p>No statutory definition. Hunting and fishing regulations must mirror customary and traditional methods, means and uses (including locations, seasons, bag limits, and proxy hunting and fishing).</p>	<p>No statutory definition proposed.</p>		<p>No statutory definition. Hunting and fishing regulations must mirror customary and traditional methods, means and uses (including locations, seasons, bag limits, and proxy hunting and fishing).</p>	<p>No statutory definition. Hunting and fishing regulations must mirror customary and traditional methods, means and uses (including locations, seasons, bag limits, and proxy hunting and fishing).</p>	<p>Add "trapping" to hunting and fishing. See Section 2 of Resolution.</p>	<p>Maintain current federal regulatory definitions. Hunting and fishing regulations would have to conform to local customary and traditional uses, as was the original intent of Title VIII of ANILCA.</p>	<p>Hunting and fishing regulations would have to conform to local customary and traditional uses, as was the original intent of Title VIII of ANILCA. Local input would be necessary.</p>

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<p>C Definition: "Customary Trade"</p>	<p><u>Federal Lands:</u> No definition in ANILCA. Regulations' definition: "Cash sale of fish and wildlife resources regulated herein, not otherwise prohibited by State or Federal law or regulation, to support personal and family needs; and does not include trade which constitutes a significant commercial enterprise."</p> <p><u>State, Private Lands:</u> "Exchange for cash of fish or game in minimal, noncommercial quantities, as determined by regulation." (State Boards set regulations.) Does not restrict money sales of furs and furbearers.</p>	<p>Allows sales for cash. Does not require that such fish or game be harvested primarily for personal or family consumption; does not draw line where amount sold or dollar value violates subsistence. Courts must decide (as in <i>Alexander</i> case) any claim that subsistence crossed into commercial.</p>	<p><u>Federal Lands:</u> No definition in ANILCA. Regulations' definition: "Cash sale of fish and wildlife resources regulated herein, not otherwise prohibited by State or Federal law or regulation, to support personal and family needs; and does not include trade which constitutes a significant commercial enterprise."</p> <p><u>State, Private Lands:</u> "Exchange for cash of fish or game in minimal, noncommercial quantities, as determined by regulation." (State Boards set regulations.) Does not restrict money sales of furs and furbearers.</p>		<p>Allows sales for cash. Does not require that such fish or game be harvested primarily for personal or family consumption; does not draw line where amount sold or dollar value violates subsistence. Courts must decide (as in <i>Alexander</i> case) any claim that subsistence crossed into commercial.</p>	<p>Exchanges for cash within family and community networks.</p>	<p>See Section 3 of Resolution.</p>	<p>Current federal regulatory definitions <u>but</u> excluding references to state regulations <u>and</u> allowing for court interpretation.</p>	<p>Allows sales for cash. Does not require that such fish or game be harvested primarily for personal or family consumption; does not draw line where amount sold or dollar value violates subsistence. Courts must decide (as in <i>Alexander</i> case) any claim that subsistence crossed into commercial.</p>
<p>D When the priority is invoked</p>	<p><u>Federal Lands:</u> As in ANILCA: Requires subsistence regulations at any time there is an identified subsistence use. Tier I or II priority invoked at any time takings must be restricted (e.g. shortage).</p> <p><u>State, Private Lands:</u> Priority for subsistence over other uses is in force at all times. However, Tier II priority may not be based on local residency.</p>	<p>No change from ANILCA: Requires subsistence regulations at any time there is an identified subsistence use. Tier I or II priority invoked at any time takings must be restricted (e.g. shortage).</p>	<p>In times of harvests below community requirements.</p>		<p>No change from ANILCA: Requires subsistence regulations at any time there is an identified subsistence use. Tier I or II priority invoked at any time takings must be restricted (e.g. shortage).</p>	<p>No change from ANILCA: Requires subsistence regulations at any time there is an identified subsistence use. Tier I or II priority invoked at any time takings must be restricted (e.g. shortage).</p>		<p>At all times.</p>	<p>No change from ANILCA: Requires subsistence regulations at any time there is an identified subsistence use. Tier I or II priority invoked at any time takings must be restricted (e.g. shortage).</p>

Subsistence Proposal Comparisons

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<p>E Standard of protection for subsistence harvests</p>	<p><u>Federal Lands:</u> Regulations must have "least adverse impact" on customary and traditional harvest and use patterns (<i>Bobby</i> case). Must provide maximum opportunity, though not guaranteed harvest.</p> <p><u>State, Private Lands:</u> Reasonable opportunity for subsistence taking and use; requires regulations providing normally diligent person reasonable expectation of success. Not a guaranteed harvest.</p>	<p>Regulations must have "least adverse impact" on customary and traditional harvest and use patterns (<i>Bobby</i> case). Must provide maximum opportunity, though not guaranteed harvest.</p>	<p>Below the level required by a Native community to meet its demonstrated subsistence requirements.</p>		<p>Regulations must have "least adverse impact" on customary and traditional harvest and use patterns (<i>Bobby</i> case). Must provide maximum opportunity, though not guaranteed harvest.</p>	<p>Regulations must have "least adverse impact" on customary and traditional harvest and use patterns (<i>Bobby</i> case). Must provide maximum opportunity, though not guaranteed harvest.</p>	<p>See Section 3(c) of Resolution.</p>	<p>Least adverse impact.</p>	<p>Regulations must have "least adverse impact" on customary and traditional harvest and use patterns (<i>Bobby</i> case). Must provide maximum opportunity, though not guaranteed harvest.</p>
<p>F Subsistence opportunities for urban Natives:</p> <ul style="list-style-type: none"> • historically rural Native communities/areas now defined as urban; • individual Natives who moved to urban communities/areas 	<p><u>Federal Lands:</u> No ANILCA provisions for urban Natives, either: 1) Historically rural Native communities/areas now defined as urban, or 2) Individual Natives who moved to urban communities/areas.</p> <p><u>State, Private Lands:</u> State has issued some Subsistence educational permits to historically rural Native communities/areas now defined as urban (e.g., Kenaitze).</p>	<p>Federal priority should be strengthened (e.g., by Native or Native-plus priority, or better definition of "rural") to guarantee adequate subsistence protections for Native residents of historically rural Native communities/areas now defined as urban. (Note: Native or Native-plus priority would protect <u>both</u> categories of urban Natives.)</p>	<p>Alaska Natives, including urban Natives, protected for hunting or fishing in their customary and traditional locations.</p>		<p>Individual Natives, as members of federally recognized tribes, would be eligible for priority within their customary and traditional use areas, regardless of where they now reside. Tribal priority would protect <u>both</u> categories of urban Natives.</p>	<p>Urban Natives would be able to participate in subsistence uses in their customary and traditional use areas.</p>	<p>Need to strengthen the "reasonable opportunity" standard. Need to provide a maximum opportunity, although not a guaranteed harvest. See Section 3(c) of Resolution.</p>	<p>Urban Natives who are members of federally recognized tribes would be eligible for priority within their customary and traditional use areas, regardless of where they now reside. Tribal priority would protect both categories of urban Natives.</p>	<p>Alaska Natives, and descendants of, including urban residents for hunting or fishing in their customary and traditional locations.</p>

Subsistence Proposa Comparisons

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<p>G What uses are protected (human consumption, nutrition, etc.)?</p>	<p><u>Federal Lands:</u> All C&T takings and uses for:</p> <ul style="list-style-type: none"> • direct personal or family consumption (food, shelter, transportation, fuel, clothing, tools); • handicraft production/sale; • barter; • customary trade for cash; • sharing for personal or family consumption. <p><u>State, Private Lands:</u> All C&T uses, as listed above, plus potlatches.</p>	<p>All C&T takings and uses for:</p> <ul style="list-style-type: none"> • direct personal or family consumption (food, shelter, transportation, fuel, clothing, tools); • handicraft production/sale; • barter; • customary trade for cash; • sharing for personal or family consumption. 	<p>All C&T takings and uses for:</p> <ul style="list-style-type: none"> • direct personal or family consumption (food, shelter, transportation, fuel, clothing, tools); • handicraft production/sale; • barter; • customary trade for cash; • sharing for personal or family consumption. <p><u>Plus:</u> Clarification to include religious and ceremonial uses.</p>		<p>All C&T takings and uses for:</p> <ul style="list-style-type: none"> • direct personal or family consumption (food, shelter, transportation, fuel, clothing, tools); • handicraft production/sale; • barter; • customary trade for cash; • sharing for personal or family consumption. <p><u>Plus:</u> Clarification to include religious and ceremonial uses.</p>	<p>All C&T takings and uses for:</p> <ul style="list-style-type: none"> • direct personal or family consumption (food, shelter, transportation, fuel, clothing, tools); • handicraft production/sale; • barter; • customary trade for cash; • sharing for personal or family consumption. 	<p>See Section 3 (d) of Resolution.</p>	<p>All C&T uses currently provided for in ANILCA as defined and practiced by the tribal community. Including the taking of, use of, and customary trade, barter and sharing.</p>	<p>All C&T takings and uses for:</p> <ul style="list-style-type: none"> • direct personal or family consumption (food, shelter, transportation, fuel, clothing, tools); • handicraft production/sale; • barter; • customary trade for cash; • sharing for personal or family consumption. <p><u>Plus:</u> Clarification to include religious and ceremonial uses.</p>
<p>H What is the geographical extent of the priority (on which lands and waters)?</p>	<p><u>Federal Lands:</u> All rural federal public lands (including reserved waters).</p> <p><u>State, Private Lands:</u> All State lands outside non-subsistence use areas, all private lands outside non-subsistence use areas (including ANCSA), and State or ANCSA selected/unconveyed lands + unreserved navigable waters.</p>	<p>All rural lands and waters. Note: definition of "rural" in Row A above.</p>	<p>Federal public lands (including reserved waters); Native lands (ANCSA and allotments); and possibly State lands in vicinity of any Native community seeking a permit.</p>		<p>All lands and waters in Alaska.</p>	<p>All rural lands and waters. Note: definition of "rural" in Row A above.</p>	<p>Statewide. See Section 3 (e) and Section 6 of Resolution.</p>	<p>Statewide: All lands (including all waters).</p>	<p>Statewide: All lands (including all waters).</p>

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<p>I Are management reforms included?</p>	<p><u>Federal Lands:</u> Fed agencies have ability to enter into cooperative management agreements. 10 fed regional advisory councils operate.</p> <p><u>State, Private Lands:</u> State agencies have ability to enter into cooperative management agreements. No State regional advisory council system.</p>	<p>Yes...Mandatory and basic reforms of state systems:</p> <ul style="list-style-type: none"> board structure and processes; regional advisory councils to generate subsistence regulations; co-management contracting and delegation of management powers and functions to Native communities and organizations. 	<p>Federal board and federal regional councils to monitor Native subsistence harvests and to provide opportunities by permit for Native communities when insufficient harvests occur. Actions are initiated by regional councils, which are entitled to deference from Federal Subsistence Board.</p>		<p>Yes. Mandatory and basic reforms of State systems. Local subsistence needs and uses would be identified and provided for through a Regional Council System that ensures a co-management role for tribal governments on all issues affecting subsistence management; the State Board system would also be reformed so that subsistence decisions are made by a board composed of subsistence users nominated by Regional Subsistence Councils.</p>	<p>Yes. Mandatory and basic reforms of state systems:</p> <ul style="list-style-type: none"> board structure and processes; regional advisory councils to generate subsistence regulations; co-management contracting and delegation of management powers and functions to Native communities and organizations. 	<p>See Section 4 of Resolution.</p>	<p>Yes, we support a federal takeover. The Federal government should exercise its existing authority to regulate and protect subsistence on state and private lands to protect subsistence on federally reserved lands & waters.</p>	<p>Yes. Local subsistence needs and uses would be identified and provided for through a Regional Council System that ensures a co-management role for tribal governments on all issues affecting subsistence management; the State Board system would also be reformed so that subsistence decisions are made by a board composed of subsistence users nominated by Regional Subsistence Councils.</p>
<p>J Does it contain the principle of co-management? (Note: concept of "co-management" is defined differently by proposals listed to the right.)</p>	<p><u>Federal Lands:</u> Section 809 authorizes, but does not mandate, cooperative agreements.</p> <p><u>State, Private Lands:</u> No specific requirement in State law or regulations.</p>	<p>Yes, as stated above: contracting and delegation of management functions and powers to Native communities and organizations.</p>	<p>Requires co-management between Secretary and Native groups. "Co-management" is not defined.</p>		<p>Yes. Maximum possible involvement of tribes in co-management. "Co-management" is not defined. If state opts not to participate, there would still be co-management between tribes and the federal government.</p>	<p>Any proposals by Alaska Native Community for changes in subsistence management shall include a provision for co-management by Tribes as equal partners with other governmental entities; convening a SE Technical Conference on co-management led by SE Tribes and organizations to explore and define co-management; and each Native community define co-management parameters itself within its traditional usage area and that each community activate Tribal members, especially elders and youth, to the opportunities of co-management.</p>	<p>See Sections 4 and 7 of Resolution. Co-management through contacts and cooperative agreements needs to be authorized. The Alaska Eskimo Whaling Commission provides a successful model. Local subsistence users role in Regional Councils and Advisory Boards needs to be strengthened..</p>	<p>Yes, maximum involvement of tribes and landowners in co-management at the federal and state levels.</p>	<p>Yes, as stated above: contracting and delegation of management functions and powers to Native communities and organizations.</p>

