ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672
9662 SENATE RESOURCES

whatsoever that the federal government will pull out and take us out from under this threat of their interfering with our management?

Bruce Botelho:

Madam Chairman, it's a difficult question to answer. I don't think there is an absolute guarantee and I think that Senator Taylor is correct when he has identified one aspect, I think, very important, sometimes overlooked, which is that when we talk about a constitutional amendment and subsidiary laws bringing the state's laws consistent with ANILCA, it does mean, obviously, that – maybe not so obviously – that fish and game managers would be state managers, setting guidelines. But it does not eliminate federal government oversight. ANILCA, by its terms, provides for any aggrieved citizen or person – not limited to citizen – to seek recourse ultimately in U.S. District Court, and to the extent that there is no resolution, the federal district court retains the right to fashion relief. And that would occur, does occur now, and would occur also with a constitutional amendment. The effect of a constitutional amendment found to be consistent with ANILCA, simply means, and it's an important simple, that it would be state fish and game managers managing the fish and wildlife resources within the boundaries of Alaska. But it does not mean there's no federal oversight.

Speaker Phillips:

So, just to clarify...could I just verify and clarify your response. We could take any kind of action we wanted in the state of Alaska. We could do anything we want to try to come into compliance...to meet the federal compliance and that still does not guarantee us, that we would have the rights to manage our fish and game resources, regardless of what we do.

Bruce Bothelo:

If I've not been clear, Madam Chairman, we do have the right to manage. We are subject, however, to federal court oversight by ANILCA. Whatever changes we make that bring us into compliance, the actions of our state government would be subject to a person challenging our... the propriety of our management under the guidelines of ANILCA. That is, whether we have in fact satisfied the rural subsistence priority found in Title 8.

Speaker Phillips:

What are we wasting time for, then?

Representative Bunde:

Well, I tend to oversimplify things, but to me that says that the state can manage, as long as they do it the way the federal government tells them to. In other words, the state managers do the talking, but the feds pull the strings.

Senator Taylor:

A puppet.

Senator Halford:

So a constitutional amendment, absent changes in ANILCA, is not a solution?
Bruce Botelho:
I have not said that though I would believe my—well, let me restate that is a correct assumption of my view. I think there are changes to ANILCA – the solution lies in a combination of a constitutional amendment and certain changes to ANILCA.
Senator Halford:
Could the solution lie with changes to ANILCA without the constitutional amendment?
Bruce Botelho:
I believe that there is no solution that can be found that rests solely on changes to ANILCA.
Senator Halford:
Politically or substantively?
Bruce Botelho:
Politically.

Senator Halford:
Isn't it kind of an insidious thing though? I mean it starts out with subsistence management and that's all that's provided for in the federal law, but as you manage for subsistence, then you manage the other conflict. So, it's not something I think that happens all at once even it you – you know I think it happens insidiously and it grows as it goes, because the federal law doesn't provide for management of fish and game, it provides for management of subsistence, but in order to manage the subsistence harvest, you have to cut off and deal with other harvests in conflict. So eventually, you get further and further into the management of every other use, and maybe even some non use areas - maybe some development areas as well.
Bruce Botelho:
Both that in terms of the expansion through the species, but also expansion geographically, whatever the outcome in Katie John in terms of navigable waters, we have separate related question in terms of management of species which passed between public and non public lands and the ability to regulate off public lands to make sure that the species are available to satisfy subsistence on public lands.
Senator Halford:
That's my comment. My question goes back to Katie John and the probable outcome. It seems that the – you know we have lot of other states that are on our side on navigational servitude. We have lots of arguments and lots of history to win that portion of the case, but what about federal reserve water rights. Isn't that the place where we can lose in part and be variable based on a whole bunch of further determinations down the road?
Joanne Grace:
Yes, I think – I think it's going to be harder for the court to base its decision on that because what the court would essentially be saying is if the United States has any interest, no matter how small in the water, that that converts the entire waterway into public lands. It's an absurd result because essentially we'll convert all lands and waters in Alaska into public lands. For example, we are just before the Ninth Circuit that it would – we argued this in the context of an absurd result. All lands in Alaska patented

after the year 1890 are conveyed subject to (indisc.) and easements (indisc.). That is an interest that the United States holds in all lands they've patented after 1890 (indisc.). So we argued that (indisc.) tend to any tiny interest of the United States to convert back areas of land and water into public lands. So I think that it's going to be pretty difficult for the court to base its decision on federal reserve water rights, but if the court does, then we're looking at a waterway by waterway determination or maybe a reservation system by reservation system of determination of whether the United States has the waterway.

Senator Halford:

But don't you think that's – I mean do you think they'll go back to navigational servitude or you think there is any chance that they will? I mean that one seems to go even further back into the...

Joanne Grace:

There's never been a decision that said a navigational servitude is a property interest and I think the Supreme Court has been – in power of the federal government (indisc.). So it would be – it would surprise me if the Ninth Circuit would rule that way just because the concept is so odd. But (indisc.), I guess don't feel really comfortable predicting what they'll do.

Bruce Botelho:

That might be something to elaborate on very briefly and that is to say that in virtually every case presented to the Ninth Circuit, the Ninth Circuit has favored the subsistence use over adverse interest, frequently the state of Alaska.

This meeting is reminiscent of the same lame brain solutions and Administration's propagandized attempts to sell the same illusionary state management control, discussed before the special Legislative session in 1990.

During both periods, there appears, the Governor's willingness to continue to support the impingement against the rights of All the peoples; and their right of equal consideration in the harvest of Alaska's common property fish, wildlife and wildlife public trust resources. To illustrate this relentless subjugation of equal footing as granted all of the other states; and to tie together this continuous attitude, I enter the dissertation that I wrote in response to the 1990 special Legislative session (Enclosure VIII). "State Control Management of Alaska's Fish and Wildlife, Illusionary or Fact?"

It is of related importance to note that in the above referenced dissertation; (i.e. Enclosure VIII), I referenced the effect of, the Gulkana River 1987 US District Court decisions, on the States ownership of our navigable waters and therewith the management of Alaska's fisheries as provided by the Submerged Lands Act.

This decision (Gulkana River Enclosure IX) established the broadest interpretation - susceptibility to transportation - as to the determination of navigable waters, by a federal court. Therefore, Alaska gained title to millions of acres of submerged lands and the State management authority of the fish in an estimated 100,000 to 180,000 miles of navigable water as provided by the Submerged Lands Act and the equal footing provision Article IV US Constitution.

Some of the pertinent quotes from the Gulkana River case are:

"1. Navigable Waters 36 (1) Title to beds of navigable inland water bodies in Alaska passed from the United States to Alaska when Alaska entered the Union; therefore, beds of navigable waterbodies in Alaska were not available for selection or changeable to either Alaska Native Claims Settlement Acts or the Alaska Statehood Act entitlements."

"This case raises difficult questions concerning application of the well settled principles that a state is vested with title to the beds underlying navigable waterbodies at the time the state enters the Union."

"However under the 'equal footing doctrine', see Pollard's v Hagan ...and its codification in the Submerged Lands Act of 1953, title to the beds of navigable inland waterbodies passes from the Untied States when the state enters the Union."

"Because title to the beds of navigable waterbodies passed automatically to Alaska at the time of statehood, they are neither available for selection nor chargeable to either the ANCSA or the Statehood entitlements." (See generally 43 USC 1602 (e) 1610 - 1611, 1631 and 48 USC prec. 21 Sec. 6 (a) and (b).)

"American courts adopted the English common law principle that navigable waterbodies are held by the sovereign in trust for the public." "In Martin v Waddell...the Supreme Court found that the title navigable waterbodies in the former colonies, formerly held by the King of England in trust for the public pursuant to the common law doctrine of navigable waterbodies, was by virtue of the Revolution rested in the States."

"Other consideration unique to the American system of government came into play when applying the doctrine of title navigability to waterbodies lying outside the original 13 colonies." "Under the equal footing doctrine, new states have the same rights, sovereignty and jurisdiction as the original states possess within their respective borders."

"Under the Americanized version of common law doctrine of navigability, by virtue of the rights gained in the Revolution and confirmed by the Constitution, it is the state, as opposed to the federal government, which hold title in public trust of 'public waterbodies' and it is through application of the definition of navigability that the determinations made of which waterbodies are public and which are not."

"The purpose then of the equal footing doctrine as applied to questions of title navigability is to ensure that all states are rested with the same right of safeguarding 'public', that is 'navigable waterbodies'." (emphasis added)

As can be readily seen this Gulkana River federal court decision is very repetitive in it's references to the equal footing right of the State of Alaska; which would include the public trust title to and management authority of the submerged lands and the fisheries of all of the navigable waters within Alaska.

It has been my long time observation that State officials have continually displayed an apathy of appreciation of the value of this Gulkana River decision. They ignore the public citizens' struggle who wrestled the title to millions of acres of submerged lands and therewith the management of all of the fisheries in the States navigable waters. At that time federal opposition, also included Alaska's congressional delegation, and now for political positioning, they again demand that a passive public

accept an unconstitutional proposed amendment to vote away their Constitutional protection of "life, liberty, and property" and the equal protection "under the law".

In this instance such an amendment would impinge not only on the Statehood Compact, Alaska Constitution Article I Section 7 Inherent Rights, and Article VIII Natural Resources; but also the US Constitution Article IV privilege and immunities, Article X States police powers and Article XIV life, liberty and property equal protection clauses.

I find that the Administrations irresponsible action in dropping, with prejudice, their opposition to parts of the Katie John case (the sanction of federal management) should raise the question of its (the Governor) purpose and position on the question of navigability State servitude title; if they are willing to vacate this right of equal footing of State management authority, by subjugating it under the proposed Constitutional amendment.

With such a voluntary subjugation the question of state title of navigable servitude, management authority can then be viewed as an issue that is moot.

In a true democracy the decision to subjugate a persons inherent rights of equality under the law must be of an individuals own volition. Then right to life, liberty and property cannot be made the preview of the vote of a majority. There are many who would deny the right of all people just to obtain privileges for their own purposes. This demand for personal privileges results in the automatic imbalance on the scale of justice.

Therefore I find that such a rear ended assault on these constitutionally protected rights of All citizens, are not a proper subject for a vote by majority of Alaskans. It is only the preview of the people of the Nation as a whole; and then only when presented as an honestly open, unclouded presentation of all of these most important rights of equal protection under the law and through the appropriate lawful process.

In support of this position, I present the following references:

(Enclosure X State v Julow; Supreme Court of Missouri)

"A citizen cannot be deprived of a right secured by the Constitution by a statute passed as a police regulation."

"...the 5th amendment of the constitution of the United States, providing, among other things, "nor deprived of life, liberty or property without due process of law." "In section 30, supra, as well as in the section in the federal constitution just recited, it will be noted that the rights of life, liberty, and property are grouped together in the same sentence; they constitute a trinity of rights, and each, as opposed to unlawful deprivation thereof, is of equal constitutional importance." "With each of those rights, under operation of a familiar principle, every auxiliary right, every attribute necessary to make the principal right effectual and valuable in its most extensile sense, pass as incidents of the original grant." "The rights thus guaranteed are something more than the mere privileges of locomotion; the guaranty is the negation of arbitrary power in every form which results in a deprivation of a right."

"These terms: "life", "liberty," and "property," are representative terms, and cover every right to which a member of the body politic is entitled under the law." "Within their comprehensive scope are embraced the right of self-defense, freedom of speech, religious and political freedom, exemption from arbitrary arrests, the right to buy and sell as others may, - all our liberties, personal, civil, and political - in short, all that

makes life worth living; and of none of these liberties can any one be deprived except by due process of law." "Now, as before stated, each of the rights heretofore mentioned carries with it, as its natural and necessary coincident, all that effectuates and renders complete the full, unrestrained enjoyment of that right."

"The 'law of the land' and 'due process of law' are the legal equivalents of each other." Touching this topic, a distinguished jurist observes: "Perhaps no definition is more often quoted than that given by Mr. Webster in the Dartmouth College Case: 'By the law of the land is most clearly intended the general law, a law which hears before it condemns, which proceeds upon inquiry and renders judgement only after trial.' 'The meaning is that every citizen shall hold his life, liberty, property, and immunities, under the protection of the general rules which govern society.' 'Everything which may pass under the form of an enactment is not, therefore, to be considered the law of the land." "Cooley, Const. Lim. (6th Ed.) 431. Comstock, J., when discussing a constitutional prohibition, such as ours, said: 'No doubt, it seems to me, can be admitted to the meaning of these provisions.' 'To say, as has been suggested, that 'the law of the land' or 'due process of law' may mean the very act of legislation which deprives the citizen of his rights, privileges, or property, leads to a simple absurdity'. 'The constitution would then mean that no person shall be deprived of his property or rights unless the legislature shall pass a law to effectuate the wrong; and this would be throwing restraint entirely away. * * * Where rights of property are admitted to exist the legislature cannot say they shall exist no longer; nor will it make any difference although a process and a tribunal are appointed to execute sentence'." "If this is the 'law of the land', and 'due process of law' within the meaning of the constitution, then the legislature is omnipotent.' 'It may, under the same interpretation, pass a law to take away liberty of life without a pre-existing cause, appointing judicial and executive agencies to execute its will.' 'Property is placed by the constitution in the same category with 'liberty and life'." Wynehamer v People, 13 N.Y. 37S. Here, the law under review declares that to be a crime which consists alone in the exercise of a constitutional right, to wit, that of terminating a contract, - one of the essential attributes of property, indeed property itself, under preceding definitions. Brought to the bar of a court on such a charge, the accused would have been prejudiced in so far as the criminality of the act charged is concerned." "No question could there be made or admitted as to the quality of the act." "That would have been settled by the previous legislative declaration, and it would only remain to find the fact as charged in order to declare the guilt as charged." "But the fact as charged, as already seen, is not a crime, and will not be a crime so long as constitutional prohibitions are respected and enforced." "If an owner, etc., obeys the law on which this prosecution rests, he is thereby deprived of a right and a liberty to contract or terminate a contract, as all others may; if *he* disobeys it, then he is punished for the performance of an act wholly innocent, unless, indeed, the doing of such an act, guaranteed by the organic law, - the exercise of a right of which the legislature is forbidden to deprive him, - can by that body be conclusively pronounced criminal." "We deny the power of the legislature to do this, to brand as an offense that which the constitution designated and declares to be a right, and therefore as innocent act; and consequently we hold that the statute which professes to exert such a power is nothing more or less that a "legislative judgement," and an attempt to deprive all who are included within it's terms of a constitutional right without

due process of law." "A statute would not be constitutional which should select particular individuals from a class or locality and subject them to peculiar rules, or impose upon them special obligations or burdens, from which others in the same class or locality are exempt. * * * Everyone has a right to demand that he be governed by general rules, and a special statute which, without his consent, singles his case out as one to be regulated by a different law from that which is applied in similar cases would not be legitimate legislation, but would be such an arbitrary mandate as is not within the province of free government." "Cooley, Const. Lim. 391." "The legislature may legislate in regard to a class of persons, but they cannot take what may be termed a natural class of person, split that class in two, and then arbitrarily designate the dissevered fractions of the original unit as two classes and enact different rules for the government of each." "This would be a mere arbitrary classification, without any basis of reason on which to rest, and would resemble a classification of men by the color of their hair or other individual peculiarities, something not competent for the legislature to do."

"The litigated statute is also in conflict with section 1, art. 14, of the federal constitution, aforesaid, forbidding that "any state deprive any person of life, liberty, or property without due process of law," as to which the same considerations as heretofore announced apply."

"Nor can the statute escape censure by assuming the label of a "police regulation." It has none of the elements or attributes which pertain to such a regulation, for it does not, in terms or by implication, promote or tend to promote the public health, welfare, comfort, or safety; and if it did, the state would not be allowed, under the guise and pretence of a police regulation, to encroach or trample upon any of the just rights of the citizen, which the constitution intended to secure against diminution or abridgment."

"In conclusion it may be said that there is a broad distinction between the invasion of a right conferred by the constitution, to wit, a right of property, carrying with it, as we have seen, all the liberties, attributes, and coincident rights, and those rights which are the mere creatures of legislative gratuity, where the legislature granting a privilege or bestowing a bounty may, of course, as no constitutional right in involved, prescribe the conditions upon which the privilege may be exercised o. the bounty be obtained."

I charge that those politicians who would amend, Alaska's Constitution, to eliminate open, equal access to ALL USERS of the States fish, wildlife, and waters common property resource; are in fact impinging on the Nations Constitutional provisions of equal protection under the law. As long as they can momentarily deliver on a political promise, they care not of their denial of this equal protection to a segment of citizens who must spend time, effort, and money to gain back their inherent right to life, liberty, and property. The politician can then claim they tried to deliver on those self interest commitments, without any thought or obligation of responsibility to those public rights of all persons.

It is because of such irresponsible political attitudes that the courts have consistently found that the Constitutional rights cannot be impinged upon by submitting to a vote, one's right to life, liberty, and property.

In a more recent case, the Colorado Supreme Court ruled, "Ones right to life, liberty and property...and other fundamental rights may not be submitted to a vote; they depend on the outcome of no election." (Enclosure XI, attachment (a))

In addressing this case (Enclosure XI, Roy Romer, Governor of Colorado v. Richard Evans 1996) the US Supreme Court found the following:

"One century ago the first Justice Harlan admonished this Court that the Constitution 'neither knows or tolerates classes among citizens.'" "Unheeded then, these words now are understood to state a commitment to the law's neutrality where the rights of persons are at stake." "The Equal Protection Clause enforces this principle and today requires us to hold invalid a provision of Colorado's Constitution."

"Colorado's state and municipal laws typify this emerging tradition of statutory protection and follow a constitutional pattern."

