

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9660 SENATE RESOURCES

**Joint Department of the Interior and the  
Department of Agriculture Budget  
Proposal for the Federal Subsistence  
Fishing Program in Alaska:**

***"Implementation of the Court's decision  
will result in the unprecedented  
expansion of Federal management of  
Alaska's fisheries in many areas of the  
State."***

***"For several areas, Federal managers may  
be called on to intervene in the  
management of commercial harvests to  
assure upstream delivery of salmon to  
subsistence users."***

## **LOCAL AND REGIONAL PARTICIPATION**

**SEC. 805(d) The Secretary shall not implement subsections (a), (b), and (c) of this section if within one year from the date of enactment of this Act, the State enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in, sections 803, 804, and 805, such laws, unless and until repealed, shall supersede such sections insofar as such sections govern State responsibility pursuant to this title for the taking of fish and wildlife on the public lands for subsistence uses....**

## **JUDICIAL ENFORCEMENT**

**SEC. 807(a) Local residents and other persons and organizations aggrieved by a failure of the State of the Federal Government to provide for the priority for subsistence uses set forth in section 804 (or with respect to the State as set forth in a State law of general applicability if the State has fulfilled the requirements of section 805(d)) may, upon exhaustion of any State or Federal (as appropriate) administrative remedies which may be available, file a civil action in the United States District Court for the District of Alaska to require such actions to be taken as are necessary to provide for the priority. In a civil action filed against the State, the Secretary may be joined as a party to such action. The court may grant preliminary injunctive relief in any civil action if the granting of such relief is**

appropriate under the facts upon which the action is based. No order granting preliminary relief shall be issued until after an opportunity for hearing. In a civil action filed against the State, the court shall provide relief, other than preliminary relief, by directing the State to submit regulations which satisfy the requirements of section 804; when approved by the court, such regulations shall be incorporated as part of the final judicial order, and such order shall be incorporated as part of the final judicial order, and such order shall be valid only for such period of time as normally provided by State law for the regulations at issue. Local residents and other persons and organizations who are prevailing parties in an action filed pursuant to this section shall be awarded their costs and attorney's fees.

## **JUDICIAL ENFORCEMENT**

**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.**

## **REGULATIONS**

**SEC. 814** The secretary shall prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title.

**SELECTED 1997 AMENDMENTS  
TO ANILCA**

**Public Law 105-83**

## TITLE VIII-SUBSISTENCE MANAGEMENT AND USE

### SEC. 801.

### FINDINGS

*(b) The Congress finds and declares further that-*

*(1) subsequent to the enactment of this Act in 1980, the subsistence law of the State of Alaska (AS 16.05) accomplished the goals of Congress and requirements of this Act in providing subsistence use opportunities for rural residents of Alaska, both Native and non-Native;*

*(2) the Alaska subsistence law was challenged in Alaska courts, and the rural preference requirement in the law was found in 1989 by the Alaska Supreme Court in *McDowell v. State of Alaska* (785 P.2d 1, 1989) to violate the Alaska Constitution;*

*(3) since that time, repeated attempts to restore the validity of the State law through an amendment to the Alaska Constitution have failed, and the people of Alaska have not been given the opportunity to vote on such an amendment;*

*(4) in accordance with Title VIII of this Act, the Secretary of the Interior is required to manage fish and wildlife for subsistence uses on all public lands in Alaska because of the failure of State law to provide a rural preference;*

*(5) the Ninth Circuit Court of Appeals determined in 1995 in *State of Alaska v. Babbitt* (73 F.3d 698) that the subsistence priority required on public lands under section 804 of this Act applies to navigable waters in which the United States has reserved water rights as identified by the Secretary of the Interior;*

*(6) management of fish and wildlife resources by State governments has proven successful in all 50 states, including Alaska, and the State of Alaska should have the opportunity to continue to manage such resources on all lands, including public lands, in Alaska in accordance with this Act, as amended; and*

*(7) it is necessary to amend portions of this Act to restore the original intent of Congress to protect and provide for the continued opportunity for subsistence uses on public lands for Native and non-Native rural residents through the management of the State of Alaska.*

## DEFINITIONS

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

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

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

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

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

(3) "customary and traditional uses" means 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;

(4) "customary trade" means, except for money sales of furs and furbearers, the limited, noncommercial exchange for money of fish and wildlife or their parts in minimal quantities; and

(5) "rural Alaska resident" means 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.

## PREFERENCE FOR SUBSISTENCE USES

SEC. 804.

*(b) The priority granted by this section is for a reasonable opportunity to take fish and wildlife. For the purposes of this subsection, the term "reasonable opportunity" means an opportunity, consistent with customary and traditional uses (as defined in section 803(3)), 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.*

**SUBSISTENCE**

**INTERIM  
HEARINGS  
(FILE 1)**



Official Business

# ALASKA STATE LEGISLATURE

F13X

## SENATE RESOURCES COMMITTEE

State Capitol  
Juneau, AK 99801

Chairman: Senator Rick Halford  
Vice Chair: Senator Lyda Green  
Senator Loren Leman  
Senator Bert Sharp  
Senator Robin Taylor  
Senator John Torgerson  
Senator Georgianna Lincoln

### AGENDA

3:30 TO 9:00 p.m.

Wednesday, September 24, 1997

Interim Hearing on Subsistence

UA Regents Conference Room  
University of Alaska, Fairbanks

#### I. Presentation of the Governor's Subsistence Task Force Proposal

Expected Witnesses:

Julian Mason, Counsel to the Governor's Task Force

Byron Mallott, Task Force Member

#### II. Native Position on Governor's Task Force Proposal

Expected Witnesses:

Rep. Albert Kookesh, Co-Chairman AFN

#### III. Public Testimony

#### NEXT MEETING

Thursday, September 25

Wasilla City Council Chambers  
290 E. Herring Ave, Wasilla

ADJOURN



Official Business

**COMMITTEE:**

SENATE RESOURCES

**DATE:**

**SIGN-IN**

**Subject of meeting:**

page one

INTERIM HEARING ON SUBSISTENCE

PLEASE PRINT!

NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?

David G. Kelleyhouse	P.O. Box 81452, Fairbanks 99708	455-7882	Self	Yes
CESA SAM	PO Box 70 HUSCIA, AK 99746	829-2294	HUSCIA TRIBE	YES
Patrice & Destiny Samu	PO Box 53, Malheur, AK 99788	848-8212	Chalchitsk Village	Yes
MARJORIE ATILA	P.O. Box 136 GALENA, AK	656-1337	Goulen Tribal Council	Yes
Mitch Demientier	Box 251 Nenana, AK 99760	832-5461	Nenana Native Village	NO
John Lord	Box 374 Nenana, AK 99760	832-5241	SELF FRIENDS	NO
Patrick Saylor	Box 629 Healy Lake 99706	876-5018	Healy Lake Village	yes
Milly Bergman	Box 4 Allakaket AK 99730	9682237	Allakaket Tribe	Yes
Mr. Mark A. Ames	40 AEC - P.O. box 71693 Fairbanks, Alaska 99707	(907) 457-5091	(1867-1979) public trust "10-41" Native born AK - American	Yes
BENEDICT JONES	P.O. Box 47 Koyukuk, AK, 99754	907 927-2205	Koyukuk TRIBAL COUNCIL	YES



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COMMITTEE:

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Subject of meeting:

INTERIM HEARING ON SUBSISTENCE

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PLEASE PRINT!

NAME

ADDRESS (MAILING) & (ZIP)

PHONE

REPRESENTING

DO YOU WANT TO TESTIFY?

Gerald Walker	Holy Cross AK 99602	476-7168	Frubly Council	yes
Gerald Oldman	General Delivery Hughes, AK. 99745	889-2221	W. Hughes Village Council	yes
Handing Sam	PO Box 109 Allakaket, Alaska 99720	968-2254	Alutia Village Council	Yes
Randy Mays	Box 13 Stevens Village AS 99774	478-7228	Stevens Village Tribal Government	Yes
Vernon Joseph Ali	Box 07665 W. K. AK 99707	458-8747	Self	Yes
Roger Nicholas	P.O. Box 41 KALTAG, AK 99748	534-2296	KALTAG TRIBAL COUN.	Yes
Anna Pickett	P.O. Box 82354 Anchorage, AK 99508	452-8251	Self	Yes
Gideon James Gary Simple	P.O. BOX 32 Venetie, AK 99788	845-8212	the native Village of Venetie Tribal Government	Yes
WALTER FLITT	P.O. Box 232 Fort Yukon, AK 99747	662-2763	SELF	Yes
Tom Scarborough	1676 Toroka Rd, Fairbanks, AK 99709	479-3412	Self	yes



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**Subject of meeting:**

INTERIM HEARING ON SUBSISTENCE

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**SIGN-IN**

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Gabe Sam	122 First Ave. Fairbanks, AK. 99701	452-8251 ext 3255	Tanana Chiefs Conference	Yes
Cecilia Joseph	First St Beaver, AK 99724	662-6112	Beaver Village Comm	Yes
David Thomas	Atkasook AK 99740	662-2587	Quich'in	Yes
Curtis Tindall	276 LEANN - FBKS. 99701	452-1787	Native People	Yes
Byron Haley	1002 PIONEER RD. 99701	456-4426	Self	Yes
Dick Bishop	1555 GUS'S GRIND, FAI. AK 99701	455-6151	AK OUTDOOR COUNCIL	Yes
John Coady	Box 84612 Fairbanks AK 99702	479-8841	AK Dept Fish & Game	Yes
Bonnie Therriault Waldstad	Box 56702 North Pole, AK 99705	488-0232	Self	yes after 5pm please
Rosemarie Martell-Greenblatt	PO Box 83298 FBKS - 99708	457-7194	Self / AOC	Yes
Rose Isaac	Box 76004 TANANAKS AK	883-5929	Self / TNG	YES



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INTERIM HEARING ON SUBSISTENCE

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**NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?**

MARY BISHOP	1555 Lewis Street Fbx 99109	455-6151	self	yes
PERCY HERBERT	PO BOX 75318 Fbks AK 99707	458 8045		
JOHN A. MILLER	1260 MARCH Dr. FAIRBANKS 99709	479-3720	SELF	Yes.
Gene P. Barclay	P.O. Box K3C Fairbanks AK	221 2211	Fred Cook Fido	
Britta A. Wiseman	POX 750230 Fairbanks AK 99775-0230	474-0666 X-3587	All of our Great PEOPLE	Yes & Listen
Tracy Hopkins	3801 Erickson ST	479-9771	Self	Yes
Rob Buist	Box 71561 Fbks 99707	457-7189	self	YES
JOE MATTIE	Box 18 ESTER 99725	471-0891	SELF	YES
Marjorie Mayn	181 Haller Fbks 99701	452-7174	Self	✓
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Subject of meeting:

INTERIM HEARING ON SUBSISTENCE

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PLEASE PRINT!

NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?

Table with 5 columns: NAME, ADDRESS (MAILING) & (ZIP), PHONE, REPRESENTING, DO YOU WANT TO TESTIFY?. Rows include Greg Machacek, Lynn Levenjick, Tim Schumacher, Stan Bloom, Roy Elias, Kathryn Richardson, Becky Hasselboeck, M. Munn Hasselboeck, Wanda Megan Lord, and an empty row.



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INTERIM HEARING ON SUBSISTENCE

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NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?

Table with 5 columns: NAME, ADDRESS (MAILING) & (ZIP), PHONE, REPRESENTING, DO YOU WANT TO TESTIFY?. Rows include: MAURELINE KALUHOSE, LINDA JUNE, MIKE PRAX, TIM WOLFE.



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resource  
Committee Name  
 Committee on Subsistence Dated 9-24-97  
Bill / Subject

I oppose any ~~change~~ change to the  
 State Constitution on subsistence.

SIGNED:

*Dale McE...*  
 Testifier

North Pole  
 Representing

P.O. Box 55141 North Pole Ak. 99705  
 Address / Phone Number

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**ALASKA FEDERATION OF NATIVES, INC.**

1577 C Street, Suite 201, Anchorage, Alaska 99501  
907-274-3611 - Fax 907-276-7989

**TESTIMONY OF THE ALASKA FEDERATION OF NATIVES  
TO THE ALASKA SENATE RESOURCES COMMITTEE  
WEDNESDAY, SEPTEMBER 24, 1997**

CHAIRMAN HALFORD, MEMBERS OF THE SENATE RESOURCES  
COMMITTEE, LADIES AND GENTLEMEN:

THE GOVERNOR'S SUBSISTENCE TASK FORCE RELEASED ITS DRAFT  
PROPOSAL ON JULY 9, 1997, ASKING THAT PUBLIC COMMENTS BE  
SUBMITTED FOR ITS MEETING ON JULY 23. AFN REQUESTED THAT THE  
COMMENT DEADLINE BE EXTENDED UNTIL AFTER THE NATIVE  
SUBSISTENCE SUMMIT OF AUGUST 26 TO 28. THAT REQUEST WAS  
GRANTED. THE SUMMIT WAS HELD, THE NATIVE COMMUNITY  
EXAMINED THE PROPOSAL IN DETAIL, AND WE FORMULATED OUR  
RECOMMENDATIONS FOR CHANGES. WE PRESENTED THESE TO THE  
TASK FORCE ON SATURDAY, SEPTEMBER 13. MY TESTIMONY TODAY  
CONTAINS THE SUMMIT'S RECOMMENDATIONS, AS WE PRESENTED  
THEM TO THE TASK FORCE ELEVEN DAYS AGO. IT IS DIVIDED INTO  
THREE SECTIONS: A RECAP OF POLICY HISTORY, 12 RECOMMENDED  
CHANGES TO THE TASK FORCE PROPOSAL, AND AN EXPRESSION OF  
THE NATIVE COMMUNITY'S INTEREST IN FURTHER SUBSTANTIVE  
DISCUSSIONS.