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K Extent of federal jurisdiction when the State is out of compliance	<p><u>Federal Lands:</u> All federal public lands (including adjacent reserved waters).</p> <p><u>State, Private Lands:</u> All State lands, private lands (including ANCSA), and State or ANCSA selected/unconveyed lands + unreserved navigable waters.</p>	<ul style="list-style-type: none"> All public lands (including broadest possible definition of "reserved waters"); all State and ANCSA selected / unconveyed lands (including over-selections); maximum extraterritorial reach off public lands. 	State would always be in compliance. State would have authority on all state, federal, and private lands.		Expands federal jurisdiction to all public lands and the broadest definition of reserved waters (including navigable waters outside federal parks and reserves); all selected and unconveyed lands; and provides for maximum extra-territorial reach of tribes in co-management.	<ul style="list-style-type: none"> All public lands (including broadest possible definition of "reserved waters"); all State and ANCSA selected / unconveyed lands (including over-selections); maximum extraterritorial reach off public lands. 	See Resolution.	Expands federal jurisdiction to all public lands, including the broadest definition of reserved waters; all selected and unconveyed lands; and provides for maximum reach off public lands.	<ul style="list-style-type: none"> All public lands (including broadest possible definition of "reserved waters"); all State and ANCSA selected / unconveyed lands (including over-selections); maximum extraterritorial reach off public lands.
L Federal Court Oversight	<p><u>Federal Lands:</u> Private right of action in federal court against State or federal regulations that are inconsistent with federal law.</p> <p><u>State, Private Lands:</u> None.</p>	No change from ANILCA: private right of action in federal court against State or federal regulations that are inconsistent with federal law.	Federal court oversight of Federal Subsistence Board decisions only.		No change from ANILCA: federal court oversight would continue and there would continue to be a private right of action in federal court against State or federal regulations that are inconsistent with federal law.	No change from ANILCA: private right of action in federal court against State or federal regulations that are inconsistent with federal law.	See Section 8 (b) of Resolution. Limiting Federal Court review should be reconsidered. Also an administrative appeal process to provide a fair hearing to reconsider allocation decisions which adversely impact individuals, communities, or Tribal groups should be considered for the State Boards and regional Councils.	No change from ANILCA: private rights of action on federal court against state regulations that are inconsistent with federal law.	No change from ANILCA: private right of action in federal court against State or federal regulations that are inconsistent with federal law.
M Nature of the State Constitutional Amendment	Not applicable.	No official AFN position taken since 1990 – because no constitutional amendment seriously considered by the Legislature in seven years.	None required.		Recognition in the Alaska Constitution of the "political" status of Alaska Natives.	No official position.	The language to "permit" rather than to require a subsistence priority merits review.	We do not support a State Constitutional amendment. Such actions give too much power to a hostile legislature to enact hunting and fishing laws adverse to the subsistence way of life.	None required.
N Amendments to Title VIII	Not applicable on either federal or State/private lands. (No ANILCA amendments have been enacted by Congress.)	No Title VIII amendments, unless they <u>strengthen</u> federal protections. Solution should include Native or Native-plus priority, or better definition of "rural" – for Native communities that could drop out of current "rural" definition.	All amendments would be made through ANILCA.		Yes, but only to provide for a Native or "tribal" subsistence priority and a tribal role in the management of subsistence resources.	No Title VIII amendments, unless they <u>strengthen</u> federal protections. Solution should include Native or Native-plus priority, or better definition of "rural" – for Native communities that could drop out of current "rural" definition.		No Title VIII amendments including appropriation riders.	Keep Title VIII closed.

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O Is there a subsistence defense against criminal prosecutions?	<u>Federal Lands:</u> Yes. <u>State, Private Lands:</u> No.	Yes.			Yes.				

TESTIMONY OF MS. JULIE KITKA, PRESIDENT OF THE ALASKA FEDERATION OF NATIVES

FOR THE RECORD, MY NAME IS JULIE KITKA, AND I AM TESTIFYING TODAY ON BEHALF OF THE ALASKA FEDERATION OF NATIVES.

AT THE OUTSET OF MY REMARKS, I WANT TO URGE BOTH HOUSES OF THE LEGISLATURE TO ALLOW TELECONFERENCED PUBLIC TESTIMONY DURING THIS SPECIAL SESSION. GIVEN THE GRAVITY OF THE ISSUE, THE PEOPLE DESERVE TO BE HEARD.

MR. CHAIRMAN, THE STATE OF ALASKA NOW STANDS AT THE CROSSROADS OF HISTORY. THE CONFLICT BETWEEN STATE AND FEDERAL SUBSISTENCE LAWS HAS DIVIDED ALASKANS FOR MORE THAN EIGHT YEARS; AND THESE DIVISIONS WILL INEVITABLY WORSEN IF THE LEGISLATURE FAILS TO RESOLVE THE IMPASSE NOW. THE WAY IN WHICH SUBSISTENCE IS DEALT WITH IN 1998 WILL HAVE A GREATER IMPACT ON THE FUTURE OF ALASKA THAN ANY OTHER ISSUE IN STATE POLITICS.

BECAUSE SO MUCH OF THIS DEBATE HAS FOCUSED ON TITLE VIII OF ANILCA, LET'S KEEP IN MIND WHY THAT LEGISLATION WAS ENACTED IN THE FIRST PLACE. IN 1971, CONGRESS HAD PASSED THE ALASKA NATIVE CLAIMS SETTLEMENT ACT, THE PRIMARY PURPOSE OF WHICH

WAS TO CLARIFY LAND OWNERSHIP. BUT SUBSISTENCE HAD ALSO
PERVADED THE ANCSA PROCESS. CONGRESSIONAL FINDINGS IN THE
FINAL SENATE BILL EMPHASIZED PROTECTION OF "...NATIVE
SUBSISTENCE HUNTING, FISHING, TRAPPING AND GATHERING
RIGHTS..." IF ENACTED, THAT BILL WOULD HAVE REQUIRED THE
SECRETARY OF THE INTERIOR TO DESIGNATE PUBLIC LANDS AROUND
NATIVE VILLAGES AS SUBSISTENCE USE AREAS - AND, UNDER CERTAIN
CIRCUMSTANCES, TO CLOSE THEM TO NON-SUBSISTENCE USES.

WHY DID THE ANCSA CONFERENCE COMMITTEE DROP THE
SUBSISTENCE PROVISIONS FROM THE FINAL ACT? BECAUSE
CONGRESS WAS UNWILLING TO DELAY THE LAND SETTLEMENT AND
CONSTRUCTION OF THE PIPELINE IN ORDER TO WORK OUT SUCH A
COMPLEX RESOURCE ISSUE. ACCORDINGLY, SECTION 4 (B) OF ANCSA
EXTINGUISHED NATIVES' ABORIGINAL HUNTING AND FISHING RIGHTS,
AS WELL AS THEIR ABORIGINAL TITLE TO THE LAND. BUT THE
CONFERENCE REPORT ARTICULATED THE UNITED STATES
GOVERNMENT'S CONCERN FOR NATIVE SUBSISTENCE IN THE ABSENCE
OF THE ABORIGINAL RIGHTS. AND IT MANDATED RESPONSIBILITY: "THE
CONFERENCE COMMITTEE EXPECTS BOTH THE SECRETARY AND THE
STATE TO TAKE ANY ACTION NECESSARY TO PROTECT THE
SUBSISTENCE NEEDS OF THE NATIVES."

BUT CONGRESSIONAL EXPECTATION OF STATE COOPERATION WENT

UNFULFILLED DURING THE 1970'S. THE PIPELINE BOOM PRODUCED AN ENORMOUS NON-NATIVE MIGRATION INTO ALASKA AND A 36% POPULATION INCREASE IN NINE YEARS, CREATING FIERCE COMPETITION AMONG USER GROUPS FOR LIMITED FISH AND GAME RESOURCES. HOW DID THE STATE GOVERNMENT REACT TO THAT?

1. THE 1972 MARINE MAMMAL PROTECTION ACT PROTECTED NATIVE HUNTING - A POLICY THAT WORKS EFFECTIVELY TO THE PRESENT DAY. THE STATE DID NOTHING ABOUT MARINE MAMMALS IN THE 1970'S, EXCEPT TO OPPOSE THAT FEDERAL ACTION.
2. IN 1976, THE NORTHWEST ARCTIC CARIBOU HERD CRASHED. THE GOVERNOR DECLARED A DISASTER AREA, AND FOOD WAS FLOWN IN TO KEEP PEOPLE ALIVE. BUT WHEN THE BOARD OF GAME TRIED TO PROVIDE FOR A VERY LIMITED HARVEST BY LOCAL RESIDENTS, A GROUP OF FAIRBANKS HUNTERS SUED, CLAIMING THAT THEIR RIGHTS HAD BEEN VIOLATED. AND THEY WON IN STATE COURT.
3. IN 1978, THE STATE ARRESTED THREE AGED ATHABASKAN ELDERS FOR OPERATING SUBSISTENCE FISHWHEELS DURING AN OPENING FOR SPORT DIPNETTING.
4. ALSO IN 1978, THE STATE ENACTED A STATUTORY PREFERENCE FOR SUBSISTENCE OVER COMPETING USES BUT FAILED TO DISTINGUISH AMONG COMPETING USERS - WHICH WAS ALWAYS THE REAL QUESTION.

THE 1970'S - A DECADE OF NEGLECT AND OBSTRUCTIONISM - LED DIRECTLY TO ENACTMENT OF TITLE VIII OF ANILCA. BY 1980, CONGRESS RELUCTANTLY CONCLUDED THAT IT HAD NO CHOICE BUT TO PROTECT SUBSISTENCE BY FEDERAL LAW, PURSUANT TO ITS PLENARY AUTHORITY TO REGULATE INDIAN AFFAIRS.

BUT EVEN THEN, CONGRESS MADE EVERY ATTEMPT TO ACCOMMODATE THE STATE'S NEEDS. ANILCA'S SUBSISTENCE PREFERENCE WAS BASED ON THE DIFFERING SOCIOECONOMIC CIRCUMSTANCES OF RURAL AND URBAN ALASKA, NOT ON RACE OR ETHNICITY. THE STATE OBJECTED TO A NATIVE PREFERENCE BECAUSE IT WANTED A STANDARD THAT IT COULD ENFORCE UNDER ITS CONSTITUTION. ALL PARTIES ASSUMED THAT "RURAL" WOULD WORK, AND THE NATIVE COMMUNITY ACCEPTED THAT COMPROMISE IN ORDER TO GET A PREFERENCE THAT THE STATE COULD IMPLEMENT.