"These statutes and ordinances also depart from the common law by enumerating the group or persons within their ambit of protection." "Enumeration is the essential device used to make the duty not to discriminate concrete and to provide guidance for those who must comply." "...it's sheer breath is so discontinuous with reasons offered for it that the amendment seems inexplicable by anything but animus toward a class that it affects; it lacks rational relationship to legitimate state interest." "...even in the ordinary equal protection case calling for the most deferential of standards, we insist on knowing the relation between the classification adopted and the object to be attained." "By requiring that the classification bear a rational relationship to the independent and legitimate legislative end, we ensure that classification are not drawn for the purpose of disadvantaging the group burdened by the law."

"Amendment...confounds this normal process of judicial review. "It is at once too narrow and too broad." "It identifies persons by a single trait and then denies them protection across the board."

(The same thoughts were addressed in McDowell v. State; and are also imposed by Title VIII ANILCA.)

Further quotes from Enclosure XI:

"...discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision." "It is not within our constitutional traditions to enact laws of this sort. Central both to the idea of the rule of the law and to our own Constitution's guarantees of equal protection is the principle of government and each of its parts remain open on impartial terms to all who seek its assistance." "Equal protection of the law is not achieved through indiscriminate imposition of inequalities."

"The guaranty of 'equal protection' of the laws is a pledge of the protection of equal laws." (Enclosure XI) "The liberty of which the fourteenth amendment forbids a state from depriving anyone without due process of law is something more than freedom from enslavement of the body or from physical restraint." "In my judgement the words, 'life, liberty or property' in the fourteenth amendment should be interpreted as embracing every right that may be brought within judicial cognizance and therefore no right of that kind can be taken in violation of 'due process of law'." (Taylor v Beckman 20 S.C.T. 890, 1016, 178 U.S. 548, 44 LCD 1187) (Enclosure XI attachment)

There is an even more insidious demand developing from the constitutional flawed edicts of Title VIII ANILCA: Some of the growing demand for a subsistence based priority are claimed to be a right of Native heritage and as a matter of religious preference. There is no fault with the fundamental claims; but when they become the basis for demands of any priority right, they in fact, result in discrimination based on ethnic identity (race) and religious preference. Such results have no place in a democratic society and are especially obnoxious when it denies Common Use of Alaska's fish, wildlife, and waters public trust resource properties.

This preordain both a civil rights violation, as well as an equal protection cases.

I believe that I have presented a fair rationale to support the States sovereign public trust authority and responsibility to manage Alaska common property fish, wildlife, and water resources. This authority is supported by the Alaska Statehood Act, Submerged Lands Act, Alaska Constitution, US Constitution and a documented history of such authority throughout our Nation's history.

I would now add, that with the matter of the fisheries there is an additional argument against federal management interventions in Alaska's anadromous fisheries.

There is no justification to trigger Title VIII ANILCA illegally mandated subsistence priority class of USERS. Since the total yearly personal consumptive USES are less that 1 ½ percent (i.e., subsistence .007; personal use .0009, and sport fishery .006) of the state total harvest of Alaska salmon; there can be no perceived shortage. (Enclosure XII)

It appears that the demands for the priority of USERS is more of selfish infatuation than any reality.

Respectfully submitted,

Dale Bondurant

Dale Bondurant
HC1 Box 1197
Soldotna, AK. 99669
Phone (907) 262-0818

List of Enclosed References

Enclosure I	Ward v Racehorse
Enclosure II	Water Resource Management
Enclosure III	Submerged Lands Act
Enclosure IV	McDowell v State of Alaska (1989)
Enclosure V	Totemoff related Anchorage News Article
Enclosure VI	Payton v State of Alaska (1997)
Enclosure VII	Meeting Bruce Botelho and Alaska Legislators (1995)
Enclosure VIII	State Control Management, Illusionary or Fact? (1990)
Enclosure IX	Gulkana River (1987)
Enclosure X	State of Missouri v Julow (1985)
Enclosure XI	Governor of Colorado v Evans (1996) (attachments (a) and (b))
Enclosure XII	Fish Harvest Percentages

Boil's down to Control & Lust for Power

Everything Ive Seen & heard here points tward - gigu. unmanageable Beurocracy. Let's don't Further complcate life. If it aint broke, don't Fix it. The Fed can't give us something we already own

9-26-97

Box 4151
Sterling 99672

Subsistance Committee: NO!

Re: Constitution Amendment

The Feds want our Permanent Fund and to absolutely control our daily lives.

Unfortunately, our Governor and too many of our locat governing bodys think thats O.K. I don't.

IF we allow our Constitution to be messed with you'd better believe the Feds (and our Governor) will inject enough fine print in any amendment to totally destroy our constitution and allow the Central Beurocracy to steal all our resorces.

We must, by whatever means necessary, run the Feds out of Alaska.

Sam Kaser

SUBSISTENCE, ANILCA AND ALASKA'S CONSTITUTION

Mel Krogseng

The Alaska Sportfish Recovery Association is opposed to placing a Subsistence Constitutional amendment on the ballot to solve ANILCA's problem with Alaska's Constitution.

Alaska already has enough user group conflicts as a result of unfair resource allocation. A subsistence preference for any exclusive group of people will only further divide the people of Alaska.

We believe there is great wisdom in the current "common use" logic found in Article VIII of our Constitution which states "Section 3. COMMON USE. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."

To destroy this great wisdom of treating everyone equally with a discriminatory amendment would be an insult to all Alaskan's, past, present and future.

We suggest that the subsistance problem may stem from ~~improper~~ incomplete implementation of the Limited Entry Amendment which granted limited special access privileges for some of our people. Please allow me to explain. Exclusive access rights have been pursued by hunting guides and commercial fishermen to the point of restricting resource use by the public thus creating the subsistence problem.

For example, in the Alaska Supreme Court Case *Johns v. Commercial Fisheries Entry Commission*, 758 P.2d 1256 (Alaska 1988), Chief Justic Matthews stated:

> "In *State v. Ostrosky*, 667 P.2d at 1184 (Alaska 1983), we noted that there is a tension between the limited entry clause of the state constitution and the clauses of the constitution which guarantee open fisheries. We suggested that to be constitutional, a limited entry system should impinge as little as possible on the open fishery clauses consistent with the constitutional purposes of limited entry, namely, prevention of economic distress to fishermen and resource conservation. *Ostrosky*, 6667 P.2d at 1191. The optimum number provision of the Limited Entry Act is the mechanism by which limited entry is meant to be restricted to its constitutional purposes. Without this mechanism, limited entry has the potential to be a system which has the effect of creating an exclusive fishery to ensure the wealth of permit holders and permit values, while exceeding the constitutional purposes of limited entry. Because this risk of unconstitutionality exists, the CFEC should not delay in embarking on the optimum number process, except where there is a substantial reason for doing so."

Despite the courts directive to the Commercial Fisheries Entry Commission, little if anything has been done to date to prevent impingement on the open public fishery. The result of this lack of action is the overharvest of a resource which is affecting the subsistence lifestyle of all Alaska residents.

ANILCA must be amended so as not to conflict with Alaska's Constitution. ANILCA should have been written to survive with our Constitution, not the other way around. Alaska's Constitution was written as a general statement of the conscience of Alaska's people. You don't change the conscience of a people because someone passes a conflicting piece of legislation.

There is nothing wrong with giving all of Alaska's people a subsistence priority over other uses but that privilege must survive within our current Constitution.

STATE OF ALASKA SUBSISTENCE HEARINGS

SEPTEMBER 26, 1997

SOLDOTNA, ALASKA

TESTIMONY / PROPOSAL By: MARY ANN MILLS

Thank you for taking testimony and welcome to Soldotna. My name is Mary Ann Mills, I am Dena'ina and Aleut from the Kenai Peninsula. I believe the subsistence issue can and should be solved by basing our resolve in honesty; in truth. The Indigenous People of Alaska have been very good hosts and hostess to most guests who have come into our land. It is our nature to care and share with others and it is our nature to respect everyone and everything in our existence. We believe the Creator made us the care-takers of our land. Before the United States and before the State of Alaska our land was pristine, our waters were clean, our fish and wildlife was plentiful. We shared with everybody, but we were not prepared for the greed, disrespect and lies that followed. And we were quiet and said nothing so as not to offend anyone, and we tried to lead by example, but nobody paid attention.

Today the Indigenous People of Alaska are in a crisis of genocidal proportions and it is time to speak out. If our Basic, Sacred, Fundamental Human Rights are not protected there is no one in this room or in this land whose Rights will be secure, for Human Rights are not exclusive to one race.

The biggest deception of the U.S. government was when they announced to the American People and the World they purchased Alaska from Russia. It is a well documented fact that Russia never claimed ownership of Alaska. Verification of this is found in the Koslitzof Memorandum and further documented in the "smoking gun" document found in the 58th Congress 2nd Session; Document No. 162, Alaska Boundary Tribunal. Proceedings of the Alaskan Boundary Tribunal, convened at London. What the U.S. purchased from Russia was the right to trade with the Indian, Eskimo, and Aleut Peoples.

After the Jewish holocaust of WWII the United States and other countries formed the United Nations in an effort to provide World peace and prevent other holocausts or genocide from occurring. Their guidelines are found in the UN Charter, which includes the Convention of the Punishment and Prevention of the Crime of Genocide. The United States then took upon themselves a "sacred trust" over Alaska and

CORRECTION

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

SUBSISTENCE, ANILCA AND ALASKA'S CONSTITUTION

Mel Krogseng

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> "In *State v. Ostrosky*, 667 P.2d at 1184 (Alaska 1983), we noted that there is a tension between the limited entry clause of the state constitution and the clauses of the constitution which guarantee open fisheries. We suggested that to be constitutional, a limited entry system should impinge as little as possible on the open fishery clauses consistent with the constitutional purposes of limited entry, namely, prevention of economic distress to fishermen and resource conservation. *Ostrosky*, 6667 P.2d at 1191. The optimum number provision of the Limited Entry Act is the mechanism by which limited entry is meant to be restricted to its constitutional purposes. Without this mechanism, limited entry has the potential to be a system which has the effect of creating an exclusive fishery to ensure the wealth of permit holders and permit values, while exceeding the constitutional purposes of limited entry. Because this risk of unconstitutionality exists, the CFEC should not delay in embarking on the optimum number process, except where there is a substantial reason for doing so."

Despite the courts directive to the Commercial Fisheries Entry Commission, little if anything has been done to date to prevent impingement on the open public fishery. The result of this lack of action is the overharvest of a resource which is affecting the subsistence lifestyle of all Alaska residents.

ANILCA must be amended so as not to conflict with Alaska's Constitution. ANILCA should have been written to survive with our Constitution, not the other way around. Alaska's Constitution was written as a general statement of the conscience of Alaska's people. You don't change the conscience of a people because someone passes a conflicting piece of legislation.

There is nothing wrong with giving all of Alaska's people a subsistence priority over other uses but that privilege must survive within our current Constitution.

I ask that the following changes be made to resolve this conflict:

1. Pass a resolution urging Congress to immediately amend ANILCA to be consistent with our Constitution.

2. Ask the other state Legislatures to join Alaska in this endeavor. This a state's rights issue and the other states should be sympathethic to our plea.

3. Amend the Limited Entry statutes as follows:

AS 16.43.290. Optimum Number of Entry Permits.
(1) the number of entry permits sufficient to maintain an economically healthy fishery that will result in a reasonable average rate of economic return to the fishermen participating in that fishery, considering time fished and necessary investments in vessels and gear;
(2) the number of entry permits necessary to harvest the allowable commercial take of the fishery resource during all years in an orderly, efficient manner, and consistent with sound fishery management techniques;
(3) the number of entry permits sufficient to avoid serious economic hardship to those currently engaged in the fishery, considering other economic opportunities reasonably available; **and**
(4) the number of entry permits sufficient to prevent serious impingement on the open public fishery.

AS 16.43.300. Revisions of Optimum Number of Entry Permits.
(a) The Limited Entry Commission **[may]** **shall** increase or decrease the optimum number of entry permits for a fishery when one or more of the following conditions makes a change desirable considering the purposes of this chapter:
(1) an established long-term change in the biological condition of the fishery has occurred that substantially alters the optimum number of entry permits permissible applying the standards set out in AS 16.43.290;
(2) an established long-term change in market conditions has occurred, directly affecting the fishery, that substantially alters the optimum number of entry permits permissible under the standards set out in AS 16.43.290.
(3) an established long-term change in public participation in the open public fishery has occurred that substantially alters the optimum number of entry permits permissible under the standards set out in AS 16.43.290.
(b) If the commission decreases the optimum number of entry permits for a fishery, the number of entry permits may be reduced only under the voluntary buy-back provision in AS 16.43.310. Establishment of Buy-back funds.

SUMMARY:

1. Amend ANILCA so as not to conflict with Alaska's constitution.

2. Amend AS.16.43.290 to include new subsection (4) relating to limiting the number of entry permits sufficient to **prevent serious impingement on the open public fishery**.

3. Amend AS 16.43.300 by mandating that the Limited Entry Commission alter the number of limited entry permits when certain changes in the fishery have occurred and adding language to the effect that the criteria include **changes in public participation**.

STATE OF ALASKA SUBSISTENCE HEARINGS

SEPTEMBER 26, 1997

SOLDOTNA, ALASKA

TESTIMONY / PROPOSAL By: MARY ANN MILLS

Thank you for taking testimony and welcome to Soldotna. My name is Mary Ann Mills. I am Dena'ina and Aleut from the Kenai Peninsula. I believe the subsistence issue can and should be solved by basing our resolve in honesty; in truth. The Indigenous People of Alaska have been very good hosts and hostess to most guests who have come into our land. It is our nature to care and share with others and it is our nature to respect everyone and everything in our existence. We believe the Creator made us the care-takers of our land. Before the United States and before the State of Alaska our land was pristine, our waters were clean, our fish and wildlife was plentiful. We shared with everybody, but we were not prepared for the greed, disrespect and lies that followed. And we were quiet and said nothing so as not to offend anyone, and we tried to lead by example, but nobody paid attention.

Today the Indigenous People of Alaska are in a crisis of genocidal proportions and it is time to speak out. If our Basic, Sacred, Fundamental Human Rights are not protected there is no one in this room or in this land whose Rights will be secure, for Human Rights are not exclusive to one race.

The biggest deception of the U.S. government was when they announced to the American People and the World they purchased Alaska from Russia. It is a well documented fact that Russia never claimed ownership of Alaska. Verification of this is found in the Koslitzof Memorandum and further documented in the "smoking gun" document found in the 58th Congress 2nd Session; Document No. 162, Alaska Boundary Tribunal, Proceedings of the Alaskan Boundary Tribunal, convened at London. What the U.S. purchased from Russia was the right to trade with the Indian, Eskimo, and Aleut Peoples.

After the Jewish holocaust of WWII the United States and other countries formed the United Nations in an effort to provide World peace and prevent other holocausts or genocide from occurring. Their guidelines are found in the UN Charter, which includes the Convention of the Punishment and Prevention of the Crime of Genocide. The United States then took upon themselves a "sacred trust" over Alaska and

its Indigenous Peoples as defined in the United Nations Charter, Article 73, which states that our People were to be brought to the full measure of our own self-governance. Instead the U.S. sent military troops which opened this Great Land to many dubious individuals as well as many good Human Beings. In an unprecedented move the U.S. paid Service men to vote for Statehood, and allowed those who moved to Alaska to vote for Statehood. Those who were not allowed to vote were those who could not speak English, most of whom were Alaska Natives. As a pre-existing condition for statehood Alaska had to accept into it's constitution a disclaimer clause which is found in Article XII, Section XII of the state constitution. Article 12, Section 12 basically states the State and its People FOREVER disclaim all rights and titles to property including hunting and fishing rights of the Indian, Aleut, and Eskimo Peoples.

In 1971 Congress passed and President Nixon signed in to law the Alaska Native Claims Settlement Act (ANCSA). This Act was accomplished by a group of approximately 500 Natives, many of whom represented their own interest. This was done without the consent or full knowledge of the (approximately) 65,0000 other Natives. ANCSA was never ratified by the Indigenous Peoples. ANCSA is an act of termination, an act of apartheid, an act of genocide. Today we recognize who our Native leaders are and who our Native traitors are. The Alaska Federation of Natives, Inc., is misrepresenting themselves, they are not a Federation, and they do not represent the Indigenous People, they represent the corporations. We would not expect K-Mart to represent the American People just as you should not expect AFN, Inc. to represent us. We expect tribal governmental representation. It is an insult to have Byron Mallott on the Governor's subsistence panel of 7, as it was he along with AFN who illegally implemented "Rural preference" for our subsistence rights in ANILCA. This was accomplished without the knowledge or consent of our Peoples, and is considered an act of treason and genocide on their part, by many of us.

I believe subsistence is a human right given to all of us by our creator. I agree with Senator Rick Halford when he said "subsistence is an inalienable right". The seriousness of subsistence was well depicted by Henry Shue, Ph.D. Princeton 1970, when he stated:

"No one can fully, if at all, enjoy any right that is supposedly protected by society if he or she lacks the essentials for a reasonably healthy and active life. Deficiencies in the means of subsistence can be just as

fatal, incapacitating, or painful as violations of physical security. The resulting damage or death can at least as decisively prevent the enjoyment of any right as can the effects of security violations. Any form of malnutrition, or fever due to exposure, that causes severe and irreversible brain damage, for example, can effectively prevent the exercise of any right requiring clear thought and may, like brain injuries caused by assault, profoundly disturb personality. And, obviously, any fatal deficiencies end all possibility of the enjoyment of rights as firmly as an arbitrary execution.