## POLICY RECAP

THE ALASKA NATIVE CLAIMS SETTLEMENT ACT OF 1971 EXTINGUISHED ABORIGINAL HUNTING AND FISHING RIGHTS - BUT DID NOT IMMEDIATELY REPLACE SUCH RIGHTS WITH STATUTORY PROTECTIONS OF NATIVE SUBSISTENCE PRACTICES. IN ITS RUSH TO CLEAR LAND TITLE FOR PIPELINE CONSTRUCTION, CONGRESS DROPPED THE SUBSISTENCE PROTECTIONS CONTAINED IN EARLIER SETTLEMENT DRAFTS AND, BY MEANS OF THE CONFERENCE REPORT, PUT THE BURDEN ON THE SECRETARY OF THE INTERIOR AND THE STATE GOVERNMENT TO "TAKE ANY ACTIONS NECESSARY TO PROTECT THE SUBSISTENCE NEEDS OF THE NATIVES." CONGRESS WAS CLEARLY CONCERNED ABOUT NATIVE VILLAGE ECONOMIES AND CULTURES IN 1971; BUT STATUTORY PROTECTIONS HAD TO WAIT NINE MORE YEARS.

TITLE VIII OF THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT OF 1980 WAS ENACTED IN RECOGNITION OF THE FACT THAT CONGRESS'S 1971 EXPECTATION OF THE SECRETARY AND THE STATE HAD FAILED. AS EXAMPLES OF WHY CONGRESS WAS CONCERNED ABOUT, PLEASE CONSIDER THESE FACTS:

--BETWEEN 1971 AND 1980, THE PIPELINE BOOM HAD CAUSED AN ENORMOUS NON-NATIVE MIGRATION INTO ALASKA - THE PRIMARY CAUSE OF A 36% INCREASE IN POPULATION THAT CREATED FIERCE COMPETITION FOR LIMITED FISH AND GAME.

--IN 1972, CONGRESS'S MARINE MAMMAL PROTECTION ACT HAD PROTECTED NATIVE HUNTING, A POLICY THAT HAS WORKED EFFECTIVELY TO THE PRESENT DAY; THE STATE HAD DONE NOTHING ON THE ISSUE BUT TO OPPOSE FEDERAL ACTION.

--IN 1976, THE NORTHWEST ARCTIC CARIBOU HERD HAD CRASHED, CREATING A SERIOUS RESOURCE SHORTAGE; BUT WHEN THE STATE BOARDS TRIED TO ALLOCATE THE REMAINING RESOURCE SO AS TO FAVOR LOCAL SUBSISTENCE USERS, THE STATE COURTS THREW OUT THE REGULATIONS.

--IN 1978, THE STATE HAD ARRESTED THREE ATHABASKAN ELDERS IN THE COPPER RIVER AREA FOR OPERATING SUBSISTENCE FISHWHEELS DURING A PERIOD OPENED ONLY TO SPORT DIPNETTING.

--ALSO IN 1978, ALASKA HAD ENACTED ITS FIRST SUBSISTENCE LAW, MERELY GIVING A PREFERENCE FOR SUBSISTENCE USE OVER OTHER CONSUMPTIVE USES, BUT FAILING TO DISTINGUISH AMONG COMPETING USERS - WHICH WAS THE REAL POLICY QUESTION.

AS A RESULT OF SUCH DEVELOPMENTS IN ALASKA, CONGRESS IN 1980 WAS DETERMINED TO MAKE LAW THAT WOULD PROTECT NATIVE SUBSISTENCE RIGHTS ON FEDERAL PUBLIC LANDS. NATIVE GROUPS

WANTED A PREFERENCE OR PRIORITY FOR ALL NATIVES, URBAN AND RURAL; BUT CONGRESS ULTIMATELY ENACTED THE RURAL PREFERENCE - INCLUDING RURAL NON-NATIVES AND EXCLUDING NON-RURAL NATIVES.

CONGRESS'S PRIME MOTIVE IN 1980 WAS TO PROTECT THE SUBSISTENCE WAY OF LIFE IN NATIVE VILLAGES. RECOGNIZING THIS, THE FEDERAL COURTS RULED IN 1984 THAT TITLE VIII IS INDIAN LAW, ENACTED BY CONGRESS UNDER ITS PLENARY AUTHORITY TO REGULATE INDIAN AFFAIRS IN THE COMMERCE CLAUSE OF THE U.S. CONSTITUTION. CONCERN FOR NATIVE VILLAGES IS ALSO WHY TITLE VIII'S RURAL PREFERENCE IS BASED ON "CUSTOMARY AND TRADITIONAL" HARVEST AND USE PATTERNS ESTABLISHED OVER TIME.

NATIVE PEOPLE WERE DISAPPOINTED BY THE 1980 EXCLUSION OF NON-RURAL NATIVES FROM THE PREFERENCE - PARTICULARLY THOSE LIVING IN HISTORICALLY RURAL, NATIVE PLACES THAT, THROUGH NO FAULT OF THEIR OWN, HAD BEEN SWALLOWED UP BY NON-NATIVE MAJORITIES AND WERE NOW DEFINED AS URBAN. BUT WE DID OUR BEST TO MAKE THE RURAL PREFERENCE WORK.

THE STATE OF ALASKA DID NOT. ITS REGULATORY BODIES, DOMINATED BY SPORT AND COMMERCIAL INTERESTS, FREQUENTLY FRUSTRATED IMPLEMENTATION OF THE SUBSISTENCE PRIORITY AND REFUSED TO REGULATE IN A WAY CONSISTENT WITH CUSTOMARY AND

TRADITIONAL SUBSISTENCE PRACTICES. THE STATE NEVER FULLY FUNDED OR EMPOWERED THE REGIONAL SUBSISTENCE COUNCILS REQUIRED BY FEDERAL LAW. IN 1989, THE ALASKA SUPREME COURT THREW THE RURAL PREFERENCE OUT OF STATE LAW IN THE *MCDOWELL* CASE. THEN, FOR THE ENSUING EIGHT YEARS, STATE LEGISLATIVE MAJORITIES HAVE REFUSED EVEN TO ALLOW THE VOTERS TO CONSIDER A CONSTITUTIONAL AMENDMENT.

### THE TASK FORCE PROPOSAL

I OFFER THE FOLLOWING RECOMMENDATIONS FOR CHANGES IN THE TASK FORCE'S PROPOSAL, BASED ON DECISIONS OF THE NINE HUNDRED PEOPLE WHO ATTENDED THE NATIVE SUBSISTENCE SUMMIT AT THE END OF AUGUST:

1. ELIGIBILITY FOR THE PREFERENCE. THE TASK FORCE'S RURAL PREFERENCE MUST INCLUDE BETTER PROTECTIONS OF NON-RURAL NATIVES, PARTICULARLY OF THOSE "FORMERLY RURAL" NATIVE COMMUNITIES THAT HAVE BEEN, OR COULD BE, PULLED OUT OF THE PREFERENCE BY NON-NATIVE POPULATION GROWTH AND SOCIO-ECONOMIC CHANGE. THE OPTIMAL SOLUTION WOULD BE A NATIVE OR TRIBAL PREFERENCE - OR A "RURAL PLUS" PREFERENCE THAT WOULD INCLUDE ALL RURAL RESIDENTS PLUS ALL NON-RURAL NATIVES. SUCH OPTIONS WOULD ALSO PROTECT NATIVES WHO HAVE VOLUNTARILY MOVED FROM VILLAGES TO URBAN CENTERS. BUT, AT A MINIMUM,

"FORMERLY RURAL" NATIVE COMMUNITIES MUST GET FULL PROTECTION OF THE STATUTORY PREFERENCE AND BE ALLOWED TO PRACTICE SUBSISTENCE IN THEIR LOCAL "CUSTOMARY AND TRADITIONAL" USE AREAS. THE INCLUSION OF PROXY HUNTING AND FISHING OPPORTUNITIES FOR PEOPLE WHO HAVE VOLUNTARILY MOVED TO URBAN AREAS AND WHO PERIODICALLY RETURN TO THEIR HOME C&T AREAS IS A POSITIVE STEP FORWARD FOR THAT GROUP. BUT EDUCATIONAL PERMITS, AT THE DISCRETION OF THE STATE BOARDS, ARE INADEQUATE FOR FORMERLY RURAL NATIVE COMMUNITIES NOW AND FOR PRESENTLY RURAL NATIVE COMMUNITIES IN THE FUTURE.

2. "CUSTOMARY AND TRADITIONAL." THE TASK FORCE'S PROPOSAL CONTAINS A DEFINITION OF C&T THAT IS IN CURRENT STATE LAW. ANILCA DOES NOT CONTAIN A STATUTORY DEFINITION, BUT THERE IS A REGULATORY DEFINITION USED BY THE FEDERAL SUBSISTENCE BOARD. THE SUMMIT UNANIMOUSLY SUPPORTED ANILCA'S PRESENT REQUIREMENT THAT SUBSISTENCE REGULATIONS MIRROR LOCAL C&T PATTERNS, WITH NO STATUTORY DEFINITION. NONE OF THE SUMMIT'S 12 REGIONAL CAUCUSES SUPPORTED THE DEFINITION CONTAINED IN THE TASK FORCE'S PROPOSAL. AFN RECOMMENDS THAT THE LATTER BE DROPPED.

3. "REASONABLE OPPORTUNITY." 11 OF THE 12 CAUCUSES SUPPORTED THE PRESENT FEDERAL REQUIREMENT THAT SUBSISTENCE REGULATIONS ACCURATELY MIRROR LOCAL C&T PRACTICES - OFTEN REFERRED TO AS "LEAST ADVERSE IMPACT." ONE SUPPORTED A STANDARD THAT "MEETS THE SUBSISTENCE NEEDS OF NATIVE COMMUNITIES." NO CAUCUS SUPPORTED "REASONABLE OPPORTUNITY." AFN RECOMMENDS THAT THE LATTER BE DROPPED AND THAT THE FEDERAL STANDARD REMAIN "LEAST ADVERSE IMPACT ON C&T." THIS ISSUE IS SEEN BY NATIVES AS A CRITICAL LOSS OF CURRENT FEDERAL PROTECTIONS.

4. "CUSTOMARY TRADE." ANILCA DOES NOT DEFINE CUSTOMARY TRADE, RELYING INSTEAD ON THE FEDERAL COURTS TO ADJUDICATE INDIVIDUAL CASES OF POSSIBLE ABUSE. THE TASK FORCE'S PROPOSAL TRIES TO OFFER A STATUTORY DEFINITION OF CUSTOMARY TRADE BUT LEAVES MOST OF IT TO THE DISCRETION OF THE STATE BOARDS. NO CAUCUS OF THE SUMMIT SUPPORTED THE LATTER FORMULA - BECAUSE VIRTUALLY NO ONE THERE TRUSTS THE BOARDS. EIGHT OF THE 12 CAUCUSES SUPPORTED ANILCA'S PRESENT RELIANCE ON FEDERAL COURT DECISIONS. AFN RECOMMENDS THAT THE "CUSTOMARY TRADE" DEFINITION, WITH ITS REGULATORY DISCRETION, BE DROPPED.

5. PROTECTED HUMAN USES OF SUBSISTENCE. THE TASK FORCE'S

PROPOSAL CONTAINS A LIST OF FIVE PROTECTED USES, WHICH IS THE SAME AS IN ANILCA NOW. STATE LAW CONTAINS THE SAME LIST AND ADDS USES FOR POTLATCHES. THE TASK FORCE'S PROPOSAL ALSO CONTAINS THE REQUIREMENT THAT, AT TIER II, THE STATE BOARDS MUST ELIMINATE ALL C&T USES OTHER THAN FOOD. BASED ON THE SUMMIT'S UNANIMOUS DECISIONS, AFN RECOMMENDS THAT CULTURAL AND RELIGIOUS USES BE ADDED TO THE STANDARD LIST OF FIVE AND THAT THE TIER II LIMITATION TO FOOD BE DROPPED.