MOREOVER, TITLE VIII OFFERED THE STATE THE OPTION OF CONTINUING TO REGULATE SUBSISTENCE ON FEDERAL PUBLIC LANDS AND WATERS (IN ADDITION TO ITS OWN JURISDICTION OVER STATE AND PRIVATE LANDS) - IF THE LEGISLATURE WOULD ENACT A STATE LAW GIVING THE SAME RURAL PREFERENCE STATEWIDE. THIS WAS NOT AN EXAMPLE OF "FEDERAL COMPULSION," AS SOME HAVE ARGUED. ON THE CONTRARY, THE UNITED STATES COULD HAVE PROCEEDED TO ENFORCE THE RURAL PREFERENCE SOLELY WITHIN ITS OWN DOMAIN, CREATING A PERMANENT SYSTEM OF DUAL MANAGEMENT. INSTEAD, IT MADE A GOOD-FAITH OFFER TO CREATE COOPERATIVE, UNITARY MANAGEMENT OF HIGHLY MOBILE SPECIES ON A CHECKERBOARD OF STATE, PRIVATE AND FEDERAL LANDS. THIS WAS UNPRECEDENTED IN THE GENERAL HISTORY OF FEDERAL LAND LAW.

IN THE DECADE FOLLOWING ANILCA, RURAL RESIDENTS DID THEIR BEST TO MAKE THE ANILCA SYSTEM WORK. THE STATE OF ALASKA DID NOT. ITS REGULATORY BODIES FRUSTRATED IMPLEMENTATION OF THE PREFERENCE AND REFUSED TO REGULATE CONSISTENT WITH CUSTOMARY AND TRADITIONAL SUBSISTENCE PRACTICES. IT NEVER FULLY FUNDED OR EMPOWERED REGIONAL ADVISORY COUNCILS. MORE THAN ONCE, RURAL RESIDENTS FOUND IT NECESSARY TO GO TO COURT TO ENFORCE THE LAW ON A STATE THAT WAS DETERMINED TO SIDESTEP IT.

BUT THE BEHAVIOR OF THE STATE BOARDS WAS VERY DIFFERENT FROM WHAT THE PEOPLE OF ALASKA THOUGHT. IN THE 1982 GENERAL ELECTION, A BALLOT INITIATIVE TO REMOVE THE RURAL PREFERENCE FROM STATE LAW WAS SOUNDLY DEFEATED - 58.4% AGAINST AND 41.6% FOR. THAT RESULT BECAME THE REAL REASON WHY LEGISLATIVE MAJORITIES HAVE REFUSED EVER TO TRUST THE VOTERS WITH THIS ISSUE AGAIN. THEY KNOW PERFECTLY WELL WHAT THE PEOPLE WILL DO, IF THEY EVER GET THE CHANCE. IF LEGISLATIVE MAJORITIES DURING THIS PERIOD HAD HAD ANY EXPECTATION THAT THE ELECTORATE WOULD VOTE IT DOWN, THEY WOULD HAVE PUT A CONSTITUTIONAL AMENDMENT ON THE BALLOT YEARS AGO. HAVING FAILED WITH THE VOTERS, THE 1982 INITIATIVE'S SPONSORS THEN TURNED TO THE STATE JUDICIARY; AND IN 1989, THE ALASKA

SUPREME COURT THREW THE RURAL PREFERENCE OUT OF STATE LAW. SINCE THEN, FOR EIGHT AND A HALF YEARS, LEGISLATIVE MAJORITIES HAVE REFUSED TO ALLOW THEIR OWN VOTERS TO CONSIDER A CONSTITUTIONAL AMENDMENT.

THIS SAD CHRONOLOGY LIES AT THE HEART OF THE DISTRUST THAT SO MANY RURAL PEOPLE FEEL FOR THE STATE OF ALASKA - AND HAS BEEN A PRIME CAUSE OF THE GROWTH OF THE TRIBAL MOVEMENT AMONG NATIVES, AS A PROTECTION AGAINST A PERMANENTLY HOSTILE STATE GOVERNMENT. NOTHING HAS DONE MORE DAMAGE TO STATE AUTHORITY AND TO THE SOCIAL FABRIC OF ALASKA THAN THE AGONY OF SUBSISTENCE. AND THE ULTIMATE IRONY IS THAT IT WAS ALL SELF-INFLICTED. THE CAUSE WASN'T THE FEDS; IT WASN'T THE LIBERALS; AND IT WASN'T THE NATIVES. THE STATE GOVERNMENT HAS NO ONE TO BLAME FOR THIS BUT ITSELF.

FACED WITH THIS HISTORICAL CRISIS, WE WOULD DO WELL TO CUT THROUGH A FEW MYTHS THAT HAVE ACCUMULATED OVER THE YEARS. THE FIRST IS THE ASSUMPTION THAT WHAT THIS IS REALLY ABOUT IS "WHO MANAGES." THAT'S NOT TRUE. THE CORE QUESTION HAS ALWAYS BEEN WHETHER THE RURAL SUBSISTENCE PREFERENCE ITSELF IS A PROPER POLICY FOR ALASKA, REGARDLESS OF THE UNIFORM WORN BY THE IMPLEMENTING MANAGER. BUT ANTI-SUBSISTENCE FORCES HAVE AVOIDED THAT DEBATE - BECAUSE IT IS

SO HARD TO ARGUE AGAINST LETTING PEOPLE EAT IN TIMES OF SHORTAGE. SO, THE PRINCIPLE OF STATES' RIGHTS AGAINST THE FEDERAL GOVERNMENT HAS BECOME THE EVASION OF CHOICE - AS IF ALL THIS WERE SOMEHOW A CLASH BETWEEN ALASKA AND THE UNITED STATES, INSTEAD OF BETWEEN TWO ALASKAS.

REMEMBER: STATE'S RIGHTS IS THE BEDROCK OF AMERICAN FEDERALISM, AND WE IGNORE THAT PRINCIPLE AT OUR PERIL. BUT IT IS ALSO TRUE THAT, THROUGHOUT THE NATION'S HISTORY, STATES' RIGHTS HAVE BEEN USED AS MEANS TO ADVANCE PURPOSES THAT ARE TRULY DESTRUCTIVE. THERE WAS A TIME WHEN STATES' RIGHTS WAS A DEFENSE OF RACIAL SEGREGATION.

FURTHER, I SUBMIT TO YOU THAT, IF FEDERAL LAW WERE OPPOSED TO A RURAL PREFERENCE, AND STATE LAW REQUIRED IT, INSTEAD OF THE OTHER WAY AROUND, ANTI-SUBSISTENCE INTERESTS WOULD TURN THEIR BACKS ON THE STATE OF ALASKA IN A HEARTBEAT. THEY MOUTH THE RHETORIC OF STATES' RIGHTS TO THE EXTENT THAT THEY CAN GET SOMETHING OUT OF IT - IN THIS CASE, SOMEONE ELSE'S FOOD. BUT A PRINCIPLE IS SOMETHING YOU DEFEND BECAUSE IT IS RIGHT, NOT BECAUSE YOU GET PAID FOR IT. THE AMERICAN FEDERAL SYSTEM DESERVES BETTER THAN TO BE TROTTED OUT AS A DEFENSE OF EVERY LOCAL EXPLOITATION, AND IT SHOULD NOT BE USED IN

MODERN ALASKA TO DISTRACT US FROM THE REAL POLICY QUESTION.

ANOTHER MYTH IS THAT ANILCA'S RURAL PREFERENCE IS IN FORCE AT ALL TIMES, RATHER THAN ONLY IN TIMES OF SHORTAGE. THAT IS NOT TRUE. THE PREFERENCE OVER OTHER USES AND USERS THAT IS GRANTED TO RURAL RESIDENTS WHO HAVE ESTABLISHED CUSTOMARY AND TRADITIONAL USES OF SPECIFIC FISH STOCKS AND GAME POPULATIONS TAKES EFFECT ONLY IN A TIER I OR TIER II SHORTAGE. TITLE VIII ALSO MANDATES THAT THE BOARDS MAY NOT MANIPULATE SUCH THINGS AS SEASONS, BAG LIMITS, METHODS AND MEANS SO AS TO DISRUPT C&T SUBSISTENCE PATTERNS, EVEN IN TIMES OF PLENTY. THIS IS NOT UNLIKE COMMERCIAL AND SPORT FISHING REGULATIONS, IN WHICH A SYSTEM OF SEASONS, GEAR, BAG LIMITS, ETC. MUST BE IN PLACE, WHETHER THERE IS A SHORTAGE OR NOT. BOTH THE PREFERENCE IN TIMES OF SHORTAGE AND THE GENERAL C&T PROTECTIONS AT ALL TIMES ARE PROVISIONS OF A FEDERAL STATUTE WHOSE PURPOSE IS TO ENSURE THAT REGULATORY MECHANISMS DO NOT HARM SUBSISTENCE IN ORDER TO SATISFY OTHER DEMANDS.

A THIRD MYTH TO BE DEBUNKED IS THAT THIS IS ALL ABOUT "EQUALITY" VERSUS "DISCRIMINATION." HERE'S AN HONEST QUESTION: DOES TITLE VIII OF ANILCA MAKE A DISCRIMINATION BETWEEN CLASSES OF CITIZENS IN ALASKA? HERE'S AN HONEST ANSWER: OF COURSE IT DOES; THAT IS WHY IT IS IN THE FEDERAL STATUTE. AND IN THAT,

ANILCA IS NO DIFFERENT FROM ANY OTHER LAW EVER PASSED.

ALL LAWS DISTINGUISH BETWEEN CLASSES OF CITIZENS. SHOW ME ANY ACT OR APPROPRIATION BY THE UNITED STATES CONGRESS, THE ALASKA LEGISLATURE, THE MUNICIPALITY OF ANCHORAGE, OR THE BRITISH HOUSE OF COMMONS - AND I WILL SHOW YOU A MEASURE THAT HANDS TO ONE GROUP OF CITIZENS SOME BENEFIT THAT IT WITHHOLDS FROM THE OTHERS. MEDICARE, FOR OLDER PERSONS? MEDICAID, FOR POOR PEOPLE? THE ORIGINAL ISSUANCE OF LIMITED ENTRY PERMITS? PERMANENT FUND DIVIDENDS? THE OLD LONGEVITY BONUS PROGRAM? VETERANS' BENEFITS? THE ENTIRE FY 1999 BUDGET, JUST PASSED BY THIS LEGISLATURE? EVEN VOTING RIGHTS? DOES ANY OF THESE POLICIES TREAT EVERY ALASKAN THE SAME? NO. THAT IS IMPOSSIBLE. THE GREAT QUESTION IN DEMOCRACIES HAS NEVER BEEN WHETHER LAWS TREAT ALL PEOPLE IDENTICALLY. IT HAS ALWAYS BEEN WHETHER THE DISTINCTIONS THAT ANY LAW OBVIOUSLY MAKES ARE REASONABLE, WHETHER THEY ADVANCE A VALID POLICY GOAL - IN SHORT, WHETHER THE PEOPLE BELIEVE THEM TO BE FAIR.

AS YOU KNOW, A CLEAR MAJORITY OF ALASKANS BELIEVES THAT A STATE LAW CONTAINING A RURAL SUBSISTENCE PREFERENCE IS A FAIR AND JUSTIFIABLE SOCIAL POLICY. THEY SEE IT AS MORALLY

RIGHT BECAUSE THE WHOLE BASIS OF LIFE IN ALASKA'S VILLAGES IS NOW THREATENED, AND BECAUSE IT IS UTTERLY PERVERSE TO WIPE OUT HUMAN COMMUNITIES FOR NO REASON OTHER THAN A FALSE DREAM OF EQUALITY. THEY SEE IT AS HISTORICALLY SMART BECAUSE, IF THE ECONOMIES AND CULTURES OF BUSH VILLAGES ARE DISMANTLED BY DISTANT POLICY DECISIONS, EVERY ALASKAN WILL SUFFER THE CONSEQUENCES; AND OUR CHILDREN, WHO WILL PAY THAT PRICE MORE THAN WE CAN IMAGINE, WILL NEVER FORGIVE US FOR WHAT OUR GENERATION DID TO THIS BEAUTIFUL PLACE AT THE END OF THE 20TH CENTURY.

