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this day, never been implemented. The dregs remaining in the federal land pool for available state selections (after that pool has been severely depleted by the Native corporations under the Settlement Act and further bled dry by the withdrawals and associated Secretarial actions under Section 17(d)(2)) were drained by this action early in 1974.

Alaska's entitlement under the Statehood Act to select 103,350,000 acres of land from a larger pool of federal lands over a 25-year period has thus been substantially impaired by each of the foregoing actions. In the 18 1/2 years since Statehood, Alaska has enjoyed only 10 years within which to freely select its entitlement. Congress, during its Claim Settlement Act deliberations, rejected the concept of free floating Native selections, specifically to allow Alaska's selection of its statehood entitlement to continue from lands not withdrawn for Native selections. However, Congress did not envision the tremendous over-selection of land by the Native corporations which has frustrated state selections, nor the absence 6 1/2 years after enactment of regulations to implement Section 17(d)(1) of the Act. With only 6 1/2 years left in which Alaska must complete its selections, there is nothing within sight which would lead Alaska to believe that the federal government will remove those obstacles to its land selections by 1984.

Certainly Alaska would not maintain that in the Statehood Act Congress committed the United States to preserve intact the entire pool of federal lands then available for state selection so that the State would have the opportunity to select any of those lands at any time in the course of its 25-year selection period. Neither could anyone maintain, at the opposite extreme, that the parties to the Alaska Statehood Compact expected that this pool of federal lands would be diminished during the 25-year selection period by other federal actions to the point where the State was left with no choice whatsoever as to the lands it would select. Everyone would agree that Congress had in mind some less drastic scenario. It clearly anticipated that the State would enjoy the benefit of its bargain -- an uninterrupted 25-year selection period during which time the pool of available federal lands from which state selections were to be made would remain sufficient in size and composition so that it would present a meaningful opportunity for choice by the State.

STATEMENT OF STATE REPRESENTATIVE STEVE COWPER
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND ALASKA LANDS
OF THE
HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
ON
ALASKA NATIONAL INTEREST LANDS
AUGUST 20, 1977

Mr. Chairman and members of the Subcommittee, my name is Steve Cowper, Suite D Nerland Building, Fairbanks, Alaska 99701. I am privileged to represent Fairbanks and North Pole in the Alaska House of Representatives, where I serve as Chairman of the Finance Committee. I am also Chairman of the Steering Committee for Alaska Lands, a statutory committee funded by the State of Alaska consisting of three state Senators; three state Representatives;one member of CMAL who is, incidentally, a mining engineer; the Alaska representative of the National Audubon Society; a member of the Alaska native community; the state Commissioner of Natural Resources; and the State Co-Chairman of the Joint Federal-State Land Use Planning Commission. The Committee's purpose is to reconcile the sometimes conflicting positions advanced by groups within Alaska on the matter of National Interest Lands, and, once that formidable task has been performed, to do everything possible to see that these views are adopted by the Congress.

As the Steering Committee is only a month old, no official positions have been adopted. Thus I address you as an elected official from this district of Alaska.

Initially, I would like to comment on a subtle undercurrent which has colored some of the testimony elicited by this subcommittee and the Subcommittee on Fisheries and Wildlife Conservation and the Environment. I am referring to the notion that the State Legislature is made up of a working majority of mad developers who do the bidding of big business, and thus any land in State or private ownership will be ravaged as soon as possible for a fast buck.

For the past three years the Alaska Legislature has been subjected to the most virulent attacks imaginable from some special interests who would like to convert the public's land and resources into fast profits. Their views have been trumpeted by sympathetic media barons. Most of us who want to proceed carefully with the development of our resources, leaving a valuable legacy for the generations to come, have been called "no-growthers", "anti-business", and even "socialists" by those who should know better.

The facts are quite clear. The Alaska Legislature has established more parks and refuges in the last three years than in any similar period in the state's history. One major park, Wood River-Tikchik, was opposed by the residents of the area, mostly Alaska natives, and I am confident that those differences will be resolved and that the bill will pass.

The Legislature repurchased, under the threat of condemnation, oil leases in Kachemak Bay because drilling activities might threaten marine life in the area. We passed one of the

toughest tanker bills in the country. It was the Alaska Legislature which took the lead in the investigation of alleged cost overruns in the construction of the Trans-Alaska Pipeline. And as to the state's largest landholders, the native corporations, the record shows that most of their selections were made for the very purpose of assuring that the land will remain in its present state: productive of wildlife and conducive to the traditional lifestyles of people who have lived in harmony with this land for thousands of years.

Mr. Chairman, Alaska's lands and waters will maintain their essential integrity, with or without federal protective legislation. We like them that way.

Having addressed that point, I should like next to speak to what I believe is a flaw in the philosophy of the present version of HR 39.

The United States of America, through the federal government, has an entirely legitimate interest in the Alaska lands to which it holds title. The most logical thing to do with public land anywhere is to determine the highest and best use in terms of the national interest. In order to determine the highest and best use, one must first define the alternatives. Some areas so clearly deserve to be protected that they should be immediately placed in some appropriate status. I don't think many Alaskans would tolerate any abuse of Mount

McKinley, or of Lake Clark, or of the valuable archaeological sites at Cape Krusenstern, no matter what riches may lie — under the ground there.

But as to much of the land which is classified as wilderness in HR 39, our information is pretty slender. By classifying these lands without knowing what they contain, you do keep them in their present state indefinitely. If no one knows whether there's copper under there, certainly there will be only minimal pressure to mine it.

That reasoning assumes that if someone knows the copper is there, one of these days a future government will allow the copper to be mined, and that when it does, the place will look like Ducktown, Tennessee, where the effluent from a copper smelter has created a moonscape extending into three different states in which nothing can live but ever-adaptable man.

Mr. Chairman, that is visiting the sins of the fathers upon the sons. That is saying, in effect, we have no faith in the America of the future. Under proper management and using the technology of the future, I believe it will be possible to obtain necessary minerals from the land without despoiling the surface. I believe that sooner than anyone here realizes, it will be possible to transport minerals through pipelines from one end of this nation to the other without leaving so much as a trace on the topsoil.

Perhaps, through the proper use of governmental restraints, we should prevent development in some areas until technology of this sort is available. But I do not believe it is in the best interests of this country to foreclose any possibility of alternative uses on these lands because we remain haunted by the visions of past abuses. In short, Mr. Chairman, I recommend that this legislation be amended to provide for a thorough resource inventory in order to allow future generations to exercise the options that may be available to them.

HR 39 provides for subsistence use of fish and wildlife on the national interest lands classified in the bill. Other institutions, such as the Joint Land Use Planning Commission, have stressed the desirability of cooperative wildlife management.

I believe that these are simply two aspects of the same problem: that is, the setting of priorities for the consumptive use of fish and wildlife resources. Assuming that subsistence use is a Congressional priority, I would suggest that the State be divided into management areas which correspond with the realities of range: for instance, fish might be managed on the basis of a particular drainage or watershed, and migratory animals on the basis of their known range.

Within those areas, classes of users should be set in order of preference. First would come persons who live in the area or who have traditionally used the area for

food and necessities, based on economic need. Second on the order of priority would be persons who live in the management area whose traditional lifestyles include subsistence hunting or fishing, although they may be economically independent. This latter group might be allowed a smaller harvest than those who depend on the resource for their lives.

After these two classes of subsistence users would be commercial takers, which of course would apply almost exclusively to commercial fishermen, and then sport hunters and fishermen who live in the state of Alaska. If there is enough left over, then out-of-state and foreign permits could be issued. State and federal rules should be the same, through identical statutory vehicles or through a duly authorized cooperative management agreement. I also believe that the Alaska Department of Fish and Game is the proper management authority for all lands in Alaska, working in close association with the U. S. Fish and Wildlife Service.

I expect to have some suggested language incorporating this concept drafted very soon and I will furnish the Subcommittee with it within a week or ten days.

One aspect of HR 39 which creates unnecessary friction between the federal government and the state is the provision revoking existing statehood selections where those selections fall within the boundaries of the lands classified under the bill. If adopted, the section in question

will generate much ill will here in Alaska, and it is also certain to lead to bitter and protracted litigation between parties who should be making every effort to cooperate in the management of the resources of Alaska. I believe that if the revocation provisions are stricken from the bill, substantially the same result may be reached through exchanges and management agreements.

One last matter which I should like to bring to the attention of the Subcommittee is probably important to only a few people in Alaska, but I happen to be one of them.

Proposed Section 202(a)(1) of HR 39 changes the designation of the Clarence Rhode National Wildlife Range to the Yukon Delta National Wildlife Range. Mr. Chairman, Clarence Rhode was a great Alaskan who disappeared in a light plane in the course of his duties with the U. S. Fish and Wildlife Service. He gave a great deal of himself to Alaska, and it is fitting and proper that he be honored by one of the largest wildlife refuges in the country. His daughter now lives in Washington, and his son, Jim Rhode, is an economist for the House Finance Committee and a prominent Alaskan in his own right. I ask that whatever the final configuration of the refuge, the name Clarence Rhode shall remain.

Thank you for coming to Fairbanks and for allowing the people of our town to testify on this important legislation.

Mr. SEIBERLING. My time has expired. Mr. Young wants to yield some time.

Mr. YOUNG. Before I yield the time, I would like to comment. People are coming up here because there is a special cut rate. Your comments about zoning by outsiders are true. Where are they when it is 70 below zero? I don't see many people up here other than Alaskans who want to undergo that hardship.

The zoning is taking place for the pretty months, nice months. I happen to think the winter months are pretty also. We are zoning for 3 months out of the year for a small group.

I think this is a real problem. You hit it on the head.

Mr. SEIBERLING. If the gentleman would yield, I would like to ask Mayor Gillam or Mr. Yonkers: Suppose gold were discovered at the very top of Mount McKinley, and it was feasible to mine it, you wouldn't advocate taking 300 feet off the top of Mount McKinley to get the gold, would you?

Mayor GILLAM. One nice thing about examples is sometimes they border in the realm of absurdity. Obviously there isn't gold at the top of Mount McKinley.

Mr. SEIBERLING. The point is, at some point we draw the line and say, this has more important value than the minerals. That is all. The only question is: Where do you draw the line?

Mayor GILLAM. Nature has drawn that line for us. They didn't put any gold there. [Applause.]

Mr. CARLSON. If gold were found on top of Mount McKinley, you can bet someone would try to figure out a way to get it out of there.

Mr. SEIBERLING. Thank you.

Mr. CARLSON. Even at $147 an ounce. It might not be economically feasible.