6. MANAGEMENT REFORMS. THE SUMMIT UNANIMOUSLY AGREED ON THE NEED FOR COMPREHENSIVE REFORM OF THE STATE'S REGULATORY AND MANAGEMENT SYSTEMS. IT RESOUNDINGLY ENDORSED THE FEDERAL REGIONAL SUBSISTENCE COUNCILS, RECOGNIZING THAT THEY ARE A VAST IMPROVEMENT ON THE STATE'S SYSTEM. THE CAUCUSES ALSO REQUESTED SIGNIFICANT REFORM OF THE STATE BOARDS - PROPOSING THE RESTRUCTURING OF THE BOARDS, THE USE OF A SUBSISTENCE BOARD, AND THE EMPOWERMENT OF REGIONAL COUNCILS AS REGIONAL REGULATORY BOARDS. AFN RECOMMENDS THAT THE TASK FORCE STRENGTHEN ITS PROPOSAL BY ADDING SUCH REFORMS - IN ORDER TO CREATE A LEVEL PLAYING FIELD FOR SUBSISTENCE USERS. OTHERWISE, NO MATTER HOW GOOD A STATE OR FEDERAL STATUTE MIGHT SOUND, WE WILL SIMPLY GO BACK TO BUSINESS AS USUAL - WITH SUBSISTENCE AS THE PERMANENT STEPCHILD OF THE REGULATORY PROCESS.

7. CO-MANAGEMENT. ALL 12 CAUCUSES INSISTED ON INCLUSION OF CO-MANAGEMENT AS AN ESSENTIAL ELEMENT OF ANY SUBSISTENCE MANAGEMENT SYSTEM. FOR 11 OF THE 12, THIS DID NOT MEAN MERELY THAT THE STATE SHOULD CONTRACT MINOR MANAGEMENT TASKS TO VILLAGE OR REGIONAL ENTITIES IN THE BUSH. CO-MANAGEMENT IS NOT JUST ABOUT HIRING LOCAL RESIDENTS TO COUNT SALMON OR TAKE SOIL SAMPLES. RATHER, IT IS ABOUT SHARING REAL MANAGEMENT AUTHORITY WITH SUCH PEOPLE AND THEIR INSTITUTIONS. IT IS ABOUT CHANGING THE ADVERSARIAL RELATIONSHIP BETWEEN VILLAGERS AND STATE OFFICIALS BY ACCORDING THE FORMER A TRUE SENSE OF OWNERSHIP AND RESPONSIBILITY FOR THE SYSTEM ITSELF. ONE OF THE GUIDING PRINCIPLES THAT EMERGED FROM THE SUMMIT CALLED FOR CO-MANAGEMENT IN WHICH THE STATE AND THE TRIBES ARE INVOLVED AS EQUALS. WE COMMEND THE TASK FORCE'S PROPOSAL FOR RECOGNIZING THE NEED FOR MANAGEMENT REFORM AND THE FACT THAT TRIBES HAVE A ROLE TO PLAY IN MANAGEMENT. THE PROPOSAL, HOWEVER, FALLS FAR SHORT OF WHAT IS NECESSARY TO MAKE SUBSISTENCE WORK IN ALASKA AND TO GAIN SUPPORT OF VILLAGE RESIDENTS. IT ALSO REPRESENTS FAR LESS THAN THE CO-MANAGEMENT SYSTEMS WHICH OTHER NATIONS HAVE WORKED OUT WITH THEIR OWN INDIGENOUS PEOPLES. AFN URGES THAT RESOLUTION OF THE IMPASSE CONTAIN REAL CO-MANAGEMENT REFORM.

8. EXTENT OF FEDERAL JURISDICTION WHEN THE STATE IS OUT OF COMPLIANCE WITH FEDERAL LAW. BASED ON A LARGE MAJORITY OF CAUCUS VOTES, AFN RECOMMENDS THAT, WHEN THE STATE FAILS TO COMPLY WITH ANILCA NOW OR IN THE FUTURE, FEDERAL JURISDICTION INCLUDE:

-- ALL PUBLIC LANDS, INCLUDING THE MAXIMUM EXTENT OF RESERVED NAVIGABLE WATERS - AS CURRENTLY PROVIDED IN FEDERAL LAW;

--ALL SELECTED BUT UNCONVEYED LANDS UNDER THE STATEHOOD ACT AND ANCSA - BY ACT OF CONGRESS; AND

--FEDERAL "EXTRATERRITORIAL" AUTHORITY TO IMPACT REGULATORY DECISIONS ON STATE AND PRIVATE LANDS WHEN NECESSARY TO PROVIDE FOR SUBSISTENCE HUNTING OR FISHING ON FEDERAL LANDS AND WATERS - BY ACTION OF THE FEDERAL AGENCIES.

9. FEDERAL COURT AND AGENCY OVERSIGHT. ALL 12 CAUCUSES OF THE SUMMIT AGREED THAT NO CHANGES SHOULD BE MADE TO ANILCA WHICH REDUCE THE POWERS OF THE FEDERAL COURTS AND AGENCIES TO ENFORCE THE STATUTE. FEDERAL LAW AND OVERSIGHT ARE THE ONLY REASON WHY NATIVE SUBSISTENCE PRACTICES SURVIVE IN THE PRESENT DAY. ANY STATUTE MAY SOUND WONDERFUL ON ITS SURFACE, BUT TO THE EXTENT THAT IT CANNOT BE MADE TO WORK IN REALITY, IT IS A LIE. AFN RECOMMENDS THAT

THE TASK FORCE DROP FROM ITS PROPOSAL THE LIMITATION OF THE FEDERAL COURTS TO "ARBITRARY AND CAPRICIOUS" AND "ABUSE OF DISCRETION," THE REQUIREMENT OF DEFERENCE TO STATE BOARD DECISIONS, AND THE ELIMINATION OF SECRETARIAL AUTHORITY WHEN THE STATE IS IN COMPLIANCE.

10. CONSTITUTIONAL AMENDMENT. BASED ON THE DECISIONS OF THE SUMMIT'S CAUCUSES, AFN RECOMMENDS MANDATORY LANGUAGE ("THE LEGISLATURE SHALL...") AND RECOGNITION OF THE POLITICAL STATUS OF ALASKA NATIVES IN THE TASK FORCE'S CONSTITUTIONAL AMENDMENT.

11. ANILCA AMENDMENTS. SEVEN OF THE 12 SUMMIT CAUCUSES OPPOSED ANY AMENDMENT OF TITLE VIII'S CURRENT PROVISIONS; THREE FAVORED ONLY AMENDMENTS THAT MIGHT STRENGTHEN, RATHER THAN WEAKEN, CURRENT FEDERAL PROTECTIONS; AND ONE SUPPORTED AN AMENDMENT TO RECOGNIZE TRIBAL SUBSISTENCE RIGHTS. NO CAUCUS SUPPORTED THE WEAKENING AMENDMENTS PRESENTLY CONTAINED IN THE TASK FORCE'S DRAFT. AFN RECOMMENDS THAT SUCH PROVISIONS, ENUMERATED ABOVE, BE DROPPED.

12. SUBSISTENCE JUDICIAL DEFENSE. ALL 12 CAUCUSES SUPPORTED THE POSITION THAT FEDERAL AND STATE LAWS MUST

RECOGNIZE AND PERMIT A SUBSISTENCE DEFENSE IN COURT, AND AFN SO RECOMMENDS.

MR. CHAIRMAN, I WANT TO CONCLUDE THIS LIST OF RECOMMENDATIONS ON A SERIOUS NOTE OF CAUTION:

ALL 12 REGIONAL CAUCUSES OF THE SUMMIT REITERATED THE STRENUOUS OPPOSITION OF THE NATIVE COMMUNITY TO ANY ATTEMPT TO OPERATE A SUBSISTENCE PREFERENCE BY MEANS OF INDIVIDUALIZED, NEEDS-BASED PERMITTING. SUCH A POLICY WOULD LITERALLY DESTROY THE ECONOMIES AND SOCIAL STRUCTURES OF NATIVE VILLAGES. BASING SUBSISTENCE ON THE LACK OF CASH WOULD TURN IT INTO A WELFARE PROGRAM: WHAT THE STATE WILL GIVE YOU IF YOU DON'T HAVE A JOB. IT WOULD SEPARATE THE TWO COMPONENTS OF RURAL ALASKA'S MIXED ECONOMIES (CASH AND SUBSISTENCE) INTO MUTUALLY EXCLUSIVE ALTERNATIVES, FORCING VILLAGERS TO CHOOSE ONE OR THE OTHER - FOR THE SIMPLE REASON THAT SOMEBODY ELSE WANTS THEIR FOOD. IT WOULD BECOME A DISINCENTIVE TO TAKING ANY CASH JOB IN THE VILLAGE FOR FEAR OF LOSING SUBSISTENCE PROTECTIONS. TAKEN TO ITS LOGICAL CONCLUSION, IT WOULD ISSUE ANNUAL SUBSISTENCE PERMITS BASED ON APPLICANTS' IRS RETURNS OF THE PREVIOUS YEAR. IT WOULD DAMAGE SOCIAL COHESION BY REACHING INTO THE MIDDLE OF EVERY NATIVE COMMUNITY AND FAMILY AND SETTING UP TWO ARTIFICIAL

CLASSES OF PEOPLE ("TRADITIONALS" WITH SUBSISTENCE AND "MODERNS" WITH CASH EMPLOYMENT), BASED ON A PIECE OF PAPER ISSUED BY NON-NATIVE FUNCTIONARIES. IT WOULD CREATE A COSTLY BUREAUCRATIC NIGHTMARE THAT WOULD MAKE LIMITED ENTRY LOOK LIKE CHILD'S PLAY. IT IS A POLICY DESIGNED TO LIMIT SUBSISTENCE USERS IN ORDER THAT NON-SUBSISTENCE USERS CAN GET A LARGER ALLOCATION OF FINITE RESOURCES. I CANNOT OVEREMPHASIZE HOW STRONGLY THE NATIVE COMMUNITY WILL RESIST ANY SUCH DEVELOPMENT.

#### FURTHER DISCUSSIONS AND NEGOTIATIONS

HAVING ENUMERATED SO MANY DIFFICULT ISSUES OF POLICY, LET ME ADD A HOPEFUL NOTE. AT THE END OF ITS DELIBERATIONS, THE SUBSISTENCE SUMMIT ADOPTED A GENERAL RESOLUTION; ITS WORDS CONVEY THE SPIRIT IN WHICH THE ALASKA NATIVE COMMUNITY WISHES TO GO FORWARD FROM HERE.

THE 900 PARTICIPANTS EXPRESSED THEIR "...APPRECIATION FOR THE HARD WORK AND DEDICATION OF GOVERNOR KNOWLES AND THE MEMBERS OF THE GOVERNOR'S TASK FORCE IN DEVELOPING ITS PROPOSAL..." THEY LIKewise COMMENDED THE EFFORTS OF ALASKA'S CONGRESSIONAL DELEGATION.

BUT, TO ME, THE MOST ENCOURAGING STATEMENT WAS THIS: "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." THEY ADDED THAT THIS PROCESS MUST INVOLVE THE FULL PARTICIPATION AND ENDORSEMENT OF THE NATIVE PEOPLE AND THEIR TRIBES. THEY AUTHORIZED AND DIRECTED AFN, AI-TC AND RURALCAP TO CONTINUE 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 INTERESTS...TO DEVELOP A RESOLUTION TO THE SUBSISTENCE IMPASSE CONSISTENT WITH THE GUIDING PRINCIPLES ADOPTED BY...THE SUMMIT."

THAT CONCLUDES MY TESTIMONY, MR. CHAIRMAN. I WOULD BE HAPPY TO RESPOND TO ANY QUESTIONS THE COMMITTEE MAY HAVE. THANK YOU.



**ALASKA OUTDOOR COUNCIL, INC.**

Date: 9/30/97

To: \_\_\_\_\_

Senator Halford  
attn: Brett  
699 0549  
Cover + 2 pp.

Testimony from 9/24  
Resources Comm. hearing  
for Comm. records.

Sorry I couldn't get to Anchorage

---

From: Dick Bishop

AOC

455-6151 (h)

455-4262 (office)



## Alaska Outdoor Council

PO Box 73902

Fairbanks, AK 99707-3902

Tel./FAX: (907) 455-4AOC (4262)

e-mail: outdoor@polarnet.com

www2.polarnet.com/~outdoor

### Alaska Outdoor Council Testimony Alaska Senate Resources Committee Hearing on Subsistence Fairbanks, AK -- September 24, 1997

by

Richard H. Bishop, AOC Subsistence Spokesman

Mr. Chairman, Committee Members:

I am Dick Bishop, Alaska Outdoor Council spokesman on subsistence. The Council appreciates your waiting until after the peak of fall hunting to commence these hearings on yet another effort to find a way out of the devil's club thicket called subsistence.