TO DATE, THE BEST THAT THE 20TH ALASKA LEGISLATURE HAS BEEN ABLE TO DO IS H.B. 406. THAT LEGISLATION IS DIAMETRICALLY OPPOSED TO TITLE VIII OF ANILCA. IN ORDER FOR THE STATE TO REGAIN MANAGEMENT, IT REQUIRES MASSIVE AMENDMENTS OF THE FEDERAL LAW IN ORDER TO REPLACE THE RURAL PREFERENCE WITH AN INDIVIDUALIZED, NEED-BASED SYSTEM.

H.B. 406 ALLOWS THE BOARDS TO CREATE NONSUBSISTENCE AREAS THAT COULD DENY SUBSISTENCE REGULATIONS TO EVERY ALASKA COMMUNITY OTHER THAN CHALKYITSK AND LIME VILLAGE. IT PROVIDES COMPLEX REGULATIONS FAVORING NONSUBSISTENCE USES AND NON-LOCAL USERS AT EVERY LEVEL OF SHORTAGE. IT ELIMINATES BOTH "RURAL RESIDENCY" AND "CUSTOMARY AND

TRADITIONAL PATTERNS OF HARVEST AND USE," AS THE STANDARDS OF ELIGIBILITY FOR THE PREFERENCE.

H.B. 406 INDIVIDUALIZES THE SUBSISTENCE PREFERENCE, BASED ON DEPENDENCE, AS DEFINED BY SIX CRITERIA WHICH CANNOT BE PROVED OR DISPROVED BUT WHICH ARE INTRUSIVE AND BURDENSOME TO ALL APPLICANTS. IT PROVIDES NO MECHANISM FOR THE DESCENDANTS OF CURRENTLY ELIGIBLE SUBSISTENCE USERS TO ESTABLISH THEIR OWN PATTERNS OF DEPENDENCE - AND COULD ELIMINATE SUBSISTENCE BEYOND THE CURRENT GENERATION.

IT CREATES A BUREAUCRATIC NIGHTMARE OF ELIGIBILITY ADJUDICATIONS. ADF&G PREDICTS APPROXIMATELY 122,000 ANNUAL APPLICATIONS (FROM THOSE WITHOUT THE PRESUMPTION WHO APPLY AND FROM THOSE WITH THE PRESUMPTION WHO HAVE BEEN CHALLENGED), THE DEPARTMENT CONSERVATIVELY ESTIMATES AN ANNUAL COST OF \$4 MILLION. COMPARE THAT WITH THE LIMITED ENTRY COMMISSION, WHICH HANDLES 15,000 PERMITS ON A BUDGET OF \$2.7 MILLION. THE BILL THEN TURNS AROUND AND ADDS LEGAL PRESUMPTIONS OF INDIVIDUAL ELIGIBILITY WITHIN WHOLE AREAS AND COMMUNITIES - THEREBY VIOLATING THE ALASKA CONSTITUTION.

H.B. 406 TRIES TO OVERTURN THE *BOBBY* CASE, WHICH PROHIBITS THE BOARDS FROM MANIPULATING SEASONS, BAG LIMITS, METHODS AND

MEANS SO AS TO INTERFERE WITH C&T PATTERNS OF TAKING AND USE AT ALL TIMES. IT ADULTERATES THE MEMBERSHIP AND DUTIES OF REGIONAL ADVISORY BODIES. THE BROAD, SUBJECTIVE GROUNDS ON WHICH THE STATE BOARDS MAY DISREGARD REGIONAL RECOMMENDATIONS RENDER THE LATTER MEANINGLESS IN THE REGULATORY PROCESS. FINALLY, THE BILL IS FULL OF VAGUE AND INAPPROPRIATE DEFINITIONS THAT CONFUSE, RATHER THAN CLARIFY, THE PREFERENCE.

THE SUBSISTENCE POSITION OF THE ALASKA FEDERATION OF NATIVES, MOST RECENTLY CONFIRMED IN FEBRUARY, HAS BEEN CLEAR AND CONSISTENT FOR EIGHT YEARS. WE SEEK A RETURN TO A RELIABLE RURAL PREFERENCE IN BOTH STATE AND FEDERAL LAWS, ACCOMPANIED BY FOUR MUCH-NEEDED IMPROVEMENTS OF THE PRE-MCDOWELL SYSTEM.

WE THEREFORE URGE THIS LEGISLATURE TO DO ITS PART BY ENACTING A STATUTE THAT COMPLIES WITH TITLE VIII AS IT WAS WRITTEN IN 1980. ONE WAY OF ACCOMPLISHING THIS IS TO ADD AN "INTENT" SENTENCE TO THE CONSTITUTIONAL AMENDMENT TELLING

THE PUBLIC AND THE STATE COURTS THAT THE PURPOSE OF THE AMENDMENT IS TO ALLOW THE STATE TO HAVE A LAW WITH A RURAL PREFERENCE - OR TO ALLOW THE STATE TO COMPLY WITH TITLE VIII - OR TO RE-INSTATE THE 1986 STATE LAW. THAT LAST OPTION WOULD STILL LEAVE US WITH THE PROBLEM OF RECONCILING STATE AND FEDERAL DEFINITIONS OF "RURAL" - A TASK IN WHICH WE WOULD GLADLY COOPERATE. ANOTHER WAY OF DOING THE SAME THING IS TO RE-ENACT THE 1986 LAW NOW AND ACCOMPANY IT WITH A CONSTITUTIONAL AMENDMENT.

THE FOUR SYSTEMIC IMPROVEMENTS NEEDED BY RURAL ALASKANS ARE:

- MANDATORY FEDERAL-STATE-TRIBAL CO-MANAGEMENT ARRANGEMENTS - TO GIVE THE PEOPLE MOST AFFECTED A REAL ROLE IN THE SUBSISTENCE REGULATORY SYSTEM;
- BETTER PROTECTIONS OF "FORMERLY RURAL" NATIVE GROUPS AND COMMUNITIES THAT HAVE BEEN SURROUNDED BY NON-NATIVE SETTLEMENT ENTRY AND TAKEN OUT OF THE PREFERENCE THROUGH NO FAULT OF THEIR OWN;
- REFORM AND RESTRUCTURING OF THE STATE BOARD SYSTEM - TO ENSURE THAT WE ARE NOT SIMPLY RETURNING TO A POLITICAL ENVIRONMENT PERMANENTLY RIGGED AGAINST SUBSISTENCE AND NATIVES; AND
- THE ABILITY OF ANY SUBSISTENCE USER TO EMPLOY A SUBSISTENCE DEFENSE IN COURT.

IF THESE IMPROVEMENTS ARE COMBINED WITH REINSTATEMENT OF THE STATE LAW THAT WORKED PERFECTLY WELL BEFORE *MCDOWELL*,

THE CONCERNS ARTICULATED BY THE NATIVE SUMMIT AND THE AFN CONVENTION WILL HAVE BEEN SATISFIED.

NOW, I AM CERTAIN, MR. CHAIRMAN, THAT SOMEONE FROM THE OTHER SIDE OF THE ISSUE WILL TRY TO EXPLOIT THE DIFFERENCES BETWEEN THE TASK FORCE'S PACKAGE AND THE AFN POSITION. WE CAN EXPECT AN EXERCISE IN DOUBLETHINK - CLAIMING, FOR EXAMPLE, THAT THE AFN POSITION SHOULD BE IGNORED BECAUSE IT IS SOMEHOW UNREASONABLE AND THAT THE GOVERNOR'S PROPOSAL SHOULD BE IGNORED BECAUSE IT ISN'T SUPPORTED BY THE NATIVES.

SUCH ARGUMENTS CONVENIENTLY IGNORE THE FACT THAT BOTH PROPOSALS REQUIRE A CONSTITUTIONAL AMENDMENT FOR A RURAL PREFERENCE AND A STATE LAW COMPLYING WITH ANILCA. THE ONLY DIFFERENCES BETWEEN THEM ARE: 1) NATIVES WANT ADDITIONAL IMPROVEMENTS IN ANILCA; 2) NATIVES DO NOT SUPPORT THE ANILCA AMENDMENTS OF LAST SEPTEMBER, AND 3) NATIVES WANT A CONSTITUTIONAL AMENDMENT WHICH IS MANDATORY AND ENSURES THAT THE STATUTE CANNOT BE OVERTURNED BY OTHER PROVISIONS OF THE CONSTITUTION. (IF YOU WANT A GOOD EXAMPLE OF HOW TO TIGHTEN THE CONSTITUTIONAL AMENDMENT LANGUAGE TO ENSURE THAT LAST GOAL, PLEASE LOOK AT SJR 2 FROM THE PAST REGULAR SESSION.)

BUT THIS BODY HAS PERSISTENTLY REMAINED SO FAR FROM THE AFN POSITION AND THE TASK FORCE'S PACKAGE THAT IT HASN'T EVERN BEEN ABLE TO CONSIDER THE DIFFERENCES BETWEEN THEM. ONLY WHEN IT TAKES THE CRUCIAL STEP OF ALLOWING THE RURAL PREFERENCE BACK INTO STATE LAW CAN THE LEGISLATURE MAKE CHOICES ABOUT WHICH POLICY MODEL TO FOLLOW. AS I HAVE SAID REPEATEDLY IN THIS TESTIMONY, THE REAL ISSUE HAS ALWAYS BEEN THE RURAL PREFERENCE ITSELF. THAT IS WHY WE WHY WE ARE IN JUNEAU TODAY. IT IS ALSO WHY I URGE THIS LEGISLATURE TO DO, AT LONG LAST, THAT WHICH IS ETHICALLY RIGHT AND POLITICALLY RESPONSIBLE TO THE NEEDS OF ALL OUR CHILDREN IN THE 21ST CENTURY.

THIS CONCLUDES MY PREPARED REMARKS, MR. CHAIRMAN, AND I WOULD BE HAPPY TO RESPOND TO ANY QUESTIONS OR COMMENTS. THANK YOU.

AUGUST 28, 1997

NATIVE SUBSISTENCE SUMMIT

RESOLUTION 97-01

Concerning the subsistence rights of the Alaska Native
People.

Whereas, representatives of the Alaska Native peoples and their tribal governments, corporations, and other organizations from throughout the State of Alaska assembled at the Native Subsistence Summit co-sponsored by the Alaska Federation of Natives, the Alaska Inter-Tribal Council and the Rural Community Action Program in Anchorage, Alaska, on August 26-28, 1997, to consider proposals to amend state and federal laws relating to subsistence hunting, trapping, gathering and fishing; and

Whereas, the delegates to the Native Subsistence Summit expressed their deep concern over the need to protect and promote the customary and traditional ways of taking fish and wildlife, and other subsistence activities in connection with any proposals to change subsistence laws, regulations and policies; and

Whereas, the delegates to the Native Subsistence Summit carefully reviewed, discussed and carefully considered numerous proposals to resolve the current subsistence impasse;

Now, therefore, be it resolved, by the representatives of the Alaska Native people assembled at the Native Subsistence Summit, that:

1.

(a) Appreciation is extended to the many Native delegates who came despite pressing unfinished subsistence work to demonstrate their deep commitment to the preservation of their customary and traditional subsistence lifestyle.

(b) The delegates to the Native Subsistence Summit express their appreciation for the hard work and dedication of Governor Knowles and the other members of the Governor's Task Force in developing its proposal and

for the attendance of the Governor and other members of the Task Force at the Native Subsistence Summit.

2. The delegates to the Native Subsistence Summit express their appreciation to the members of the Alaska Congressional delegation for their efforts to resolve the subsistence impasse and their support for a State Constitutional amendment which will allow the State of Alaska to comply with the provisions of Title VIII of the Alaska National Interest Lands Conservation Act.