Mr. SEIBERLING. It may not be today, I agree.

I want to thank you, Mr. Carlson, for constructive suggestions. Thank you.

Our next witness is Mr. Byron Mallott, after whom we will break for lunch.

STATEMENT OF BYRON MALLOTT

Mr. SEIBERLING. Mr. Mallott, I was delighted to be in your town, Yakutak, the other day. It was a magnificent day. We went around and looked at some of the salmon spawning areas.

Mr. MALLOTT. Thank you. Mr. Chairman.

Just a brief comment with respect to your example. From my front porch in Yakutak, I have a stupendous view of the second highest mountain in North America, Mount Logan, which reaches 19,000 feet. I wouldn't mind 300 feet taken off Mount McKinley, because I could have the view of the highest mountain in North America. [Laughter.]

Mr. Chairman, I will summarize my statement. I have submitted to you both my prepared statement—a legal brief that was done by AFN D-2 counsel, Stewart Udall—on the constitutional issues surrounding subsistence as well as nine pages of amendments to H.R. 39 on the subsistence issue and on the land bank.

Mr. Chairman, we have studied H.R. 39 with great care through the course of your public hearings in Alaska. Native regional and village

organizations and individuals have voiced their support or objections to various provisions of H.R. 39.

Today, on behalf of the Alaska Federation of Natives, I respectfully submit for your consideration several amendments which we feel are necessary for H.R. 39 to be responsive to the needs of the Native Alaskans. I would like to briefly discuss some of the major issues which our proposed amendments address.

No. 1. With respect to subsistence. Subsistence users should be those residents and their descendants who at the time of passage of ANCSA were using the resources of public lands for subsistence purposes, and subsistence use of fish and game and plant resources should be the priority use among all such uses on public lands.

No. 2. "Subsistence uses" should be defined to include those customary, traditional and regular uses made of renewable resources for food, shelter, fuel, clothing, tools, transportation and, for the production and selling of traditional articles of handicraft and clothing, methods of taking should allow those traditionally and presently employed.

No. 3. The Alaska Federation of Natives believes this legislation should confirm the subsistence rights of the Alaska Natives, not just to the D–2 lands, but, as Congress plainly intended when it wrote its conference report, to all Native subsistence uses on all Federal public lands.

Congress should protect the subsistence uses of other Alaska residents who regularly and customarily have utilized subsistence resources.

No. 5. The Alaska Federation of Natives is convinced the best and most workable subsistence system will be one which has a strong element of involvement by subsistence users. We also believe that it would be wise and logical for the initial subsistence zones to conform to the 12 regions previously organized by Congress in ANCSA.

No. 6. It is also vital that subsistence users in each of the zones serve on the boards, be they State regional fish and game board's or subsistence management boards which manage the subsistence programs.

And finally, we also have a strong conviction that if it is to succeed, any subsistence program must be keyed to the wise management and conservation of the renewable resources in each zone, which we address partly with our land bank proposal.

You are aware from previous rough drafts of legislation that we have given you that we have researched the possibility of Natives only subsistence approach.

Frankly, the major reason we have researched the Natives only subsistence system is that while our lawyers feel certain that Congress has the power to create a native subsistence system which will withstand any attack on constitutional grounds, they are concerned that if a broader subsistence system which includes nonnatives is established, it might be struck down as an unconstitutional exercise of power.

If the Congress feels it can protect our rights, constitutionally, by writing subsistence legislation which covers Native and nonnative users, which our language does, we will abide by the words of Congress on this issue.

Today, 5 years after the passage of the Claims Act, the need for decisive protection of subsistence options is even more evident.

The Department of the Interior has failed to take any action under four different Secretaries; and the steps taken by the State have been timid and inconclusive. Recently, a State superior court nullified State subsistence efforts by declaring them unconstitutional.

In order to enhance the quality and quantity of Alaska's resources, there will be created, by our amendments, the Alaska Native land bank program.

Under this program a Native corporation may place up to 90 percent of its land in the land bank at any one time. While land is banked it will not be available for development, and will be exempt from State and local property taxes, and it will not be subject to adverse possession.

In addition to protecting the subsistence resource base on Native-owned lands, the land bank program will help insure a well-planned pattern of resource development and protective management throughout Alaska.

I would like to emphasize that while the primary purpose of our proposed amendments is to protect the economic and cultural dependence of Native Alaskans upon subsistence, it is not our intent to curtail the legitimate subsistence activities of nonnatives, nor to limit sports hunting and fishing.

As long as fish and game resources are available for those dependent upon subsistence, we see no reason to restrict such other uses of fish and game. In fact, we anticipate that our proposed amendments will greatly assist in minimizing potential conflicts between various groups utilizing fish and wildlife resources.

Of equal importance to the Alaska Federation of Natives and Native people throughout Alaska is the protection of the economic development options of Alaska Native corporations. If the regional and village corporations are to survive and make significant economic contributions to the future of their Native shareholders, they must have the ability to develop the resources on and beneath their lands.

The Alaska Federal of Natives opposes any classification of national interest lands which would block the access needed to transport equipment, supplies and raw materials to and from Native lands.

This must be avoided. I urge your committee and other members of Congress to carefully consider the testimony of various Native corporations which address these issues.

It is our belief that very restrictive land management on some public lands should not place undue restrains on adjacent Native landowners to develop their resources. Native landowners should be as free as any private landowner to use their land as they wish.

AFN itself has not taken a position on specific land classifications and the number of acres which should be included in each. The Alaska Federation of Natives' board of directors has urged each regional corporation to make those recommendations to you as their regional interests may dictate. We hope that during the course of your hearings these recommendations have or will be made.

It is our conviction that Native regional corporations should not lose their right to select their lands because areas were withdrawn for D–2 classification by a former Secretary of the Interior.

We urge that where there are dual withdrawals, the selections of regional corporations be given preference over the D–2 status. The

specific, detailed testimony of regional corporations supporting their selection rights should be carefully considered.

We also feel it is appropriate and consistent with the intent of ANCSA that title be conveyed to Native-selected lands before vast areas of D–2 lands are classified as national interest lands. To this end we ask your assistance in expediting the conveyance of title to Native-selected lands.

I appreciate the time and effort this committee has taken in recently holding a public hearing in Washington regarding ANCSA land conveyance problems.

It is clear that the easement provisions of ANCSA have been abused to the serious disadvantage of Alaska Natives. Resolution of the easement problem is the overriding stumbling block to the prompt conveyance of the Native lands.

It is also clear that both the Federal and State governments have sufficient existing legal authority to obtain easements through the exercise of eminent domain and condemnation authority. Therefore, we propose that the public easement provisions of ANCSA be repealed in D–2 legislation.

In conclusion, I would like to express our appreciation for your efforts to travel throughout Alaska to hear the feelings and thoughts of the people. We will be glad to further discuss any aspects of our proposed amendments with members of your committee and staff.

I will submit to the committee staff, with your permission, a copy of our draft subsistence and land bank language and a copy of a paper prepared at my request by our D–2 counsel, Stewart Udall, on the constitutional issues affecting subsistence.

The amendments we offer at this time are our best efforts to date, but do not preclude further modifications, especially of the administrative language which, even to us, appears cumbersome and overly complicated.

The great import D–2 legislation has for all Alaskans and people throughout America is worthy of all the care and consideration you can give it. In your deliberations, we hope you will pay particularly close attention to the needs and desires of Native Alaskans who have lived with the lands and waters of Alaska for a long, long time, and who expect to be here far into the future.

Contrary to what I have heard from some of the testimony this morning about your presence in Alaska, your presence in Alaska leaves me somewhat reassured.

Thank you.

[Prepared statement of Mr. Mallott may be found in the appendix.]

The CHAIRMAN. I want to thank Mr. Mallott for a sensitive and sensible set of suggestions here. I looked through the amendments you proposed. There are things there that the subcommittee will want to look at carefully, and I know we will have a better bill because of the attention you have given it in your presentation here today.

If I had to list off a dozen major impressions I will leave Alaska with tomorrow, one of them would be the intense attachment of the Alaskan Native people to the land and the desperate importance to them of their subsistence way of life. There are not many places left on Earth where we still have the chance—I am a little pessimistic—

but we have a chance to give people who want to stay close to the land that opportunity.

In the Navajo, Hopi reservations in my State, there are the same set of conflicts and values that we see here. We have an obligation to the Natives of Alaska to give them that opportunity. I hope we can write a bill to do just that.

We have had a number of witnesses out in the villages who tell us what very large quantities of land it takes to provide the subsistence way of life. On individual estimated that to sustain a family on a subsistence basis in one of these remote areas requires 30,000 acres just for one family. You need immense expanses of land so that moose, bear, sea walrus, and other animals that provide the susbsistence way of life will not be depleted. It seems to me in Alaska, as big as it is, it does not have enough acreage to go much beyond the kind of populations now which take part in the subsistence way of life. You indicate that in your testimony. You not only want the D–2 lands made available, but you hope other Federal lands which remain in the four systems and outside would be available.

Would you like to comment on the extent to which there is land and resources in Alaska to support the present number of Natives who might choose the subsistence way of life?

Mr. MALLOTT. There is no question that at the time we were working on the Native Claims Settlement Act that we recognized from the work we had done that even the 40 million acres that seemed to be shaping up at that time would not be sufficient with respect to overall subsistence use. And we made very strong arguments to include subsistence provisions within ANCSA in recognition of that concern.

We have again in recognition of that concern in our definition of "subsistence user" tried to limit it to those people involved with subsistence prior and at the time of passage of ANCSA. That is pretty much an arbitrary judgment.

Again, there is evidence, and we are concerned that the subsistence way of life does require huge acreage in order to ultimately survive.

The CHAIRMAN. I see trouble down the road here. All the people who want growth and development and the same old pattern continue. I notice in your statement the population of Alaska has doubled in 10 years. The number of fishing and hunting licenses have doubled in 10 years. I wonder what will happen if you redouble in the next 10, and redouble after that in the years following.

The caribou here, some people think it is a tenth of what it was a few years ago. Even in this land there are limits to activities of man that can be supported.

I thank you.

Mr. SEIBERLING. Thank you much.

Mr. Young?

Mr. YOUNG. Where does the figure double the population in 10 years occur?—325,000 was the last census figure, and 375,000 is the number now. That is not double. Should subsistence users be required to obtain a special permit like is mandated in H.R. 39?

Mr. MALLOTT. I do not think so. We have that type of registration program in the legislation that we have given to you here this morning. But upon our own reflection in the last week or so where we have

tried to run out what the administrative process would entail. that thing kind of bothered us. We do intend to take another look at it.