The Outdoor Council does not support the Task Force proposal without substantial revision, although it contains a number of improvements, particularly definitions of terms in ANILCA.

Paradoxically, proponents of a discriminatory rural or racial priority have brushed out the trail through the devil's club by stating "Subsistence is a basic human right."

The Alaska Supreme Court made that point 8 years ago in the McDowell case. The Court said that subsistence is an important value running to every Alaskan; too important to discriminate on the basis of ZIP code. One Justice went on to say that "this is an equal protection case, and an easy one at that."

The Outdoor Council has repeatedly stated that subsistence uses and lifestyles are integral values of Alaska. But a law that says they are only good for some Alaskans, that no one but those of an arbitrary, closed class group can hope to qualify for those "important values", -- can hope to qualify for those "basic human rights" -- such a law is wrong.

This is a civil rights issue. It's not about food, it's not about culture, it's about whether the law of the land should continue to ratify discrimination against the majority of Alaskans, and indeed, against the majority of Americans, regarding the use of fish and game and other natural resources.

It is scary to realize how politically seductive is the idea of discriminating just a little bit in order to slide past the compromise politically unscathed.

Sure -- it's a tough issue -- and in Washington, DC, few people know much about it. Bruce Babbitt is blowing political smoke. Alaska's delegation has passed the buck back and forth, trying to avoid the heat; and saying on this issue "Gosh, we are powerless..."

But do you suppose that if the Chairman of the Senate Appropriations Committee stood up and proclaimed that "Subsistence is a basic human right" and "Subsistence is an important value running to every Alaskan", and the opportunity to pursue it should not be discriminated on the basis of ZIP code -- do you think if Senator Stevens said this Congress would listen? I think so. I would like to hear him say it.

The Governor's Task Force subsistence proposal ignores the premise that "subsistence is a basic human right". It says it's a basic human right only for a privileged few. The proposal attempts to make a rural priority palatable by some much-needed tightening up of the "sideboards".

But it begs the Alaskan public and Alaska's Legislature to vote for discrimination and against equal protection before the law -- against subsistence as a "basic human right."

**The Outdoor Council urges the Alaska Legislature to look beyond the present subsistence political dilemma. It is possible to adequately accommodate the needs of people who rely on personal consumptive use of fish and wildlife for their livelihoods without compromising the common use and equal protection provisions of Alaska's Constitution.**

We have suffered through nearly 20 years of bad political compromises on subsistence. Adding one more will only make matters worse. It's time to start the ball rolling the right direction. And the ball is in the Legislature's court once again.

Someone, someone among elected public officials, must stand up for the values and rights of all Alaskans' use of our common property fish and game resources, or our Congressional delegation will keep on dodging the issue.

There is no real difference in the long-term results of voluntarily buying into the federal law or having it stuffed down our throats.

The last time Alaska agreed to a hasty political compromise on subsistence we got into this mess. It's time to get out.

GTF ⊖

Barker

September 29, 1997

Senator Georgianna Lincoln  
Member Senate Resources Committee  
State Capitol  
Juneau, AK 99801

RECEIVED  
OCT 02 1997  
Ais'd.....

Dear Senator Lincoln,

I am writing to you about the Governor's Subsistence Plan to restore fish and game management to the State of Alaska. I am against the changes proposed by the Governor's plan because the plan changes the practice of subsistence from a dedication of fish and game to the Native community to practicing subsistence as a seasonal non-native hunt.

I believe this is unfair to the Alaska Natives because it makes it impossible for them to maintain their traditional connection to the land, a connection acknowledged through ANILCA, and seen as a matter of equity of law, which states that the "continuation of the opportunity for subsistence... by Alaska Natives ... is essential to ... Native cultural existence."

The only way to fairly recover state control of fish and game resources is for the state to acknowledge that the Alaska Natives need and deserve a priority to fish and game in Alaska.

Thank you for an opportunity to be heard on this issue.

*Edward D. Barker Jr.*

Ed Barker  
Box 80267  
Fairbanks, Ak 99708  
ffedb@aurora.alaska.edu  
(907)479-2794



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the SENATE RESOURCES  
 Committee on SUBSISTENCE Committee Name  
 Dated 4/24/97  
 Bill / Subject

Please do not change our Alaska Law  
 We do not need a discriminatory Law on  
 this Issue

FRED BAST

SIGNED:

Testifier

self

Representing

601 Fidsler Rd. FBKs Alaska 99507

Address / Phone Number

907-457-7543



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subcommittee Committee Name  
Dated Sept 24,  
 Bill / Subject

I am against denying the people of the State by this measure. Calif.'s Prop. 209 comes to mind for Alaska. Stay with our st. constit. + allow all resources to be used equally by everyone. Do not sell out to the gods for your own political gain, present or planned for later.

SIGNED: Burt B. Beard  
 Testifier  
myself  
 Representing  
1721 Emmons Trail, Box 470-3640  
 Address / Phone Number

Senate Resources Committee Hearing on Subsistence  
Testimony by Mary Bishop  
September 24, 1997

Thanks for coming and listening to us after the major hunting seasons.

Suggested process for your action:

A. You, the State Legislature, decide what's best for Alaska. Don't be moved to act by dire threats from those who don't live in this State.

B. Decide if you want any kind of statutory preference for any kind of individual or group.

If the answer is NO then don't do it -- and start some type of legal action against the federal government.

If the answer is YES then decide:

1. Should that preference be based on individual characteristics related to need --thus probably consistent with our State constitution (See McDowell decision).

2. Should it be a group preference -- thus requiring an amendment to the State Constitution.

3. Decide "who's in and who's out" -- make it clear so that voters know and federal judges know. Don't leave this job to people appointed to make fish and game regulations.

4. Should it be a preference for "customary and traditional use". If there is no indication of what "customary and traditional use" means, the argument regarding whether it provides for "a reasonable opportunity" or "least adverse impact" on "c & t use" is irrelevant. See Judge Holland's decision in the 1989 Bobby case. Holland required that he, as federal judge, approve any season or bag limit imposed by the Board of Game; he finally allowed something like an 11 month season for caribou and moose. In the decision he ruled:

*"...the Board of Game must in the future proceed with scrupulous care and caution in imposing seasons and bag limits on subsistence hunting...Need is not the standard. Again, it matters not that other food sources may be available at any given time or place. The standard is customary and traditional use of game." (emphasis added)*

If the Legislature uses words in a statute, a court of law rightly assumes they have a meaning and reason for being there. I know what "customary and traditional" means. If I were a federal judge, I would assume State Legislators knew what the words mean -- and what Judge Holland had ruled they meant.

"Customary and traditional" methods and skills were necessary to bush Alaskan survival 75 years ago. Knowledge of those methods and skills is valuable today, especially for those who may on occasion need the survival skills. They are NOT appropriate for general use today by any people who have accepted Remington, Winchester, Evinrude, nylon nets, Yamaha, and Honda into their cultures.

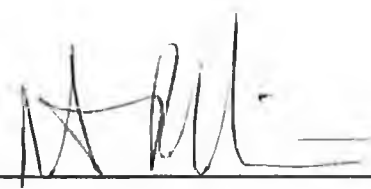


# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Sen. Res.  
Committee on Subsistence Committee Name  
Bill / Subject Dated 9/29/97

- See attached -

SIGNED:

Pete Buist 

Testifier

My family

Representing

Box 71561, Fairbanks, AK 99707

Address / Phone Number

(907) 457-7189

Mr. Chairman, members of the Committee

My name is Pete Buist, Box 71561, Fairbanks. I am testifying only for myself and my family, not any group or agency.

I am holding photographs of four generations of Buists obtaining moose meat for the family table. The oldest photo was taken in 1910.

I come from an unbroken line of hunters who have taken wild resources for sustenance. While I have the utmost respect for Native Alaskans, I resent the implication by the Governor, his hand-picked Task Force and AFN that my cultural heritage is not as important as someone else's.

*find it reprehensible*  
I ~~am dismayed~~ that any Alaska legislator would even consider voting in favor of the institutionalized discrimination inherent in the proposal to strike the concept of equal rights and common use from our State Constitution.

And I must add that if you capitulate to the pressure to "manage" fish and wildlife by federal dictates, that is not really regaining state management.

Thank you.



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee Name  
 Committee on Subsistence 9-25-97 Dated 9-25-97  
 Bill / Subject

I have been an Alaskan resident since 1964, and have hunted & fished for recreation and as a way to supplement my income by reducing my annual food bills by using the fish and game that I have been fortunate enough to harvest. I oppose the governor's subsistence plan, or any change to our state constitution. The only fair (just) plan, is NONE at all. If we are giving <sup>priority</sup> access to fish & game to any group or class of people we are violating our constitution. all Alaskans must have equal access to our resources. Why should a resident of Unit 13 who works for the State (DOT) making 60,000. + a year have priority over me, to harvest unit 13 moose & caribou? IT DOES NOT MAKE SENSE!

SIGNED: Wm B Childers  
 Testifier

Self  
 Representing

PO Box 82075 Fairbanks, AK 99708 Ph. 479-4959  
 Address / Phone Number

# CORRECTION

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



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Central Microfilm Services  
Department of Education  
State of Alaska



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subsistence 9-25-97 Dated 9-25-97  
 Bill / Subject

I have been an Alaskan resident since 1964, and have hunted & fished for recreation and as a way to supplement my income by reducing my annual food bills by using the fish and game that I have been fortunate enough to harvest. I oppose the governor's subsistence plan, or any change to our state constitution. I believe the only fair (just) plan, is NONE at all. If we are giving <sup>priority</sup> access to fish & game to any group or class of people we are violating our constitution. all Alaskans must have equal access to our resources. Why should a resident of Unit 13 who works for the State (DOT) making 60,000. + a year have priority over me, to harvest unit 13 moose & caribou? IT DOES NOT MAKE SENSE!

SIGNED: Wm B Childers  
 Testifier

Self  
 Representing

PO Box 82075 Fairbanks, AK 99708 Ph. 479-4959  
 Address: / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subsistence Committee Name Dated 9-24-97  
Bill / Subject

Please note that although your efforts are not wasted or thought of that way. It is imperative that you understand the timeliness of these hearings in the Fairbanks area excludes possible testimony from All those hunting during this time - the need for wild game + fish is important not only to the natives of Alaska but also Alaska Natives. As a third generation Alaskan - involved in collecting resources from the land for diet, housing etc. ~~should not~~ these resources should not be limited unless

SIGNED: Aoni Clayton limited equally NO  
 Testifier Self preference.  
 Representing 4634 Ruth Estates Rd Everyone chooses  
 Address / Phone Number Fairbanks, AK 99712 to live where they  
907-457-3416 live in the  
 State.



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
Committee Name  
 Committee on Subsistence Dated 9-25-97  
Bill / Subject

I oppose the governors plan and I strongly support the alaska outdoor councils recommendations.

also I oppose any change to the alaska constitution,

Hunting and fishing is the way of the land in a alaska all people should have the same rights

I have done both for over 20 years here to feed myself and family both of my kids were born here that should also made them what you would call a alaska Native

SIGNED:

Ronald Dumas  
 Testifier

Myself  
 Representing

310 steelhead Road FBX 99709 479 45-90  
 Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee Name  
 Committee on Subsistence Dated 8-25-97  
 Bill / Subject

First, I feel there is no need to be changing the Constitution in any way. The Alaska Outdoor Council has the right direction in mind. I hunt with my son every year, and we do use all the meat we take. We look forward to spending time together doing something we love. I have been in Alaska for 19 years, and my son and wife were born here. My family and I feel we have just as much right to hunt and fish Alaska lands and waters as anyone! Thank you for your time.

SIGNED: DARRIN MEDSON Darrin M Edson  
 Testifier

Self + Family  
 Representing

PO Box 61106 Fairbanks AK. 99706  
 Address / Phone Number  
(907) 455-6624

Frank ✓



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the SRC  
 Committee on Subsistence Committee Name Dated 9-24-97  
Bill / Subject

- 1) Hold hearings in rural areas; especially near navigable waters where the federal government would assume mgt.
- 2) Allow Alaskans to vote on the issue.
- 3.) I favor a Yup'ik; Inuit; Aleut; Athabaskan Tlingit; Haida subsistence tradition cultural taking of subsistence resources.

SIGNED: Oscar Frank Sr  
 Testifier  
SELF - no one else.  
 Representing  
1302 21st Ave Fbxs, AK 99701  
 Address / Phone Number 458-0708



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subsistence Dated 9/25/97  
Committee Name/ Bill / Subject

I oppose the Governor's Plan and I strongly support the Alaska Outdoors Council's recommendations

I very strongly oppose any changes in the Alaska Constitution

Hunting, fishing, berry picking and mushroom gathering are essential to my ~~Family's~~ Family's well being. I have lived in Alaska for 27 years. My daughter was born here. I consider her and my self and wife (resident of 30 years) to be ~~Alaska~~ natives of Alaska.