3. The delegates to the Native Subsistence Summit express the willingness of the Alaska Native community to work for the development of a consensus on a package to address subsistence.

4. In order to ensure an acceptable resolution of the current impasse on the subsistence issue, the delegates to the Native Subsistence Summit demand that the development of any further proposal to resolve this issue of crucial importance to the future of the Alaska Native people be accomplished only with the full participation and endorsement by representatives of the Alaska Native people chosen by the Alaska Native people themselves and with the consent of Alaska Native tribes.

5. In order to effectuate the recommendations set forth in this resolution, the delegates to the Native Subsistence Summit authorize and direct the leadership of the Alaska Federation of Natives, the Alaska Inter-Tribal Council and the RurAL Community Action Program:

a) To continue the work of the Native Subsistence Summit to resolve the subsistence impasse; and

b) To work with Governor Knowles, the members of the Governor's Task Force, the members of the Alaska Legislature, the members of the Alaska Congressional Delegation and other interested parties to develop a resolution to the subsistence impasse consistent with the guiding principles adopted by the delegates to the Native Subsistence Summit.

6. Any resolution negotiated by the representatives must be ratified through the full and informed consent of the Alaska native tribes and other organizations.

7. The delegates to the Native Subsistence Summit call upon the Governor, the members of the Alaska Legislature, the members of the Alaska Congressional Delegation and other interested parties to work with the representatives of the Alaska Native people to reach consensus to resolve the current subsistence impasse.

GUIDING PRINCIPLES

Establishment of a legal system based upon principles which achieve:

1. Full participation and consent of the Alaska Native Community, including hearings in villages in each region;
2. A subsistence priority based on Alaska Native, community, religious/spiritual, nutritional, medicinal and cultural practices rather than an individualized or a needs based system;
3. Only amendments which enhance subsistence rights and maintain federal oversight to at least its current level;
4. Co-management including state, federal and tribal co-equal involvement;
5. Full recognition of customary and traditional uses including religious/spiritual and ceremonial;
6. Effective comprehensive reform of the State management system;
7. Recognition that subsistence is a basic human right.

ALASKA FEDERATION OF NATIVES, INC.

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907-274-3611 Fax 907-276-7989

**Alaska Federation of Natives
Position on Subsistence
Drafted February 11, 1998**

The Alaska Federation of Natives Board of Directors urges the Alaska Legislature to adopt a resolution authorizing a public vote at the next general election allowing the Alaska Legislature to enact a priority for the taking of subsistence resources that complies with the original intent of Title VIII of ANILCA as adopted in 1980 and the promises made in ANCSA to protect the subsistence way of life.

The Alaska Federation of Natives Board of Directors further urges the Alaska Legislature to withdraw its lawsuit (*Alaska Legislative Council v. Babbitt*) as a show of good faith toward favorably resolving the subsistence dilemma without creating more conflict and delay.

1997
SJR 2

SJR 2

SENATE JOINT RESOLUTION NO. 2
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY SENATORS ADAMS AND HOFFMAN, Lincoln

Introduced: 1/13/97

Referred: Resources, Judiciary, Finance

A RESOLUTION

Proposing amendments to the Constitution of the State of Alaska relating to subsistence uses of fish and wildlife by residents, and establishing an effective date for the amendment.

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

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

Section 19. **Subsistence Uses of Fish and Wildlife.** Consistent with the sustained yield principle, the legislature shall grant a preference to and among residents in the taking of fish and wildlife for subsistence uses on the basis of customary and traditional use, cultural tradition, direct dependence, local residence, or the availability of alternative resources.

* Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding a new section to read:

Section 29. **Effective Date of Subsistence Amendment.** Section 19 of Article VIII, regarding subsistence uses of fish and wildlife, takes effect immediately upon certification of the election returns by the lieutenant governor.

* Sec. 3. The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

Subsistence In Alaska: 1998 Update

Division of Subsistence, Alaska Department of Fish and Game
Box 25526, Juneau, Alaska, 99802 (907) 465-4147
March 1, 1998

Introduction

Subsistence fishing and hunting are important for the economies and cultures of many families and communities in Alaska. Subsistence exists alongside other important uses of fish and game in Alaska, including commercial fishing, sport fishing, personal use fishing, and general hunting. This report provides an update on subsistence in Alaska, including its interaction with other types of fishing and hunting.

What is Subsistence?

State and federal law define subsistence as the "customary and traditional uses" of wild resources for food, clothing, fuel, transportation, construction, art, crafts, sharing, and customary trade. Subsistence uses are central to the customs and traditions of many cultural groups in Alaska, including Aleut, Athabaskan, Alutiiq, Euroamerican, Haida, Inupiat, Tlingit, Tsimshian, and Yup'ik. Subsistence fishing and hunting are important sources of employment and nutrition in almost all rural communities.

Commercial fishing differs from subsistence fishing, as it is fishing for sale on commercial markets. Subsistence fish

and game cannot be commercially sold. Personal use fishing is similar to subsistence fishing, except that it is fishing with nets for food in areas generally closed to subsistence, particularly by residents of urbanized areas. Sport fishing and hunting differ from subsistence in that, although food is one product, they are conducted primarily for recreational values, following principles of "fair chase". While subsistence is productive economic activity which is part of a normal routine of work in rural areas, sport fishing and hunting usually are scheduled as recreational breaks from a normal work routine.

Who Qualifies for Subsistence?

Federal and state laws currently differ in who qualifies for subsistence. Rural Alaska residents qualify for subsistence under federal law. About 20% of Alaska's population (124,367 people in 270 communities) lived in rural areas in 1995 (see Fig. 1). Of the rural population, 61,320 (49.3%) were Alaska Native and 63,047 (50.7%) were not Alaska Native. Of Alaska's urban population (491,533 people), about 33,782 (6.9%) were Alaska Native and 457,751 (93.1%) were not Alaska Native. Under state law, rural residents qualified for subsistence from 1978-1989. Since 1989, all state residents have qualified under state law.

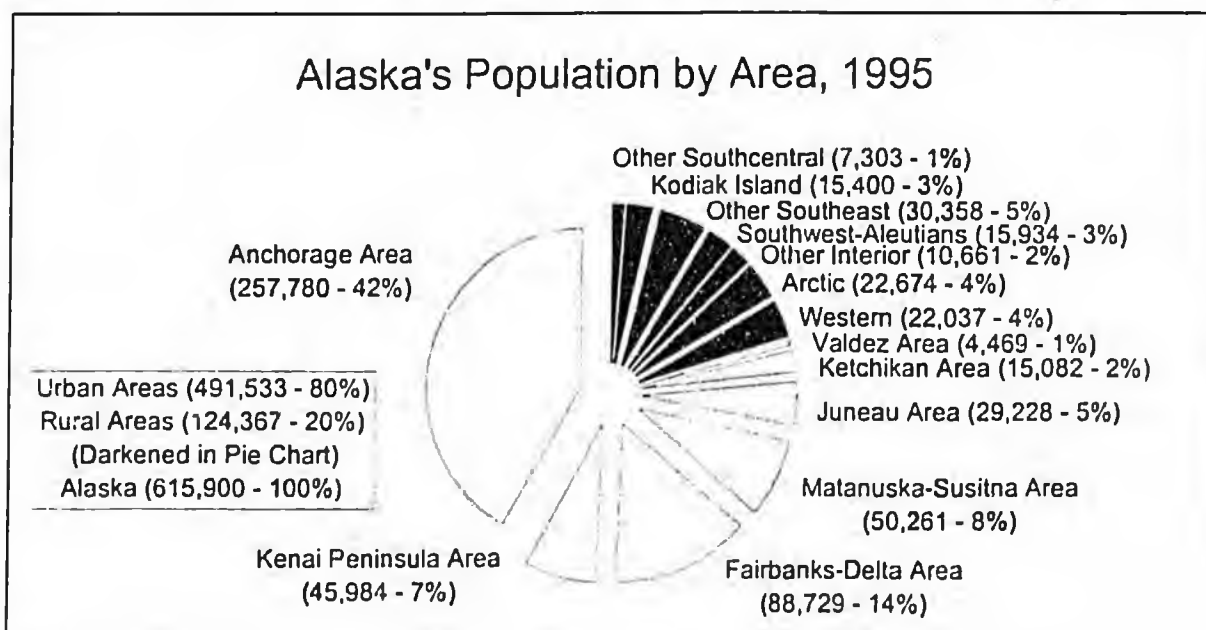


Figure 1

CORRECTION

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



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State of Alaska

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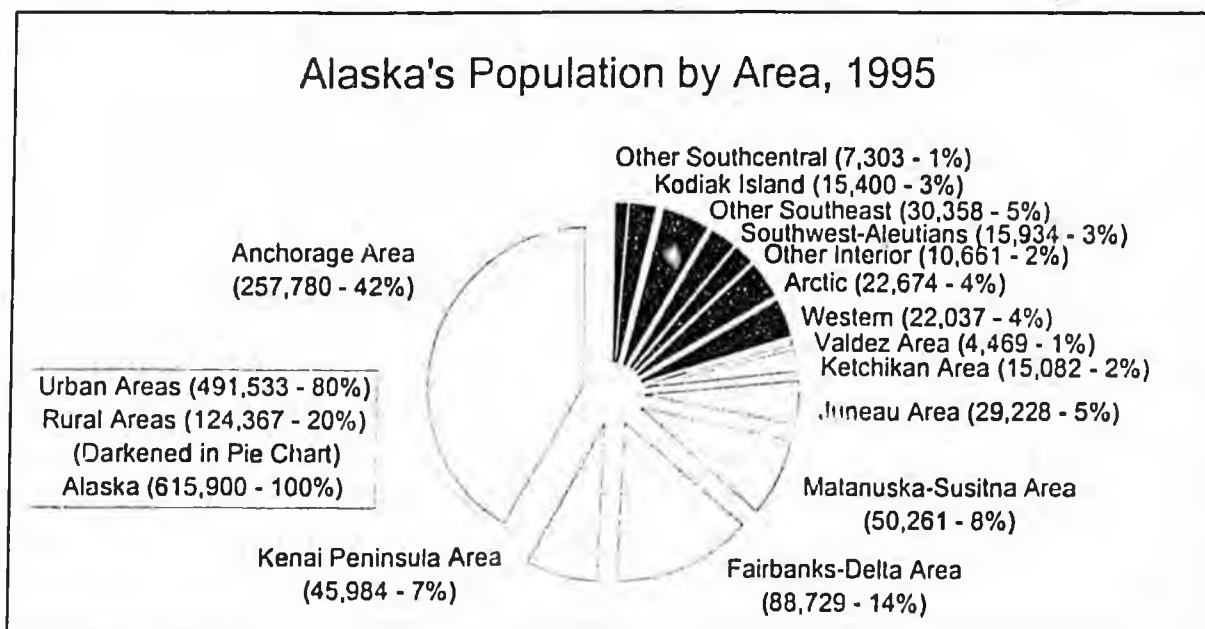


Figure 1

Percent of Households Participating in Subsistence Activities in Rural Areas

Area	Harvesting Game	Using Game	Harvesting Fish	Using Fish
Arctic	63%	92%	78%	96%
Interior	69%	88%	75%	92%
Southcentral	55%	79%	80%	94%
Southeast	48%	79%	80%	95%
Southwest	65%	90%	86%	94%
Western	70%	90%	98%	100%
Total Rural	60%	86%	83%	95%

Figure 2

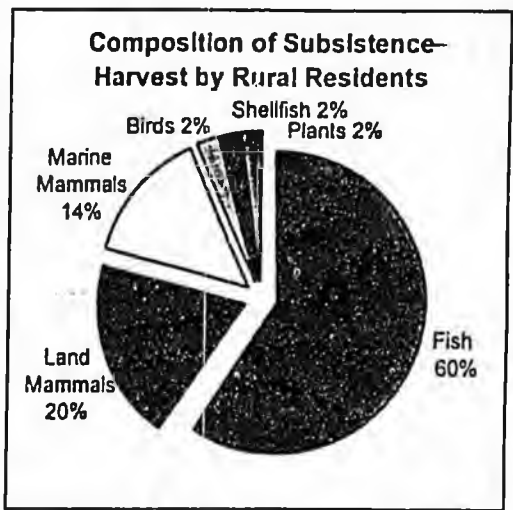


Figure 3

Who Participates in Subsistence?