Indeed, prevention of deficiencies in the essentials for survival is, if anything, more basic than prevention of violations of their physical security. People can, if they are free, fright back against their attackers or flee, but people who lack essentials, such as food, because of forces beyond their control, often can do nothing and are on their own, utterly helpless."

The only way conflicts and concerns can be accomplished without engaging in futile arguments over Indigenous sovereignty or the state's authority is by basing our resolve upon truth. The Indigenous Peoples should be given the dignity of our own self-governance, instead of being forced to participate in foreign non-human corporate entities and foreign governments that is bringing us to the brink of our demise. Our healing can only be successful if it is based on truth. Being holders of the alodial title to Alaska has made us targets for genocide, and we don't like it. We are loving, caring, and peaceful People, and recognize the only way to protect our sovereignty and our Human Rights is by protecting these sacred rights of those Humans who have peacefully integrated into our Human societies.

This is an exciting era for all of us: a new millennium, a time of hope and ancient prophesy. We are told the healing of our Earth Mother and of Humans will begin in the North when we recognize that we are all brothers and sisters and when we strive and accomplish a peaceful and loving coexistence between each other and all Earth's children, including the plants and animals.

In closing, I propose that the State of Alaska and its People, the United States and its People, honor and up-hold their own Constitutions, laws, treaties, conventions and proclamations. In doing so our rights will be protected. We do not need any new amendments to the constitution or new legislation. Our Rights are inherent. I stand firm and would like to go on record that BASIC, SACRED, FUNDAMENTAL HUMAN RIGHTS ARE NOT NEGOTIABLE.

Isa Nan
Thank You

DATE: September 25, 1997

TO: Senator Rick Halford, Chair
Members of the Senate Resources Committe

FROM: Bill Stockwell
P.O. Box 721
Cooper Landing, AK 99572 Phone & Fax 595-1540

SUBJECT: Rural Priority for Subsistence

I am a 25 year Alaskan now retired in Cooper Landing and I serve on the Cooper Landing Fish & Game Advisory Committee. I have reviewed the July 1997 proposal by the Miller/Phillips/Knowles Task Force and the proposed changes to ANILCA, Title VIII, offered by Senator Murkowski and Representative Young. I will be unable to attended the public hearing on subsistence issues on Friday, September 26, but would like to have my written testimony made part of the record.

For the legislature to allow the rural priority for subsistence issue to drag on without compromise until the Federal takeover of management of both fisheries and game, would be totally irresponsible. Rural priority for subsistence has divided Alaskans for the 17 years since the passage of Title VIII of ANILCA and, because of political bickering and inaction, the situation is far worse today than in December 1980.

Now is the time for action. The Federal takeover of fisheries would have a devastating impact on the State economy, especially here on the Kenai Peninsula where tourism and commercial fishing are both mainstays of local economies. The only viable industry in Cooper Landing is tourism and the lion's share of the tourist dollars spent here are spent on sport fishing.

Now is the time for the Alaska Legislature to take a leadership position on subsistence and find a solution to this problem that has divided Alaskans for 17 years. Inaction has only made the problem worse. Amending our Alaska Constitution should never be taken lightly, BUT allowing the Federal Government to manage the fish and wildlife resources of Alaska should be considered intolerable. Once Federal control of fishe occurs, the State of Alaska will never regain total ent of our fish and wildlife resources again.

Study carefully the recommendations, both old and new, of the Miller/Phillips/Knowles Team. Enlist the advise and support of our Congressional Delegation. Hold a special legislative session if necessary to find a solution. But most important, listen to the voices of the people, ignore the special interests on both sides of the issue, and allow the CITIZENS OF ALASKA TO VOTE on this most contentious issue that has divided the people of our State far too long.

Thank you for your time

W. E. Stockwell

COOK INLET SPORTFISHING CAUCUS
3620 PENLAND PARKWAY
ANCHORAGE, ALASKA 99508
(907) 276-2222 FAX (907) 278-0896

September 26, 1997

Senate Resources Committee

The impact of the federal management on subsistence fisheries will be traumatic to sport and commercial fishing. It will create a two tier management system. We asked Dan Coffey, Vice Chair of Board of Fisheries for his comments and this was his response:

Q. What would be the effect if the feds take over management of subsistence?

A. "It is impossible for any fishery to be managed by two different agencies. It would certainly be a nightmare, with a potential for disaster."

Q. What would be the effect if legislation and regulations were adopted as proposed by the Task Force?

A. "There would be no significant changes in the way our fisheries are managed for any user group nor in the way that people fish today."

We have reviewed the revised Task Force proposal as to how it would effect sportfishing in Alaska . Our analysis is as follows:

"If we replaced todays laws relating to sport fishing with the revised Task Force proposal, the result would be neutral to neutral-positive for sport fishing state wide: it would be equal to or better than todays laws for the 200,000 Alaskans who have sportfishing licenses."

We urge the Legislature to proceed with a Constitutional Amendment as quickly as possible before the Feds get their program in place.

Don't let the Feds in. Robert Penney

KENAITZE INDIAN TRIBE, IRA
P.O. BOX 988 KENAI, ALASKA 99611

RESOLUTION NO. 97-24

A TRIBAL RESOLUTION IN STRONG SUPPORT OF A SUBSISTENCE PRIORITY FOR ALL ALASKA NATIVES

WHEREAS, the Kenaitze Indian Tribe, IRA, a federally recognized Tribe, reorganized in August, 1971 pursuant to the Indian Reorganization Act (I.R.A.) of 1934, as amended for Alaska in 1936 and is responsible (in accordance with the Preamble to the Tribal Constitution) for the social and economic welfare of its 939 Tribal Members and for the welfare of the total 2,767 Alaska Native residents of Central and Upper Southern Kenai Peninsula of south-central Alaska; and

WHEREAS, the Kenaitze Indian Tribe, IRA has established long range goals which relate to the collective and individual, social, economic, and governmental concerns of its people; and

WHEREAS, the Kenaitze Indian Tribe, IRA, the natural stewards of this land and its resources since time immemorial have respected and depended upon the natural resources along the Cook Inlet Basin and its tributaries as our inherited, cultural way of life; and

WHEREAS, if the culture of Alaska Natives in the Cook Inlet area is to continue to exist, the special relationship Alaska Natives have with Alaska's wild, renewable resources and subsistence hunting, fishing, marine mammals, and gathering must be expressly recognized and protected in federal law; and

WHEREAS, a "Native Preference" represents the most complete, long range protections for Alaska Natives and is the desired option. However, in light of the current political environment it is understood that pursuing a Native Preference would be a difficult task; and

WHEREAS, as a condition of acceptance of any resolution of the subsistence issue, the proposed solution must, at a minimum, incorporate the following guiding principles:

1. Federal law must protect the Alaska Native way of life for both rural villages and those Alaska Native people who still occupy their traditional homelands even though those homelands may no longer be considered "rural",

2. Customary and traditional Alaska Native Tribal subsistence uses, including but not limited to cultural, religious and medicinal uses, seasons, bag limits, methods and means and harvest patterns must be fully protected. A priority must be provided to residents of Alaska communities that are rural

(as defined by the Kenaitze case) and have established over time customary, historical and traditional uses,

3. A regional co-management system that requires tribal and subsistence users representation as determined by the Alaska Native community. And tribal authority that is directly reflected in the decision-making process and funding for a level of enforcement that places a priority on subsistence uses and the related resources;

4. Continued federal oversight by the Secretary and the federal courts to assure full implementation of federally protected tribal subsistence rights and practices by Alaska native people;

5. Maximum protection for urban Alaska Natives to carry out and share in tribal subsistence practices;

6. Language that is precise, leaving a minimum of discretion to law makers;

7. Guaranteed subsistence protections that are equal to, or greater than, protections currently provided in ANILCA.

NOW THEREFORE BE IT RESOLVED by the Kenaitze Indian Tribe, IRA Executive Committee/Tribal Council that the Alaska Native subsistence way of life can only be protected through a tribal/subsistence priority, and demands that tribal subsistence rights and practices among Alaska Natives be protected by Federal Law.

CERTIFICATION

VOTING FOR: 4
VOTING AGAINST: 0
ABSTAINING: 0
ABSENT: 2

Ronald Petterson
RONALD PETTERSON, TRIBAL CHAIRPERSON
KENAITZE INDIAN TRIBE, IRA

Bonnie Juliussen
BONNIE JULIUSSEN, TRIBAL SECRETARY
KENAITZE INDIAN TRIBE, IRA

September 24, 1997
DATE

KENAI RIVER SPORTFISHING ASSOCIATION

Executive Director
Ben Ellis
P.O. Box 1228
Soldotna, AK 99669
Phone: (907) 262-8588
1-800-478-0724
Fax: (907) 262-8582

The Kenai River Sportfishing Association's position paper to the State Senate Resource Committee Concerning Governor's Task Force on Subsistence

September 26, 1997

The Board of Directors of the Kenai River Sportfishing Association supports in concept those presented by the governor's task force position on subsistence. The Board based its decision on:

- the position should provide for a subsistence priority in time of shortages for those who live in areas of the state where a subsistence is the principle characteristic of the economy.
- it is a linked package addressing both the state constitution and the federal law ANILCA
- Our association has sent each legislator a letter urging your bipartisan action to stave off Federal takeover of the state's fish and game management October 1, 1997.

It is imperative that the State of Alaska retain management of our state's fish and game. By calling for a special subsistence session followed by placing the issue before the voters in 1998, we believe the state can retain management of this complex natural resource.

Legal recognition of subsistence use dates back to 1925 when the Alaska Game Law stated that: "any Indian or Eskimo, prospector or traveler (can) take animals, birds or game fishes during the closed season when he is in the need for food." (ADF&G Subsistence Division, 1995).

The Alaska Constitution is unique among state constitutions in that it dedicates an entire segment, Article VII, to natural resources. While several sections are relevant to the management and conservation of salmon, Section 4 is especially pertinent to this issue. It states that: "Fish, forest, wildlife, grasslands and all other replenishable resources belong to the State and shall be utilized, developed and maintained on the sustained yield principle, subject to preferences among beneficial uses."

We are asking you to allow the people of Alaska to determine if subsistence use as defined by your actions based on what the Governor's Task Force has put forward is an acceptable preference among beneficial uses.

Once again, we strongly urge you to address this issue as soon as possible in order to allow the voters of the State to voice their preference on the subsistence impasse.

26 September 1997

FAX To: Legislative Affairs Office-Kenai for members of both the Senate and House Resources Committees.

From: Dr. Al Franzmann, Soldotna, Wildlife Veterinarian, Former member of the Alaska Board of Game, Board Director at Large of the Alaska Outdoor Council.

I was hoping to give testimony at the Soldotna Senate subsistence hearings on the 26th, but must be in Anchorage. I therefore have prepared this statement for both committees on my views of the subject.

My opposition to the Knowles group "compromise" on subsistence is based on several components of their proposal. The primary one is my opposition to harvest preference based on group criteria such as ZIP code, culture or race. To amend our constitution to comply with a federal law that provides for a rural priority is not in the best interests of Alaskans. The last minute rush to force this upon us because of an arbitrary October 1 deadline is an example of the federal government holding us hostage. We have the most powerfully placed Alaska delegation to the U.S. Congress, yet no concerted effort has been made simply amend a few conflicting portions of the flawed ANILCA law.

The recommended Regional Subsistence Boards in the Knowles proposal will destroy the Alaska Boards of Fish and Game. It adds another layer of bureaucracy that is not needed. If it functions like the Federal Subsistence Boards, which it likely will due to the proposed makeup of it, we will experience what the Kenai Peninsula and the Ketchikan area have recently gone through. Why not strengthen our present constitutionally derived system and strengthen the Advisory Committee system and not further dilute it and the Boards. We had the best working system in the world and it can be again if we give it a chance. True subsistence needs, wherever they may occur, can be provided for by regulations through the Advisory Committee and Boards process. It was managed in this manner for many years until special interests groups used the courts and politicians to circumvent the process. Lets fix what we already have and put real pressure on our Congressional delegation to simply fix ANILCA.

Albert W. Franzmann

Official Business

COMMITTEE:

SENATE RESOURCES

DATE:

Subject of meeting: #1

INTERIM HEARING ON SUBSISTENCE

SIGN-IN

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Ed Earnhart	1043 W. 74th Ave, Anch. 99518	349-1160	Public interest as a disinterested party & Const.	Specialist
Wayne A. Ross	Box 101522 Anchorage AK 99510	276-5307 346-2697	Republican Party National Committeeman	yes
Charles E. McKee	Box 243053 Anch. AK 99524	none		yes
~~[illegible]~~	DECEASED ~~[illegible]~~	~~276-3614~~	~~Indigenous Holders of the Allodial Title~~	~~yes~~
Dale Bondurant	HC-1 Box 1197 Soldotna 99669	262-0818	Self	yes
Peggy Ginsburg	810 N St. #202 Anchorage 99501	258-7524	Commonwealth North	yes
Charles [illegible]	211 McCarrey St. Anchorage	[illegible]	Self	yes
[illegible]	[illegible]	[illegible]	Self	yes
[illegible] Hopson	P.O. Box 69 Barrow AK 99723	852-0350	North Slope Borough	yes
Jerry McCutcheon	Anch	[illegible]	Self	yes

Official Business

COMMITTEE: SENATE RESOURCES

DATE:

Subject of meeting: #2

INTERIM HEARING ON SUBSISTENCE

SIGN-IN

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
PAUL "Amarok" HARMON	925 Eagle St Anch 99501	277-2043	Self	Yes
Willard Ferrell	17549 Sunnyway Drive Eagle River 99577	696 2470	Self	
[illegible]	[illegible] Rd. Anchorage	333-[illegible]	Self	Yes
Bob [illegible]	[illegible] Anchorage	[illegible]	Alaska [illegible]	Yes
Randy Kubitz	18124 Meadow creek Eagle River AK	696 2818	Self + Alaskan hes.	Yes!
LANDIS TEW	1945 U. SKYLINE DR E. RIVER AK. 577	696 2226	SELF	YES
Warren Olson	5961 OrTh Circle Anch 99516	3464440	Self	Yes
David Pease	4670 Southpark Bluff 99516	345-6322	Self	yes
[illegible] Morrison	[illegible] MARINER DRIVE ANCHORAGE, AK [illegible]	[illegible]	—	yes
Gary Mason	7610 Old Harbor Rd Anch AK 99504	338-[illegible]	Self	Yes

Official Business

COMMITTEE: SENATE RESOURCES

DATE:

Subject of meeting: #3

INTERIM HEARING ON SUBSISTENCE

SIGN-IN

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Michael Golgianaki	1652 Sunrise Drive Anch, 99508		Self	no
Terry Burns	P.O. Box [illegible], Anch 99510		"	Yes
Charles Skultka	P.O. Bx 665 Sitka, AK. 99835	907-966-2574	Self - Family - Haida People	No
Doug Pope	3940 Arctic Products, Anch	243-1338	Self / Sons	Yes
JOSEF PRINCIOTTA	711 H st #510 ANCH 99501	562 6306	SELF	YES
Don Sherwood	1610 Brink Dr Anch, AK	333-6268	AK Boating Assoc	Yes
Vic Fischer	Po Bx 201348 Anch. 99520	276 7606	Self	yes
Art Mathews	3410 Arctic Anchorage	563-3188	Self	Yes
Chuck Graham	Box 11 Hope	782-3371	Self	Yes
WILDA HUDSON	~~LWVAK~~ 1542 E 27th Ave, Anch 99508	272-0366	LWVAK	Yes

Official Business

COMMITTEE: SENATE RESOURCES

DATE:

Subject of meeting: #4

INTERIM HEARING ON SUBSISTENCE

SIGN-IN

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Ken Weare	641 Wickersham Dr Anch AK 99507	563-7616	Forgotten 90%	Yes
Larry Holmes	P.O. Box 454, Girdwood 99587	783-2188	—	No
Randy Bosman	3038 Dunsmuir Dr. 99504	333-8347	ABA	Yes
Delice Calcote	205 E Dimond #326 99515	345-0505	CIMMC	Yes
Ron Barnes	8301 Rungwood #1 Anchorage Alaska 99504	337-5481	TTC S.A.I.W.T.	
Clayton Gottschalk	~~P.O~~ P.O Box 122 NAKUSC AK 99652	(907)24 8608	PAVG-UIK	Yes
Ray Metcalf	PO Box 230701 Anch 99523			
Fritz Pettyjohn	Box 110912 AA '11	563 3452	self	Yes

TESTIMONY ADDRESSING THE ATTEMPT TO AMEND THE CONSTITUTION OF THE STATE OF ALASKA

To Whom It May Concern:

Question:

Is the proposed amendment, of the Alaska Constitution, to provide a priority subsistence right to a restrictive class of USERS of our common property fish, wildlife and waters public trust resources; a constitutionally proper subject to be decided by a vote of the public?

The Colorado Supreme Court recently voiced it very simple and eloquently: "Ones right to life, liberty and property.... and other fundamental rights may not be submitted to a vote; they depend on the outcome of no elections."

The US Supreme Court rejected the Colorado Governor's bid to have that court override the Colorado Supreme Court decision which overturns a public vote to amend the state's constitution. (does that sound familiar?)

This decision reflects a litany of Supreme Court decisions that have continuously rejected those positions that claim that the constitution's "equal protection of the laws" can be declared voided by a vote of the public.

The US Constitution provided that no state shall "deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." This equal protection of the law is a most important right of any true democracy. And it cannot be subverted by the passage of any law (i.e. statute or amendment) which in fact and effect removes this fundamental right.