I hunt every year for up to a month and my family fishes every year.

SIGNED: Wade Kinard  
 Testifier

Representing  
P.O. Box 81810 455-4721  
 Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subsistence Committee Name  
 Dated 9-25-97  
Bill / Subject

I was born & raised in Fairbanks and have lived here 53 years. I consider myself a Native Alaskan. My family hunts & fishes in Game Units 20 and 13 annually.

I oppose any change to the Alaska Constitution.  
 I support the Alaska Outdoor Council's recommendations.

SIGNED:

Henry W. Grant  
 Testifier

Representing

604 Cambridge Dr, Fairbanks, AK 99709-6758  
 Address / Phone Number 907-479-2623



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the \_\_\_\_\_  
 Committee on Subsistence \_\_\_\_\_ Committee Name  
 Dated \_\_\_\_\_  
 Bill / Subject

Dear Representatives Hudson and Ogan:

I support the following principles regarding subsistence:

- Full state management *without* federal oversight
- No racially or culturally based preference
- Individual needs-based subsistence eligibility
- Effective regulation and no commercial sales
- No erosion of state constitutional protections
- \_\_\_\_\_

Thank you for your help in protecting all Alaskan's privileges to hunt and fish.

Sincerely,

Signature  
 Printed Name  
 Address

Henry W Grant  
HENRY W GRANT  
604 Cambridge Dr  
FAIRBANKS, AK 99709-6758  
 907-479-2623

SIGNED:

\_\_\_\_\_  
 Testifier

\_\_\_\_\_  
 Representing

\_\_\_\_\_  
 Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subsistence Committee Name  
 Dated 9-25-97  
 Bill / Subject

1. I oppose the Governor's plan.
2. Strongly endorse Alaska Outdoor Council.  
Recommendation.
3. Oppose any change in Alaska Constitution.
4. Subsistence coastal fishing is a important supply of meat for my family.
5. I've been here 8 years

SIGNED:

Joe Greenwood

Testifier

Self.

Representing

41.08 Port mouth Fairbanks AK 99709 907-474-2047  
 Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources  
 Committee on Subsistence Dated 9-25-97  
Committee Name  
Bill / Subject

I oppose the governors plan and  
 Support the Alaska Outdoor  
 Councils recommendations.

I oppose any change to the  
 Alaskan Constitution. I use hunting  
 and fishing to support our  
 food needs. I've lived in  
 Alaska for 18 years. One of the  
 great joys of being in Alaska  
 is the right to hunt and fish  
 for food.

SIGNED: Tina D. KA  
 Testifier

Representing

1233 Raspberry Flks AK  
 Address / Phone Number

455-7236

Leghearing Bullets

September 1997

To: Legislative Hearing Record

From: Wayne E. Heimer  
1098 Chena Pump Road  
Fairbanks, AK 99709

Re: Governor's Task Force Position on Subsistence

Testimony: Personal credentials

My name is Wayne Heimer; I live at 1098 Chena Pump Road in Fairbanks. I am speaking for myself. I have been a careful observer of, and a participant in events leading to passage of ANILCA and its effects on management and conservation of Alaska's wildlife since the beginning. From 1971 to 1997, I was employed by the Alaska Department of Fish and Game. My initial exposure to the ANILCA controversy resulted from my assignment as a Dall sheep specialist. Since much of ANILCA land involved sheep habitat, the potential impacts on Dall sheep management in Alaska were a major concern. During the early stages of the ANILCA debate, I published three technical/historical papers on ANILCA's effects on Dall sheep management by the state. Because of this background, I was assigned to provide biological and management background for the Babbitt case during the Hickel administration.

My specific job was to research and document management case histories where federal management harmed state interests. I received this assignment because Judge Holland challenged the state to show it had been harmed by the federal takeover of wildlife management before he would hear the Babbitt case. The product produced during the first year of this assignment was a 250-page volume titled "DUAL STATE AND FEDERAL MANAGEMENT OF FISH AND WILDLIFE HARVESTS; Examples of problems and related issues," was appended to the state's filing in the Babbitt suit over federal and Native objections. Subsequently, Judge Holland ruled the state had been harmed by the federal takeover of wildlife management. This finding of harm precluded dismissal of the state's case against federal takeover of wildlife management as requested by federal and Native attorneys. Subsequently, I prepared seven additional case histories which were presumably to be used in further litigation. These additional case histories were never released by the Department because of philosophical changes which accompanied the Knowles administration appointments in the Department of Fish and Game. In the course of preparing these ten case histories over the 4.5 years I was assigned to the ANILCA program, I was forced to become familiar with the legislative history and content of ANILCA as passed by Congress. I have included an annotated outline of the history of ANILCA with respect to the myth of a mandatory federal take over for your use.

My testimony:

The direct purpose of this letter is to inform you of my considered opinion of the Governor's Task Force plan. I've studied the draft plan, and tried to keep abreast of modifications. I oppose the plan, and encourage you to resist its implementation. Here's why:

1. ANILCA does not now, nor did it ever mandate a federal takeover of state wildlife or fisheries management of subsistence harvest allocation. In fact, Sec. 807 excludes the possibility of federal takeover.
2. The reason the feds took over wildlife management and are now preparing to take over fish management is because they chose (and are choosing) to do so. *(If they are not required to, they must be doing it because they elect to do so. Right?)*
3. The only authority the feds have to sustain their takeover of wildlife management is Judge Holland's ruling that, even though ANILCA doesn't call for a federal takeover because takeover language was 'amended out' on the Senate floor, he couldn't imagine Congress didn't have a federal takeover in mind when it passed ANILCA. This decision, which amounts to making law 'from the bench' stands unchallenged because then-candidate Knowles promised to drop the state's challenge to Holland's opinion to secure a political advantage (endorsement by the Alaska Federation of Natives) in the gubernatorial election of 1994. Governor Knowles obtained the advantage, won the election, and kept his promise to AFN.
4. The only justification for a federal fisheries takeover is the reserved water rights count of the Katie John litigation, *(the only count in the Katie John suit to be upheld by the Ninth Circuit Court)*. The perversely broad federal application of reserved water rights to management of subsistence fishing in Alaska's navigable waters has not been challenged by the state.
5. In seven years of federal management of wildlife, the federal government has probably spent at least \$50,000,000. The results in terms of benefits to federally recognized subsistence users (rural residents) are nebulous. Of the 794 federal subsistence regulations on the books in 1996-97, only 176 customary and traditional use findings provided for exclusive use by 'local' rural residents. Whether these federal 'local use' restrictions have actually provided subsistence harvest opportunities which would not have been provided by the state in the absence of a federal program takeover is arguable.

Certainly, any benefits could have been provided more promptly and cost-effectively through application of the judicial enforcement provision (Sec. 807) which ANILCA actually specifies to address grievances by subsistence users.

Recognition of the fact that the state and federal subsistence laws are designed to do the same thing, and that the state's Tier II mechanism selects in favor of local users, drives me to suggest that actual benefits produced by the federal system have been negligible for rural residents.

6. The feds project taking over fisheries management and expanding federal wildlife management to state lands will cost another \$116-\$120,000,000 per year.
7. Since Title VIII of ANILCA is very costly and provides no actually measurable benefit to Alaska's rural residents, my first suggestion is that it simply be repealed. If this is politically or socially unacceptable, Alaska should simply say "NO" to federal management (which is based only on Judge Holland's opinion and NOT on the text of ANILCA).

That is, Alaskans should simply refuse to recognize any attempt at federal takeover; let the feds sue us if they really want it. What could the feds really do if the legislature just said "NO" to the feds? Here we should note that the legislature is the representative branch of government...not the Governor's office. If the Governor won't assert Alaska's right to manage, why shouldn't the people do it through their elected representatives?

8. We have tried for 20 years to 'solve the subsistence problem' to keep the feds from a takeover to which they have no legitimate claim. This approach has only exacerbated the problem of division among Alaskans...not the subsistence problem. Only when we get the feds out of the picture, will it be possible for the state to resolve the problem--if an actual problem exists. The state's history of local preference hunting and fishing regulations shows this is certain to happen again in the absence of the feds.
9. My final "compromise position" is that if we can't or don't have the collective will to "Just say NO!" we could survive rather nicely if we'd simply insist that the feds abide by the language of ANLCA rather than the "legislative intent" they established in House committee hearings, but couldn't get into the law on the floor of Congress. That would not be a disaster. It worked well in the cases of Kilbuck caribou and Lime Village moose up until the time of federal takeover. Under state management as actually prescribed in ANILCA, we may have some litigation from time to time, but the feds would be out of the management picture, and the division among Alaskans could begin to heal.

I regret that I cannot be present to share these ideas with you. However, your meeting was scheduled at a most inappropriate time for me. I am pursuing my customary and traditional fall activity, moose harvest to feed my family today. Had I known your schedule in advance, I would have rearranged mine, but alas, your schedule was not available when I had to make plans and commitments.

Do not accept the Governor's plan, it will make things worse rather than better (see attached reprint from Fairbanks Daily News-Miner). Just say "NO" to federal management.

# Alaskans don't like the 'Alaska solution'

By WAYNE A. HEIMER

Recent News-Miner articles suggest the so-called "Alaska solution" proposed by Sen. Ted Stevens and Gov. Tony Knowles to solve "the subsistence problem" is unacceptable to Alaskans. Proponents of the governor's plan don't seem to be getting the message.

Most recently, Sen. Stevens purposely chose not to block a federal fisheries take-over this fall. The senator's reason was to apply pressure for an "Alaskan solution" to the subsistence problem. Stevens justified increasing the risk of a "federal solution," by reading a letter from Interior Secretary Bruce Babbitt, who—brace yourself—doesn't approve of state management or a smaller budget for his department. (July 23, 1997 News-Miner.)

In the July 22 News-Miner, I read the governor was "Coated with a fine layer of dust...eating smoked salmon, feeding the mosquitoes and listening" as he made a riverboat trip down the Yukon to talk to villagers about his proposed "Alaskan solution." Villagers the governor encountered seemed more interested in "flushing than fishing" as road construction and maintenance, public sewer and water systems were above subsistence when they spoke with the governor.

While the governor was feeding the mosquitoes, task force member Charlie Cole was on local radio mistakenly misrepresenting the impact of the hunting proxy provision of the governor's plan. Mr. Cole was dead wrong in his understanding of the restrictions existing in state proxy hunting regulations. The task force's proxy hunting

## Guest Opinion

section would be more accurately titled "An exemption allowing urban residents with rural connections to hunt."

In the July 18 News-Miner, Fred Pratt pointed to specific failures of the governor's "Alaskan solution." He faulted the proposal because it fell short of fairness to all, a difficult task when discriminating to allow preference.

Earlier, the July 13 editorial had suggested we try to consider the governor's "Alaskan solution" as a positive step toward solving the subsistence problem, but that "the devil was probably in the details."

The July 13 editorial was polite and kind, but missed two major issues. "Preventing" a federal take-over by transferring unworkable federal laws to the state's books gives only the illusion of state authority unless the feds are completely excluded from state management. This exclusion is pointedly not the case in the governor's plan.

The other issue is that the governor's "Alaska solution" calls for legally institutionalized discrimination. I realize the official term, "preference" is less abusive; but the fact is that "preference" is a politically correct way of saying "discrimination." It is logically impossible to give preference to some without discriminating against others. For this most basic reason, the governor's "Alaska solution" (which Ted Stevens plans to force on us) should be abhorrent to Alaskans.

The governor is pushing this unsatisfactory "Alaska solution"

at "warp-speed" because of a mistake he made while campaigning for office. In his quest to secure the endorsement of the Alaska Federation of Natives, Gov. Knowles dropped the Babbitt suit. This litigation would have settled the issue of federal involvement in Alaska's resident fish and game management. Because of his campaign choice Gov. Knowles now tells us that we must deal hastily with a "crisis." The "crisis" is destabilization of our commercial fishing industry.

To protect the commercial fishing industry, the governor says we must establish another, more radically "privileged" class: rural subsistence users. (Commercial fishermen may be considered a sort of "privileged class" because they're the only ones who can fish commercially.)

I can't see how the governor's plan will solve the commercial fishing problem. The only way we could use the very laws the feds will enforce upon takeover to stabilize our commercial fishing industry would be to ignore (or amend) them once the feds are gone. What's the difference if the state or the feds enforce laws which prohibit commercial fishing until all upriver subsistence users are satisfied? Ignoring or even amending the governor's new (presently federal) laws can't be a long-term fix because the governor's task force plan makes it easier than ever to re-involve the feds through the courts.