Most rural families in Alaska depend on subsistence fishing and hunting. A substantial proportion of rural households harvest and use wild foods (see Fig. 2). For surveyed communities in different rural areas, from 92%-100% of sampled households used fish, 79%-92% used wildlife, 75%-98% harvested fish, and 48%-70% harvested wildlife. Because subsistence foods are widely shared, most residents of rural communities make use of subsistence foods during the course of the year.

What is the Rural Food Harvest?

Most of the wild food harvested by rural families is composed of fish (about 60% by weight), along with land mammals (20%), marine mammals (14%), birds (2%), shellfish (2%), and plants (2%) (see Fig. 3). Fish varieties include salmon, halibut, herring, and whitefish. Seals, sea lion, walrus, beluga, and bowhead whale comprise the marine mammal harvest. Moose, caribou, deer, bear, Dall

sheep, mountain goat, and beaver are commonly used land mammals, depending on the community and area.

How Large is the Subsistence Harvest?

The subsistence food harvest in rural areas represents about 2% of the fish and game harvested annually in Alaska (see Fig. 4). Commercial fisheries harvest about 97% of the statewide harvest (about 2.0 billion lbs annually), while sport fishing and hunting take about 1% (18.0 million lbs).

Though relatively small in the statewide picture, subsistence fishing and hunting provide a major part of the food supply of rural Alaska (see Figs. 5 and 6). Our best estimate is about 43.7 million lbs (usable weight) of wild foods are harvested annually by residents of rural areas of the state, and 9.8 million lbs by urban residents (see Fig. 6). On a per person basis, the annual wild food harvest is about 375 lbs per person per year for residents of rural areas (about a pound a day per person), and 22 lbs per person per year for urban areas (see Fig. 5).

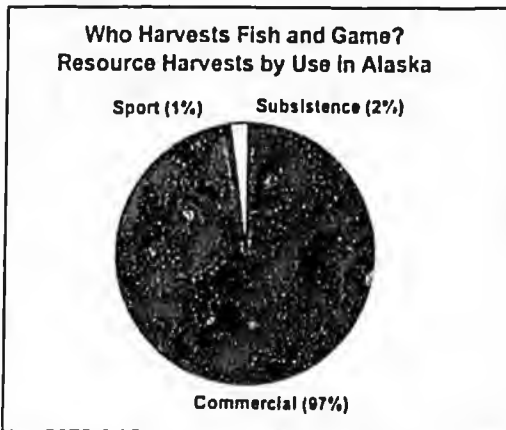


Figure 4

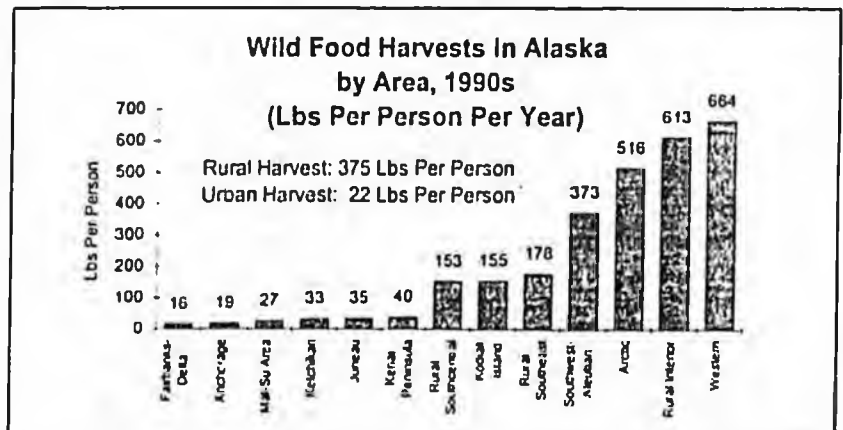


Figure 5

Nutritional Value of Subsistence

The subsistence food harvest provides a major part of the nutritional requirements of Alaska's population. The annual rural harvest of 375 lbs per person contains 242% of the protein requirements of the rural population (that is, it contains about 118 grams of protein per person per day; about 49 grams is the mean daily requirement) (see Fig. 6). The subsistence harvest contains 35% of the caloric requirements of the rural population (that is, it contains about 840 Kcal daily, assuming a 2,400 Kcal/day mean daily requirement). The urban wild food harvests contain 15% of the protein requirements and 2% of the caloric requirements of the urban population (see Fig. 6).

	Annual Wild Food Harvest (Lbs Per Person)	Annual Wild Food Harvest (Total Lbs)	Percent of Population's Required		Estimated Wild Food Replacement Value @ \$3/lb	Estimated Wild Food Replacement Value @ \$5/lb
			Protein (49 g/day)	Calories (2400 C/day)		
Rural Areas						
Southcentral	153	1,888,467	99%	14%	\$5,065,401	\$8,442,335
Kodiak Island	155	2,061,607	100%	14%	\$6,184,821	\$10,308,035
Southeast	178	5,064,509	115%	17%	\$15,193,527	\$25,322,545
Southwest-Aleutian	373	5,114,522	241%	35%	\$15,343,566	\$25,572,610
Interior	613	6,359,597	396%	57%	\$19,078,791	\$31,797,985
Arctic	518	10,507,255	333%	48%	\$31,521,785	\$52,536,275
Western	664	12,918,649	429%	62%	\$38,755,947	\$64,593,245
Total Rural	375	43,714,606	242%	35%	\$131,143,818	\$218,573,030
Urban Areas						
Ketchikan Area	33	461,855	22%	3%	\$1,385,566	\$2,309,276
Juneau Area	35	922,910	22%	3%	\$2,768,729	\$4,614,548
Matsu Area	27	1,058,322	17%	2%	\$3,168,966	\$5,281,610
Fairbanks-Delta	16	1,307,648	10%	1%	\$3,922,944	\$6,538,240
Kenai Peninsula	40	1,600,320	26%	4%	\$4,800,960	\$8,001,600
Anchorage Area	19	4,380,957	13%	2%	\$13,172,872	\$21,954,786
Total Urban	23	9,740,012	15%	2%	\$29,220,036	\$48,700,060
Alaska Total	100	53,454,618	65%	9%	\$160,363,854	\$267,273,090

Figure 6



Figure 7

Traditional Harvest Areas

Studies show that subsistence users tend to harvest in traditional use areas surrounding their communities. Subsistence harvest areas are accessible from the community, although seasonal camps are used to access some species. Subsistence harvest areas for communities are definable and relatively predictable. Subsistence users generally do not harvest outside their community's traditional use areas (see Fig. 7).

The Monetary Value of Subsistence Harvests

Subsistence fishing and hunting are important to the rural economy. Attaching a dollar value to wild food harvests is difficult, as subsistence products do not circulate in markets. However, if families did not have subsistence foods, substitutes would have to be purchased. If one assumes a replacement expense of \$3 - \$5 per pound, the simple "replacement value" of the wild food harvests in rural Alaska may be estimated at \$131.1 - \$218.6 million dollars annually (see Fig. 6).

Subsistence and Money

Subsistence is part of a rural economic system, called a "mixed, subsistence-market" economy. Families invest

money into small-scale, efficient technologies to harvest wild foods, such as fishwheels, gill nets, motorized skiffs, and snowmachines. Subsistence food production is directed toward meeting the self-limited needs of families and small communities, not market sale or accumulated profit as in commercial market production. Families follow a prudent economic strategy of using a portion of the household monetary earnings to capitalize in subsistence technologies for producing food. This combination of money from paid employment and subsistence food production is what characterizes the mixed, subsistence-market economies of rural areas. Successful families in rural areas combine jobs with subsistence activities and share wild food harvests with cash-poor households who cannot fish or hunt, such as elders, the disabled, and single mothers with small children.

Subsistence and Sport

Subsistence harvests in rural areas commonly occur alongside recreational fishing and hunting from urban neighbors. Most urban residents hunt and fish under general hunting and sport fishing regulations. In 1995, Anchorage had 22,148 licensed hunters (9% of Anchorage residents); Matanuska-Susitna area, 8,820 (13%); Fairbanks, 11,489 (13%); Kenai Peninsula, 8,670 (19%); Ketchikan, 2,569 (17%); and Juneau, 3,672 (13%). For sport fishing, Anchorage had 70,885 licensed anglers (27% of Anchorage residents); Matanuska-Susitna area, 15,985 (32%); Fairbanks, 22,581 (25%); Kenai Peninsula, 18,657 (41%); Ketchikan, 5,626 (37%); and Juneau, 9,743 (33%).

Urban residents primarily hunt in areas surrounding their home communities (see Fig. 8). About 80% of the wild

meat harvested by urban hunters came from locally-accessible Game Management Units (1.6 million lbs of 2.0 million lbs annually). Many recreational hunters also hunt in more distant locations, so that hunting by urban residents touches all areas of Alaska. Recreational fishing by anglers follows a similar geographic pattern.

The Subsistence Priority

Subsistence uses are given a priority over commercial fishing and recreational fishing and hunting in state and federal law. By and large, urban fishers and hunters have not experienced major changes in harvest opportunity due to the subsistence priority. Personal use net fisheries provide for established food fisheries of urban residents in areas closed to subsistence fishing. General hunting and sport fishing regulations continue to provide opportunities for residents and non-residents.

For example, during the eleven-year period when the rural priority was being implemented under state management (1978-1989), general resident hunting seasons for caribou increased by 36% (from 5,505 days to 7,500 days), moose hunting days decreased by 10% (from 2,961 days to 2,671 days), and Dall sheep hunting days increased by 2% (from 1,855 days to 1,900 days) – comparing the 1978-79 resident season with the 1989-90 resident season. That is, during this period, hunting days by urban hunters for caribou, moose, and sheep were not significantly changed by the rural subsistence priority.

The greatest effect of state and federal subsistence laws has been to legally recognize customary and traditional harvest practices and uses in rural areas. Because of the law, the

Boards of Fisheries and Game have created subsistence regulations designed to provide opportunity for the continued harvest of the rural food supply. While impacts on urban residents have been relatively small, the impacts on rural areas have been great. Rural residents now have a legally protected opportunity to fish and hunt to feed families following long-term customs and traditions.