Mr. YOUNG. I appreciate that. I think permits would be tremendously inoperative and totally restrictive. and cause a lot of problems. I believe that Alaskans are all one. I have real reservations about this bill. I do not agree with you that subsistence should be based on ethnic qualities at all. I think subsistence use should be recognized for those residing in the area and who take supplemental dietary need.

We can discuss that later. Subsistence users should be designated as those using renewable resources, et cetera.

Do you consider trapping subsistence use. or would that be excluded under your definition?

Mr. MALLOTT. Our feeling is that trapping seems to be an element of overall subsistence use. Whether or not you would define subsistence taking for trapping purposes where there is obviously a commercial involvement for other than the traditional handicrafts that you have included there. I am not sure that that would fit.

I guess my point would be that subsistence in most instances is incidental to trapping. and that the two are not mutually exclusive.

Mr. YOUNG. The chairman had a discussion the other day in Kotzebue that he did not quite support the concept of cash returns for trapping. That is why the majority of people, including myself. have trapped. Not for food or clothing, but for the cash return to purchase other things.

I think it has to be spelled out clearly that it is on the subsistence level. I can see the friend of the animal organization saying, "Wait a minute. He did not eat that wolverine. So he consequently cannot sell fur."

One other question: What do you think about the land bank. the Stevens. Hammond, Young proposal? We have a land bank provision. Have you seen that?

Mr. MALLOTT. Yes, sir. It is part of the cooperative management effort.

Mr. YOUNG. You are included on a volunteer basis into that bank?

Mr. MALLOTT. That is right.

Mr. YOUNG. Primarily to keep your land from being taxed as private lands?

Mr. MALLOTT. Our feeling is that management of those lands should be passive. as opposed to being active. And that use to which those lands in the bank could be put would be very minimal, and have to do with only nonconsumptive use, recreation. subsistence, so forth. But we will not want to be part of any system that involved active management.

Mr. YOUNG. I agree.

One other question: In your amendments. you never pose an access question from your lands to other lands or to a railhead or seaport. Under the act, it says "For your social and economic benefit."

Mr. MALLOTT. Right. My testimony does. I hope. state strongly that we are opposed to any classifications which would preclude transportation of Natives—who comprises that organization—are they all tions in that regard to the regional corporations who might be affected themselves to respond to.

Mr. YOUNG. You are in support of access for economic reasons?

Mr. MALLOTT. Yes.

Mr. YOUNG. My time has expired.

I thank you gentlemen for being here.

Mr. WON PAT. Thank you very much.

Mr. Mallott, I would like to ask this question: The Alaska Federation of Natives—who comprises that organization—are they all Natives, indigenous, non-Natives?

Mr. MALLOTT. It is a completely Native organization. The only members of the Alaska Federation of Natives are the regional corporations established under the Alaska Native Claims Settlement Act. At the present time 10 of the 12 regional corporations are members and owners of the Alaska Federation of Natives.

Mr. WON PAT. How many members do you have in the organization?

Mr. MALLOTT. Through the regional corporations AFN represents about 50,000 Alaska Natives.

Mr. WON PAT. Does that comprise all of the Natives of Alaska?

Mr. MALLOTT. It does not comprise all of the Natives of Alaska. It excludes the membership of two regional corporations. The 50,000 figure is in my judgment a conservative one. I can be more precise. The total population enrolled in the corporation is 80,000. The membership of AFN at this time is about 16,000. So we have a little more than 60,000 Native people represented through the 10 regional corporations in the Alaska Federation of Natives.

Mr. WON PAT. Your present population, according to the census, is 375,000. What percentage is the Native population?

Mr. MALLOTT. I also have trouble with math. In any event, 80,000 among 400,000 is between 20 and 25 percent. We are a major, significant portion of the Alaska population. There is no question about that.

Mr. WON PAT. Do you feel that the Natives' indigenous habitats are represented in your State government as well as in the Federal Government?

Mr. MALLOTT. Yes. I do not think there is any common belief among Alaska Natives that they are inadequately represented in a general sense. We have specific concerns as any other group has from time to time about how our interests may be responded to. But we view ourselves absolutely as members of Alaskan society, as are any other group of people.

Mr. WON PAT. You do not feel there is discrimination between Natives and non-Natives?

Mr. MALLOTT. Racial discrimination exists in any society. If we accept that as given, I think we are being realistic. But I do not think it is a major problem for us here in Alaska.

Mr. WON PAT. I am glad to know about that. I see no evidence of such discrimination. I do think it is important that the group you represent be given special privileges with respect to subsistence. They should be allowed to live the way they have been used to. Today the main thing is to provide these people the kind of living they have. Today they do not use the bow and arrow, the spear. So today, and I

understand this change has come about, but they have to adjust accordingly.

The Government comes in and provides a system. You said you have $40 million. How much money are the poor people getting here in terms of the welfare system?

Mr. MALLOTT. I do not have any idea in terms of dollar terms or general terms. There is no question that if subsistence were wiped out, inadvertently or otherwise, within the next decade, that reliance on that kind of Government assistance would be tremendously increased.

Mr. WON PAT. I want to say that the people of Alaska are much better off than my own people. We have a small area.

My time has expired.

Mr. BYRON. I want to get specific with one thing, and I think it is a good point. You recommended certain amendments to H.R. 39, page 3. You recommend that the Congress should protect subsistence use of other Alaska residents and regularly and customarily utilize subsistence resources.

What about non-Natives? How do you feel about that specifically?

Mr. MALLOTT. Our definition, as I said earlier, does at this time exclude nonresidents and nonsubsistence users—residents who are not subsistence users at the time of the Alaska Native Claims Settlement Act.

Mr. BYRON. A nonresident from another State or country should not be able to hunt more than other Alaskans?

Mr. MALLOTT. Not able to hunt and fish as a subsistence user does. One of the things we must be careful of in this whole issue is that in our judgment, subsistence priority, the use of a strong subsistence definition would only come into play where you are faced with resource depletion. Without resource depletion, all users, nonresidents, residents, non-Natives, would have access to the land.

Mr. BYRON. I have not heard anybody say when an administrator says there is not enough game, who relies on subsistence or who does not.

Mr. MALLOTT. When faced with resource depletion, the subsistence resource users would be those people using subsistence prior to the time and at the time of the ANCSA period.

Mr. BYRON. You would assume whoever was writing the regulations could provide for the resident—the resident who hunts one moose a year to make up the deficiency in his food budget?

Mr. MALLOTT. He could take advantage of existing State fish and game laws and regulations.

Mr. BYRON. There has been a suggestion in this act that the State not be involved exclusively in setting hunting goals.

Mr. MALLOTT. Only for subsistence purposes. For all other use of the fish and game resources, the State would have total responsibility.

Mr. BYRON. You would recommend that?

Mr. MALLOTT. Yes.

Mr. BYRON. You would recommend we continue having the State manage all nonsubsistence hunting and fishing?

Mr. MALLOTT. Yes, sir.

Mr. SEIBERLING. Mr. Mallott, I have a couple of questions.

My personal view is that the Congress has made some commitments to the Natives in Alaska which we must move on. That refers to not only protection of their land, but protection of their subsistence rights. In my view, and I have been thinking this through and discussing it with various people—at least my view at the present time—is we have a constitutional power to say if there is an insufficient amount of game to supply all the needs, that the Natives will get the first priority. I think we not only have the power to do that, but we have the legal as well as moral obligation to do that. I hope we will write that in this bill.

I will read with great interest your proposed amendments, and also the brief that Stewart Udall prepared for you.

Assuming that there is sufficient resources to take care of the subsistence rights of the Natives, then I think we have the problem of how to manage—how to handle the additional game. It seems to me that there it is a matter of defining "use." I think we would give—we ought to work out some way of giving non-Native subsistence use a priority over recreational use.

In other words, non-Native residents who want to hunt and fish for subsistence use ought to have a priority over sport hunting.

I wonder if you care to comment on that? Does that sound right and feasible?

Mr. MALLOTT. In our research we were led to, in our language, the creation of a severability among Native and non-Native subsistence users, while attempting to make subsistence to the maximum degree possible a nonracial kind of use, simply recognizing the political realities over time, having lived here in Alaska.

What our legislation does say, however, is that if nonracial subsistence is struck down by court challenge, then there should be language in D-2 that protects Native subsistence use through Congress exercising its constitutional authority.

Mr. SEIBERLING. The more I think about it, the more I see no way to protect the Native subsistence rights except by putting it strictly on a racial basis, which I think we need to take care of the rest of the use by defining "subsistence use" versus "recreational use."

I am going to try to dig into this further, and with the kind help you have given us, I think we can resolve it.

I want to comment on one other thing. I think your specific proposals are really the kind of input we need, and we appreciate them very much. Representative Anderson made the point that they had workshops—there should be workshops in all of the rural communities on H.R. 39, and then we would have discussions. Bethel did this, for example.

Really, the question is not whether every person in Alaska understands H.R. 39, but whether we in Congress understand the interest and concerns of Alaska citizens. That is why we spent all of the time we have listening to them in rural villages and areas. I think we have seen a section of Native and rural Alaskans and we do have a sufficient information base to act intelligently. If we do not, we want to crosscheck with you and others to make sure we do.

Thank you very much.

Mr. MALLOTT. Thank you very much for the opportunity to be heard.

indigenous people, holding original title, remain in peaceful occupancy. The Inuit not only hold original title but our claim to sovereignty and peaceful coexistence and a continuous display of our authority over our lands is contrary to the claim of the United States which has based their claim on the titles of discovery, of recognition by treaty and of contiguity, i.e. titles relating to acts or circumstances leading to the acquisition of sovereignty; they have, however, not established the fact that sovereignty so acquired was effectively displayed at any time. We, the Inuit, concur with the precedent set in the United States vs. Netherlands, wherein the United States lost its claim to inchoate title. (Palmas Island Arbitration, 1928).

For want of jurisdiction and possession, the United States government maintained in its negotiations with Russia concerning territorial questions that dominion cannot be acquired but by a real occupation and possession, and an intention to establish it is by no means sufficient. The mere desire and political ambition of the Russians and the United States throughout the negotiations of the Treaty of Cession of 1867, cannot extinguish the principle of the continuous and peaceful display of the functions of occupation by the Natives of Alaska within the territory of Alaska and is a constituted element of territorial sovereignty which is a recognized principle of international law.