The "property" referenced in the fourteenth amendment of the US Constitution addresses the common property, such as fish, wildlife and waters, which are held in public trust for all people. The proposed amendment of the State Constitution, that subjugates the fundamental right of common use, then grants it as priority use to a restrictive class of USERS of those public trust properties, also denies "equal protection of the law." And thereby violate the US Constitution.
So, as to present my belief in what I objectively assume as may be individual public reasons for those who wish to truly support and honestly contribute to the priority of rights for the selective class of USERS of our common property fish,

wildlife and waters; I will first enumerated such a list and then issue a challenge to their personal commitments:

TO: Governor Tony Knowles and his politically indebted constituency, including the politically appointed task force that would plagiarize his own unconstitutional amendment to the Alaska Constitution.

TO: Lieutenant Governor Fran Ulmer who as the political handmaiden of the Governor, she has shown a continuing rush for a political settlement of the subsistence issue rather than any desire to stand up for equal rights protection.

TO: Former Governor Jay Hammond who publicly attacks those "opposed to amending our constitution or discriminating further between Alaskans" and then he co-ercively calls for the courage of others to follow his continual demand for the illegal vote on this unconstitutional denial of the equal protection rights of all the people. And to those who participate in his commercial fishing interests.

TO: House Speaker Gail Phillips who with her higher future political aspirations. has flip flopped from a position of "What are we wasting time for then?" to her present medicine show huckstering of the so called hardfast "linkage" of the proposed constitution's amendment. I questioned the honesty of tnis so called linkage when viewed, compared to the total federal disregard of the statehood compact linkage. Later she made a personal effort to confront me and make her accusation that I was the problem. (Confidentially, I better like the Alaska Supreme Court McDowell decision that we were right.)

TO: Byron Mallot who declared that the subsistence priority was no longer an equal protection issue. Then he adds that the Alaskan Natives have a special governmental relationship and that the Alaska public must recognize and accept this as a true fact. (A civil rights issue based on ethnic identity and religious claim of subsistence rights?)

TO: Former Attorney General Charlie Cole who personally admitted to me, that the due process right of life, liberty and property of the XIV amendment to the US Constitution is not subject to the vote of the public. Of course he agreed to bring it up, but if he did, it was evidently not in public.

TO: Senate President Mike Miller, who has also made a political flip flop, as he stated after discussion with Secretary of Interior Bruce Babbit.

TO: Said Interior Secretary, the federal fox guarding the state hen house, but he too no doubt does have strong interests in hunting and fishing uses of these public trust resources.

TO: Bruce Botelho Attorney General who is the Governor's politically appointed legal shill, who's entire office is committed to a political client-attorney relationship. And he has publicly stated that he has accepted that the only solution is not substantively but politically.

TO: Alaska's Congressional delegation who publicly makes excuses for their inept ability to protect the provisions of the statehood compact, the equal footing state resource management authority under the Submerged Lands Acts and Alaskans right to life, liberty and property, due process protection under the US Constitution. To specifically address Senator Stevens who created this quagmire, by supporting Title VIII ANILCA and to his support of his son's commercial fishing interest and to all of his congressional buddies who he accompanies each year to fish in the Kenai River

TO: To Bob Penny, Ben Ellis, Phil Cutler, and any other amendment supporting members of their sport fishing organizations.

TO: Theo Mathews, Karl Kishner and any other amendment supporting members of the statewide commercial fishing organizations.

TO: Federal Court Judge Holland who also enjoys fishing on the Kenai and to all individual federal authority who support the priority for a restrictive class of USERS of our fish, wildlife and water common use public trust resource properties.

TO: All of those who support the subsistence priority of a restricted class of USERS only if confined to specific areas of the Kenai Peninsula.

And now to the above listed parties and including all others who wish to truly support and honestly contribute to the priority demands of the restrictive class of USERS as proposed in the proposed amendment; I now challenge them to individually and collectively voluntarily "just say no" and cease their future

involvement in the harvest of these fish and wildlife, but to also cease their demand for a illegal vote to deny others equal protection of the laws.

Such responsible individual choices are the hallmark of a true democracy.

If we had a Governor and his administration who really opposes the federal oversight authority and was not tied to a political solution, we should disregard these federal administrative edicts and instead listen to the states highest legal authority (The Alaska Supreme Court).

The Alaska Supreme Court has taken the following positions:

1. "For a number of reasons... the federal government has no authority to regulate hunting and fishing in Alaska's water."

2. "We are not obligated to follow the 9th Circuit Courts rulings since this court is not bound by decisions of federal court, other than the United States Supreme Court."

In response, Botelho's staff argued that most of the issues raised in Totemoff's appeal were unworthy of Supreme Court review. But their response did urge the justices to resolve the conflicting edicts about regulatory authority.

It seems to me that if the State would follow our highest courts legal advice it would then be the federal administrators responsibility to seek their support from their highest federal legal authority, the US Supreme Court. That should at least force an avenue of level ground to the final settlement of these most important rights of the state authority over public trust resources. (See enclosure I Concurrent federal & state authority over public trust resources)

I ask the Knowles administration what it intends to do if they succeed in brokering their so called linkage agreement and then but not if, when Federal District Court Judge Holland does as he has in the past, over rides even the 9th Circuit Court when he issued his Kenatizie priority educational fishery decision.

Another issue that will create a direct conflict with the state administration proposed amendment and a recent 1997 Supreme Court decision (Payton -v- State of Alaska) i.e. "Despite repeated legal challenges to and multiple revisions of the subsistence laws, 'Subsistence USES' have long been defined in the terms of 'customary and traditional USES' ".

"Accordingly, we consistently have interpreted 'customary and traditional' to refer to 'USES' rather than USERS".

Because the proposed amendment grants a priority right for a restrictive class of 'USERS' and not just a preference of USE open to all persons; it will raise a challenge and a Supreme Court reversal due to its equal protection violation.

When we ask the Anchorage Attorney General's office what kind of new advice would be given to the Boards of Fish and Game due to this Supreme Court (Payton) decision. Their response was that the Paytons would be given their rights granted by the court, but this would have no expanded effect on future Board Management decisions.

The same challenge and Supreme Court reversal will be triggered by the place of residency clause of the proposed amendment. The Alaska Supreme Court in McDowell pointed out that a number of jurisdictions have struck down intrastate residency conditions for USERS priority of these common property resources.

Then why do those who push for such vulnerable actions continue such irresponsible attempts. Because they can pay their political debts by showing their constituency they tried. They care less for those who are denied their constitutional right for the years of time, effort and money it takes to win back their right, through court action.

Submitted By:

Dale Bondurant

Dale Bondurant
HC - 1 Box 1197
Soldotna, Alaska 99669

cc: Concerned Alaskans
Concerned Americans

To all whom it may concern:

Here we go again.

There are always those who demand special privileges and there by willingly subjugated the equal rights of all the people.

Even more at fault, there are those who are even more willing to use such matters for their own political purposes.

ANILCA Title VIII Subsistence priority for rural residents is such a matter. To understand the full implications of this provision, it is important to first establish some important facts.

Throughout recorded history, the fish, wildlife, and waters, as common property resources have been a compelling motivation for establishment of democratic equality under the law. This history of common USER ownership of these untitled properties has been recognized in what is referred as the Public Trust Doctrine.

The Public Trust Doctrine is an axiom of the recognition that the untitled fish, wildlife, and water properties be managed for the peoples common use. It was developed, evolved, and honed by its travel through centuries of time and various societies, that is why its purposes must be continued in light of changing history of regulations developing by agencies and court interpretations. But the thread of equality of common USE must not be broken by a priority of USERS.

The Alaska Constitution Article VIII Natural Resources explicitly reflects the Public Trust Doctrine mandate of equal protection of the law for USER of the fish, wildlife, and water as a common property resource. Section 3 "Common Use." "Where ever occurring in their natural state fish, wildlife, and waters are reserved to the people for common use" is a pure axiom of such a public trust.

Section 4 Sustained Yield. Fish, forest, wildlife, grass lands and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial USES"

Here in lies an oxymoron that creates confusion for those who do not wish to understand nor except that thread, of equal protection for all USERS, that ties together all Sections of Article VIII.

There can and will be Selective preferences among the beneficial USES of the common property fish, wildlife, and waters resources. Example: Subsistence, personal use and sport fisheries; all of which are recognized as personal common consumptive USES, which are specifically identified by methods, means, bag limits, species, availability, etc. But whenever or where ever, each such specific USES are selected for preference, then All USERS must be awarded their equal rights of consideration to participate in the harvest of these common use property public trust resources.

This equality as USERS is further provided by Section 15. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State" and Section 17 "Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons."

Alaska Constitution Article VIII is recognized by constitutional scholars as the best Natural Resources provision in the Nation. Members of the Constitutional

Convention spent more time on Article VIII than they did on the rest of the Constitution. The main thrust of Article VIII is that Alaska's public resources are to be used by and for the common benefit of All of the people.

"Although 3, 15 & 17 vary in expression , they share at least one meaning; exclusive or special privileges to take fish and wildlife are prohibited in the use of natural resources subject to the disposition of the state." Still further the constitutional Convention stated: "This section (15) is intended to serve as a substitute for the provision, prohibiting the several right of fisheries in the White Act." "Instead of using the terminology of the Act, the purpose sought by it are given expression in a prohibition of exclusive right or special privileges of any person to the fisheries of the State."

In both the United States and Alaska Constitutions we find provisions of the public trust responsibility and further fortify the equal rights of USERS of the common property fish, wildlife, and water resource.

The Constitution of Alaska Article I Declaration of Rights: Section 1 Inherent Rights: This Constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities and protection under the law; and that all persons have corresponding obligation to the people and to the State."

In opposition to the Subsistence priority for rural residents, Alaska Supreme Court Justice Moore stated: "This is an equal protection case, and an easy one at that."

Therefore in a rare show of openness, responsibility and 'corresponding obligation to the people and the State'; I challenge, the secretly seven to submit in their proposed constitutional amendment the following addendum to "Article I Inherent Rights" '...that all persons are equal and entitled to equal rights, opportunities, and protection under the law [addendum: except as the Legislature may wish to deny these rights and selectively impose priority classes of USERS of Alaska's fish, wildlife, and waters public trust resources.]

I also challenge our esteemed congressional delegation, who pleads an ability to only selectively amend ANILCA, to submit such a companion phrase for the US Constitution Article XIV "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or (property)...[(addendum) except as when Congress may wish to deny such protection and selectively impose priority classes of USERS of Alaska's fish, wildlife, and waters public trust properties.]

(Footnote) This denial of equal protection under the law explicitly includes All residents of specifically named cities of Anchorage, Fairbanks, Ketchikan, and Juneau and thereby the sovereign State of Alaska is shorn of its equal footing status with the other states of the Union.

Court reversals of congressional and federal attempts to deny equal footing status is well documented: Wyoming v. Race Horse cite 163 US 514 (Enclosure I) presents a number of such attempts to deny, by federal acts, the equal footing clause to sovereign states; and pertinate information is quoted in brief as follows: "The power of a state to control and regulate the taking of game can not be questioned."

"This argument indicates at once the conflict between the right to hunt in the unoccupied land, with in hunting districts and the assertion of power to exercise of the privilege in question in the state of Wyoming is in defiance of its laws"

The act which admitted Wyoming into the Union, as we have said expressly declared that state should have all the powers of the other states of the Union."

"It was held that the shores of navigable waters and the soil under them were not granted by the Constitution of the United States, and hence the jurisdiction exercised there over by the Federal government, before the formation of the new state, was held temporarily and in trust for the new state to be there after created, and that such state when created, by virtue of its being, possessed the same rights and, jurisdiction as had the original states." "The courts declared that to refuse to concede to Alabama sovereignty and jurisdiction over all territory within its limits would be to deny that Alabama has been admitted into the Union on an equal footing with the original states."

" In considering this act of Congress...it is unnecessary to institute any examination or criticism as to its legitimate meaning or operation or binding authority, further than to affirm that it could have no effect to restrict the new state as an independent sovereign government nor inhibit or diminish its perfect equality with the other members of the confederacy with which it was to be associated."

"Whatever the limitation upon her powers as a government whilst a territory condition, whether from....legislation of Congress, it ceased to have any operative force except as voluntarily adopted by her, after she became a state of the Union." "On her admission she at once became entitled to and possessed of all tne rights of dominion and sovereignty which belong to the original states." "She was admitted, and could be admitted, only on the same footing with them...Equality of the constitutional right and power is the condition of all the states of the Union old and new."

"And it was held that a clause in the act of admitting California into the Union which provided that the navigable waters within the state shall be free to citizens of the United States, in no way impaired the power which the state could exercise over the subject if the clause in question had no existence." "The act admitting California declared that she is admitted into the Union on an equal footing with the original states in all respects whatever." "She was not, therefore shorn by the clause as to navigable water, within her limits, of any of the powers which the original states possessed over such waters within their limits."

How do these above quoted decisions relate to the mandate of federal management imposed by Congress in their enactment of Title VIV of ANILCA? The Federal Government has argued on several issues their supremacy right to impose this rural residency discrimination on USERS on public land within the limits of sovereign State of Alaska. This by fact and intent impinges upon the States sovereign servitude responsibility to manage Alaska's fish, wildlife, and water public trust resource and there with denies her people and State the equal footing of the other states.

The federal government rightly claim that those dedicated lands such as National Parks, reserves, forests, etc.. are set aside for special purposes that requires compatible management of the fish, wildlife, and waters. This argument is a slender reed when viewed in the context of the Alaska Constitution recognition of such preferences of beneficial USES. But the mandate of ANILCA is in fact a federal oversight authority

demanding the imposition of a certain class of (intrastate rural residents) priority USERS of these common property fish, wildlife, and waters public trust resource. This imposition of such a factional and intentional denial of the protection of the privileges and immunities and the equal protection of life, liberty and property has no president in the police powers of the State sovereignty. All such attempts have been struck down by courts as violation of Articles IV, V, X, and XIV of the US Constitution.

The federal authorities used a two prong attack, on Alaska's right to manage the fish, wildlife, and waters within its limits, by contending that it can claim federal authority by reserved water rights and over navigable waters of the federal public lands reserved within the limits of Alaska.

1. The reserved water rights of these National Parks, reserves, forest, etc.. are of a commendable and viable concern to protect their purpose, but to use this as a claim of federal supremacy over the states servitude responsibility to manage these fish, wildlife, and waters becomes a sham when viewed in the proper prospective and recognized purpose:

"Water Resource Management" "A Case Book in Law and Public Policy" (quote), "The United States follows state water law in appropriating water rights, but when it is unable to comply with the provisions of the law and still carry out federal purposes, state law may be preempted. The policy debate is over how vigorously the Executive will act in asserting preemption."

["Consider several possible federal needs for water. In which cases do reserved rights exist? In which must the government proceed to acquire water rights entirely according to state law? In which may aspects of state law be avoided in order to acquire water rights.?

1. The Department of Defense needs water to serve barracks built on a military reservation.
2. The Forest Service seeks in stream flow rights for fish and wildlife purpose in a national forest, but state law does not recognize in stream flows as a beneficial use.
3. The Park Service seeks to convert state-permitted agricultural rights it purchased from a farmer to in stream flow rights for a national park, but the state law allows in stream flow rights to be held only by a state agency.
4. The Bureau of Land Management (B.L.M.) seeks water rights to maintain a fishery in a stream on unreserved lands in a state that does not recognize in stream flows as a beneficial use.] (Enclosure II Water Resource Management)

The Alaska Constitution Title VIII Section 13 "...an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise as prescribed by law, and to the general reservation of fish and wildlife."

So there is no conceptual conflict with the responsible federal need for reserved water rights on these public lands, and the need of in stream flows for the general reservation of fish and wildlife as is mandated. This is the same constitution that was required by the Alaska Statehood Compact to prove the state - "has made an adequate

provisions for the administration, management, and conservation of said resources in the broad national interest." To make reserved water rights the scapegoat of federal claim of management, not of preference USES, but of priority USERS of Alaska's fish and wildlife, and waters public trust resources; is just another naked attack on Alaska's right of equal footing and its people's life, liberty and property rights of equality under the law.

This same federal attack is also aimed at those navigable waters that are on or flow through such federal lands that lie within Alaska limits. It shows a repeated lack of federal respect for the equal footing right of the State and, therefore, the state's citizens.

The Alaska Statehood Compact explicitly provides: "The Submerged Lands Act of 1953...shall be applicable to the State of Alaska and the said State shall have the same rights as do existing states thereunder." ["Submerged Lands Act" Title II "Section 3 Right of the States":

"(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of lands beneath the navigable waters within the boundaries of the respective States, and the natural resources within such land and waters. And (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with the applicable state law be, and they are hereby subject to the provisions hereof, recognized confirmed, established and rested in and assigned to the respective States."

(b)(1) The United States hereby releases and relinquishes unto said States...all rights, title and interest of the United States, if any it has in and to said land, improvement and natural resources. (2) The United States hereby releases and relinquishes all claims of the United States."

"Title I Definitions"

(e) The terms 'natural resources' includes without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animals and plant life.] (Enclosure III, The Submerged Lands Act.)

It can be briefly explained that the federal government has a servitude responsibility to manage navigable waters for transportation and commerce. The State governments have a servitude responsibility to manage the natural resources within the submerged lands and all fish, marine animals and plant life within these navigable waters.

Now through Title VIII of ANILCA, Congress has shorn Alaska of its equal footing rights and the State's citizens are denied their constitutional right of equality under the laws.

Some argue that the Alaska Statehood Compact's provisions promising the State management authority of its fish and wildlife was an act of Congress and it can also be taken thereof.

I will, in reply, argue that Title VIII of ANILCA, did not, in fact and effects, mandate the management of beneficial USES but instead it mandates the priority of a restricted class of USERS to participate in the harvest of these common property fish, wildlife and waters public trust resource.