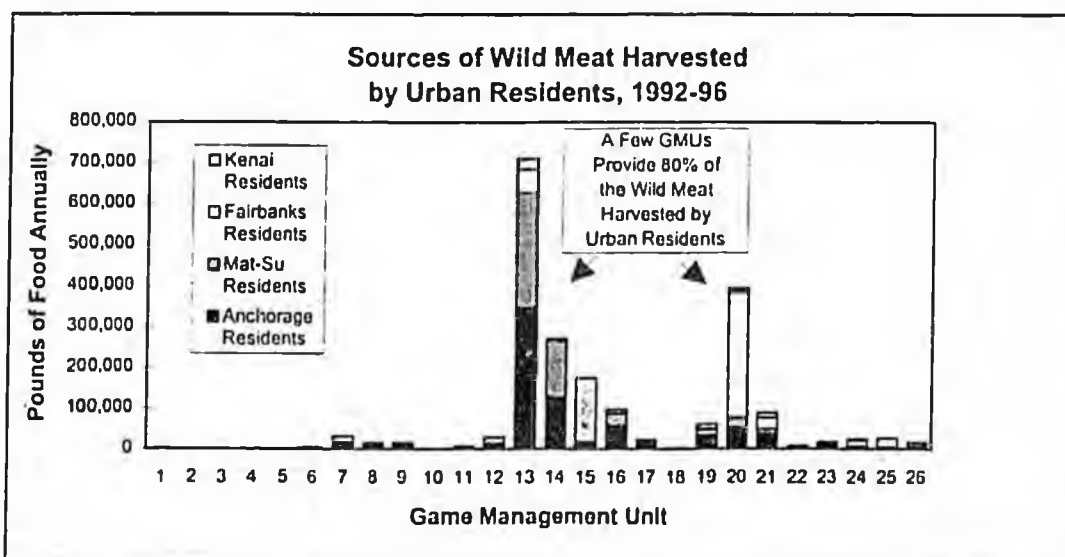


Figure 8

Legislative Research Report 98.075

May 22, 1998

Subsistence Hearings Sponsored by the Legislature or the Governor, 1990-1998

Legislative Research Services
Division of Legal and Research Services
Legislative Affairs Agency
Alaska State Legislature

Prepared for Senator Tim Kelly
Prepared by Maria Gladziszewski, Manager



*Legislative Research Services
130 Seward Street, Room 218
Juneau, AK 99801
907-465-3991
907-463-3351 (fax)
www.legis.state.ak.us/legres/legres.htm*

SUMMARY

You asked about public hearings aimed at resolving the impact of the Alaska Supreme Court's December 1989 decision in *McDowell v. State*. In that decision, the Court held that the state's 1986 subsistence law violated the state constitution because it excluded urban residents from subsistence activities.

In attempts to resolve the issue since then, the legislature has met twice in special session (June 1990 and June 1992), and two governors have convened task forces (Governor Hickel's Subsistence Advisory Council in 1991-92 and Governor Knowles' Subsistence Task Force in 1997-98). Also, since the *McDowell* decision, the Legislature has held over 100 hearings on the issue, taking testimony from approximately 240 state and federal officials, and over 1,000 members of the public. Table 1 summarizes the statistics on legislative hearings; Tables 2 and 3 present more detail, including bill number and subject, committee, and hearing dates.

Table 1: Legislative Hearings on Subsistence, 1990-1998

LEGISLATURE	HEARINGS	TESTIMONY FROM PUBLIC OFFICIALS	TESTIMONY FROM MEMBERS OF THE PUBLIC (including interest group representatives)
16 TH Legislature	25	78	152
17 th Legislature	30	79	235
18 th Legislature	0	0	0
19 th Legislature	11	10	259
20 th Legislature	37	72	482
TOTAL	103	239	1,128

NOTE: These numbers do NOT represent numbers of different individuals who testified; rather, they are the sum of the total number testifying at each hearing (i.e., many public officials and interest group representatives testified numerous times).

Governor Hickel's Subsistence Advisory Council, charged with proposing a statutory fix that did not include constitutional amendments, convened first in February 1991 but was reorganized in the fall. According to Advisory Council member Byron Mallott, the group met five or six times between November 1991 and February 1992, primarily in the governor's conference room in the Frontier Building in Anchorage. Mr. Mallott reports that while the meetings were open to the public and the press, and several individuals and representatives from stakeholder groups attended the meetings to express opinions, the meetings were informal and Advisory Council members did not open them to formal testimony.

TABLE 2

Hearings on Subsistence, 1990-1998, by Bill

Committee	Date	Heard Testimony From:
16th Legislature (1989-1990)		
HJR 74, 88, 90 -- Constitutional Amendments on Subsistence		
House Resources	March 7, 1990	5 state officials, 1 member of the public
House Resources	March 10, 1990	2 state officials, 51 members of the public
House Resources	March 21, 1990	1 state official, 28 members of the public
House Resources	April 5, 1990	2 state officials, 10 members of the public
House Resources	April 20, 1990	3 state officials, 5 members of the public
House Resources	April 21, 1990	2 state officials
House Judiciary	April 27, 1990	4 officials (3 state, 1 federal), 4 members of the public
House Judiciary	April 30, 1990	3 state officials, 3 members of the public
House Judiciary	May 1, 1990	3 state officials
House Judiciary	May 4, 1990	5 state officials
SJR 78, SB 305 -- Subsistence Uses of Fish and Wildlife		
Senate Resources	May 3, 1990	4 state officials
SJR 78 -- Subsistence Uses of Fish and Wildlife		
Senate Resources	May 4, 1990	4 state officials, 2 members of the public
Senate Resources	May 6, 1990	3 state officials
Senate Resources	May 7, 1990	1 state official, 6 members of the public
16th Legislature, First Special Session, 1990 (June 25-July 8)		
HB 599, HB 600, HB 601, HCR 68, HJR 97, SB 553, SJR 86, SJR 88 -- Various, on Subsistence		
SB 555 -- Commission on Subsistence Use of Fish & Game (became law -- Chapter 1 FSSLA 90)		
House Work Session	June 20, 1990	In Anchorage -- 2 state officials, 10 members of the public
House Resources	June 25, 1990	7 officials (incl. Cowper, Murkowski, Stevens, Young), 10 public
House Resources	June 26, 1990	4 state officials
House Resources	June 27, 1990	1 state official
House Resources	June 29, 1990	5 state officials
House Resources	June 29, 1990	5 state officials
SB 553, SCR 61, SJR 86, SJR 88 -- Various, on Subsistence		
SB 555 -- Commission on Subsistence Use of Fish & Game (became law -- Chapter 1 FSSLA 90)		
Senate Resources	June 26, 1990	17 members of the public
SCR 62 -- Subsistence Legal Challenge		
Senate Resources	June 27, 1990	5 state officials, 1 member of the public
Senate Finance	June 28, 1990	3 state officials, 1 member of the public
Senate Rules	June 29, 1990	No testimony; committee discussion only
HJR 99 -- Constitutional Amendment: Subsistence Preference		
House Rules	July 7, 1990	6 state officials, 3 members of the public
THE FOLLOWING BILLS RECEIVED NO HEARINGS:		
HB 602-Subsistence Hunting and Fishing		SB 556-Subsistence Hunting and Fishing
HB 603-Subsistence Uses of Fish/Game		SCR 39-Joint Commission on Subsistence
HCR 70-Subsistence Regulations		SJR 87-Constitutional Amendment: Subsistence
HJR 98-Constitutional Amendment		SJR 89-Constitutional Amendment: Subsistence
HJR 100-Constitutional Amendment: Subsistence/Personal Use		
HR 16 -- Requesting Alaska Supreme Court to Extend Stay (became Legislative Resolve 10)		

TABLE 2

Hearings on Subsistence, 1990-1998, by Bill

Committee	Date	Heard Testimony From:
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18th Legislature (1993-1994)

THE FOLLOWING BILLS RECEIVED NO HEARINGS:

HJR 23 / SJR 42 -- Constitutional Amendment: Subsistence Preference
 SJR 12 -- Constitutional Amendment on Subsistence Preference

19th Legislature (1995-1996)

HB 312 -- Extend Current Subsistence Law

House Resources	April 25, 1995	3 state officials, 1 member of the public
House Resources	April 27, 1995	1 state official, 4 members of the public

HJR 33 -- Amendments to ANILCA

House Judiciary	March 17, 1995	24 members of the public
House Judiciary	March 22, 1995	2 state officials, 80 members of the public

SCR 6 -- State v Babbitt Lawsuit Continuation (became Legislative Resolve 1)

House Rules	January 27, 1995	No testimony; committee discussion only
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SB 171 -- Extend Current Subsistence Law (became law -- Chapter 68 SLA 95)

Senate Resources	April 28, 1995	1 state official, 3 members of the public
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SJR 19 -- Ask Congress to Amend ANILCA (became Legislative Resolve 26)

Senate Resources	March 29, 1995	In Fairbanks -- 1 state official, 69 members of the public
Senate Resources	April 8, 1995	In Soldotna -- 33 members of the public
Senate Resources	April 10, 1995	1 state official, 29 members of the public
Senate Rules	April 11, 1995	No testimony; committee discussion only
House Judiciary	May 1, 1995	1 state official, 16 members of the public

THE FOLLOWING BILLS RECEIVED NO HEARINGS:

HCR 7 -- State v Babbitt Lawsuit Continuation
 HJR 14/SJR 2 -- Constitutional Amendment: Subsistence Preference

20th Legislature 1997-1998

HJR 21 -- Requesting that Congress Amend Title VIII of ANILCA

House Resources	March 13, 1997	19 members of the public
House Resources	March 20, 1997	1 state official, 14 members of the public
House Resources	March 27, 1997	No testimony; committee discussion, then bill moved out
House State Affairs	April 10, 1997	1 state official, 15 members of the public
House State Affairs	April 15, 1997	23 members of the public
House State Affairs	May 3, 1997	No testimony; committee discussion, then bill moved out

HB 243 -- Extend Current Subsistence Law (became law -- Chapter 109 SLA 97)

House Resources	May 1, 1997	2 state officials, 1 member of the public
Senate Resources	May 8, 1997	1 state official

HB 255 -- Subsistence Hunting & Fishing

House Resources	May 1, 1997	2 state officials, 7 members of the public
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TABLE 3

Legislative Hearings on Subsistence, 1990-1998, by Date

Committee	Date	Heard Testimony From:
16th Legislature (1989-1990)		
House Resources	March 7, 1990	5 state officials, 1 member of the public
House Resources	March 10, 1990	2 state officials, 51 members of the public
House Resources	March 21, 1990	1 state official, 28 members of the public
House Resources	April 5, 1990	2 state officials, 10 members of the public
House Resources	April 20, 1990	3 state officials, 5 members of the public
House Resources	April 21, 1990	2 state officials
House Judiciary	April 27, 1990	4 officials (3 state, 1 federal), 4 members of the public
House Judiciary	April 30, 1990	3 state officials, 3 members of the public
House Judiciary	May 1, 1990	3 state officials
Senate Resources	May 3, 1990	4 state officials
House Judiciary	May 4, 1990	5 state officials
Senate Resources	May 4, 1990	4 state officials, 2 members of the public
Senate Resources	May 6, 1990	3 state officials
Senate Resources	May 7, 1990	1 state official, 6 members of the public
House Work Session	June 20, 1990	In Anchorage -- 2 state officials, 10 members of the public
House Resources	June 25, 1990	7 officials (incl. Cowper, Murkowski, Stevens, Young), 10 public
House Resources	June 26, 1990	4 state officials
Senate Resources	June 26, 1990	17 members of the public
House Resources	June 27, 1990	1 state official
Senate Resources	June 27, 1990	5 state officials, 1 member of the public
Senate Finance	June 28, 1990	3 state officials, 1 member of the public
House Resources	June 29, 1990	5 state officials
House Resources	June 29, 1990	5 state officials
Senate Rules	June 29, 1990	No testimony; committee discussion only
House Rules	July 7, 1990	6 state officials, 3 members of the public
17th Legislature (1991-1992)		
Senate Resources	April 5, 1991	1 state official
Senate Resources	March 5, 1992	4 state officials (including Governor Hicket)
Senate Resources	March 6, 1992	1 state official
Senate Resources	March 7, 1992	33 members of the public
Senate Resources	March 10, 1992	1 state official, 1 member of the public
Senate Resources	March 23, 1992	3 state officials
Senate Resources	March 27, 1992	1 state official
House Resources	April 1, 1992	2 state officials (including Governor Hicket)
Senate Judiciary	April 7, 1992	4 state officials, 2 members of the public
Senate Judiciary	April 9, 1992	2 state officials
House Resources	May 5, 1992	1 state official, 1 member of the public
House Resources	May 11, 1992	1 state official, 3 members of the public
House Resources	May 11, 1992	4 members of the public
Conference Committee	May 21-22, 1992	6 state officials, 1 member of the public
House Judiciary	June 10, 1992	3 state officials, 44 members of the public
S Comm of the Whole	June 15, 1992	2 state officials, 8 members of the public
House Resources	June 15, 1992	3 state officials
H State Affairs/Judiciary	June 16, 1992	3 state officials, 5 members of the public
S Comm of the Whole	June 16, 1992	4 state officials, 17 members of the public
House Resources	June 16, 1992	1 former state official

TABLE 3
Hearings on Subsistence Bills 1998-1999 by Date

Committee	Date	Heard Testimony From:
House Judiciary	March 9, 1998	2 state officials
House Judiciary	March 11, 1998	4 state officials, 23 members of the public
House Judiciary	March 18, 1998	2 state officials, 10 members of the public
House Judiciary	March 20, 1998	3 members of the public
Senate Resources	March 25, 1998	2 state officials, 1 member of the public
House Judiciary	March 25, 1998	No testimony; committee discussion only
House Judiciary	March 27, 1998	3 state officials, 1 member of the public
House Judiciary	March 28, 1998	6 members of the public
House Judiciary	March 30, 1998	1 state official, 22 members of the public
House Judiciary	April 3, 1998	2 state officials
House Judiciary	April 6, 1998	3 state officials, 1 members of the public
House Finance	April 9, 1998	4 state officials
Senate Judiciary	April 25, 1998	9 members of the public
Senate Judiciary	May 1, 1998	1 member of the public
Senate Judiciary	May 5, 1998	1 state official, 4 members of the public
Senate Judiciary	May 6, 1998	No testimony or discussion, moved bill out

NOTE:

We compiled this information by first selecting major subsistence bills listed by subject in the *Final Status of Bills and Resolutions*, then searching through BASIS and FOLIO Views databases for meeting minutes. Because BASIS information is no longer available for the 16th and 17th Legislature, we also looked through committee records maintained in the Legislative Library.