We, Inuit, must now apply through the written word against their desires as written in their Constitution of September 18, 1787. From the period of 1776 to 1787, it was known to many colonists that the issue of sovereignty was not resolved by their Declaration of Independence. The concept of "sovereignty" continued to be the most important theoretical question throughout the decades following the Declaration.

The creation of American sovereignty was done on a theoretical plane and drawn upon blank sheets of paper. The confederation the colonists formed, therefore, was not a sovereign government. John Adams reflects this weakness in his diary in 1787:

> "Regarding the greatest Question yet agitated---the idea of sovereignty, that in all civil states it is necessary that there should some where be lodged a supreme power over the whole---this was the heart of the Anglo-american argument that led to the Revolution."

Almost every writer, British or American, who groped for an acceptable compromise that would prevent the breach, had sooner or later stumbled over this problem of sovereignty. The doctrine of sovereignty, by itself, compelled the imperial debate to be conducted in the most theoretical terms of political science. It was the single most important abstraction of politics in the entire Revolutionary era.

In the contest between the states and Congress, the ideological momentum of the Revolution lay with the states, but in the contest between the People and the state governments it decidedly lay with the People. For the Continental Congress had realized that the Articles of Confederacy was not a government and the Articles held no sovereignty. In Massachusetts the General Court proclaimed, "In every government there must exist somewhere a 'supreme sovereign absolute' and an uncontrollable power."

> "But this Power resides, always, in the body of the People, and it never was, or can be delegated, to one Man, or a few. In one sense this was a traditional utterance, for no one doubted, even most Tories, that all power ultimately resided in the people."

CORRECTION

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

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A P P E N D I X

Additional Material Submitted for the Hearing Record

TESTIMONY OF

GOVERNOR JAY S. HAMMOND

BEFORE THE

HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE

SUBCOMMITTEE ON ALASKA LANDS

FAIRBANKS, ALASKA

AUGUST 20, 1977

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE. IT HAS BEEN MANY MONTHS SINCE WE HAD OUR INITIAL DISCUSSIONS REGARDING D-2 LANDS AT YOUR COMMITTEE AND IN YOUR OFFICES IN WASHINGTON. SINCE THEN, MUCH HAS HAPPENED, AND I AM SURE YOU HAVE LEARNED, AS WE ALL HAVE, MUCH ABOUT THE DYNAMICS OF THIS VOLATILE ISSUE. IN ADDITION, I AM SURE YOU HAVE LEARNED EVEN MORE ABOUT THE FACTS OF THE ISSUE, AND THE MERITS OF VARIOUS ARGUMENTS. WE

HAVE HAD FRANK AND THOROUGH DISCUSSIONS REGARDING THE PHILOSOPHIES OF D-2, AND THE COMMON GOALS THAT ALL OF US WISH TO ACCOMPLISH IN THIS LEGISLATION. BOTH MY CABINET MEMBERS AND I HAVE PRESENTED SPECIFIC SUGGESTIONS, AS WELL AS GENERAL DIRECTIONS TO THIS COMMITTEE PREVIOUSLY. TODAY, I WOULD LIKE TO SUM UP THE ASPECTS OF THE D-2 ISSUE THAT ARE OF HIGHEST IMPORTANCE TO THE PEOPLE OF ALASKA, TO STRAIGHTEN OUT SOME MISPERCEPTIONS THAT SEEM TO BE GROWING, TO OFFER EXPLICIT SOLUTIONS TO PROBLEMS BEFORE YOU, AND TO ONCE MORE OFFER THE POSITIVE HELP AND EXPERT INPUT OF THIS ADMINISTRATION AS YOU PREPARE YOUR FINAL BILL.

TODAY I WANT TO DEAL WITH FIVE MAJOR TOPICS, AND TO DEAL WITH THEM ON A LEVEL THAT WILL BE OF PRACTICAL HELP TO YOU IN THE NEXT STAGE OF YOUR LEGISLATIVE CONSIDERATION. I WANT TO DISCUSS THE

OPPORTUNITY YOU HAVE BEFORE YOU TO ASSIST FAIRLY AND EQUITABLY IN CONVEYANCE OF NATIVE AND STATE LANDS, AS WELL AS ESTABLISHMENT OF NATIONAL INTEREST LANDS.

I WANT TO MAKE SPECIFIC SUGGESTIONS AS TO HOW COOPERATIVE MANAGEMENT MIGHT BE STRUCTURED TO MEET SOME OF THE OBJECTIONS THAT YOU CONSERVATIONISTS HAVE CONTINUALLY RAISED. IN ADDITION, I WOULD LIKE TO SUGGEST THE SIMPLEST, MOST RATIONAL APPROACH TO SUBSISTENCE, TO OFFER OUR SPECIFIC SUGGESTIONS AS TO DETERMINATION OF BOUNDARY LINES.

GENTLEMEN, THERE HAS BEEN MUCH POSTURING AND PONTIFICATING BEFORE YOUR COMMITTEE IN RECENT WEEKS REGARDING THE STATE'S SELECTION "RIGHTS", THE "UNFAIRNESS OF IT ALL", AND VARIOUS ALLEGATIONS REGARDING THE ABROGATION OF THE STATEHOOD COMPACT BY H.R. 39. I DO NOT INTEND TO EITHER POSTURE OR PONTIFICATE,

BUT I HOPE THIS COMMITTEE TAKES THESE ALLEGATIONS VERY SERIOUSLY AND THOUGHTFULLY ADDRESSES THEM IN YOUR RESULTANT LEGISLATION. IN THAT REGARD, I AM SUBMITTING FOR THE RECORD A POSITION PAPER I HOPE YOU WILL READ AND CONSIDER CAREFULLY. THE FACT IS, THERE WERE EXPECTATIONS FAIRLY DRAWN FROM THE STATEHOOD COMPACT AND THEN DENIED UNFAIRLY. RIGHTS GRANTED AT STATEHOOD HAVE UNDENIABLY BEEN ERODED. THE PEOPLE OF ALASKA HAVE CONSCIOUSLY AND IN GOOD FAITH MADE MAJOR CONCESSIONS TO THE UNITED STATES IN RESPONSE TO CHANGING NEEDS. IN THE PAST ALASKA HAS VOLUNTARILY SUBORDINATED ITS STATEHOOD RIGHTS IN FAVOR OF OTHER CONSTITUENCIES. THOUGH NOT CONSTITUTIONALLY COMPELLED TO DO SO, ALASKA ACQUIESCED TO THE SECRETARIAL FREEZE ORDERS OF THE 1960's AND SUPPORT FOR CERTAIN ASPECTS OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT ITSELF ARE GOOD EXAMPLES.

MORE RECENTLY, HOWEVER, EVENTS SUGGEST ALASKANS MAY HAVE BEEN BADLY SUCKERED. THE SO-CALLED "OVERRIDING SECTION (D)(1) WITHDRAWAL" ADDED INSULT TO INJURY. AT THAT TIME ALL REMAINING FEDERAL LANDS WERE CLOSED TO STATE SELECTION, PENDING CLASSIFICATION UNDER A NEW SYSTEM WHICH HAS, EVEN TO THIS DAY, NEVER BEEN IMPLEMENTED. NOW H.R. 39 SUGGESTS THAT ALASKA STATE LAND SELECTIONS TOTALLING ALMOST EIGHT AND ONE-HALF MILLION ACRES BE REVOKED, WITH THE SOP TOSSED IN THAT THE STATE MIGHT SELECT "OTHER PUBLIC LANDS OF APPROXIMATELY EQUAL ACREAGE."

GENTLEMEN, IT IS ABSOLUTELY ESSENTIAL THAT CONGRESS AND THE CITIZENS OF ALASKA WORK TOGETHER TO RESOLVE THESE PROBLEMS THROUGH SPECIFICS RATHER THAN RHETORIC. A LARGE PART OF OUR POPULATION WOULD HAVE THIS ADMINISTRATION LITIGATE TO SQUEEZE

EVERY LAST VALUE FROM STATE SELECTIONS, REGARDLESS OF COMPELLING NATIONAL OR NATIVE INTERESTS. ANOTHER CONSTITUENCY GROUP WOULD HAVE B.L.M. EVENTUALLY PARCEL OUT TO US AS MUCH AS THEY WANTED TO OF OUR REMAINING STATEHOOD ENTITLEMENT, ACCORDING TO THEIR RULES, GIVING THE STATE NO "SELECTION" OR CHOICE IN THE MATTER. IN THE MEANTIME, ALASKA NATIVES HAVE SEEN TITLE TO VERY LITTLE LAND. I SUGGEST THAT THIS CONGRESS, BEGINNING WITH YOUR COMMITTEE, CAN RESOLVE THE STATE AND NATIVE LAND ENTITLEMENT ISSUE ON CONSTRUCTIVE MIDDLE GROUND. FURTHER, I SUGGEST THAT YOU MUST DO IT NOW AS PART OF D-2 IN ORDER AT LONG LAST TO REMOVE ROADBLOCKS STANDING BETWEEN ALASKA NATIVES, THE STATE AND THEIR RESPECTIVE LAND. I URGE YOU TO ACT SPECIFICALLY IN THE FOLLOWING WAYS.

FIRST, THE D-2 BILL PASSED BY THE CONFERENCE COMMITTEE NEXT AUTUMN SHOULD CONVEY MOST, IF NOT ALL, OF REMAINING STATE AND NATIVE ENTITLEMENTS. TO ASSIST IN THIS, THE STATE WILL, WITHIN THE NEXT 90 DAYS, IDENTIFY APPROXIMATELY 60 MILLION ACRES PRESENTLY INCLUDED IN D-1, NATIVE OVERSELECTED, AND D-2 LANDS, AS LANDS WE ARE MOST INTERESTED IN EVENTUALLY RECEIVING. BY DOING THIS, WE ARE NOT QUESTIONING THE NATIVES' PRIORITY RIGHT TO SELECT THEIR FULLENTITLEMENT FROM THE OVER 80 MILLION ACRES THAT THEY PRESENTLY HAVE UNDER SELECTION. NOR ARE WE QUESTIONING CONGRESSIONAL RIGHT OR INTENT TO ESTABLISH NATIONAL INTEREST LANDS UNDER SECTION 17(D)(2) BEFORE STATE SELECTIONS ARE DEALT WITH. HOWEVER, CERTAINLY AT THAT POINT OUR TURN SHOULD FINALLY COME. AT THE VERY

LEAST WE WOULD EXPECT LANDS THAT WE NOMINATE NOW, WHICH ARE NEITHER RETAINED IN NATIVE SELECTIONS OR ESTABLISHED AS NATIONAL INTEREST LANDS, TO BE CONVEYED TO US IN AUTUMN OF 1978, WITH NO STRINGS ATTACHED.