It's time we gave up trying to solve the subsistence problem to get or keep the feds out of fish and game management. We've been at it for 17 years with no success. Only when the feds are completely out of fish and game

management in Alaska will we be able to solve the subsistence problem. This is because the federal recipe is the subsistence problem.

It is becoming progressively clearer that the "Alaskan solution" proposed by lawyers and politicians is unacceptable to Alaskans. This is, after all, the second time around for the governor's plan. I think it is time Alaskans call on our governor and congressional delegation to give up trying to amend the "sow's ear" of ANILCA into a "silk purse." It's also time for them to listen.

Acknowledgment of a federal role in the function of fish and wildlife management is counterproductive. The state has a better record of producing wildlife and fisheries abundance than the feds. Additionally, Native rights not withstanding, Alaska Natives have been better treated by the state than the feds. Most of the historic grievances kept alive by Native folklore and traditions have federal roots, having been committed in territorial days or as a result of federal policies which took a while to rectify after statehood.

Alaska is not anti-Native. The divisiveness we see has in fact, been primarily generated by federal government intrusion into state affairs. A truly Alaskan solution must be based on good faith and equality as set forth in our present constitution. Aren't good faith and equality really the Alaska values we should pursue at the exclusion of discrimination and its handmaiden, preference?

Wayne Heimer is a recently retired state wildlife biologist who spent the last 4.5 years of his career comparing state and federal wildlife management programs and functions following the partial federal take-over in 1990.

AN ANNOTATED CHRONOLOGICAL SUMMARY OF EVENTS LEADING TO  
THE PRESENT STATE/FEDERAL SUBSISTENCE IMPASSE

by Wayne E. Heimer  
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*Dear Reader:*

*It has been said that the first requisite of a democratic society is an informed citizenry. At the present time, Alaskans are being asked to amend their state constitution and accept federal laws as state statutes in a proposal which proponents say will reestablish state authority for fish and wildlife management. If Alaska is to manage the state's fish and wildlife, it will be necessary to reestablish this authority because it was usurped by the federal government through a series of events of which the public was never well informed.*

*Basic to the actual federal take-over of wildlife management on federal and some state lands in 1990 was the federal assertion that the Alaska National Interests Conservation Act (ANILCA) mandates a federal take-over if the state does not provide subsistence preference based on "rural residence." This is not now, and since passage of ANILCA in 1980, has never been true. ANILCA, as passed by Congress never contained a federal take-over provision, and still doesn't. Still, most Alaskans believe it does, and that federal take-over is mandated by ANILCA if the state doesn't provide rural subsistence preference.*

*In an effort to explain how this widely held misconception was generated, I offer the following list of events I consider important to generation and evolution of "Alaska's subsistence problem." I have bracketed and italicized inclusion of ancillary facts together with my analysis so you will know when I have departed from events directly related to the history I'm trying to share with you.*

*I prepared this list as a "roadmap" to navigate among key elements of the ANILCA controversy during the 4.5 years I spent as a "dual management" researcher, analyst, and historian assigned to the Alaska Department of Fish and Game's then-existing ANILCA Team. Initially, my team assignment was to provide evidence of harm to the state's wildlife management programs as a result of the federal take-over of wildlife management in 1990. This assignment was in support of the Lujan/Babbitt suit contesting federal assumption of wildlife management in Alaska. This assignment lasted from 1992 through 1994 when there was a change in Governors. After the present Governor was elected and*

*dropped the Babbitt suit, my function became that of cr. ANILCA-related subsistence issue historian rather than a partisan in litigation. Nevertheless, objective documentation without comment continued to be my guideline. I emphasize that I have departed from that guideline here, providing ancillary facts and some personal analysis identified in bracketed, italicized text in an effort to render this arcane information more understandable to the general Alaskan public. I'm sorry I could not make it simple.*

*I hope this annotated historical review of events leading to the Governor's Task Force recommendations provides you with a sufficient historical perspective to make an informed decision regarding your position on how to resolve "Alaska's subsistence problem." Most reviewers of this manuscript were uncomfortable with my selection of events and some with my analysis. Where I was demonstrably wrong, I have changed my views and conclusions. The opinions I include are, of course, my own and subject to change as further facts requiring a change in opinion are documented. I'd rather be right than consistent. So, if you find errors of fact, please let me know. If you simply don't like my analysis or opinions, I'd be interested in trying to reconcile them with yours.*

*Wayne E. Heimer*

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## **IMPORTANT EVENTS IN THE HISTORY OF SUBSISTENCE MANAGEMENT PROBLEMS**

--Prior to the 1960s, Native claims throughout the U.S. had been variously filed, considered, set aside, and scheduled for reconsideration without any real settlement.

--In the 1960s Indian tribes in the Northeastern U.S. were successful in getting court judgments requiring the government to honor terms of existing federal treaties.

--General interest in aboriginal claims increased along with social awareness of past Native American grievances (remember the "Wounded Knee" demonstrations and a spate of grievance books such as "Bury My Heart at Wounded Knee," and later films such as "He Dances With Wolves").

--During the 1960s, Alaskan Natives filed such claims, sometimes claiming specific use areas, sometimes the entire state. Nothing much happened other than these claims began to grind their way through the courts.

--In the mid-to-late 1960s the environmental movement began to define and achieve its agenda. Many historians date "Earth Day" 1967 as the beginning of environmental political power. The first major impact this agenda had on Alaska was passage of the Marine Mammal Protection Act. This act took Marine Mammals management from the state, placed it in the hands of the federal government, and limited use of marine mammals on the basis of race.

--Also in the late 1960s, oil was discovered on Alaska's north slope.

--After running one ice breaking tanker through the Northwest Passage, it became obvious that getting the oil to market was going to require a pipeline.

--Not everyone thought the pipeline was a great idea. The increasingly influential environmental community opposed it because it would transect what the community saw as the untrammled, pristine Brooks Range. It was clear that the pipeline would require a road, and the North Slope Natives also opposed it because it would bring "outsiders" into what they saw as "their" country...even though they did not "own" it by any conventional definition.

--In order to meet their common goal, opposition to the pipeline, the environmental community and Alaska Natives formed an alliance in spite of their obviously disparate views on human use of animals. Cynics (or prophets) of the day asserted a devious, anti-hunting agenda drove the environmentalists to form the "unholy alliance" to limit the total amount of hunting opportunity in the future. Whether the cynic/prophets were right in their assertion, federal wildlife management through the Federal Subsistence Board has certainly had that effect. Nevertheless...

--Alaska Natives were the dominant legal force in this alliance because the pipeline could not be built until title to the pipeline right-of-way was secure. This meant the Native land claims had to be settled before the pipeline could be built.

--The alliance was successful. Using the Native land claims as the major issue, and with the support of the environmental community, pipeline construction was delayed until the Alaska Native Claims Settlement Act (ANCSA) was passed in 1971. Alaska Natives got 44 million acres of land and approximately 1 billion dollars, half of which the state had to pay out of oil and gas development revenues. The state paid this debt "up front;"-(which is one reason permanent fund dividend checks are not even larger than they are) it is no longer owed.

--Included in ANCSA was Sec. 17 (d) (2) which was what the environmental community got out of the deal for supporting Native claims interests. This section created the vast new national parks, refuges, forests, and wild and scenic rivers under the National Interest Lands Conservation Act (ANILCA) in 1980. ANILCA was primarily a land-control act generated by the environmental community and the federal land-management agencies

which wanted more Alaskan land. Their ties to Alaska Natives were sufficiently strong that Title VIII (which, as originally drafted in the House of Representatives, included not only legal recognition of subsistence on a racial basis (like the Marine Mammals Act) but also provision for a federal management takeover). *These committee draft provisions did not make it into the final bill (as amended by the Senate) which was ultimately passed by Congress.*

--These positions were objectionable to many Alaskans. In an effort to keep Congress from including Title VIII (as drafted and presented in ANILCA during committee hearings) our Congressional delegation (primarily Ted Stevens) recommended to the Alaska Legislature that it should pass a state subsistence law as a preemptive measure. Acting on this advice, the legislature passed the state's first subsistence law.

--In spite of the state's subsistence law (which antedated ANILCA by 2 years), Congress included Title VIII (the subsistence provision) in ANILCA anyway.

--In 1980, ANILCA finally made it to the floor of congress (after Pres. Carter forced the issue by creating huge, strategically placed National Monuments which tied up Alaska's economic future so tightly that Senators Stevens and Gravel were willing to compromise).

--On the floor of Congress, two important aspects of Title VIII were changed. The first was pointed elimination of the racial designator for subsistence preference in Title VIII.

*[Ancillary Fact: ANILCA, as originally drafted, went through the House without significant modification, containing both the racial preference and federal take-over provisions in Title VIII. However, two important amendments occurred on the Senate floor. The first was elimination of racial preference. It has long been common knowledge that the term, "rural residents," and repetitive use of the term "non-Native" in the FINDINGS, POLICY, and DEFINITIONS sections of ANILCA were specific to elimination of race as the definer of subsistence preference in the Senate (which became the final) version of ANILCA.*

*The second important amendment was substitution of "judicial oversight" (Sec. 807) for "federal take-over" as the "enforcement teeth" which would assure the state provided the Congressionally mandated subsistence preference on federal public lands.*

*These two changes by the Senate were never formally challenged by the House, but neither were they ever really accepted as valid by ANILCA's original sponsors.*

*Analysis: This is why we have controversy over federal take-over today.*

Ancillary fact: The Senate version of ANILCA (which substituted "rural" for "racial" preference and judicial enforcement for the threat of federal take-over) passed a Democrat-controlled Congress during a Democratic administration (President Carter's) at the 11th hour before Congress adjourned in the fall. Passing legislation which contains differences in detail between House and Senate versions is common. Usually, differences in details are resolved by joint House-Senate conference committee and the committee's compromise version goes on to become law. If a conference committee cannot agree on compromises, the legislation is usually returned to the floor of the originating house for the further action.

Analysis: From our vantage point (15 years later, and in the midst of an unprecedented federal administrative take-over of fish and wildlife management) this difference between Senate and House versions doesn't look at all like it was a "detail!" Major policy differences are probably too important to simply work out in conference committee. Perhaps this one was. Still, by not asking for conference, the House passively accepted the Senate version.

Ancillary fact: The House tacitly accepted the Senate version so it became the law of the land.

Analysis: Perhaps there were political reasons why the House didn't protest the Senate's amendments. If a conference committee had failed, there was no recourse but to reintroduce the bill (in the House) during the next session. Considering the passion of those dedicated to saving "the crown jewels of Alaska" (a commonly used phrase during the emotionally charged ANILCA debates), it is logical to suggest House sponsors planned to get the racial preference and federal take-over language back into ANILCA by amending it during the next Congressional session. Attempting resolution of differences of this significance in a conference committee would have certainly been a major undertaking, and probably would have precluded President Carter (and Democratic Congressmen) from taking credit for "saving the crown jewels of Alaska" during the upcoming campaign.

Ancillary Fact: As a result of the election, the balance of power changed. President Carter lost to President Reagan, and Democratic control of Congress eroded. This meant the Democratic House leadership (whose specific "federal take-over" provision had been replaced by the Senate's "judicial oversight") would have to face a decidedly less friendly group during the next session (not to mention a sitting Republican President who favored state's rights, and would probably veto the bill). With these realities facing them, the House ANILCA sponsors didn't balk

*at sending the Senate version to President (Carter) who signed it into law (even though it didn't contain the federal take-over language they wanted). Apparently accepting the "imperfect" (as they saw it) subsistence enforcement provision for a year was preferable to risking loss of what they had secured with respect to saving Alaska's "crown jewels."*

*Analysis: As passed and without the sort of fine tuning which typically occurs in conference committees, ANILCA is unusually vague and internally inconsistent. This vagueness has allowed interests favoring federal take-over the opportunity to achieve federal management through administrative means even though it appears to be precluded by the language of ANILCA (which has persisted for the last 17 years.)*

*Ancillary Fact: The Senate's "judicial oversight" provision (which replaced the House's "federal take-over language") was Sec. 807. This section of the law demonstrates the difficulty of working with ANILCA. Finding out just what Sec. 807 actually says is difficult because readily available copies of ANILCA are said to contain a version of Sec. 807 which has since been amended. This amendment allegedly took place almost 15 years ago, but has never gotten into common circulation. I've not been able to obtain a copy of the "real" bill— if a "real" bill exists. (I've made a reasonable effort, but must admit I've not made it my life's work). Still, the readily available version of ANILCA Sec. 807 provides aggrieved subsistence users (who don't think the state gave them sufficient opportunity or allowed them to meet their needs) access to federal court (after they've exhausted the administrative appeal process). If these users prevail in federal court, the court can direct the state to provide increased subsistence use opportunities. Because the Sec. 807 process in the commonly available version of ANILCA was followed exactly in the Lime Village moose and Kilbuck caribou management before federal take-over, I question the existence of an amended version of Sec. 807.]*

--Once ANILCA was passed, some unknown person or entity in the Interior Department in Washington DC selected "rural residence" as the "litmus test" of whether the state subsistence law was "of general applicability."