SOURCES:

Final Status of Bills and Resolutions for each Legislature (published by the Legislative Affairs Agency); BASIS for the 18th, 19th, 20th Legislatures; FOLIO Views (committee minutes database); Committee records in the Legislative Library.

Essential Elements of a Subsistence Bill

Protects subsistence uses; provides opportunity for sport, commercial, personal use

			TASK FORCE APPROACH
			Designed to secure state management of hunting and fishing on all lands and waters; recognizes rural dependence on subsistence; makes minimal changes to current state statute
Who	<u>Eligibility</u>	⇒ Define a mechanism for determining who can participate in subsistence hunting and fishing.	<ul style="list-style-type: none"> Residents of areas determined by the boards to be rural are eligible. All Alaskans have opportunity to hunt and fish as long as there is a reasonable opportunity for subsistence General hunting/sport fishing, commercial, personal use fishing, proxy subsistence permits and cultural/educational permits provide for urban residents' opportunity.
Where	<u>Location</u>	⇒ Identify portions of the state where hunting and fishing may occur under subsistence regulations.	<ul style="list-style-type: none"> Rural areas are "places found by boards to be dependent on fish and wildlife for nutritional and other subsistence uses." All other places are non-rural (non-subsistence) areas.
How	<u>Process</u>	⇒ Identify the mechanism for developing subsistence regulations that implement the subsistence priority.	<ul style="list-style-type: none"> State boards implement steps to provide subsistence priority: (1) joint boards identify rural areas; (2) fish or game board identifies c&t use of stock or population, amount needed for reasonable subsistence use opportunity. In times of shortage subsistence uses are last to be eliminated. Regional Councils provide subsistence advice; boards give deference
What	<u>Definitions</u>	⇒ Clarify what use is being afforded a preference, and key terms used in statute to direct actions of the boards.	<ul style="list-style-type: none"> Subsistence; reasonable opportunity; rural area; customary trade; customary and traditional use

**PRESENTATION ON
SUBSISTENCE ISSUES**

May 26, 1998

Attorney General Bruce Botelho

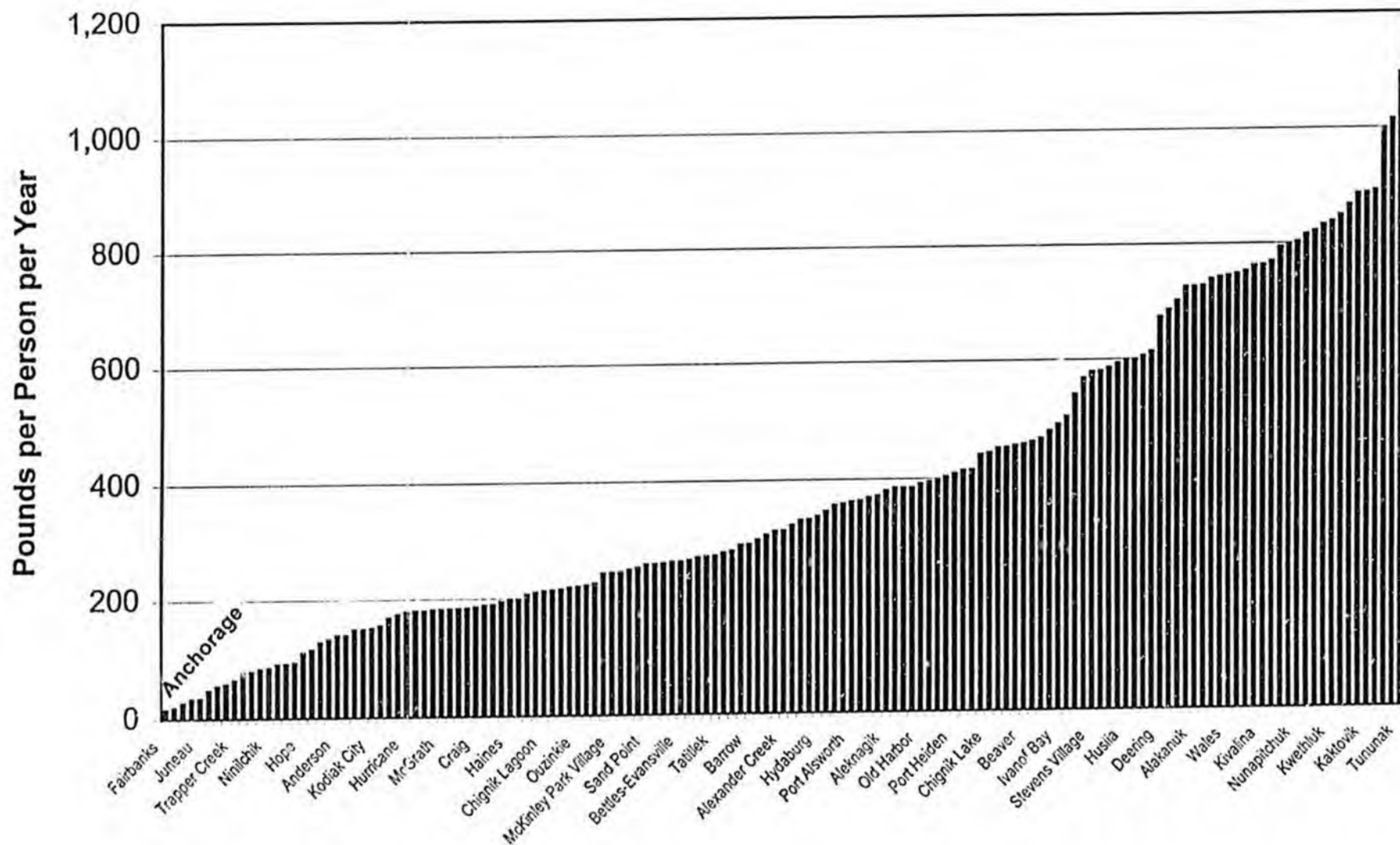
Former Attorney General Charlie Cole

**Table 1 - Annual Harvest of Subsistence Foods,
by Geographical Area**

Geographical Area	Annual Harvest (Pounds/Person)
Anchorage/Juneau/Fairbanks/Mat-Su	30
Kenai Peninsula	96
Copper Basin	149
Southeast	212
Upper Tanana	218
Prince William Sound	256
Northern Cook Inlet	265
Alaska Peninsula	290
North Slope	364
Kodiak Island	426
Southwest	626
Western	732
Yukon-Koyukuk	839
Northwest Arctic	1,067

Source: Alaska Department of Fish and Game, 1987

Annual Wild Food Harvests by Alaska Community



“The conference committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives.”

**Conference Committee Report on
ANCSA (1971)**

“The legislature . . . determines that it is in the public interest to clearly establish subsistence use as a priority of Alaska’s fish and game resources and to recognize the needs, customs and traditions of Alaskan residents.”

1978 Session Laws

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT (1980)

Policy

Sec. 802(1). It is hereby declared to be the policy of Congress that-- consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized scientific principles . . . the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so.

Definitions

Sec. 803. As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural residents of wild renewable resources for direct personal or family consumption. . . .

Preference for Subsistence Uses

Sec. 804. Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. . . .

Local and Regional Participation

Sec. 805(d). The Secretary shall not implement . . . this section if . . . the State enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in [the Act].

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

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

McDowell v. State of Alaska (1989)

“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.”

“Inconvenience is in no sense the equivalent of a bar to eligibility for participation in subsistence hunting and fishing and does not suffice to trigger an analysis under the equal access clauses.”

State v. Kenatize Indian Tribe (1995)

“By virtue of its reserved water rights, the United States has interests in some navigable waters. Consequently, public lands subject to subsistence management under ANILCA include certain navigable waters. . . .

“We also hold that the federal agencies that administer the subsistence priority are responsible for identifying those waters.”

Katie John v. U.S. (9th Cir. 1995)

“Because the Submerged Lands Act of 1953 specifically gives state authority over fish and animals in navigable waters and precludes the navigational servitude or reserved water rights from being used to erode that authority, because the navigational servitude and reserved waters rights are not interests to which title can be held, because of the clear statement doctrine, because the navigational servitude and reserved water rights are limited interests which do not give the federal government power over navigable or reserved waters unrelated to those interests, and for the other reasons discussed above, we hold that navigable waters are generally not “public lands” under ANILCA. Therefore, ANILCA does not curtail the State’s authority to regulate hunting and fishing in navigable waters, and the State has criminal jurisdiction over Totemoff.”

Totemoff v. State (1995)

Principles of the Bipartisan 1997 Task Force on Subsistence

- 1. To establish effective state authority, and eliminate federal authority, over fish and game management on all lands and waters of Alaska.**
- 2. To recognize the paramount importance of the subsistence way of life to rural Alaskans and to those Alaskans who demonstrate a customary and traditional use or a direct dependence on fish and game resources.**
- 3. To maintain neutrality on the issue of tribal sovereignty over lands within Alaska.**
- 4. To make only those changes to the Alaska Constitution, ANILCA and state law that are absolutely necessary to accomplish those ends.**

THE SUPREMACY CLAUSE OF THE U.S. CONSTITUTION

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

U.S. Const., Art. VI, cl. 2

The Property Clause of the U.S. Constitution

**Congress shall have power to dispose of
and make all needful rules and
regulations respecting the territory or
other property belonging to the United
States.**

U.S. Const., Art. IV, sec 3, cl.2.

"And while the furthest reaches of the power granted by the Property Clause have not yet been definitively resolved, we have repeatedly observed that the power over the public land thus entrusted to Congress is without limitations."

**Kleppe v. New Mexico 426 U.S. 529, 539
(1976)**

" In our view, the 'complete power' that Congress has over public lands necessarily includes the power to regulate and protect the wildlife living there."

Kleppe v. New Mexico 426 U.S. 529 (1976)

“With this guidance, we must decide the question left open in *Kleppe* -- the scope of Congress’ property clause power as applied to activity occurring off federal land. Without defining the limits of the power, the Court in *Kleppe*, relying on its decision in *Camfield v. United States* . . . acknowledged that ‘it is clear the regulations under the Property Clause may have some effect on private lands not otherwise under federal control.’ . . .

“Under this authority to protect public land, Congress’ power must extend to regulation of conduct on or off the public land that would threaten the designated purpose of federal lands. Congress clearly has the power to dedicate federal land for particular purposes. As a necessary incident of that power, Congress must have the ability to insure

that these lands be protected against interference with their intended purposes.”

**State of Minnesota by Alexander v. Block.
660 F.2d 1240 (1981)**