SIMILARLY, CONGRESS SHOULD CERTAINLY CONVEY FULL ENTITLEMENT TO ALASKA'S NATIVES AT THAT TIME. THE NATIVES HAVE SELECTED OVER 80 MILLION ACRES OF WHICH THEY WILL OWN APPROXIMATELY 44 MILLION. WE INTEND TO NOMINATE ABOUT 60 MILLION ACRES, FROM WHICH WE ARE ENTITLED TO ABOUT 35 MILLION ACRES. ALL PARTIES SHOULD SIT DOWN WITH THESE NOMINATIONS TO WORK OUT AGREEMENTS SO THAT CONGRESS MAY SETTLE THE OWNERSHIP QUESTION ONCE AND FOR ALL NEXT FALL. IF YOU MEAN WHAT YOU HAVE BEEN SAYING PUBLICLY, AND I BELIEVE YOU DO, YOU SHOULD BE PLEASED TO DO THIS. AND IF YOU IN FACT DO IT, YOU WILL SAVE YEARS OF

HEARTACHE, LITIGATION AND MISTRUST, WHILE ADDING STABILITY TO ALASKA LAND MANAGEMENT AND OWNERSHIP YEARS BEFORE IT COULD HAPPEN THROUGH THE ALTERNATE TORTUOUS ADMINISTRATIVE PROCESS.

SECONDLY, I WOULD URGE THIS COMMITTEE TO QUESTION THE REASONING BEHIND SECTION 704 (B) OF H.R. 39. THE AUTHOR OF THIS SECTION APPARENTLY ASSUMED THAT, IN ALASKA, ONE ACRE OF PUBLIC LANDS IS EQUAL TO ANY OTHER. ONE OF THE MOST BENEFICIAL SPINOFFS OF YOUR VISIT TO ALASKA IS RECOGNITION OF THE FACT THAT IS SIMPLY NOT THE CASE.

LAND SELECTIONS BY THE STATE WERE MADE BECAUSE THE STATE SAW MORE VALUE IN THE ACRES IT SELECTED THAN IN ACRES NOT SELECTED. IT IS AS SIMPLE AS THAT. ANY ATTEMPT AT REVOCATION OF EXISTING SELECTIONS IN EXCHANGE FOR EQUAL ACREAGE TO BE MADE UP FROM

THE DREGS IS SIMPLY NOT EQUITABLE. CONGRESS MUST NOT ATTEMPT TO REVOKE STATE SELECTIONS. IF FOR SOME REASON THE COMMITTEE FEELS THAT A GIVEN STATE SELECTION IS ABSOLUTELY ESSENTIAL TO A NATIONAL INTEREST AREA, AND THAT COOPERATIVE MANAGEMENT WOULD NOT PROTECT NATURAL INTERESTS SUFFICIENTLY, IT WILL FIND THE STATE WILLING TO DISCUSS IN GOOD FAITH A LAND EXCHANGE SO THAT LAND OF EQUAL VALUE MIGHT BE CONVEYED TO THE STATE IN LIEU OF THOSE ACRES RETURNED TO FEDERAL OWNERSHIP. SUCH COOPERATIVE EFFORT BETWEEN THE STATE AND CONGRESS COULD AVOID THE SPECTER OF MUTUALLY UNWANTED LITIGATION THAT UNILATERAL ACTION WOULD EVOKE.

NOW LET ME TALK ABOUT COOPERATIVE MANAGEMENT. OF SIGNIFICANCE IS THE FACT THAT THE COOPERATIVE MANAGEMENT CONCEPT NOW HAS THE SUPPORT OF ALL THE CONGRESSIONAL DELEGATION, THE LAND

USE PLANNING COMMISSION, AS WELL AS MYSELF. INFORMED DEVELOPERS AND CONSERVATIONISTS SEE IN COOPERATIVE MANAGEMENT THE POTENTIAL FOR A LAND MANAGEMENT SYSTEM WHICH COULD BETTER MEET THE CONCERNS OF EACH. THE DEVELOPER SEES THE OPPORTUNITY TO DO SOME THINGS ON SOME LANDS WHICH OTHERWISE WOULD BE FORECLOSED IN RETURN FOR WHICH THE CONSERVATIONIST SEES THE MOTIVATION FOR UPGRADING THE QUALITY OF LAND MANAGEMENT ON BORDER LANDS WHICH OTHERWISE COULD BE DESECRATED AT THE WHIM OF THE RESPECTIVE STATE OR PRIVATE OWNER.

MEMBERS OF THIS COMMITTEE HAVE ENDORSED COOPERATIVE MANAGEMENT AS AN IDEALISTIC CONCEPT. AT YOUR SUGGESTION, I HAVE DISCUSSED COOPERATIVE MANAGEMENT WITH MEMBERS OF NATIONAL INTEREST GROUPS, AND HAVE LEARNED MUCH ABOUT THEIR SPECIFIC CONCERNS ABOUT ITS APPLICATION. GENTLEMEN, YOUR COMMITTEE IS

CERTAINLY CREATIVE ENOUGH TO DEAL WITH THESE CONCERNS AND OF SUFFICIENT COURAGE TO STRUCTURE A COOPERATIVE MANAGEMENT SYSTEM FOR THE GREATER BENEFIT OF ALL.

LET ME RUN DOWN SOME OF THE CONCERNS I HAVE HEARD ABOUT COOPERATIVE MANAGEMENT, AND SUGGEST HOW EASILY THEY MIGHT BE ADDRESSED.

THE FIRST CONCERN IS THAT CONGRESS MIGHT ABROGATE ITS RESPONSIBILITY TO THE NATION AS A WHOLE IF IT GIVES AWAY AUTHORITY TO CONTROL WHAT HAPPENED ON FEDERAL LANDS. WE HAVE NEVER ASKED FOR THAT. ACCORDING TO OUR LONG STANDING PROPOSAL, SOVEREIGNTY WOULD REMAIN WITH THE RESPECTIVE SECRETARY CHARGED WITH MANAGING THE LAND. HE COULD VETO ANY ACTION THAT OCCURRED ON FEDERAL LAND UNDER HIS PROPRIETARY CONTROL. THE COMMISSION WOULD CLASSIFY WHAT USES COULD BE

ALLOWED ON THOSE LANDS, AND THE SECRETARY (OR THE GOVERNOR, IN THE CASE OF STATE LAND, OR THE PRIVATE LANDOWNER) COULD AS WELL BY VETO REJECT THIS CLASSIFICATION. BY ALLOWING A COMMISSION TO GIVE ADVICE ON FEDERAL LANDS, THE PEOPLE OF THE OTHER STATES WOULD GAIN THE RIGHT TO GIVE ADVICE ON STATE LANDS THROUGH THEIR COMMISSION MEMBERS. SUCH CERTAINLY COULD IMPROVE THE MANAGEMENT OF ALL LANDS SO INVOLVED. SUCH REQUIRES NO ALIENATION OF ANY PROPRIETARY OR SOVEREIGN RIGHT FOR ANY PARTY.

NEXT, I HAVE HEARD A WHOLE SERIES OF ASSERTIONS REGARDING HOW THE COMMISSION COULD BE STACKED OR LOADED FROM ONE SIDE OR ANOTHER. CONSERVATIONISTS FEAR THAT THE COMMISSION WOULD BECOME A TOOL OF DEVELOPERS; DEVELOPERS FEAR THAT THE COMMISSION WOULD BECOME A TOOL OF CONSERVATIONISTS; AND MEMBERS OF CONGRESS FEAR THAT THE COMMISSION WOULD BE OVERLOADED WITH

PEOPLE WHO RESIDED IN ALASKA AND, THUS, WERE TOO PROVINCIAL. WHY NOT SIMPLY STRUCTURE THE COMMISSION SO THAT THESE THINGS CANNOT HAPPEN? WHY NOT DEFINE THE MEMBERSHIP OF THE COMMISSION TO ELIMINATE THIS CONCERN?

A THIRD CONCERN REGARDING COOPERATIVE MANAGEMENT ARISES FROM A CONFUSION BETWEEN MANAGEMENT AND ADVICE. THE COMMISSION WE HAVE SUGGESTED IS A CLASSIFICATION COMMISSION. IT DOES NOT HIRE PEOPLE TO DO RESEARCH, SURVEY LANDS, HELP TOURISTS, GIVE LEASES, OR DO ANY OTHER OF THE ADMINISTRATIVE TASKS THAT A LEGITIMATE MANAGEMENT AGENCY DOES. THE LANDS UNDER THE COOPERATIVE MANAGEMENT SYSTEM WOULD BE ASSIGNED BY THE RESPECTIVE OWNERS TO THE APPROPRIATE MANAGEMENT AGENCIES (I.E., PERHAPS THE FISH AND WILDLIFE SERVICE OR PARK SERVICE ON FEDERAL LANDS, THE DIVISION OF LANDS ON STATE LAND, THE PRIVATE OWNER

ON PRIVATE LANDS) TO MANAGE UNDER THE COMMISSION'S GUIDELINES. THE COMMISSION WOULD NOT BE ANOTHER MANAGEMENT AGENCY; IT WOULD BE A CLASSIFICATION COMMISSION.

FINALLY, THERE HAS BEEN MUCH CONFUSION OVER WHAT WOULD BE ALLOWED OR NOT ALLOWED ON COOPERATIVELY MANAGED LANDS. THE COMMITTEE HAS SEVERAL CHOICES IN THIS REGARD. THE "STEVENS BILL" SUGGESTS THAT COOPERATIVE LANDS BE OPEN TO ALL PRESENT USES UNTIL THOSE USES WERE CLASSIFIED CLOSED BY THE COMMISSION. ON THE OTHER HAND, THE LAND USE PLANNING COMMISSION'S SUGGESTED LEGISLATION SAYS THAT CONGRESS SHOULD ESTABLISH PRIME USES OF THESE LANDS, AND THAT THE LANDS WILL BE CLOSED TO ALL OTHER USES UNTIL CLASSIFIED OPEN BY THE COMMISSION. A COOPERATIVE MANAGEMENT SYSTEM COULD BE DERIVED TO GIVE ANY AMOUNT OF

FLEXIBILITY ALONG THIS ENTIRE SPECTRUM. I SUGGEST THAT YOU NOT SHY AWAY FROM IT JUST BECAUSE IT COULD BE AN OVERLY PERMISSIVE SYSTEM, OR CONVERSELY BUY IT JUST BECAUSE IT COULD BE AN OVERLY RESTRICTIVE SYSTEM. I AM SUGGESTING THAT THE BENEFITS OF MUTUAL COOPERATION, AND RATIONAL MANAGEMENT OF LANDS FAR BEYOND THOSE CONTAINED IN THE NATIONAL INTEREST LANDS, COULD BE ACHIEVED IF YOU WOULD MAKE THE DECISION AS TO HOW COOPERATIVE LANDS SHOULD BE STRUCTURED AND MANAGED, RATHER THAN AVOIDING THIS DECISION IN FEAR THAT SOME WILL BELIEVE IT EITHER TOO RESTRICTIVE OR PERMISSIVE.