If the people are so lackadaisical as to accept such politically motivated, imperialistic action, there still remains the fact that the Statehood Compact also provided that: "The Submerged Lands Act - shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder." If the same imperialistic implications exist - that what Congress gives, they can also take away -; then under the Constitutions provision of State sovereignty equal footing rights, it must follow that all other States would also lose their resource management authority as provided by said Submerged Lands Act.

The supremacy of the federal government also cannot subjugate the police powers of a sovereign State as delegated by US Constitution Article X; by an act of Congress such as Title VIII ANILCA.

I find that: Governor Knowles in delivering on past political promises to his supporters, Speaker Gail Phillips by laying foundations of future political aspirations, and former Governor Jay Hammond's arrogant statement to shame Alaskans into giving up their principles of fairness for his idea of acceptable discrimination are personal positions; that further clouds the task force's amendment product, hatched in secret of purpose and shows an irresponsible disregard for the Alaska Constitution's provision "that all persons have corresponding obligations to the people and to the State."

I would still hope that instead of the acceptance of 'politically correct' (?) positions, the incentive would instead be to protect the equal rights under the law for all people. Instead of accepting excuses that our Congressional delegation are inept at changing the prejudices and inequities of Title VIII ANILCA, we should look to the findings of the Alaska Supreme Court as the most important guide to the State's legal position.

Some of the findings are as follows:

(1) "State control merely for the sake of control is a questionable goal when the terms infringe upon the open access values of Article VIII." (Enclosure IV, McDowell v. State of Alaska 1989)

(2) "We note that several other jurisdictions have struck down intrastate residential preferences in fish and game statutes." "These authorities support our view that the equal access clauses of Article VIII, which are special types of equal protection guarantee, bar the residential discrimination imposed in this case." (McDowell v. State of Alaska, 1989)

(3) "The common right, which one individual of the whole community is entitled to enjoy as much as another, cannot be made by law, the exclusive privilege of the people of a certain class or section upon terms that do not apply to the whole people alike." "This right which one individual has in common with every other individual in the community to take and use fish and game, ferae naturae, is one that has existed from the remotest times, and although at one time in England after the Norman Conquest the right to take fish and game was claimed a royal prerogative to the exclusion of the people, it was restored to them by the Barons at Runnymede in 1215 and was declared in the great (Magna) Charter which they wrested from King John." "(McDowell quoted from Lewis v. State 110 Arizona 204)"

"These rights were confirmed and established ever after in England by acts of Parliament, and they have come down to us from the laws of England and may be regarded as a common heritage of the English speaking people." "(McDowell, also see Parker v. People - 111 111 581; Greer v. Conn 161 US 519; Martin v. Waddell 41 US)"

(4) "Where the necessity for the preservation of wild game and fish exists in certain territories of the State, that territory may be segregated for the purpose of regulating the right to taking game and fish therein; but the privilege of taking and using same must be extended to the people of the State outside of the territory upon the same terms that are given to those who are residents of the territory embraced in the legislation." "(McDowell also see Hayes v. Territory 2 Wash T 286; State v. Higgins 51SC51; and Harper v. Galloway 58 Fla 253)"

(5) Alaska Supreme Court Judge Moore "This is an equal protection case, and an easy one at that." "Article I Section 1 of the Alaska Constitution provides that 'all persons...are entitled to equal rights, opportunities and protection under the law..." "The Alaska Constitution has a similar clause specifically concerning natural resources." Article VIII section 17 the Uniform Application Clause, ' provides that laws and regulations governing the use and disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation'." (McDowell)

(6) "In Owsichek v. State (Alaska 1988) we observed that Article VIII provisions were designed to ensure to the public the broadest possible access to wildlife." We noted that "the common use clause imposes upon the State a trust duty to manage the fish, wildlife and water resources of the State for the benefit of All the People." "(emphasis added)" "A minimum requirement of this duty is a prohibition against any...special privileges" (McDowell).

(7) "In State v. Ostrosky (Alaska 1983), we observed that the common use and no exclusive right of fishery clauses reflect 'anti-exclusionist values'." (McDowell)

(8) [The following comments are excerpts from Anchorage Daily News article related to sovereign edicts over regulatory to manage Alaska's common property fish, wildlife and waters public trust resources: (Enclosure V) The US Supreme Court...refused to address a conflict between a federal appeals court and Alaska's Supreme Court over whether the state or federal government has the highest regulatory authority over hunting and fishing along Alaska's waterways. The justices, without making any comments, let stand an Alaska Supreme Court ruling that said the State - not the Federal Government - has regulatory authority over subsistence hunting and fishing. The case...dates back to an incident...on Naked Island in Prince William Sound. Michael Totemoff ...was convicted of illegally hunting deer with a spotlight off the island. He challenged his conviction, and based his legal case in part on what he said was the state's lack of authority to regulate his conduct in navigable waters. The Alaska Supreme Court upheld Totemoff's

conviction, ruling that state game laws applied to his conduct. "We are not obligated to follow (the Ninth Circuit Court's ruling) since this court is not bound by decisions of federal courts other than the United State's Supreme Court" the Alaska Court said. "For a number of reasons...the federal government has no authority to regulate hunting and fishing in Alaska's navigable waters", it added.] (Enclosure V, Anchorage Daily News article)

(9) "Despite repeated legal challenges to and multiple revisions of subsistence laws, 'subsistence USES' have long been defined in terms of 'customary and traditional USES'. "Accordingly we consistently have interpreted 'customary and traditional' to refer to 'USES' rather than 'USERS'." State v. Morry 1992; McDowell v. State; Madison (reference Payton v State of Alaska 1997) (Enclosure VI Payton v. State of Alaska)

Customs and traditions are important heritages of different peoples, but when they invoke prejudice they are merely demands of special privileges for some and destroy equality among All the people.

All past history shows that Title VIII ANILCA federal management oversight authority continues no matter what the State may do to comply. It was this blackmail purpose that resulted when Senator Stevens told the Alaska legislators that if they did not pass a subsistence priority statute, then Congress would. He then went before Congress and declared that this was what Alaska wanted. It was his devious purpose of supporting Title VIII ANILCA which resulted in the federal mandated oversight that unilaterally denies Alaskans its equal footing right to manage the State common property fish, wildlife and waters public trust resources.

As further proof of the foolish expectations for, a return of true State fish, wildlife, and water resource management authority, from the proposed discriminatory amendment to our "Common Use" and No exclusive right or special privilege clause of Alaska's Constitution; I provide the following results from a meeting between Bruce Botelho (Governor Knowles appointed Attorney General) and over 20 Alaska Legislators.

(Enclosure VIII)

Speaker Phillips:
Bruce, time and time again, we have been told that if Alaska comes into compliance with the federal law, that we will be guaranteed the right to manage our fish and game resources again, or at least manage them with the least amount of federal interference. However, you will recall that when the...the same promises were made to us when we reassumed management of the walrus under the Marine Mammal Protection Act. And once we had that, then the management was forced...we were forced return walrus management to the federal government due to continued harassment by the federal government. Do we have any kind of guarantees whatsoever, that if we were to take action, whether it be to come into compliance as has been stated, or to reach some kind of compromise, or to come up with some kind of solution, do we have any guarantee

whatsoever that the federal government will pull out and take us out from under this threat of their interfering with our management?

Bruce Botelho:

Madam Chairman, it's a difficult question to answer. I don't think there is an absolute guarantee and I think that Senator Taylor is correct when he has identified one aspect, I think, very important, sometimes overlooked, which is that when we talk about a constitutional amendment and subsidiary laws bringing the state's laws consistent with ANILCA, it does mean, obviously, that – maybe not so obviously – that fish and game managers would be state managers, setting guidelines. But it does not eliminate federal government oversight. ANILCA, by its terms, provides for any aggrieved citizen or person – not limited to citizen – to seek recourse ultimately in U.S. District Court, and to the extent that there is no resolution, the federal district court retains the right to fashion relief. And that would occur, does occur now, and would occur also with a constitutional amendment. The effect of a constitutional amendment found to be consistent with ANILCA, simply means, and it's an important simple, that it would be state fish and game managers managing the fish and wildlife resources within the boundaries of Alaska. But it does not mean there's no federal oversight.

Speaker Phillips:

So, just to clarify...could I just verify and clarify your response. We could take any kind of action we wanted in the state of Alaska. We could do anything we want to try to come into compliance...to meet the federal compliance and that still does not guarantee us, that we would have the rights to manage our fish and game resources, regardless of what we do.

Bruce Bothelo:

If I've not been clear, Madam Chairman, we do have the right to manage. We are subject, however, to federal court oversight by ANILCA. Whatever changes we make that bring us into compliance, the actions of our state government would be subject to a person challenging our... the propriety of our management under the guidelines of ANILCA. That is, whether we have in fact satisfied the rural subsistence priority found in Title 8.

Speaker Phillips:

What are we wasting time for, then?

Representative Bunde:

Well, I tend to oversimplify things, but to me that says that the state can manage, as long as they do it the way the federal government tells them to. In other words, the state managers do the talking, but the feds pull the strings.

Senator Taylor:

A puppet.

Senator Halford:

So a constitutional amendment, absent changes in ANILCA, is not a solution?

Bruce Botelho:

I have not said that though I would believe my—well, let me restate that is a correct assumption of my view. I think there are changes to ANILCA – the solution lies in a combination of a constitutional amendment and certain changes to ANILCA.

Senator Halford:

Could the solution lie with changes to ANILCA without the constitutional amendment?

Bruce Botelho:

I believe that there is no solution that can be found that rests solely on changes to ANILCA.

Senator Halford:

Politically or substantively?

Bruce Botelho:

Politically.

Senator Halford:

Isn't it kind of an insidious thing though? I mean it starts out with subsistence management and that's all that's provided for in the federal law, but as you manage for subsistence, then you manage the other conflict. So, it's not something I think that happens all at once even it you – you know I think it happens insidiously and it grows as it goes, because the federal law doesn't provide for management of fish and game, it provides for management of subsistence, but in order to manage the subsistence harvest, you have to cut off and deal with other harvests in conflict. So eventually, you get further and further into the management of every other use, and maybe even some non use areas - maybe some development areas as well.

Bruce Botelho:

Both that in terms of the expansion through the species, but also expansion geographically, whatever the outcome in Katie John in terms of navigable waters, we have separate related question in terms of management of species which passed between public and non public lands and the ability to regulate off public lands to make sure that the species are available to satisfy subsistence on public lands.

Senator Halford:

That's my comment. My question goes back to Katie John and the probable outcome. It seems that the – you know we have lot of other states that are on our side on navigational servitude. We have lots of arguments and lots of history to win that portion of the case, but what about federal reserve water rights. Isn't that the place where we can lose in part and be variable based on a whole bunch of further determinations down the road?

Joanne Grace:

Yes, I think – I think it s going to be harder for the court to base its decision on that because what the court would essentially be saying is if the United States has any interest, no matter how small in the water, that that converts the entire waterway into public lands. It's an absurd result because essentially we'll convert all lands and waters in Alaska into public lands. For example, we are just before the Ninth Circuit that it would – we argued this in the context of an absurd result. All lands in Alaska patented

after the year 1890 are conveyed subject to (indisc.) and easements (indisc.). That is an interest that the United States holds in all lands they've patented after 1890 (indisc.). So we argued that (indisc.) tend to any tiny interest of the United States to convert back areas of land and water into public lands. So I think that it's going to be pretty difficult for the court to base its decision on federal reserve water rights, but if the court does, then we're looking at a waterway by waterway determination or maybe a reservation system by reservation system of determination of whether the United States has the waterway.

Senator Halford:

But don't you think that's – I mean do you think they'll go back to navigational servitude or you think there is any chance that they will? I mean that one seems to go even further back into the...

Joanne Grace:

There's never been a decision that said a navigational servitude is a property interest and I think the Supreme Court has been – in power of the federal government (indisc.). So it would be – it would surprise me if the Ninth Circuit would rule that way just because the concept is so odd. But (indisc.), I guess don't feel really comfortable predicting what they'll do.

Bruce Botelho:

That might be something to elaborate on very briefly and that is to say that in virtually every case presented to the Ninth Circuit, the Ninth Circuit has favored the subsistence use over adverse interest, frequently the state of Alaska.

This meeting is reminiscent of the same lame brain solutions and Administration's propagandized attempts to sell the same illusionary state management control, discussed before the special Legislative session in 1990.

During both periods, there appears, the Governor's willingness to continue to support the impingement against the rights of All the peoples; and their right of equal consideration in the harvest of Alaska's common property fish, wildlife and wildlife public trust resources. To illustrate this relentless subjugation of equal footing as granted all of the other states; and to tie together this continuous attitude, I enter the dissertation that I wrote in response to the 1990 special Legislative session (Enclosure VIII). "State Control Management of Alaska's Fish and Wildlife, Illusionary or Fact?"

It is of related importance to note that in the above referenced dissertation; (i.e. Enclosure VIII), I referenced the effect of, the Gulkana River 1987 US District Court decisions, on the States ownership of our navigable waters and therewith the management of Alaska's fisheries as provided by the Submerged Lands Act.

This decision (Gulkana River Enclosure IX) established the broadest interpretation - susceptibility to transportation - as to the determination of navigable waters, by a federal court. Therefore, Alaska gained title to millions of acres of submerged lands and the State management authority of the fish in an estimated 100,000 to 180,000 miles of navigable water as provided by the Submerged Lands Act and the equal footing provision Article IV US Constitution.

Some of the pertinent quotes from the Gulkana River case are:

"1. Navigable Waters 36 (1) Title to beds of navigable inland water bodies in Alaska passed from the United States to Alaska when Alaska entered the Union; therefore, beds of navigable waterbodies in Alaska were not available for selection or changeable to either Alaska Native Claims Settlement Acts or the Alaska Statehood Act entitlements."

"This case raises difficult questions concerning application of the well settled principles that a state is vested with title to the beds underlying navigable waterbodies at the time the state enters the Union."

"However under the 'equal footing doctrine', see Pollard's v Hagan ...and its codification in the Submerged Lands Act of 1953, title to the beds of navigable inland waterbodies passes from the Untied States when the state enters the Union."

"Because title to the beds of navigable waterbodies passed automatically to Alaska at the time of statehood, they are neither available for selection nor chargeable to either the ANCSA or the Statehood entitlements." (See generally 43 USC 1602 (e) 1610 - 1611, 1631 and 48 USC prec. 21 Sec. 6 (a) and (b).)

"American courts adopted the English common law principle that navigable waterbodies are held by the sovereign in trust for the public." "In Martin v Waddell...the Supreme Court found that the title navigable waterbodies in the former colonies, formerly held by the King of England in trust for the public pursuant to the common law doctrine of navigable waterbodies, was by virtue of the Revolution rested in the States."

"Other consideration unique to the American system of government came into play when applying the doctrine of title navigability to waterbodies lying outside the original 13 colonies." "Under the equal footing doctrine, new states have the same rights, sovereignty and jurisdiction as the original states possess within their respective borders."

"Under the Americanized version of common law doctrine of navigability, by virtue of the rights gained in the Revolution and confirmed by the Constitution, it is the state, as opposed to the federal government, which hold title in public trust of 'public waterbodies' and it is through application of the definition of navigability that the determinations made of which waterbodies are public and which are not."

"The purpose then of the equal footing doctrine as applied to questions of title navigability is to ensure that all states are rested with the same right of safeguarding 'public', that is 'navigable waterbodies'." (emphasis added)

As can be readily seen this Gulkana River federal court decision is very repetitive in it's references to the equal footing right of the State of Alaska; which would include the public trust title to and management authority of the submerged lands and the fisheries of all of the navigable waters within Alaska.

It has been my long time observation that State officials have continually displayed an apathy of appreciation of the value of this Gulkana River decision. They ignore the public citizens' struggle who wrestled the title to millions of acres of submerged lands and therewith the management of all of the fisheries in the States navigable waters. At that time federal opposition, also included Alaska's congressional delegation, and now for political positioning, they again demand that a passive public

accept an unconstitutional proposed amendment to vote away their Constitutional protection of "life, liberty, and property" and the equal protection "under the law".

In this instance such an amendment would impinge not only on the Statehood Compact, Alaska Constitution Article I Section 7 Inherent Rights, and Article VIII Natural Resources; but also the US Constitution Article IV privilege and immunities, Article X States police powers and Article XIV life, liberty and property equal protection clauses.

I find that the Administrations irresponsible action in dropping, with prejudice, their opposition to parts of the Katie John case (the sanction of federal management) should raise the question of its (the Governor) purpose and position on the question of navigability State servitude title; if they are willing to vacate this right of equal footing of State management authority, by subjugating it under the proposed Constitutional amendment.

With such a voluntary subjugation the question of state title of navigable servitude, management authority can then be viewed as an issue that is moot.

In a true democracy the decision to subjugate a persons inherent rights of equality under the law must be of an individuals own volition. Then right to life, liberty and property cannot be made the preview of the vote of a majority. There are many who would deny the right of all people just to obtain privileges for their own purposes. This demand for personal privileges results in the automatic imbalance on the scale of justice.

Therefore I find that such a rear ended assault on these constitutionally protected rights of All citizens, are not a proper subject for a vote by majority of Alaskans. It is only the preview of the people of the Nation as a whole; and then only when presented as an honestly open, unclouded presentation of all of these most important rights of equal protection under the law and through the appropriate lawful process.

In support of this position, I present the following references:

(Enclosure X State v Julow; Supreme Court of Missouri)

"A citizen cannot be deprived of a right secured by the Constitution by a statute passed as a police regulation."