--The Secretary of the Interior immediately threatened a take-over if the state's subsistence law didn't operate according to the federal (rural residence) litmus test.

--Instead of insisting that the federal agencies live by the letter of ANILCA Sec. 807 (the only means the act recognized for addressing the grievances of rural residents against the state for failure to provide subsistence preference on federal lands, the Hammond administration attempted to pacify the federal insistence of rural preference to prevent the federal take over which had been amended out of ANILCA in the Senate as though it were still in the text of ANILCA.. The first attempt was administrative.

--The Joint Boards of Fish and Game tried to pacify the Secretary of the Interior by administratively linking rural residence with subsistence preference through state fish and game harvest regulations (1981).

*[Analysis: Governor Jay Hammond and his Attorney General failed, at this point, to assert the state's right to manage indigenous wildlife. For some unknown reason they failed to insist that the feds stick to the letter of Title VIII as passed by Congress and the subsequently negotiated master memoranda of agreement and accompanying specific agreements negotiated by the state under Hammond's direction for each refuge, park, national forest, and wild and scenic river.]*

--In what came to be known as the Madison case (1985), this administrative (through regulations) linkage of subsistence preference with rural residence was found to be illegal.

--The Secretary of the Interior immediately notified the State of Alaska, through the Undersecretary for Parks and Wildlife, that it was out of compliance with ANILCA, and threatened another federal take-over.

--To avoid a second federal take-over threat the legislature passed our second subsistence law, which legally linked preference to rural residence. Once this was done, the Undersecretary for Parks and Wildlife, Bill Horn, notified Alaska that it was once again in compliance (1986) with ANILCA; and that a federal take-over would not occur.

--The second subsistence law was challenged by a citizen named McDowell.

--In ruling on the McDowell case (1989), the Alaska Supreme Court said it was unconstitutional to discriminate among Alaskans on the basis of residence.

--Based on the Interior Secretary's judgment that Alaska was again out of compliance (having failed the residence litmus test again) the federal government took over subsistence harvest allocation.

--To accomplish this take-over the Secretaries of Agriculture and Interior used the administrative federal rulemaking procedures to establish an administrative structure (the Federal Subsistence Board) for this function (1990). Federal rulemaking was the vehicle for establishing the Federal Subsistence Board because ANILCA (as passed by Congress) contained no provision for federal take-over (see compromises above).

*Analysis: Congressional compromises produce vague laws. ANILCA may be the grandest compromise ever produced by Congress, even though it never underwent joint House-Senate conference resolution). Looking at what has happened 17 years after ANILCA passage, it appears the forces*

*behind the House version simply decided to save Alaska through federal administrative means instead of risking legislative compromise.*

*Ancillary Fact: When Congress passes a vague law, Congress tacitly refers implementation of the law to the responsible agencies (in the case of ANILCA Title VIII, the Depts. of Interior and Agriculture).*

*What the agencies do is refer the job of interpreting the vague law to its solicitors. Typically, the solicitors refer to committee testimony to determine legislative intent. This apparently happened with respect to federal take-over relating to ANILCA Title VIII.*

*Analysis: The "subsistence problem" relating to ANILCA stems from the fact that the committee intent was different from the law Congress passed on the floor. When federal solicitors went to committee hearing records to establish legislative intent, they couldn't help but come up with stuff which was not in the law as passed on the floor of Congress because the Senate "amended out" the committee intent from the final version of the law. Still, these solicitors gave the "committee intent" greater weight than the text of the bill which passed out of the Senate and into law.*

--Because of the changes made in the Senate, the Depts. of Interior and Agriculture no longer had take-over language in the bill. Consequently, they had to use administrative means, federal rulemaking, to establish the machinery, called the "administrative structure," (the Federal Subsistence Board) for federal take-over.]

--This Federal Subsistence Board was composed of the regional directors of the federal land-management agencies in Alaska plus the director of the BIA. In addition to discharging their specific agency responsibilities and mandates, these directors are supposed to manage subsistence harvest allocation by passing suitable regulations for subsistence harvest allocations on federal public lands.

--Actions of the Federal Subsistence Board were unsatisfactory to the state in many cases.

*[Analysis: To me it seems obvious the two responsibilities, achievement of agency agenda and subsistence management, conflict for some federal land management directors (most notably the National Park Service.) The record shows the Regional Directors on the Federal Board are not above furthering their agencies' agendas through use of what they call, "ANILCA-mandated (rural) subsistence management authority" inferred from ANILCA committee intent language.*

***Ancillary Fact:** When it has suited any individual director, each has placed his agency's agenda regarding control of federal land above allowing subsistence uses.*

***Analysis:** For this reason, I suggest land-control (the primary job of a land-management agency regional Director) is a primary cause of the symptoms which define "the dual management/subsistence problem." Remember, ANILCA was not a subsistence law, but a federal land-control law, which occurred at the behest of federal land-management agencies and the national environmental community. Subsistence is a secondary priority for ANILCA.]*

--Creation of the Federal Subsistence Board to take over subsistence harvest allocation as well as the cumulative effects of "agency interest" actions by individual agencies through the Federal Subsistence Board, eventually led to sufficient state dissatisfaction that legal action was undertaken.

--Governor Hickel initiated litigation against Secretary of Interior Lujan, and subsequently Secretary Babbitt (1992), in an effort to reestablish state management of indigenous wildlife (as guaranteed in ANILCA) rather than implementation of regulations (driven by *ex post facto* interpretation of committee intent rather than what Congress actually passed). It was particularly onerous to the state because federal management was established by federal agencies through the federal rulemaking process rather than through legislation.

--As managed by Hickel's Attorney General, Charlie Cole, and the Federal District Court Judge, H. Russell Holland, this suit evolved into a challenge of "the standing" of the federal government to manage indigenous wildlife when it was on federal public land as defined in ANILCA. Judge Holland eventually narrowed the focus of the Babbitt case to what he called the "who" question.

*[Analysis: I don't know whether Attorney General Cole had any control of the direction this suit took, but what started out as an attempt to make the feds abide by the text of their own law, ANILCA, got to be a much larger question. The results of management of the case in this manner (whether it involved the Attorney General or not) were disastrous.]*

--Alaskan Natives saw this litigation, the state's effort to regain state management of wildlife, as a threat.

*[Analysis: Native opposition was understandable given the racial preference objectives of record by the Alaska Federation of Natives (AFN). After all, if the state were to prevail, the federal agencies which had been currying favor with Alaskan Natives through permissive*

*subsistence regulations would no longer be capable of doing so. Also, if the federal system gave way to the state system, "trust responsibility" could no longer provide the prospect of Native preference. [Note: Native interest in establishment of "trust responsibility" associated with sovereignty issues (repudiated four times by Judge Holland in 1995) is still seen as a means to racially based subsistence preference. Further note: There is a common confusion of prepositions when the feds discuss or fall back on trust responsibility to justify their takeover of wildlife and fish management. It should be noted that the federal government has a trust responsibility FOR Alaskan Natives not TO Alaska Natives. There is a significant difference as discussed by Holland in his judgment on the Venetie case where he cites Black's Law Dictionary regarding wardship.]*

*Ancillary Fact: State management was unacceptable to Alaska Native power brokers. The official AFN position of record still favors maximal federal management in lieu of race-based Native preference.*

*Analysis: Recalling the racial basis of marine mammal use illuminates the rationale of this position. These facts form the basis of my suggestion that race-power is a conceptual cause of the symptoms we call the dual management/subsistence problem.]*

--The initial ruling in Federal District Court (Alaska v. Babbitt) was unsatisfactory to the state. The state appealed to the Ninth Circuit Court of Appeals (1994).

*[Ancillary fact: In this ruling, Judge Holland reviewed the history of ANILCA passage. In fact, most of the facts about amendments on the Senate floor at the 11<sup>th</sup> hour come directly from his opinion. He found that the Senate had, in fact, "amended out" federal take-over from ANILCA, but rendered his opinion that Congress surely must have meant to provide federal take-over responsibility so that the answer to his "who" question about who should manage on federal land was, "the feds." It is no wonder the state appealed the case to the next higher court, the Ninth Circuit Court of Appeals.]*

--Governor Hickel retired from the Governorship.

--In the course of a very close campaign for the Governorship, the Knowles-Ulmer ticket sought endorsement of the Alaska Federation of Natives by promising to drop the state's litigation against Secretary Babbitt. The Knowles-Ulmer ticket won the endorsement of AFN, and eventually the election.

--Immediately upon election, Governor Knowles canceled the Babbitt suit because he said "many Alaskans" thought it was anti-subsistence.

--About this time, President Clinton's newly appointed Bureau of Indian Affairs Secretary, Ada Deer, appointed an activist lawyer with a background in ANILCA-related Native interest litigation, (Robert Anderson) to the post of BIA solicitor. Shortly after this appointment, the Federal Subsistence Board received a pointed solicitor's opinion from Mr. Anderson (1995). This opinion essentially told the Federal Board that it could not deny any proposal offered by a Regional Subsistence Advisory Council without explaining why according to criteria described in ANILCA Sec. 804 (*which deals with state--not federal--management*). Sec. 804 says:

The state rulemaking authority may choose not to follow any recommendation which it determines is not supported by substantial evidence presented during the course of its administrative proceedings, violates recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs. If a recommendation is not adopted by the State rulemaking authority, such authority shall set forth the factual basis and reasons for its decision.

--Federal land-management directors on the Federal Subsistence Board lacked the courage or management experience to apply these criteria at their April 1995 meeting. Notable results were the Kenai moose hunting crisis, closure of the pipeline corridor to bowhunting (later reversed upon public outcry), and elimination of caribou hunting on the Bristol Bay side of the Alaska Peninsula (presumably so caribou would migrate unimpeded to the Pacific side-which is not really satisfactory caribou habitat, though caribou sometimes pass through there). Additionally, there was the Dall River access controversy, the Arctic Village Subsistence Management Area expansion, and so on.

*[Ancillary fact: Accountability to documentable fact or empirical scientific data were not compelling factors in these decisions. Proposal by a Regional Subsistence Advisory Council (buttressed by what has come to be known as local knowledge or "traditional ecological knowledge") was all that was required.]*

--After canceling the Babbitt litigation, Governor Knowles appointed Lt. Governor Ulmer to come up with a "consensus plan" to solve the dual management/subsistence problem (1995). Lt. Governor Ulmer used "quiet diplomacy" to derive her "consensus plan." The plan failed.

--In a case related to the Babbitt suit, Judge Holland set out to solve the "where" issue of federal management. This was called the Katie John case. Alaska Native plaintiffs in this case had asked Federal District Court Judge (Holland) to rule that navigable waters are federal public lands upon which the federal government has subsistence management jurisdiction. Holland ruled in favor of the Natives. The state appealed.

--Upon appeal, the Ninth Circuit Court of Appeals overturned Holland, but did find that the federal government has reserved water rights for federal installations.

*[Ancillary Fact: This means that any federal installation which the federal government may establish has (automatically) reserved, for it, enough water to serve the functions of that installation. Typically these rights assure the conventional water needs for federal facilities such as military bases or federal holdings which may require irrigation water.]*

--In its ruling, the Ninth Circuit Court found that because subsistence fishing occurs in some navigable waters, and the federal government has reserved water rights, the federal government has some responsibility for subsistence preference provision in some navigable waters.

--Based on the finding that federal facilities are assured enough water for their intended function, the federal government proposed, through expanded rulemaking, a plan to assume fisheries management in the navigable waters of Alaska (1996). Under the proposed regulations, the federal government could regulate subsistence (as well as conflicting) harvests of fish and wildlife throughout the state of Alaska.

*[Analysis: Reserved water rights is a concept from irrigation law, which basically says an upstream user cannot deprive a downstream user of water to which the downstream user is legally entitled. Federal reserved water rights assure Federal agencies of enough downstream flow to fulfill the purpose for which any federal facility may be established. The actual relevance of enough water to flush toilets at a National Park headquarters may be only distantly related to what is coming upstream e.g. salmon allocation. That is, in their expansive application of the Ninth Circuit Court of Appeals finding that federal reserved water rights are guaranteed, the federal government is in the interesting position of using a guarantee that they'll get enough water coming downstream to allow function of the conservation units established by ANILCA lands, to manage what is coming upstream, i.e. salmon allocation for subsistence. If the federal mandate were for salmon conservation, this might make some sense, however, the mandate cited by the feds is not the continued conservation of a viable salmon resource, but continued human use of salmon by rural residents. The two mandates are not inherently complimentary.]*

*[Analysis: Until withdrawal of the Babbitt suit and the reserved water rights decision in Katie John, neither the state nor the federal government took dual management all that seriously. Both figured the courts would decide the issue. Had Governor Knowles not intervened on behalf of AFN, the courts would have decided the issue. Now that court decisions are no longer an option, both state and federal governments appear to be rethinking their approach to dual management.]*

--The feds are moving to take over fisheries based on the claim that they don't want to, but are forced to by ANILCA mandate.