MEMBERS OF THE COMMITTEE, I WOULD EARNESTLY ASK YOU TO LOOK AT THESE CONSIDERATIONS AS PROBLEMS TO BE SOLVED, RATHER THAN INSURMOUNTABLE BARRIERS BETWEEN YOU AND A CONCEPT YOU ALL PROFESS TO BELIEVE IN PRINCIPLE.

THE THIRD TOPIC I WANT TO ADDRESS TODAY IS SUBSISTENCE. HERE AGAIN IS A TOPIC IN WHICH WE ALL AGREE IN CONCEPT. THE

SUBSISTENCE WAY OF LIFE SHOULD BE PRESERVED IN ALASKA FOR AS LONG AS POSSIBLE. I THINK THAT THIS GOAL CAN BE ACCOMPLISHED IF WE ALL REALIZE THAT WHAT WE REALLY ARE CONCERNED ABOUT ARE THESE TWO BASICS:

FIRST, THE RESOURCE ITSELF -- THE FISH AND WILDLIFE -- MUST BE MAINTAINED IF SUBSISTENCE IS TO PERSIST AS A WAY OF LIFE. THIS REQUIRES TWO THINGS: FIRST, PROTECTIVE MANAGEMENT OF THE RESOURCE-SUSTAINING HABITAT, AND PROFESSIONAL, COORDINATED, SCIENTIFIC MANAGEMENT OF THE WILDLIFE OR FISH SPECIES ITSELF. SECOND, THERE IS CONCERN ABOUT REDUCING COMPETITION BETWEEN THE SUBSISTENCE USER (USUALLY RURAL OR "LOCAL" PEOPLE) AND NON-SUBSISTENCE USERS (USUALLY URBAN "SPORT" HUNTERS) WHEN NECESSARY TO PROTECT THE RESOURCE. THEREFORE, MANY WANT THE RESOURCE ALLOCATED TO THE SUBSISTENCE USER AS A PRIORITY.

ALL CONCERNS ABOUT SUBSISTENCE CAN BE BOILED DOWN INTO THESE

BROAD CATEGORIES, AND ANY DISCUSSION REGARDING RACIAL DEFINITIONS OF SUBSISTENCE; FEDERAL MANAGEMENT OF WILDLIFE FOR SUBSISTENCE, OR SIMILAR ITEMS, ARE ALL MERELY SUGGESTIONS AS TO HOW TO BETTER ACCOMPLISH THE TWO BASIC AIMS. I WOULD URGE AS STRONGLY AS I CAN YOU NOT MISTAKE THE TREES FOR THE FOREST IN THIS INSTANCE. INSTEAD LET US CONCENTRATE ON THESE BASICS.

FIRST, HOW CAN WE PROTECT THE SUBSISTENCE RESOURCE ITSELF? THE DESIGNATION OF CORE AREAS IN ALASKA COULD, OF COURSE, PROTECT MUCH HABITAT. HOWEVER, WHAT ABOUT PRIME SUBSISTENCE HABITAT ON THE REMNANT TWO-THIRDS OF ALASKA? THE LAND USE PLANNING COMMISSION HAS CALCULATED, AND I AM SURE WILL MAKE AVAILABLE TO YOU, THE INFORMATION THAT ONLY APPROXIMATELY 20 PERCENT OF THE RESOURCE BASE FOR SUBSISTENCE LIVING IS TIED TOTALLY TO FEDERAL LANDS. FULLY 80 PERCENT OF THAT RESOURCE BASE DEPENDS UPON THE MANAGEMENT OF STATE OR PRIVATE LANDS.

IN FACT, THEY CALCULATE THAT LESS THAN 5 PERCENT OF THE SUBSISTENCE RESOURCE BASE IS TIED SOLELY TO D-2 LANDS. EVEN IN THE FACE OF THIS, THERE SEEMS INSUFFICIENT RECOGNITION THAT THE ESTABLISHMENT OF COOPERATIVE MANAGEMENT SYSTEMS COULD LEAD TO THE RATIONAL PROTECTION OF A MUCH GREATER RANGE OF PRIME SUBSISTENCE HABITAT THAN OTHERWISE WOULD BE THE CASE, AS BOTH STATE AND NATIVE OWNERS WOULD BE MOTIVATED TO ASSURE ADEQUATE PROTECTION OF AND PROVISION FOR SUBSISTENCE CAPABILITY. WITHOUT THIS, THE ULTIMATE GOAL OF PRESERVING THE SUBSISTENCE WAY OF LIFE CANNOT BE MET BY EVEN 100 PERCENT PROTECTION ON D-2 LANDS ALONE. I FEEL THAT A COOPERATIVE MANAGEMENT SYSTEM IS ABSOLUTELY ESSENTIAL TO THE LONG-TERM PROTECTION OF THE ENTIRE SUBSISTENCE RESOURCE BASE.

SECONDLY, CRUCIAL TO PROTECTION OF THE RESOURCE IS COORDINATED, SCIENTIFIC WILDLIFE MANAGEMENT THAT MANAGES ANIMAL POPULATIONS REGARDLESS OF WHERE THEY MAY ROAM, SPAWN, MIGRATE OR BE TAKEN.

AS YOU KNOW, FISH AND WILDLIFE HAVE LITTLE REGARD FOR BUREAUCRATIC BOUNDARIES AND, SO FAR AS I AM CONCERNED, THIS IS ARGUMENT ENOUGH IN ITSELF AGAINST SEGMENTING THE MANAGEMENT OF A SINGLE SPECIES OR POPULATION ACCORDING TO LAND OWNERSHIP OR USER GROUPS. SPLIT MANAGEMENT OF A SINGLE LIVING RESOURCE MAY MAKE SOME MARGINAL SENSE IN THE CONTEXT OF POLITICAL SCIENCE; BUT IT MAKES ABSOLUTELY NO SENSE WHATSOEVER IN THE CONTEXT OF BIOLOGICAL SCIENCE.

THIS COMMITTEE HAS BEEN LEARNING IN ITS TOURS AROUND THE STATE THAT MANY PEOPLE ARE LESS THAN ENAMORED WITH EXISTING STATE WILDLIFE MANAGEMENT POLICY AND EXECUTION. I AM QUICK TO ACKNOWLEDGE THIS FACT, AND AM TRYING TO DO SOMETHING ABOUT IT. LET ME SAY AT THE OUTSET THAT THERE ARE TWO PARTS TO THIS DISENCHANTMENT. THE FIRST, AND I THINK A MAJOR PART, MIGHT BE CALLED "DISSATISFACTION WITH THE TAX COLLECTOR." FRANKLY, ANYONE WHO MAKES THE HARD DECISIONS WHICH RESTRICT PEOPLE'S

ACCESS TO FISH OR WILDLIFE, THE SUPPLY OF WHICH LAGS FAR BEHIND DEMAND, IS NOT GOING TO BE MOST POPULAR. I SUSPECT THAT EVEN IF JIMMY CARTER, J. P. JONES, THE A.F.N., JOE VOGLER AND BELLA ABZUG WERE SETTING OUR MOOSE SEASONS, I'M SURE SOMEONE WOULD STILL THINK HE AS BEING DISCRIMINATED AGAINST UNFAIRLY. THUS, WHEN THE BOARD OF GAME SEVERELY RESTRICTED HUNTING OF THE ARCTIC CARIBOU HERD, SOME EVEN HURLED THE CHARGE THAT SUCH WAS PROMPTED BY ATTEMPTED "GENOCIDE", EVEN THOUGH IT IS CLEAR TO THOSE INFORMED THAT THEY COULD SIMPLY NOT DO OTHER THAN RESTRAIN THEIR HARVEST. IRONICALLY, SOME OF THOSE WHO CHARGED THERE WERE SUFFICIENT CARIBOU TO CONTINUE THE ANNUAL SLAUGHTER UNABATED VERY STRIDENTLY DEMANDED INCREASED WOLF CONTROL TO HELP DANGEROUSLY DECLINING CARIBOU POPULATIONS.

ANYONE WHO HONESTLY AND CONSCIENTIOUSLY ATTEMPTS TO REGULATE HUNTING AND FISHING WILL BE CRITICIZED BY THOSE WHOM HE IS REGULATING.

ONE FACET OF SUCH CRITICISM WHICH CONCERNS ME MUCH IS THE PERCEPTION THAT STATE REGULATION HAS EITHER FAVORED URBAN HUNTERS TOO MUCH, OR NOT FAVORED RURAL HUNTERS ENOUGH WHEN THE DIFFICULT ALLOCATION DECISIONS WERE MADE. STATE POLICY UNDER THIS ADMINISTRATION HAS EXPLICITLY STATED THAT SUBSISTENCE WILL HAVE PRIORITY WHEN THERE IS A CONFLICT AND A THOROUGH REVIEW OF RECENT FISH AND WILDLIFE REGULATIONS WILL SHOW SCORES OF CASES WHERE THE LOCAL RURAL USER HAS BEEN FAVORED IN REGULATION. NEVERTHELESS, THE PERCEPTION PERSISTS, AND WITH SOME JUSTIFICATION.

THE ALLOCATION OF RESOURCES TO COMPETITIVE CONSUMERS IS A DIFFICULT PROBLEM AT BEST. THUS, I WOULD HOPE THIS CONGRESS ESTABLISHES THE PRIORITY OF SUBSISTENCE USE WHERE THERE IS A CONFLICT ON NATIONAL INTEREST LANDS. I BELIEVE THIS IS A LEGITIMATE SUBJECT FOR LEGISLATION, AND HOPE THAT THIS PRINCIPLE, WHICH HAS BEEN STATE POLICY FOR SOME TIME, IS ENACTED INTO

FEDERAL LAW.