"...the 5th amendment of the constitution of the United States, providing, among other things, "nor deprived of life, liberty or property without due process of law." "In section 30, supra, as well as in the section in the federal constitution just recited, it will be noted that the rights of life, liberty, and property are grouped together in the same sentence; they constitute a trinity of rights, and each, as opposed to unlawful deprivation thereof, is of equal constitutional importance." "With each of those rights, under operation of a familiar principle, every auxiliary right, every attribute necessary to make the principal right effectual and valuable in its most extensile sense, pass as incidents of the original grant." "The rights thus guaranteed are something more than the mere privileges of locomotion; the guaranty is the negation of arbitrary power in every form which results in a deprivation of a right."

"These terms: "life", "liberty," and "property," are representative terms, and cover every right to which a member of the body politic is entitled under the law." "Within their comprehensive scope are embraced the right of self-defense, freedom of speech, religious and political freedom, exemption from arbitrary arrests, the right to buy and sell as others may, - all our liberties, personal, civil, and political - in short, all that

makes life worth living; and of none of these liberties can any one be deprived except by due process of law." "Now, as before stated, each of the rights heretofore mentioned — carries with it, as its natural and necessary coincident, all that effectuates and renders complete the full, unrestrained enjoyment of that right."

"The 'law of the land' and 'due process of law' are the legal equivalents of each other." Touching this topic, a distinguished jurist observes: "Perhaps no definition is more often quoted than that given by Mr. Webster in the Dartmouth College Case: 'By the law of the land is most clearly intended the general law, a law which hears before it condemns, which proceeds upon inquiry and renders judgement only after trial.' 'The meaning is that every citizen shall hold his life, liberty, property, and immunities, under the protection of the general rules which govern society.' 'Everything which may pass under the form of an enactment is not, therefore, to be considered the law of the land." "Cooley, Const. Lim. (6th Ed.) 431. Comstock, J., when discussing a constitutional prohibition, such as ours, said: 'No doubt, it seems to me, can be admitted to the meaning of these provisions.' 'To say, as has been suggested, that 'the law of the land' or 'due process of law' may mean the very act of legislation which deprives the citizen of his rights, privileges, or property, leads to a simple absurdity'. 'The constitution would then mean that no person shall be deprived of his property or rights unless the legislature shall pass a law to effectuate the wrong; and this would be throwing restraint entirely away. * * * Where rights of property are admitted to exist the legislature cannot say they shall exist no longer; nor will it make any difference although a process and a tribunal are appointed to execute sentence'." "If this is the 'law of the land', and 'due process of law' within the meaning of the constitution, then the legislature is omnipotent.' 'It may, under the same interpretation, pass a law to take away liberty of life without a pre-existing cause, appointing judicial and executive agencies to execute its will.' 'Property is placed by the constitution in the same category with 'liberty and life'." Wynehamer v People, 13 N.Y. 37S. Here, the law under review declares that to be a crime which consists alone in the exercise of a constitutional right, to wit, that of terminating a contract, - one of the essential attributes of property, indeed property itself, under preceding definitions. Brought to the bar of a court on such a charge, the accused would have been prejudiced in so far as the criminality of the act charged is concerned." "No question could there be made or admitted as to the quality of the act." "That would have been settled by the previous legislative declaration, and it would only remain to find the fact as charged in order to declare the guilt as charged." "But the fact as charged, as already seen, is not a crime, and will not be a crime so long as constitutional prohibitions are respected and enforced." "If an owner, etc., obeys the law on which this prosecution rests, he is thereby deprived of a right and a liberty to contract or terminate a contract, as all others may; if *he* disobeys it, then he is punished for the performance of an act wholly innocent, unless, indeed, the doing of such an act, guaranteed by the organic law, - the exercise of a right of which the legislature is forbidden to deprive him, - can by that body be conclusively pronounced criminal." "We deny the power of the legislature to do this, to brand as an offense that which the constitution designated and declares to be a right, and therefore as innocent act; and consequently we hold that the statute which professes to exert such a power is nothing more or less that a "legislative judgement," and an attempt to deprive all who are included within it's terms of a constitutional right without

due process of law." "A statute would not be constitutional which should select particular individuals from a class or locality and subject them to peculiar rules, or impose upon them special obligations or burdens, from which others in the same class or locality are exempt. * * * Everyone has a right to demand that he be governed by general rules, and a special statute which, without his consent, singles his case out as one to be regulated by a different law from that which is applied in similar cases would not be legitimate legislation, but would be such an arbitrary mandate as is not within the province of free government." "Cooley, Const. Lim. 391." "The legislature may legislate in regard to a class of persons, but they cannot take what may be termed a natural class of person, split that class in two, and then arbitrarily designate the dissevered fractions of the original unit as two classes and enact different rules for the government of each." "This would be a mere arbitrary classification, without any basis of reason on which to rest, and would resemble a classification of men by the color of their hair or other individual peculiarities, something not competent for the legislature to do."

"The litigated statute is also in conflict with section 1, art. 14, of the federal constitution, aforesaid, forbidding that "any state deprive any person of life, liberty, or property without due process of law," as to which the same considerations as heretofore announced apply."

"Nor can the statute escape censure by assuming the label of a "police regulation." It has none of the elements or attributes which pertain to such a regulation, for it does not, in terms or by implication, promote or tend to promote the public health, welfare, comfort, or safety; and if it did, the state would not be allowed, under the guise and pretence of a police regulation, to encroach or trample upon any of the just rights of the citizen, which the constitution intended to secure against diminution or abridgment."

"In conclusion it may be said that there is a broad distinction between the invasion of a right conferred by the constitution, to wit, a right of property, carrying with it, as we have seen, all the liberties, attributes, and coincident rights, and those rights which are the mere creatures of legislative gratuity, where the legislature granting a privilege or bestowing a bounty may, of course, as no constitutional right in involved, prescribe the conditions upon which the privilege may be exercised or the bounty be obtained."

I charge that those politicians who would amend, Alaska's Constitution, to eliminate open, equal access to ALL USERS of the States fish, wildlife, and waters common property resource; are in fact impinging on the Nations Constitutional provisions of equal protection under the law. As long as they can momentarily deliver on a political promise, they care not of their denial of this equal protection to a segment of citizens who must spend time, effort, and money to gain back their inherent right to life, liberty, and property. The politician can then claim they tried to deliver on those self interest commitments, without any thought or obligation of responsibility to those public rights of all persons.

It is because of such irresponsible political attitudes that the courts have consistently found that the Constitutional rights cannot be impinged upon by submitting to a vote, one's right to life, liberty, and property.

In a more recent case, the Colorado Supreme Court ruled, "Ones right to life, liberty and property...and other fundamental rights may not be submitted to a vote; they–depend on the outcome of no election." (Enclosure XI, attachment (a))

In addressing this case (Enclosure XI, Roy Romer, Governor of Colorado v. Richard Evans 1996) the US Supreme Court found the following:

"One century ago the first Justice Harlan admonished this Court that the Constitution 'neither knows or tolerates classes among citizens.'" "Unheeded then, these words now are understood to state a commitment to the law's neutrality where the rights of persons are at stake." "The Equal Protection Clause enforces this principle and today requires us to hold invalid a provision of Colorado's Constitution."

"Colorado's state and municipal laws typify this emerging tradition of statutory protection and follow a constitutional pattern."

"These statutes and ordinances also depart from the common law by enumerating the group or persons within their ambit of protection." "Enumeration is the essential device used to make the duty not to discriminate concrete and to provide guidance for those who must comply." "...it's sheer breath is so discontinuous with reasons offered for it that the amendment seems inexplicable by anything but animus toward a class that it affects; it lacks rational relationship to legitimate state interest." "...even in the ordinary equal protection case calling for the most deferential of standards, we insist on knowing the relation between the classification adopted and the object to be attained." "By requiring that the classification bear a rational relationship to the independent and legitimate legislative end, we ensure that classification are not drawn for the purpose of disadvantaging the group burdened by the law."

"Amendment...confounds this normal process of judicial review. "It is at once too narrow and too broad." "It identifies persons by a single trait and then denies them protection across the board."

(The same thoughts were addressed in McDowell v. State; and are also imposed by Title VIII ANILCA.)

Further quotes from Enclosure XI:

"...discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision." "It is not within our constitutional traditions to enact laws of this sort. Central both to the idea of the rule of the law and to our own Constitution's guarantees of equal protection is the principle of government and each of its parts remain open on impartial terms to all who seek its assistance." "Equal protection of the law is not achieved through indiscriminate imposition of inequalities."

"The guaranty of 'equal protection' of the laws is a pledge of the protection of equal laws." (Enclosure XI) "The liberty of which the fourteenth amendment forbids a state from depriving anyone without due process of law is something more than freedom from enslavement of the body or from physical restraint." "In my judgement the words, 'life, liberty or property' in the fourteenth amendment should be interpreted as embracing every right that may be brought within judicial cognizance and therefore no right of that kind can be taken in violation of 'due process of law'." (Taylor v Beckman 20 S.C.T. 890, 1016, 178 U.S. 548, 44 LCD 1187) (Enclosure XI attachment)

There is an even more insidious demand developing from the constitutional flawed edicts of Title VIII ANILCA: Some of the growing demand for a subsistence based priority are claimed to be a right of Native heritage and as a matter of religious preference. There is no fault with the fundamental claims; but when they become the basis for demands of any priority right, they in fact, result in discrimination based on ethnic identity (race) and religious preference. Such results have no place in a democratic society and are especially obnoxious when it denies Common Use of Alaska's fish, wildlife, and waters public trust resource properties.

This preordain both a civil rights violation, as well as an equal protection cases

I believe that I have presented a fair rationale to support the States sovereign public trust authority and responsibility to manage Alaska common property fish, wildlife, and water resources. This authority is supported by the Alaska Statehood Act, Submerged Lands Act, Alaska Constitution, US Constitution and a documented history of such authority throughout our Nation's history.

I would now add, that with the matter of the fisheries there is an additional argument against federal management interventions in Alaska's anadromous fisheries.

There is no justification to trigger Title VIII ANILCA illegally mandated subsistence priority class of USERS. Since the total yearly personal consumptive USES are less that 1 ½ percent (i.e., subsistence 007; personal use .0009, and sport fishery .006) of the state total harvest of Alaska salmon; there can be no perceived shortage (Enclosure XII)

It appears that the demands for the priority of USERS is more of selfish infatuation than any reality.

Respectfully submitted,

Dale Bondurant

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List of Enclosed References

Enclosure I	Ward v Racehorse
Enclosure II	Water Resource Management
Enclosure III	Submerged Lands Act
Enclosure IV	McDowell v State of Alaska (1989)
Enclosure V	Totemoff related Anchorage News Article
Enclosure VI	Payton v State of Alaska (1997)
Enclosure VII	Meeting Bruce Botelho and Alaska Legislators (1995)
Enclosure VIII	State Control Management, Illusionary or Fact? (1990)
Enclosure IX	Gulkana River (1987)
Enclosure X	State of Missouri v Julow (1985)
Enclosure XI	Governor of Colorado v Evans (1996) (attachments (a) and (b))
Enclosure XII	Fish Harvest Percentages

Subsistence

I moved to Alaska when I was little and married a life long Alaskan. We are now raising third generation Alaskans. A subsistence preference for any class of people based on location, race, age or any other way to delineate a preference is wrong! The Zoebel/Permanent Fund lawsuit established that we can't create a separate classs of citizen based on residency.

We must give credit to the powerful lobby effort of the Alaskan Natives. Exemptions from welfare reform; the inflated purchases of their land from the Exxon oil spill moneys; the new Alaskan Native Hospital which provides free medical service to native Americans; to the current proposal to spend $1.1 Billion on modern sanitation systems to connect only 8,000 homes to sewer and water lines is outrageous. As a taxpayers of Anchorage I resent this gross misuse of public funds. This sewer system reflects $137,500 per home with no assessments or community obligations to the bonds. $137,500 is almost the average selling price of a home in Anchorage.

A subsistence preference has only been made an issue by Senator Ted Stevens. Why is this an issue after 20 years of ANCSA (Alaska Native Claims Settlement Act)? What is so bad about the federal government taking over the fish and wildlife management? Most of Alaska is federal land or Native land with priority subsistence rights to Natives. All the land conveyed by the Oil Spill Council has a native subsistence priority. Maybe having the Feds manage Fish and Wildlife will save the state money!

In addition to Federal land and Native Corporation land (44 million acres), every Alaskan Native that could establish a subsistence claim to land has been granted a 160 acre Native allotment. These allotments represent the best hunting and fishing sites in all Alaska. BLM reports that applications for 5,721 Native Allotments were still pending as of September 30, 1996. On all these lands, they have a subsistence priority. Enough is enough.

A subsistence life style is a luxury. Who would not like living in a beautiful remote location in a pristine environment, with no other responsibilities than your day to day existence. As long as Uncle Sam and the State of Alaska pay for all your housing, medical and education. Its a recreational lifestyle with no financial obligations!

We can't stop the twentieth century from coming. No one is owed a lifestyle. When the resources and economic opportunities no longer can support your lifestyle, man moves. This has been true throughout mans evolution. The Alaska Natives must take financial responsibility for their lifestyle or move to other areas where there are jobs. People that give up the big-city in favor of a rural life style fully expect the cold seat of an outhouse.

Respectively,

Diane Black-Smith
2755 Illiamna
Anchorage, Alaska 99517

Alaska Boating Association * PO Box 210430 * Anchorage Alaska 99521
E-Mail to ..... loneagle@alaska.net

I am Speaking in regards to the issue that is very up-front and apparent at this time being. The Subsistence issue,,,Constitutional Amendment consideration,,,relationship to ANILCA. This issue has been under debate in our great state since the 70's and Title VIII of ANILCA has added another "black cloud" to an already complex, complicated issue.

What we feel is of most importance, to all Alaskans, is the Consitutional Amendment part of this issue. This group should attack this issue, up front and before any other part of the issue is considered. We are being pressured by Congress to change our Constitution to conform to what is considered by most of us to be an unconstitutional federal statute. If this group wants to truly do something to resolve all the issues , it must br taken a piece-at-a-time and resolve each piece respectively. We know you have tried and now you have come to us for our opinions and thoughts and now we suggest that you stand united against the Constitutional Amendment and send a message to our Congressional Delegation to end this "blackmail " the Federal government is holding over our great state. With that resolved, and knowing that our Constitution is protected, we can then go to work and begin to resolve the other issues involved. No matter how many proposals are put forth, we must have EQUAL access to our fish and game. We have paid for these studies done to keep our renewable resources stable so that we can fish and hunt together and benefit equally in the harvest of OUR fish and Game.

Look at the whole picture, and be honest with the people of this great state, subsistence is just a small but very important part of this and can be solved once the people of this state know that we cannot and will not be continually "blackmailed" by the federal government. When the Governor withdrew the suit against Federal government, he opened up "pandora's box" and now look at us. Now we are being divided within our state, and that has to stop. Make and Stand for all Alaskans and maintain equally for one and all. Thank you for the time and for listening to us.

Donald E. Sherwood
President

- Dedicated to the rights of Alaskan Boaters -

LEGISLATIVE Information Office FAX 2581261

To: ALL HOUSE AND Senate Members 9-25-97

DO NOT BE INTIMIDATED BY THE FEDERAL GOVERNMENT. STAY THE COURSE. ALL ALASKANS ARE EQUAL NO SPECIAL SUBSTANCE FOR SOME, MAKING 2ND CLASS CITIZENS OF OTHERS.

RONALD J. SMITH SR.
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Senator,

Subsistence...my two bits worth. The state must retain management. I doubt that any rural preference will be much different than it is now. There is defacto discrimination at present merely because of access to fish and game by "rural" residents. If the AOC doesn't want preference based on zip codes why, may I ask, do we charge non-residents higher license fees. Why is the permanent fund distributed to only Alaskans? Zipcode discrimination? Why are there senior citizen discounts? A form of discrimination? Basically my subsistence permit is called a personal use permit. Ralph Seekins doesn't have it that bad. On the other side, you know that there will be many "frivolous" lawsuits filed by native groups. Why wouldn't Ft Yukon sue the Federal Goverment to increase their subsistence fishery? Why wouldn't the courts force reductions to the commercial fishery in the lower Yukon in an attempt to comply. I don't see any of the rural residents not getting adequate subsistence resources at present. Why not just acknowledge what is already occuring? Change the State constitution. I don't like racial or zip code preferences any more than the AOC but the alternatives are rather slim or none. Just tell the subsistence users that the State or the Feds can easily comply...we'll just cut the commercial harvests. What a mess!

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SUBSISTENCE
THE STATE OF ALASKA VERSUS THE UNITED STATES OF AMERICA

Prepared for
Legislative Hearings on Subsistence
27 September 1997
By Wayne Anthony Ross

There is an old cliche that says "When all else fails, look at the instructions."

Instructions for governments, at least in this country, are contained in documents called constitutions. The government of the United States has one. The government of the State of Alaska has one.

There is nothing in the Constitution of the United States that gives the U.S. Government the authority to govern fish and game resources of the individual states[1]. Instead, Article X of the United States Constitution states, clearly, that:

> **"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people."**
>
> From the United States Constitution.

It would appear, therefore, that a simple reading of the "instructions" established for operating the U.S. Government would indicate that the U.S. Government should not be interfering with any state's fish and game resources. If there are no powers delegated to the United States Government by the Constitution to govern fish and game resources, Article X of the U.S. Constitution provides that such powers are reserved to the individual states or the people.

Alaska also has a Constitution. Alaska's Constitution was adopted by the Alaskan Constitutional Convention on 5 February 1956, it was ratified by the people of Alaska on 24 April 1956, and it was sent to the President of the United States for submission to the

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[1]Some commentators and courts have cited Article IV, Section 3, of the U.S. Constitution for this authority. That Section reads: "The Congress shall have power to dispose of and make all needed rules and regulations respecting the territory and other property belonging to the United States...". Even if such interpretation of this section is correct, however, the actions of Congress during the statehood proceedings clearly demonstrate that Congress, through the Statehood Compact, contractually delegated any such authority to the State of Alaska Congress cannot, therefore, unilaterally withdraw from that contract.