[Analysis: *This is not a credible claim.*

Ancillary Fact: *ANILCA as passed by the Congress of the United States, does not now, nor has it ever contained a mandate for federal take-over. The feds wanted one, but they did not get it in the final bill. They never went to conference, and they never amended the ANILCA to include this language.*

Ancillary Fact: *The Babbitt suite as decided by Judge Holland's opinion represents, to date, the substance of the federal claim that they have standing as managers of wildlife and fisheries on federal (and adjoining state) lands and navigable waters.*

Analysis: *This situation resulted directly from the Knowles administration's dropping the Babbitt suit, and its reluctance to appeal the Katie John decision to a higher court for definition of the extent to which reserved federal water rights define the "where" question defined by Judge Holland.*

Ancillary Fact: *Federal take-over should not be "blamed on" ANILCA in any way.*

Analysis: *If the feds choose to take over, they should clarify the basis of their action. They are not forced to take over management for subsistence preference by any language in ANILCA.*

Personal opinion which goes beyond analysis: *I think the feds are simply taking over because they want to, and Judge Holland said he couldn't imagine that Congress didn't intend for them to do so. Title VIII of ANILCA appears to be a distraction which serves as a more noble justification than the fact that the feds simply don't think Alaskan's can be trusted to wisely manage and conserve Alaska's natural resources.*

*I think this "federal feeling" is generated by national guilt generated, and continually kept before Americans by the environmental community. It may be a well deserved guilt resulting from over exploitation of natural resources in the contiguous 48 states by earlier developers. This national mood is maintained by the media successes and political viability of guilt management by the environmental community.*

*Additionally, federal reference to a manufactured ANILCA mandate to provide preference for "the last indigenous people" by linking "rural preference" to federal trust responsibility "TO" not "FOR" Native Americans facilitates federal take-over by playing on the emotion of a national guilt resulting from the way American Indians were subjugated 100 years ago*

*I think these emotional ties to Alaskan management of Alaska's resources make rational discussion almost impossible. I also think this arena is no place for a decision to be based on emotion or vaguely referenced "facts." If we understand that ANILCA's Title VIII, as written, is not directly tied to these issues, there may be hope for informed discussion and decision.]*

--This imminent federal take-over of fisheries is clearly linked to Knowles administration decisions to withdraw the Babbitt suit and acceptance of the Ninth Circuit Court decision on the Katie John case instead of appealing it to a higher court in an attempt to frame reserved water rights in their traditional legal context.

--The his further incursion of federal management (into fisheries management as well as wildlife) precipitated designation of the fisheries issue as a crisis by the Governor.

*[Analysis: The crisis appears to be driven by the understanding that federal enforcement of the rural preference will destabilize the commercial fishing industry. An alternate explanation is that Governor Knowles is using this divisive issue as a wedge in an effort to fracture the majority coalition in the legislature so his veto returns power to the executive branch of government.]*

--To deal with this crisis, the Governor appointed a Subsistence Task Force on the subject.

--This Task Force has prepared a plan involving amendment of the Alaska Constitution to allow preference and discrimination based on rural residence by a variety of methods, state adoption of ANILCA Title VIII language as law, and some amendments to ANILCA.



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the SENATE RESOURCES  
Committee Name  
 Committee on SUBSISTENCE Dated 9/25/97  
Bill / Subject

- I STRONGLY OPPOSE THE PLAN SET FORTH BY TONY KNOWLES BECAUSE IT IS RACIALLY BIASED WHICH DOES NOT PROVIDE EQUAL OPPORTUNITIES AND ACCESS TO ALL THE PEOPLE IN ALASKA.
- I SUPPORT THE RECOMMENDATIONS MADE BY THE ALASKA OUTDOOR COUNCIL.
- MY FAMILY HAS HUNTED & FISHERD IN ALASKA FOR 20+ YEARS, HUNTING & FISHING IS MUCH MORE THAN A SOURCE OF FOOD, RECREATION, OR INCOME SUPPLEMENT, IT IS A LIFESTYLE, TRADITION, AND AN ESSENTIAL PART OF A PERSON'S SOUL, AND A FAMILY'S TRADITION OVER GENERATIONS, EVEN FOR NON-NATIVE FAMILIES!

SIGNED:

*Robby David Harrington, Jr.*  
 Testifier

Representing

1333 GOLD RUSH DR. - FBKS, AK 99709 - 907-458-0300  
 Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Natural Resources  
 Committee on Subsistence Committee Name  
 Dated 9-29-97  
 Bill / Subject

Thank you for the opportunity to comment. I have first hand knowledge of how native indians ruined steelhead salmon fisheries in Washington and Pike, Muskey and bass fisheries in Wisconsin and Minnesota. Changing the States Constitution to allow one race of people to rape and pillage our fish and game will ~~to~~ destroy Alaskas uniqueness. To me traditional means and need are equated with ~~the~~ the way it was done 1000 years ago, with only hand made everything. As for subsistence very few Alaskans live a truly subsistent lifestyle and from what I've ~~observed~~ <sup>observed</sup>, particularly with spring waterfowl hunting, it is sport not subsistence. The average cost per bird must run around \$200 and once the two wing breasts are filleted out the cost per pound rises to \$3.40. They also use lead shot and gumdown birds while chasing them with boats. All is illegal and flies in face of international agreement that ~~legis~~ protect waterfowl.

- I oppose any change to the Alaska State constitution
- I oppose the proposed plan
- I support the Alaska Outdoor Council recommendations

SIGNED: Scott Heidorn Scott Heidorn  
 Testifier

Self and family  
 Representing

PO Box 84591 Fairbanks AK 99708  
 Address / Phone Number  
907-474-8711

My testimony before the Legislature's Senate Resources Committee at the Butrovich Building, U.A.F. September 24, 1997.

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Thanks for staying, being patient, and listening to so many people. This Subsistence issue is such an emotional one for folks, it means so many different things to so many different people. I have lived in Fairbanks with my husband and our 2 sons for over 32 years. Our sons were born here, this is the only life they grew up with. A major part of their heritage is that of Alaska. Like so many others who spoke, my father and his father before etc. were hunters, my husband's father and grand father etc. were even more avid in their hunting pursuits. Needless to say, Hunting is a major part of our son's upbringing, with a tremendous emphasis on respect for the land, the game, and sharing with others when times are good and receiving from others when times were not so good. We fish, pick berries and use all the bounty we are privileged to be able to gather; and, yes, our ties to the Land and its harvest and beauty are also Spiritual in nature.

There will always be subsistence around the remote villages, if for no other reason than it gets cold, and who is on patrol? For my family that lives in Fairbanks, however, there is a distinct possibility of them to loosing their hunting opportunity due to where we live. That doesn't mean they won't be able to hunt. One can always hunt. The problem is being able to hunt where there is the possibility of legal animals. When I was a little kid I asked my mom in I could fish in a certain mud puddle in our driveway. Mom replied, "sure, go ahead, just don't expect to catch anything." I am afraid that is what our hunting rights are about to turn into. "Sure, go ahead and hunt, just don't expect to shoot anything."

I listened to a lot of people testify tonight, I believe they are sincere in their words. Alaskans do work together for mutual good, and for the good of the land. We do need to regulate ourselves, because some folks get a bit over zealous in their harvest. I believe if our leaders would listen to us, the citizens of Alaska, and Do what needs to be done, we could come out of this O.K. "What needs to be done?"---ACTIVE fish and game MANAGEMENT---predator control---bag limits for everyone---seasons etc.; we would still need to keep tabs on ourselves, but bountiful game makes

a tremendous difference. We seriously need to take note of the addresses and longevity in Alaska, of the people we listen to when making management decisions. Money in the East cannot be allowed to rule Alaskan decisions so that we are no longer free to be who we are.

I respect people who are remote, who choose that lifestyle, and who do truly "subsist". As has been quoted over and over again, however, Subsistence is a basic human right, it is an Alaskan right, not just a rural Alaskan right. My son's heritage is just as valuable as someone else's son's heritage.

You know, where we live use to be a lot more rural than it is now! I could tell you some stories, but that is another issue. Thank you very much for reading my letter, and for at least making me feel like you were willing to hear what I had to say.

Sincerely,



Linda G. Hull  
2181 Twinflower Drive  
Fairbanks, Alaska 99709

P.S. My husband is out hunting, I expect him back this weekend.



## ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Subsistence Task Force

Committee on \_\_\_\_\_ Dated 9/24/97  
Committee Name

Bill / Subject

my name is ROSE ISAAC. I am from Tanacross Alaska where I lived most of my life. My parents had 16 children. We lived totally off the land. My parents fished, hunted and gathered food. They did not rely on any type of federal or state benefits.

Subsistence, to me, is not only a way of life. It is also economy. The moose / Caribou which provide food also provided the skin which is used to make moccasins, mukluks, and all kinds of other beaded material which is sold. There are various ways to utilize all of the animal in order to feed and clothe our children.

It saddens me to see that this State Legislature is not holding hearings in our villages as we are the ones who will feel the impact more than anyone else. You deliberated decided amongst yourself not to hold hearings in the villages which is not fair. That says

SIGNED:

\_\_\_\_\_  
 Testifier →

\_\_\_\_\_  
 Representing

\_\_\_\_\_  
 Address / Phone Number

alot. You are not representing all of Alaska. By your action, you are representing only a certain group of people. Furthermore, I feel that you, the Alaska State Legislature already failed to resolved this. This should have been resolved years ago. It seems to me that you are just passing the buck. You would rather blame and hold the Alaska Native people responsible when in reality, subsistence can be and always have been utilized by all ~~the~~ Alaskans regardless of race.

I would love to see the Federal Government take over. Perhaps we should give them a chance as the Alaska State Legislature already failed many times.

These hearings should have been held months ago and in the villages too. You all need to realize that RURAL Alaska does exist and you are suppose to be representing all of Alaska? Your actions the past few years is proof that all of Alaska is not fairly represented. Please take every Alaskan in consideration regardless of race.

Thank you

Cosby [Signature]



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources Committee  
 Committee on Proposed Subsistence Committee Name Dated 9-24-97  
Bill / Subject

Support Federal Management  
Take over.

SIGNED:

David L. James  
 Testifier

Crystal  
 Representing

714 Lakeside Dr Anchorage AK 99503  
 Address / Phone Number

SEPT. 24, 1997

**ARCTIC VILLAGE / VENETIE****RE: Subsistence Testimony**

My name is Gideon James and I'm from Arctic Village, Ak. - I believe everyone knows where Venetie and Arctic Village are located. "I hope". I work for Native Village of Venetie Tribal Government, as a Human Resource Director, and I've traveled to many places in the last few years. - I have worked in many positions for my tribe, this includes first chief position several times. So I'm very familiar with the issue I'm about to testify on, which is subsistence. And I'm very grateful that I have an opportunity to do this.

Each area for occupancy for the subsistence use has been in existence for many generations of our Native people. And it always provides a way of life for each community in rural Alaska. The state of Alaska and its legislature need to understand that this existence of way of life in Rural Alaska is where Alaska Native raise their family and it's a continuous cycle. And there is no alternative method at present time. Alaska Native are citizen of Alaska and we should remember that it is only 2 percent of game resource in Alaska we are addressing. I believe Alaska Native did no harm to the game resource to date.

Instead of attacking our way of life, the state need to control the existence of unfair ratio of, hunters come to certain areas of Alaska. Many places goes unchecked and these private aircraft lands just about any place they wish. - This disturbance of game goes on mainly on the animal

migration route. -

The high cost of items in rural village make impossible for families to depend solely on cash economy in area of arts and crafts and winter clothing.

This unfair political attack on our way of life is a matter of State of Alaska intent to ignore our Native existence on at all level. So finally in state agenda clearly focus on denying our tribal recognition at the same time. Therefore I strongly recomend Alaska Native fully support the principles listed at Alaska Native Subsistence Summit.

I live in Arctic Village most of my life, if everyone was to get along . we need to respect each other every time. I come to the city I comply with everything they have in the city. It should be the same way with city people when comes to rural area. They need to respect what we have out there. We can make this a very simple issue, the State government should considerate on more pressing issue like building schools for our kids, better sanitation, and health service delivery to the villages. - You cannot solve anything by attacking the core of our live hood. This only create disappointment and anger among families who make there living out there.

The present economic structure in Alaska is to weak because state has very few instate process of its resources. Up to 80 percent of cash income leaves the state in state businesses has very small success against the influx of larger firm like K-Mart and Fred Meyers. - I'm saying this because state government need to get a better use of its resources, and its not happening. Again utilizing games as food sources in the rural areas is the Alaska Native tradition in vital source of nutritional diet.-