IN ADDITION, I INTEND TO DO SOMETHING ELSE TO BRING MORE MEANINGFUL REPRESENTATION TO ALASKA'S RURAL PEOPLE IN THE MANAGEMENT OF FISH AND WILDLIFE. YEARS AGO WHILE IN THE STATE LEGISLATURE, I WAS INSTRUMENTAL IN THE CREATION OF LOCAL FISH AND GAME ADVISORY BOARDS AS AN EFFORT TO INCREASE LOCAL INPUT INTO REGULATIONS GOVERNING MANAGEMENT OF THESE RESOURCES. WHILE THESE BOARDS VASTLY INCREASED LOCAL CITIZEN INVOLVEMENT OVER WHAT HAD PREVIOUSLY BEEN THE CASE, MANY FRUSTRATIONS HAVE CAUSED PEOPLE TO CONCLUDE THAT THE PRESENT ADVISORY BOARD SYSTEM IS SIMPLY INADEQUATE TO ADDRESS SUCH THINGS AS RESOURCE ALLOCATION, SUBSISTENCE NEEDS OR STOCK DEPLETION.

INCREASED PEOPLE PRESSURES AND DECLINING RESOURCES HAVE INCREASED THE DEMAND FOR GREATER LOCAL INVOLVEMENT, PARTICULARLY IN THOSE AREAS WHERE SUBSISTENCE CAPABILITIES SEEM THREATENED. ACCORDINGLY, I AM REVIEWING A PROPOSAL I SUGGESTED SEVERAL

YEARS AGO REGARDING THE CREATION OF REGIONAL OR SO-CALLED "SATELLITE" FISH AND GAME BOARDS. THEY WOULD FORMULATE REGIONAL REGULATORY PROPOSALS WHICH WOULD BE CONVEYED TO A MASTER BOARD COMPRISED OF ONE MEMBER FROM EACH REGIONAL BOARD. THE MASTER BOARD WOULD THEN BE OBLIGATED TO PROMULGATE INTO REGULATIONS REGIONAL PROPOSALS UNLESS THE MAJORITY WERE CONVINCED THAT BY SO DOING THEY DID VIOLENCE TO THE BROAD PUBLIC INTEREST OR SOUND CONSERVATION PRACTICE.

WHEN I FIRST SUGGESTED THIS, IT WAS CLEARLY PREMATURE. URBAN SPORTSMEN FELT IT COULD CONSTRAIN THEIR ACTIVITIES. PROFESSIONAL FISH AND GAME MANAGERS WERE MADE RESTIVE BY THE POSSIBILITY THAT SUCH MIGHT NOT SIGHT IN PRECISELY ON THESE "OPTIMUM HARVEST" TARGETS THAT THEY HAD LEARNED TO SHOOT FOR BACK IN SCHOOL. MOREOVER, THE COSTS AND COMPLEXITIES OF SUCH A SYSTEM DID NOT SEEM TO WARRANT FURTHER STUDY. TIMES HAVE CHANGED, HOWEVER, AND IN FULL CONSULTATION

WITH SUBSISTENCE USERS AND URBAN HUNTERS ALIKE, I HOPE TO PROPOSE STATE LEGISLATION WHICH COULD FAR BETTER AND LESS TRAUMATICALLY ADDRESS THE SUBSISTENCE ISSUE THAN ALTERNATIVES BEFORE YOU. PERHAPS THE REPRESENTATIVE OF ANY LARGE FEDERAL LANDOWNER IN THE REGION (FOR EXAMPLE, THE PARK SUPERINTENDENT OR REFUGE MANAGER) SHOULD SIT ON SUCH A REGIONAL BOARD TO ASSURE FEDERAL INPUT AND COOPERATION WITHOUT ABUSING STATE MANAGEMENT PREROGATIVES OR CREATING CHAOS.

I HOPE THIS COMMITTEE KEEPS THESE THINGS IN MIND WHEN DEALING WITH THE SUBSISTENCE ISSUE: FIRST, SUBSISTENCE HABITAT SHOULD BE RATIONALLY PROTECTED ON ALL LANDS, NOT JUST D-2 LANDS. SECOND, THE MANAGEMENT MUST BE UNIFIED, PROFESSIONAL, NOT SPLINTERED AND POLITICIZED. THIRD, SUBSISTENCE MUST BE GIVEN PRIORITY ON NATIONAL INTEREST LANDS, AS IT HAS BEEN GIVEN PRIORITY IN STATE LAW AND POLICY ON ALL LANDS OF THE STATE. FOURTH, LOCAL PEOPLE ARE DEMANDING GREATER SAY IN REGULATION

OF FISH AND GAME HARVESTS IN THEIR AREAS AND TO THE EXTENT THEY CAN BE ACCOMMODATED WITHOUT DOING VIOLENCE TO SOUND CONSERVATION AND BROAD PUBLIC INTEREST, THIS SAY SHOULD BE PROVIDED. ATTENTION TO THESE PRINCIPLES WILL PRESERVE THE POSSIBILITY FOR THE SUBSISTENCE WAY OF LIFE FOR THE INDEFINITE FUTURE, NOT SIMPLY ON D-2 LANDS BUT ALL ACROSS ALASKA.

ON ANOTHER SUBJECT: I AM NOT GOING TO SIT HERE AND ARGUE ACREAGE WITH YOU. BUT I WOULD LIKE TO EXPRESS STRONGLY THAT WHAT IS FAR MORE IMPORTANT IN THIS WHOLE ISSUE THAN HOW MANY ACRES GO INTO WHAT MANAGEMENT SYSTEM IS <u>WHICH</u> OF THOSE ACRES GO INTO <u>WHICH</u> SYSTEM. YOU ARE AWARE OF THE STATE'S RESOURCE INVENTORY SYSTEM. AND I ONCE MORE WOULD UNDERSCORE THE HELP THIS CAN BE TO YOU IN STRUCTURING THIS LEGISLATION. THIS INVENTORY, AS YOU PROBABLY KNOW, WAS NOT DESIGNED TO PROVE ANY POINT ONE WAY OR ANOTHER REGARDING D-2.

IT WAS DESIGNED TO AID THE STATE IN DECIDING WHICH LANDS TO SELECT TO FULFILL OUR STATEHOOD ENTITLEMENT. ONLY AFTER THE INFORMATION WAS IN PLACE WAS IT APPLIED BY COMPUTER TO VARIOUS D-2 PROPOSALS. I THINK THIS IS THE BEST PROOF POSSIBLE OF THE UNBIASED NATURE OF THE INVENTORY. THE INVENTORY SIMPLY SHOWS WHICH LANDS ARE MOST VALUABLE FOR WHICH RESOURCES.

OBVIOUSLY, A COMPUTER CANNOT DRAW YOUR BOUNDARY LINES, FOR MANY UNKNOWNS AND VALUE JUDGMENTS ARE INVOLVED. HOWEVER, IT IS CLEAR THAT SLIGHT ALTERATIONS IN BOUNDARIES CAN MAKE MAJOR ALTERNATIONS IN IMPACT, BOTH POSITIVE AND NEGATIVE, OF YOUR RESULTANT LEGISLATION. WITH THIS IN MIND, I HAVE INSTRUCTED MY DEPARTMENT OF NATURAL RESOURCES NOT ONLY TO MAKE RAW DATA AND THE COMPUTER CAPABILITY AVAILABLE TO YOUR COMMITTEE AND STAFF DURING MARK-UP, BUT TO GO ONE STEP FURTHER. WE WILL HAVE AVAILABLE VERY SHORTLY A SERIES OF DETAILED MAPS DEPICTING THE H.R. 39 AREAS. I HAVE AN EXAMPLE WITH ME HERE TODAY.

THESE MAPS WILL DEPICT FOUR THINGS: FIRST WILL BE LANDS

TO WHICH THE STATE ALREADY HOLDS EQUITABLE TITLE. THESE

I HAVE ASKED YOU TO AVOID ENTIRELY EXCEPT FOR COOPERATIVE

MANAGEMENT OR EXCHANGE PURPOSES. SECOND WILL BE LANDS IN

WHICH THE STATE HAS A SELECTION INTEREST BECAUSE OF RESOURCES

FOUND UPON THEM. THE COMMITTEE WILL THEN KNOW WHETHER IT

IS DEALING WITH A TOWNSHIP THE STATE HAS AN INTEREST IN

OBTAINING. THIRD, TOWNSHIPS ARE MARKED THAT, ACCORDING TO

KNOWLEDGE WE HAVE TODAY, HAVE A PARTICULARLY HIGH RESOURCE

VALUE. YOU CAN LOOK AT A TOWNSHIP, AND IMMEDIATELY KNOW

WHETHER IT IS AMONG THE TOP PROSPECTS FOR OIL AND GAS, HARD

ROCK MINERALS, COAL, URANIUM, AGRICULTURE, SUITABILITY FOR

SETTLEMENT, OR OTHER RESOURCES. YOU WILL THEN KNOW VERY

CLEARLY WHAT EFFECT YOUR DECISION WILL HAVE ON A KNOWN

RESOURCE VALUE. FINALLY, THE MAPS WILL DEPICT AREAS WHICH

ARE ESPECIALLY IMPORTANT TO FISH AND WILDLIFE MANAGEMENT:

SUCH AS POTENTIAL HATCHERY SITES, HIGH QUALITY HUNTING AREAS,

AND OTHER AREAS. THESE DEPICT MANAGEMENT PRIORITIES RATHER

THAN RESOURCE VALUES PER SE.

IN THE SPIRIT OF COOPERATION, I AM MAKING OUR BEST INFORMED STAFF PEOPLE AVAILABLE TO YOU AT YOUR PLEASURE, AND I URGE THAT YOU DISCUSS THESE DATA AT LENGTH WITH THEM OVER THE NEXT SEVERAL WEEKS.

IN CONCLUSION, LET ME WISH YOU GODSPEED ON A COURSE THAT WILL HOPEFULLY RESOLVE THIS VERY COMPLEX AND EMOTIONAL PROBLEM TO THE BEST INTEREST OF ALASKA'S AND THE NATION'S PEOPLE AND RESOURCES. AND LET ME UNDERSCORE ONCE MORE THE GOOD FAITH IN WHICH ALASKANS HAVE UNDERTAKEN THE STEWARDSHIP OF THIS GREAT LAND IN WHICH WE LIVE. GENTLEMEN, NO RATIONAL PERSON CAN SEE THE STATE OF ALASKA AS ANYTHING BUT A LEADING PROGRESSIVE STATE IN BOTH RESOURCE MANAGEMENT AND CONSERVATION. ASK YOURSELVES WHY ALASKANS CAME HERE, OR WHY THEY STAY. THE GREAT BEAUTY AND WILDNESS OF OUR STATE IS A PRIME REASON.