Congress. Congress ratified Alaska's Constitution and Alaska was formally proclaimed a State on 3 January 1959.

During the period between the adoption of our Constitution by Alaskans, and the proclamation of statehood, Congress passed the Statehood Compact, which was approved by the citizens of Alaska. That Statehood Compact said the State of Alaska was to manage the vacant, unappropriated, and unreserved lands belonging to the Federal Government in Alaska, for which we were to receive 90% of the potential revenue from those lands (the so-called "90-10 split")[2].

"On 18 December 1971, the Congress of the United States, the President, and the State of Alaska, including a wide representation of Alaska Natives, came to an agreement called the Alaska Native Claims Settlement Act (ANCSA) (Public Law 92-203). That agreement read, in part:

> **'All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished."**
>
> From the Alaska Native Claims Settlement Act

In exchange for such waiver of any claims for "aboriginal title" and "aboriginal hunting or fishing rights" the Alaska Native peoples received $962,000,000[3] and 44,000,000[4] acres of land (15 % of the land base of the state).'"[5]

"Section 2 of ANCSA made it very clear that this settlement settled all claims 'with certainty' and 'without establishing any permanent racially defined rights or privileges'."[6]

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[2]"One of the most central, most emotional and most critical issues that brought this vast Federal Territory to choose Statehood was Alaskan insistence that Statehood result in the transfer of the managemer t of fish and wildlife on all lands and waters from Federal agencies to the State." From APSA Briefing Paper, 25 June 1990, by Ric Davidge.

[3]Five hundred million dollars ($500,000,000) of this settlement figure came from the State of Alaska.

[4]This figure of 44,000,000 acres did not include the total amount of land authorized under individual allotments (possibly over 1.5 million acres). Native Corporations, established by ANCSA, selected lands for their economic, cultural, and subsistence resources that took precedence over previously authorized State land selections.

[5]APSA Briefing Paper, supra.

[6]APSA Briefing Paper, supra.

When the Statehood Compact was passed and Alaska was made the 49th State, among other provisions of Alaska's Constitution, Congress ratified these

> **"ARTICLE I: This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry, that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.**
>
> **ARTICLE 1, SECTION 15: ...(N)o law making any irrevocable grant of special privileges or immunities shall be passed....".**
>
> **ARTICLE VIII, SECTION 3: Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use"**
>
> **ARTICLE VIII, SECTION 4: Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses".[7]**
>
> **ARTICLE VIII, SECTION 17: Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.**
>
> From the Constitution of the State of Alaska.

When Congress passed the Alaska National Interest Lands Conservation Act (ANILCA)[8] in 1980, it included a subsistence priority on federal lands and allowed subsistence hunting on national interests lands. ANILCA requires that subsistence rights be given only to "rural" residents. Section VIII of ANILCA mandates federal management of fish and wildlife resources on federal lands in Alaska if Alaska's subsistence law does not conform with the provisions of ANILCA.

Today we see a massive and organized campaign against hunters and hunting.

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[7]Under Alaska's Constitution, there can be a preference for uses, but not a preference for users. Thus, under Alaska's Constitution, subsistence can have a preference over sport or commercial uses, but one subsistence user cannot have a preference over another subsistence user.

[8]16 U.S.C.A., Sections 3101-3233.

Preservationist groups, so called "Friends of Animals", "People for the Ethical Treatment of Animals" (PETA), various humane societies, anti-gun groups, and others know that the best way to end hunting is to first divide the hunters. We need only look at what happened at St. Paul Island in the Pribilofs to see the adverse effects that result when hunting rights once enjoyed by everyone are eroded into a special privilege for the very few. As a result of the passage of the Marine Mammal Protection Act, only Native people could take marine mammals. The hunting of polar bear, whale, walrus, seal, sea lion, and fur seals ended for all non-Natives[9]. With only a small group of hunters (Natives) who still possessed rights to take fur seals, it was very easy for the government to end the taking of fur seals in the Pribilofs. When only the Natives were legally able to take these animals, there were no large pressure groups of hunters left to protest the government's shut-down of the fur seal industry on St. Paul. By obtaining special rights, rights that others did not possess, Native people, and especially those on St. Paul became the real losers[10]. When they had to stand alone, without the support of other hunters, their right to harvest fur seal in the Pribilofs was easily ended[11].

We now see more and more hunting areas closed to any but Native or subsistence hunters. We see sport and trophy hunters vilified in the press[12], we see the direction of the Alaska Department of Fish & Game changed away from supporting hunting, we see management of our fish and wildlife resources being mandated by initiative and referendum, we see commercial fishermen pitted against sport and subsistence fishermen, we aren't even cutting spruce bark beetle infested trees because some "crazies" object, and we see "crackpot" schemes like sterilization of wolves being seriously considered by state officials.

"Divide and conquer" is proving to be an effective technique here in Alaska and elsewhere. Unless we can get Alaskans together in supporting our Constitution, we will remain divided, and one by one, we will lose the right to pursue both the outdoor activities that make life here so special and even our ability to earn a livelihood.

In passing Section VIII of ANILCA, Congress reversed itself from the position it

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[9]The State of Alaska did little or nothing to oppose the Marine Mammal Protection Act.

[10]With the passage of the Marine Mammal Protection Act, the Natives also lost the potential of establishing a thriving guide industry for taking non-residents hunters out for polar bear and other Marine Mammals. With no one (other than Natives) able to hunt these animals, there were no "Outside" hunters who could legally hire Native guides to hunt these animals.

[11]The battle to end hunting continues unabated.

[12]Just last year, an archer who took a trophy moose, with an 80+ inch set of antlers, was highly criticized by some Alaskans who sent letters to the editor in the Anchorage Daily News. When the Make-A-Wish Foundation granted a young man's dying wish to hunt brown bear, it was threatened with a boycott and it, and the boy himself, received other threats.

took in approving Alaska's Constitution. In passing Section VIII of ANILCA, Congress violated the compact it had with the people of the State of Alaska!

Instead of challenging this abrogation of portions of the Statehood Compact by Congress, the Alaskan legislature and several governors attempted to comply with Section VIII's provisions. Despite many Alaskans' demands that the federal law be challenged, the State opted to "go along to get along" by enacting subsistence laws providing for a rural preference. As a result, several Alaskans (including a Native Alaskan who lived in an urban area) took the State to court. And in a decision rendered in 1989, the Alaska Supreme Court held that a rural preference for subsistence violated the Constitution of the State of Alaska.[13]

As stated, Section VIII of ANILCA provides for federal management of fish and game resources on federal lands if the State's laws regarding subsistence are not in compliance with the federal law. As a result of the McDowell decision, Governor Cowper, and now Governor Knowles, either sought to amend Alaska's Constitution or otherwise bring Alaska into compliance with ANILCA. They failed and continue to fail to realize, however, that even if they were able to bring Alaska's laws into compliance, there would still be federal management of fish and wildlife in Alaska. Section VIII of ANILCA authorizes any aggrieved party to seek federal court review of Alaska's subsistence laws and regulations. Thus, as long as Section VIII exists, the federal courts will exercise their authority to review any attempts by the State of Alaska to manage fish and wildlife resources. To obtain such federal review, all that is necessary is to allege that the State's actions interfere with subsistence rights.

The only way to resolve the mess that we are in regarding Federal management of fish and game in Alaska, the only way to resolve the conflicting laws regarding subsistence, is either get Congress to repeal the Section VIII provisions of ANILCA, or challenge Section VIII as violative of the Statehood Compact, taking the issue to the U.S. Supreme Court for a final determination. As stated, Section VIII of ANILCA may also be violative of ARTICLE X of the U.S. Constitution. It also would appear to be in violation of ARTICLE IV of the U.S. Constitution, which reads:

> **"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state where they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the US, nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."**
>
> From the United States Constitution

[13] McDowell v. State, 785 P.2d 1 (Alaska 1989)

These avenues of legal argument, and others, also need to be pursued,[14] and pursued aggressively by the State of Alaska. Unfortunately, our current Governor dismissed one lawsuit challenging the Federal takeover, and though the Legislature sought to carry on that lawsuit, it was unsuccessful.

We have a courageous Alaska Supreme Court which has been the number one protector of Alaska's constitutional guarantee regarding the allocation of fish and game resources. The legislature has also, but to a lesser extent, attempted to involve itself in that protection.

The problem with subsistence, right now, is the Governor! Until this State elects a Governor with more backbone than a banana, a Governor with an aggressive Attorney General who is willing to stand up for State's Rights[15], we will continue to be ground under the heel of intrusive, outrageous, and overbearing federal regulations... and we can expect things to only get worses.

Once Alaskans can get fish and wildlife issues away from improper interference by the Federal Government, Alaskans of good will can work together to solve the subsistence issue on our own. Provisions for subsistence can be incorporated into management techniques so

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[14]The so-called "Public Trust Doctrine" would also be a good issue to raise. Article VIII, Section 3, incorporates the "Public Trust Doctrine" into Alaska's Constitution. This doctrine holds that natural resources are reserved for common use. The provisions of SECTION VIII of ANILCA appear to violate that doctrine because they give one group of users priority over another.

There are also recent federal court decisions involving "unfunded mandates" and other issues that hold that a state cannot be forced to comply with a federal regulation. Again, the issues should be raised in litigation brought by the State of Alaska.

[15]The Governor and the Attorney General took oaths of office to "support and defend" the Constitution of Alaska. ART. XII, Section 5, of Alaska's Constitution states: "All public officers, before entering upon the duties of their offices, shall take and subscribe to the following oat or affirmation: 'I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as _____ to the best of my ability....'" One can only wonder how these men can reconcile their oath with their public statements calling for changes to our Constitution. How can the Governor and the Attorney General legitimately state that they are supporting and defending our Constitution while, instead of supporting and defending it, they actively seek to change it? It would appear to this author that their actions advocating a rural preference are violative of their oath of office.

that those Alaskans who rely on our fish and game resources can be accommodated.[16]

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[16]In 1983, Swedish hunters harvested 232,000 moose. During the same year, Alaska harvested only 10,000 moose. Sweden is 1/3 the size of Alaska. Sweden attributes their great moose harvest, in part, to intensive forest management. Wisconsin had 800,000 deer hunters in the field during its annual 10 day deer hunt. During its season, Wisconsin had twice as many people carrying guns as served at any one time in Vietnam! There were 5 to 6 times the number of hunters we have in an entire year in an area one tenth the size of Alaska. Three hundred fifty thousand deer were taken during only ten days.

In Alaska, instead of managing our fish and game resources intensively, as mandated by Article VIII, Section 4, of our Alaskan constitution. we have a Governor who cancels wolf hunts, allows "referendums" on game management, and entertains crackpots who advocate wolf sterilization!

Subsistence needs can easily be accommodated through proper and intensive management and through regulations governing seasons and bag limits, methods and means.

9-27-97

Mr Chairman

I was in attendance at your public hearing on subsistence in Anchorage, but had to leave before I was called to testify. Therefore, I request that you accept my comments in writing.

I was born and raised in Alaska. Over the years. I have hunted, fished and trapped around the state. I participate in subsistence hunting and fishing programs, as well as dry net fisheries. Fish and game that I gather is an integral part of my diet and yearly sustenance. I also have a garden, and pick a variety of berries each fall. I have a job in Anchorage in the private sector. I am opposed to any kind of a rural preference for access to fish or game.

Enclosed are a couple of pictures depicting modern day subsistence activity using customary and traditional means by rural residents. There is nothing customary, traditional, or rural about heavy equipment made by Caterpillar. The very essence of the activity engaged in in the photographs is urban and modern.

I fail to see how a rural resident has any different or preferential right to fish and game resources than I do. Just because someone lives in Bethel or Barrow or some other community doesn't mean that they have a greater right or need to fish or game resources. We are all Alaskans.

and should all have equal access to the resources. Any kind of a rural preference violates the equal access rights of all Alaskans. I fail to see how or why a person with a government job in Kipnuk for example should have a greater right to fish and game than an unemployed resident of Palmer. If anything, subsistence priority should be usage based, not residence based. However, the fair thing is to have equal access for all.

The real problem with the subsistence issue rests with ANILCA and the federal government. ANILCA must be amended and our Congressional delegation must be pressured to eliminate any rural or subsistence preference from ANILCA. The Congressional delegation have no assurance that any other amendments to ANILCA will work either. What is needed is an honest attempt and commitment to attempt to amend ANILCA from our Congressmen.

I do not understand why the state has not pursued a lawsuit challenging the legal authority of the federal government to oversee a state resource. Much of the subsistence issue has been shaped by state and federal courts. There is no promise or agreement that if the state Constitution is amended, the legal challenges will cease. Attempts to amend the Constitution or ANILCA may be misplaced in light of the role the courts have played on this issue.

There is currently pending before the US Supreme Court a case on the issue of Indian country in Alaska. It seems that Alaskans may be undermining the strength of a Supreme Court opinion if action is taken to amend the Constitution while the court decision is pending. If the state prevails, the state may be in a strong position to amend ANILCA. Why send a message to the Supreme Court of a potential weakening in the state's position by attempting to amend the Constitution.

In closing, I wish to point out that people throughout the state use the same modern methods and means to take fish and game. In times of shortage for fish and game, Alaskan residents do one of two things: they go to work to buy food or they go on government aid. No one starves in this day and age, because no one truly subsists in Alaska anymore. What we are talking about is rural and urban Alaskans who like to hunt and fish. Methods, means and needs are all the same. My activities are as customary and traditional as those of any villager. There is no basis for a rural preference based on need or tradition. Alaskans should all have equal access to the fish and game resources. I remain opposed to any rural preference for subsistence.

Thank you for considering my testimony

David Pease 345-6322

September 25, 1997

Mark W. Gordon
HC01 6131 AB
Palmer, AK 99645

Senate Resources Committee
P.O. Box 670190
Chugiak, AK 99567

Ladies and Gentlemen:

When I first heard of this subsistence problem at least a dozen years ago, like most Alaskans, I felt that there should be a dominant patent to harvest fish and wildlife ensured to the appropriate wilderness entities. I no longer feel this way.

All these years of debate have exposed both the good will and the selfishness of the participants of all sides of this issue.

For example, at a recent subsistence celebration event promoted by native groups a doctrine was released to the public. It espoused the belief that subsistence was primarily native based, not rural based. Urban natives should enjoy the same subsistence priority that rural natives should. Then, amazingly, the last point stated that subsistence is a basic human right.

I failed to perceive any inkling that the author may have considered the possibility that I and other non-natives might be human too.

I am of creole cajun descent. Both sides of my family went to California during the Depression/WWII era. My father's side came from a subsistence lifestyle in the bayou.

I was born in Los Angeles. When I was young we moved to a growing suburb in Orange County, escaping city life for a newer, safer environment. But we were just the first. Waves of social and cultural refugees followed us to Orange County. I hated it. When I graduated in 1974 at the age of seventeen I successfully urged my parents to sign a consent form so I could enlist in the Army with a guarantee of station in Alaska. Within two years I had met and married a local girl of the Matanuska Valley. I have rarely eaten beef or purchased poultry or fish since then. We eat our own homegrown

greens and vegetables along with harvested moose, caribou, venison, salmon, halibut, clams, trout, berries, and homegrown apples.

But look at the Valley now. Again I was just among the earlier social or cultural refugees. I have been followed. I am not happy with this "progress".

So this population growth I did not want justifies giving someone else "more rights" than me on public lands? That land is no more theirs than mine or the taxpayers in Gary, Indiana.

And the basic truth demonstrated by my life experience?: Like my parents before me and the refugees who followed me, we are but grains of sand on the beach. They will keep coming. You cannot stop them.

If someone negates my subsistence lifestyle because I live in Palmer, and guarantees someone else's because they live in the Bush, I will move to the Bush.

I bet I will just be among the first. I will be followed.

It's interesting how forbearing our federal delegation was after federal authorities stole game management authority over federal lands a few years ago. They insisted that Alaskans needed to reach consensus over a solution. Their patience seemed to run out quick when the feds were set to steal authority over fisheries. There are more big-dollar entities involved with fisheries.

As a personal use/subsistence fisherman, I have been completely disgusted with state management of fisheries. Federal management won't be any better, but it can't get worse (can it?).

Frankly, I don't fear federal management. Their subsistence priority law will not stand constitutional challenge any better than state subsistence law withstood state constitutional challenge. Proponents of constitutional amendment betray their fear of U.S. Supreme Court challenge.

And, further, since so few remain content with federal management of anything, what goes around will be very certain to come back around, anyway. As ridiculous as AOC official Rod Arno's suggestion of succession sounds to many, we should all be concerned that it sounds like a just and inevitable solution to the subsistence issue as well as many other problems.

If the feds want more rope, give it to them. We can marvel at the creative noose the entangle themselves with.

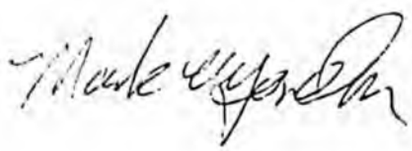
The disaster regarding this devil-may-care approach is the "Balkinization" of our people. Resentment and hatred will grow. This is what central planning has achieved for all the peoples of the world.

Leave the state constitution alone. Congress itself approved it, along with its common use clause, in 1959 with the Alaska Statehood Act.

Although I believe the whole intent and black-letter of ANILCA is illegitimate, the subsistence clause is simply and clearly a violation of the spirit of equal access guaranteed by the Fourteenth Amendment of the U.S. Constitution. It is also an illegal affront to the rights of states guaranteed by the Tenth Amendment of the U.S. Constitution.

It should not and will not stand.

Sincerely,



Carol Jensen
4800 East 112th Avenue
Anchorage, AK 99516-1612
(907) 346-3321

September 25, 1997

State of Alaska
House Resources Committee
Senate Resources Committee

Committee Members:

RE: SUBSISTENCE PREFERENCE

I am not able to testify at the public hearings, so I am sending this letter as written testimony.

I have lived in Anchorage since 1973 and am an avid follower of political issues. Many of you have received my letters and POM's over the years on a variety of issues. I have file folders full of newspaper articles, letters to the editor and other information on subsistence, the state and federal hunting proposals and adopted regulations, seasons, bag limits, etc. as well as government financial aid that goes to Natives and villages. Following are my views and opinions:

1. I oppose a Native or location-based preference. I am opposed to the task force's recommended amendment. The word "may" doesn't fool anyone. You could just as well say "will". I agree with Mr. Mallott on that point.

2. Many of our wildlife species in many parts of the state are dwindling at a fast pace due to overhunting, weather conditions, disease, natural cycles, migration, habitat deterioration and removal of habitat by man's encroachment. The Federal Subsistence Board and Board of Game have been very liberal in granting rural residents and Natives hunting and fishing seasons and bag limits. If anything, I notice the Federal board is more liberal than the State, which is probably why some of the Natives would be happy with Federal control. However, we need to keep in mind the fact of our limited wildlife resources and what impact a location-based or Native preference (with such strong influence by Native committees) will have on the wildlife.

3. I believe, contrary to what our Congressional delegation is saying, that we should try either through the courts or Congress, to change the preference clause in ANILCA. The Natives gave up their traditional/customary use in exchange for millions of acres of land and money. If they want to go back on that agreement, then they must give back the land and money. The U. S. Constitution, our state constitution and the Bill of Rights specifically prohibit racial discrimination and guarantee equal rights to everyone. Native preference should be easy to fight on a legal basis.

4. Any type of allocation program needs to take into consideration other food sources available to specific locations. Race should not be a factor, nor should place of residency. Natives would ban (as they do now) non-Natives from hunting or fishing on their lands. If you tie a preference to residency, then you run in to the headaches of designation. You remember the uproar over designating the Kenai Peninsula as "rural" or the Mat Valley for subsistence purposes. Location based preference would also extend to non-Natives in that area, which would upset the Natives who feel they, as a race, should be the only ones to get the preference. The question comes up as to boundaries for hunting/fishing in an area designated for subsistence. Would these residents qualify to hunt under subsistence bag limits and seasons throughout the state? If the caribou or moose population in their immediate vicinity plummet, would they still be allowed to kill the "last one"?

5. I agree with the people who have stated that hunting and fishing is not a "right" but a privilege. Many Natives do not hunt or fish using "traditional" methods. They use snowmachines, airplanes and high powered guns with scopes. They are capable of doing a lot of damage to wildlife and cases of wanton waste by so-called subsistence hunters and fishermen are not scarce. I am firmly opposed to using subsistence as a defense for illegal hunting or fishing. There is NO defense for that. How can anyone justify a hunting or fishing subsistence preference for someone of Native heritage, living in Anchorage and earning $50,000 or more a year? That is another reason you can't tie it to race. Natives would demand unlimited hunting and fishing rights to the exclusion on non-natives.

6. Because of ANILCA and ANCSA, Alaskan Native tribes are not on the same level or have the same situation as tribes in the Lower 48. They did not have land taken away from them. They RECEIVED an enormous amount of land and money and they have developed much of that land into very profitable enterprises. The state or Federal government doesn't "owe" them anything. The governments certainly should not be going against the words and intent of its own establishment documents which guranteed equal treatment and access for ALL.

Thank you,

Carol Jensen

Carol Jensen

P-O-M To The House and Senate Natural Resources Committees 9/29/97

The ruling of the Honorable Dana Fabe in the Kenitze Case, finding that subsistence is an inherently local activity, is your only hope of reconciling the federal rural subsistence priority with our constitutional provision of common use, Article VIII Section 3. Please require allocation for a local subsistence priority statewide.

Tom Lakosh

Tom Lakosh
P.O. Box 100648
Anchorage, Ak. 99510
Phone/Fax (907) 338-1606

SUBSISTENCE

"Local Preference"

Art Mathias

Alaskans have been arguing over subsistence for far too many years. It's time to put the issue and the politics that drive it behind us -- to work together to solve the issue and to do what is best for all Alaskans. There is a solution that will work for all of us. But before we talk about solutions, it is important we take a brief look at the history of the issue in light of what is happening currently.

Alaska's Constitution was adopted in 1956, with sections that declare that our fish and game resources are "reserved to the people for common use" and that all persons are equal and entitled to equal rights and protections. Congress and the citizens of Alaska subsequently passed the Statehood Compact, which remains in effect today. It is a legal "contract" outlining the responsibilities of our state and federal governments. It states that the State of Alaska is to manage the vacant, unappropriated, and unreserved lands belonging to the Federal Government in Alaska, for which we are to receive 90% of the potential revenue from those lands (the so called "90-10 split").

On December 18, 1971, Congress, and the State of Alaska, including a large representation of Alaska Natives, came to an agreement known as the Alaska Native Claims Settlement Act (ANCSA). As settlement for any claims of "aboriginal title" and "aboriginal hunting or fishing rights" the Alaska Native peoples received $962 million and 44 million acres of land. Section 2 of ANCSA made it very clear that this measure settled all claims "with certainty" and "without establishing any permanent racially defined rights or privileges."

After reading all these documents, a rational person could rightly assume the issue settled. Article X of the US Constitution clearly provides that the federal government may not interfere with any state's fish and game resources as such powers are reserved to the individual states, unless specifically granted to the federal government. The Alaska Constitution and our Statehood Compact clearly state that the resources are to be shared by **all** Alaskans. In addition, ANCSA was supposed to settle all aboriginal claims.

What happened?

In 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA). They included a subsistence priority on federal lands and declared that subsistence rights be given only to "rural" residents. Section VIII of ANILCA also requires federal takeover of fish and wildlife resources on federal lands in Alaska if Alaska's subsistence law does not meet the provisions of ANILCA.

Amazingly, by passing Section VIII of ANILCA, Congress reversed itself from the position it took in approving Alaska's Constitution, our Statehood Compact, and ANCSA. Congress violated our legal contract!

Instead of immediately challenging this violation, the Alaska Legislature and several governors since ANILCA was passed have attempted to comply with Section VIII's provisions by enacting subsistence laws providing for a rural preference. As a result, several Alaskans took the State to court. In the 1989 McDowell Decision, the Alaska Supreme Court correctly held that a rural preference for subsistence violates Alaska's Constitution.

So much for the legal history! Now the question is: "Where do we go from here?"

There are really only two ways for Alaskans to maintain management of fish and game, and to resolve the conflicting laws regarding subsistence. We must either get Congress to repeal or amend the Section VIII provisions of ANILCA, or remove its effect by successfully challenging it at the US Supreme Court level as a violation of the Statehood Compact.

If Section VIII of ANILCA remains in effect, anybody claiming interference with subsistence rights may seek federal court review of Alaska's subsistence laws. As long as it exists, Alaska will be subject to federal control in managing its fish and game resources.

The stumbling block introduced by ANILCA is the requirement for "rural preference" and the definition of "rural" and "rural preference." In our age of air travel "rural" preference does not protect the resource, or provide for the needs of the subsistence user. What if a rural area is experiencing a shortage of fish, and residents of a different "rural" area want to fish in the area of a shortage? Should Dillingham residents be allowed to fish in Naknek if there is a shortage in Naknek? The answer is "NO," but under the "rural preference" system this is legal. The real issue is to protect the resource in times of shortage and to provide for subsistence needs.

I believe a better solution is "Local Preference," a system of backyard, neighborhood, or traditional hunting and fishing areas in times of shortage. The neighborhood or traditional hunting and fishing areas could be current game management units or a combination of them. If the Alaska Department of Fish and Game were to declare a shortage in an area(s), it would be closed to everyone except those who live there. There are 26 game management units in Alaska and each of these has an advisory council that could also serve as the local subsistence board. I propose that these advisory boards be given a true voice in the management of the local fish and game and that the budget for the department of fish and game be increased to provide for the best possible scientific management so that we do not have shortages.

"Local Preference" will protect the resource and provide for the subsistence needs of the local resident, and apply to all Alaskans equally. It would also give the local resident a bigger voice and more control over their local area.

Frankly, no one wants to travel to an area to hunt or fish if the resource is limited. No one wants to take food out of the mouths of the local residents who need it to feed their families. I believe that if we can get past the term "rural" we can find a solution that will work for all Alaskans.

We must solve our own problems. The answer is not found in caving in to the federal government or in amending our constitution. We must amend ANILCA to provide for "Local Preference" in a time of shortage of the resource. If Alaskans can agree on a solution, I believe the feds will comply with our wishes.

MEARS

from the desk of

DR. KENNETH J. MEARS, D.D.S., M.S.D.
1941 WICKERSHAM DR. • ANCHORAGE, AK 99507

TO SEN. RICK HALFORD & TASK FORCE

Re "SUBSISTENCE"

DEAR SIR

THREE ELEMENTS ARE NOTED

#(1) FED. RULES BASED ON A SNEAKY STATE LAW (PASSED IN FAR OFF JUNEAU WITHOUT MAJORITY INPUT AND LATER RULED ILLEGAL BY OUR SUPREME CT.)

WHY OUR LIBERAL POLITICIANS HAVE SUPPORTED THIS APARTHEID AND DONE NOTHING TO CHANGE FED POLICY IS OPEN TO DEBATE & SHOULD BE ASKED!

#(2) 2/3 OF ALASKA RULED BY FED. GOVT AND RURAL CORPORATIONS!

#(3) IN ORDER TO HAVE H. & F. FOR THE FORGOTTEN 80% AND ACHIEVE PARTIAL BALANCE WE SHOULD REALLY COUNTER THIS EXTORTION ATTEMPT BY ALLOWING A VOTE FOR URBAN PREFERENCE ON STATE LANDS. I HATE TO TELL MY KIDS TO SELL THEIR RODS & RIFLES BECAUSE WE GAVE UP ON THEIR RIGHTS!

THANK YOU KINDLY

KEN MEARS

Edwardsen

September 25, 1997

State of Alaska
1997 Subsistence Hearing
Anchorage, Alaska

To Whom it May Concern:

I have attached six (6) exhibits. Exhibits One (1) and Two (2) are statements by Governor Hammond on August 20, 1977 for the Hearings of the Subcommittee on General Oversight and Alaska Lands wherein Hammond defines the parameters of "genocide."

Exhibit Three (3) is a statement by Byron Mallott. Mallott had faithfully predicted that the present language in ANILCA was to be struck down as an unconstitutional exercise of power. See page fifty-three (53) of his statement on August 20, 1977.

Exhibit Four (4) is a statement from Secretary of Interior Udall wherein he makes a frail attempt to discuss the constitutional question without any depth outside of Article XII, Section 12 of the Constitution of the State of Alaska.

And, Exhibit Five (5) from the Inuit Liaison Office in Washington, D.C. outlines our view that the State of Alaska has made an attempt to diminish the constitutionally protected rights of the Eskimos, Indians, and Aleuts in their commerce as protected under Article I, Section 8 of the United States Constitution. Therein customary trade by Eskimos, Indians, and Aleuts is recognized as international trade and is not limited by a dollar cap. This is established for the United States by John Quincy Adams in the Treaty of 1824 between the United States and the Imperial Government of Russia.

Exhibit Six (6) is my analysis of the recent Alaska Inter-Tribal Council Subsistence Conference in Anchorage at the end of August 1997.

Sincerely,

Charles Etok Edwardsen
Inupiat Community of the Arctic Slope
c/o Box 211
Barrow, Alaska 99723

Statement on Behalf of

THE STATE OF ALASKA

By

Governor Jay S. Hammond

For the Hearings of the

SUBCOMMITTEE ON GENERAL OVERSIGHT AND ALASKA LANDS

OF THE HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

on

ALASKA'S LAND SELECTION ENTITLEMENT

Fairbanks, Alaska

August 20, 1977

ALASKA'S LAND SELECTION ENTITLEMENT

The Alaska Statehood Act embodies a bargain struck by the people of the State of Alaska and the United States of America, a "compact" which may not be altered unilaterally by either party.

One of the most important elements of this compact is the grant to the State, under Section 6 of the Act, of 103,350,000 acres of federal land. This grant of land differed from the statehood land grants made by Congress to all previously-admitted states. Because of the special needs of the new state and the desire of Congress to ensure its economic survival, the Alaska Statehood Act grant was not an "in place' grant of specifically identified lands. Instead, recognizing the inadequacy of existing information about Alaska's land resources, Congress chose to give Alaska the right to select its statehood lands from the vast pool of available federal lands within the new state. Though the lands granted to Alaska were, for that reason, indeterminant as to their location when the grant was made, the Statehood Act grant operated, in legal terms, in praesenti. That is to say, equitable title would vest in the State as to specific lands upon the selection of those lands by the State's

filing of a selection application valid under Interior Department regulations. If land is available for selection*, the filing of a selection application initiates a chain of events which, subject only to the identification of prior valid existing rights, vests equitable title in the State. No subsequent attempt at withdrawal, reservation, grant or other action by the federal government may intrude upon or take precedence over this chain of events once initiated.

In perfecting its rights to acquire these federal lands, rights which were the principal inducement to accepting the responsibilities attendant upon Statehood, the State has over the years selected approximately 70.5 million acres of federal land. Of this, 21.1 million acres have been patented to the State. The State regards itself as the equitable owner of the remaining 49.4 million acres of selected and tentatively approved land.

* Legal questions as to the claimed unavailability of federal lands for state selection, based upon their alleged prior use and occupancy by Native Alaskans, were laid to rest by Section 4 of the Alaska Native Claims Settlement Act of 1971. All state land selections were validated by that section as against any claims that the lands to which those selections applied were unavailable for selection due to Native use and occupancy.

In the context of the pending congressional deliberation over Alaska "national interest" lands legislation, two important aspects of this Alaska Statehood Act land grant must be kept in mind. They were and are substantial elements of the bargain made in 1959.

First, the Alaska Statehood Act did not require the fledgling state to race to the Bureau of Land Management in 1959 with selection applications for the entire 103,350,000 acres of land. It provided instead for a 25-year period within which the State might complete its selection of the acreage granted to it by Congress. This term of years (1959 to 1984) was accepted by all parties to the statehood compact as a reasonable time frame within which the State might be expected to make rational land selection decisions, given indeterminancies as to state development policy, incidence of resources, and the like. It was never intended that the State would be forced by other federal legislative actions to make hasty selections in an accelerated time frame, nor did any party expect that the State's right to select during the statutory 25-year period might somehow be impaired by federal actions taken in response to later competing claims for the available federal lands.

Second, the value of Alaska's right to acquire its lands, by the very nature of that right, depends substantially upon the size and diversity of the pool of available federal lands from which Alaska's selections may be made. In the eyes of the Congress, and in the eyes of the people who voted for Statehood, "selection" clearly meant choice among reasonable alternatives,

Subsequent to the attainment of Statehood in 1959, a series of federal actions have placed the State in a bind. a bind which has become progressively more serious, and one which was not contemplated by the authors of the Statehood Act nor by the Alaskan citizens who voted to accept Statehood under the terms of that act. The bind has arisen from the fact that other, competing demands upon available lands -- principally, the Native land claims settlement and the administrative actions in aid of so-called "national interest" land legislation -- have effectively reduced the size of the pool from which the State may select its statehood land grant. This reduction of the pool has been so rapid and so substantial that it threatens to frustrate Alaska's legitimate expectations that it could use its entire 25-year selection period in order to select St tehood Act lands from a pool of federal lands of sufficient size and composition to offer meaningful choices among reasonable alternatives.

In the course of this gradual erosion of the Statehood Act grant, the State of Alaska has made various major concessions to the United States in response to changing social needs. Indeed, it has voluntarily subordinated its Statehood Act land rights in favor of the interests of other constituencies, as an act of comity and cooperation under circumstances in which Congress might not constitutionally compel it to do so. Some of the more conspicuous events in this seemingly inexorable erosion of Alaska's rights are well known to all who follow Alaska land issues.

First came the Secretarial land freeze and "super freeze" orders of the 1960's. On the heels of the land freeze came the Alaska Native Claims Settlement Act. This generally laudable act entailed two substantial sacrifices on the State's part. It not only reduced the pool of lands available for state selections by granting the Native corporations priority rights to select approximately 40 million acres of the best resource-rich lands from that pool; it also included a granting-back to the United States for reconveyance to the Native corporations approximately 2,735,000 acres of very valuable lands already tentatively approved to or selected by the State in key locations.

This subordination of the State's land grant rights in order to settle Native claims had another aspect, Section 17(d)(2) of the Settlement Act. By inclusion of that provision in the Native Claims Settlement Act, Alaska was faced in essence with an extension of the earlier land freeze for another five years with respect to up to 80 million acres of land, over and above the vast quantities that were to be set aside for Native corporations selections. The State tolerated this further land freeze even though it was plainly in derogation of state land selection rights. But it did so only upon the terms set forth in Section 17(d)(2) itself -- that is, provided that the pool of available lands for state selection would be reduced by no more than 80 million acres under Section 17(d)(2), and provided that the 80 million acres would not remain frozen beyond December 15, 1978 except insofar as they might be included in the federal "national interest lands" legislation contemplated by that section.

The Secretary's March 1974 public land order, the so called "over-riding Section 17(d)(1) withdrawal," added insult to injury. All remaining federal lands were set aside, including a prohibition against state selection, pending classification under a new system which has, even to