I HOPE YOU REMEMBER IN YOUR DELIBERATIONS THAT WE PROUDLY HAVE THE LARGEST STATE PARK SYSTEM IN AMERICA, AND MILLIONS OF OTHER ACRES IN STATE WILDLIFE REFUGES, SANCTUARIES AND CRITICAL HABITAT AREAS. WE LOVE OUR NATURAL VALUES AND WOULD PROTECT THEM ON STATE LANDS. LET ME ASK THIS COMMITTEE TO REMINISCE A BIT. WHICH GOVERNMENT WAS THE LEADER IN THE RAPACIOUS ENVIRONMENTALLY INSENSITIVE, ACCELERATED O.C.S. LEASING PROGRAM? THE FEDERAL GOVERNMENT. WHICH STATE ARGUED LOUDEST FOR MODIFICATION BACK TO A RATIONAL PACE AND LEVEL OF ENVIRONMENTAL CONSTRAINTS? THE STATE OF ALASKA. WHICH GOVERNMENT REMOVED ALL BIOLOGICAL RESTRICTIONS ON THE TAKING OF POLAR BEARS AND WALRUS? THE FEDERAL GOVERNMENT. WHICH GOVERNMENT HAD MANAGED WALRUS ACCORDING TO POPULATION PRODUCTIVITY, AGE AND SEX, AND HAD LIMITED THE TAKE OF POLAR BEARS? THE ALASKA GOVERNMENT. WE HAVE DEMONSTRATED A SENSITIVITY TO OUR NATURAL ENVIRONMENT, AND MOST ALASKANS I KNOW SHARE THAT SENSITIVITY.

HOWEVER, AS WELL WE RECOGNIZE THAT WE ARE SADDLED WITH RESPONSIBILITIES AS AMERICA'S LAST GREAT STOREHOUSE OF RESOURCES. WE CONTAIN MOST OF THE NATION'S REMAINING ENERGY RESERVES AND MOST OF HER POTENTIAL MINERAL RESERVES. THE PRESSURE IS ON US FROM OTHER CONGRESSIONAL QUARTERS TO MAKE THESE THINGS AVAILABLE TO THE NATION. AS I HAVE SAID BEFORE, IT IS NOT EASY TO BE BOTH OIL BARREL TO THE NATION AND NATIONAL PARK TO THE WORLD. I WOULD HOPE THAT YOUR VISIT HAS BROUGHT REALIZATION THAT ALASKANS ARE SINCERE IN THEIR RESOLVE TO SEEK OUT WAYS TO BRING BOTH THE STATE AND NATIONAL INTERESTS IN TO HARMONY SO THAT OUR OUTSTANDING NATURAL VALUES ARE PROTECTED WHILE YET PERMITTING RATIONAL DEVELOPMENT OF OUR RESOURCES; NOT ONLY ON ENCAPSULATED FEDERAL ENCLAVES BUT ACROSS THE ENTIRE WIDTH AND BREADTH OF THIS GREAT LAND. WE ALL SEEK A SOLUTION IN GOOD FAITH, AND HOPE THAT YOU WILL REALLY LISTEN TO AND ADDRESS THESE SPECIAL CONCERNS THAT I HAVE VOICED TO YOU TODAY.

UNITED STATES SENATE

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

Chairman, Senator Daniel Inouye

May 23, 1992
Anchorage, Alaska

Charles Edwardsen, Jr.
Kasigluk Elders Conference

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HUNTING, FISHING, AND TRADING RIGHTS SINCE TIME IMMEMORIAL

INUIT VIEW OF ORIGINAL UNDERSTANDINGS

Inuit unwritten sovereignty over Alaska since time immemorial has now come into conflict with the claim of the United States, for their laws are written in the form of a constitution.

The Americans have an assumption of superiority based upon written words copied upon paper. However, Inuit laws are original, customary, traditional, unwritten, and inherent. We, Inuit, must now apply the test of the written laws of the United States against their desire and causes of action against their very own constitution.

Our hunting, fishing, and trading rights do not derive from the written word but are inherent within ourselves. Our Creator has provided us with land, water, weather, animals, and birds plentiful to harvest, appropriate to season, and a desire for the longevity of our people. Inuit hunting, fishing, and trading rights are not derived from the United States constitution nor United States treaties.

Our claim to jurisdiction is inherent and it is for the Natives of Alaska to determine the destiny of our territory and not the territory to determine, from afar, the destiny of the Natives of Alaska. Inuit hunting, fishing, and trading rights have not been yielded to the United States during peacetime, at war, nor through the conveyance of a treaty. In United States v.Winans, (198 U.S. 371), the Supreme Court found that the right to resort to the fishing places in controversy was a part of larger rights possessed by the Indians, upon the exercise of which there was not a shadow of impediment, and which were not much less necessary to the existence of the Indians than the atmosphere they breathed. New conditions came into existence, to which those rights had to be accommodated. Only a limitation of them, however, was necessary and intended, not a taking away. In other words, the treaty was not a grant of rights to the Indians, but a grant of rights from them---a reservation of those not granted. And the form of the instrument and its language was adapted to that purpose . . . There was an exclusive right of fishing reserved within certain boundaries.

We, Inuit, challenge the Marshall Trilogy as these three Supreme Court cases do not apply to Natives of Alaska. Hence, the claim to jurisdiction in Alaska is based upon conquest which has never occurred. These three cases are titled Fletcher vs. Peck, Johnson vs. McIntosh, and Worcester vs. Georgia. Therein the legal theory for the United States is based upon sovereign right of first purchase which refers to the exclusive rights that European explorers claimed over territory they discovered in the "New World". According to this policy, the first to discover new territory obtained instant property rights against all other European explorers. These exclusive rights included the ability to "purchase" this land from the Indians and to establish settlements on the land.

For Alaska the case for the Inuit is of a different footing than the Indians of the Lower 48 states where formal and informal conquest occurred by colonial powers and the United States. Any claim that conquest has occurred in Alaska is without constitutional footing and a formal or informal declaration of war has never been declared by the United States Congress. The Marshall Trilogy is not applicable against Alaska Native (Inuit) Nations or their legal status. Moreover, on November 4, 1988 the United States elected to become civilized by signing the Genocide Treaty and the Senate gave its advice and consent.

In a review of our original understanding of the constitution and its requirements for civilized activity, the desire of the American administration was to create inchoate title. It was the intent of the United States to perfect title over time. However, we, the

indigenous people, holding original title, remain in peaceful occupancy. The Inuit not only hold original title but our claim to sovereignty and peaceful coexistence and a continuous display of our authority over our lands is contrary to the claim of the United States which has based their claim on the titles of discovery, of recognition by treaty and of contiguity, i.e. titles relating to acts or circumstances leading to the acquisition of sovereignty; they have, however, not established the fact that sovereignty so acquired was effectively displayed at any time. We, the Inuit, concur with the precedent set in the United States vs. Netherlands, wherein the United States lost its claim to inchoate title. (Palmas Island Arbitration, 1928).

For want of jurisdiction and possession, the United States government maintained in its negotiations with Russia concerning territorial questions that dominion cannot be acquired but by a real occupation and possession, and an intention to establish it s by no means sufficient. The mere desire and political ambition of the Russians and the United States throughout the negotiations of the Treaty of Cession of 1867, cannot extinguish the principle of the continuous and peaceful display of the functions of occupation by the Natives of Alaska within the territory of Alaska and is a constituted element of territorial sovereignty which is a recognized principle of international law.

We, Inuit, must now apply through the written word against their desires as written in their Constitution of September 18, 1787. From the period of 1776 to 1787, it was known to many colonists that the issue of sovereignty was not resolved by their Declaration of Independence. The concept of "sovereignty" continued to be the most important theoretical question throughout the decades following the Declaration.

The creation of American sovereignty was done on a theoretical plane and drawn upon blank sheets of paper. The confederation the colonists formed, therefore, was not a sovereign government. John Adams reflects this weakness in his diary in 1787:

> "Regarding the greatest Question yet agitated---the idea of sovereignty, that in all civil states it is necessary that there should some where be lodged a supreme power over the whole---this was the heart of the Anglo-american argument that led to the Revolution."

Almost every writer, British or American, who groped for an acceptable compromise that would prevent the breach, had sooner or later stumbled over this problem of sovereignty. The doctrine of sovereignty, by itself, compelled the imperial debate to be conducted in the most theoretical terms of political science. It was the single most important abstraction of politics in the entire Revolutionary era.

In the contest between the states and Congress, the ideological momentum of the Revolution lay with the states, but in the contest between the People and the state governments it decidedly lay with the People. For the Continental Congress had realized that the Articles of Confederacy was not a government and the Articles held no sovereignty. In Massachusetts the General Court proclaimed, "In every government there must exist somewhere a 'supreme sovereign absolute' and an uncontrollable power."

> "But this Power resides, always, in the body of the People, and it never was, or can be delegated, to one Man, or a few. In one sense this was a traditional utterance, for no one doubted, even most Tories, that all power ultimately resided in the people."

During the federal convention debate of 1787, Benjamin Rush said: "The people of America have mistaken the meaning of the word 'sovereignty'. It is often said that the sovereign and all other power is seated *in* the people. This idea is unhappily expressed for it should be all power is derived *from* the people. "

The confusion continued surrounding the concept of "sovereignty". During the federal convention Noah Webster argued with great persuasiveness that Americans could not have their constitutional remedies without the evils and that all of the developments and devices of the decade since Independence were inextricably bound together "leading eventually, if not totally repudiated, to a subversion of all government." Webster wrote:

> "A fundamental maxim of American politics is that sovereign power resides in the people. Written constitutions and bills of rights can never be effective guarantees of freedom. Liberty is never secured by such paper declarations, nor lost for want of them."

Webster continued:

> 'The truth is that government takes its form and structure from the genius and habits of the people, and if on paper a form is not accommodated to those habits, it will assume a new form, in spite of all the formal sanctions of the supreme authority of a State.
>
> To credit a perfect wisdom and probity in the framers of the Constitution is both arrogant and impudent. The very attempt to make *perpetual* constitutions, is the assumption of a right to control the opinions of future generations and to legislate for those over whom we have as little authority as we have over a nation in Asia."

Finally, it was to remedy the defects of the Articles of Confederacy that the convention was called to frame the federal constitution. Under this constitution the United States became a government. For it is true, as a matter of history, that some new states are formed out of the sovereignty of the old, whereas others are created in violent opposition to the former territorial sovereign. Is it not reasonable to suppose, therefore, that a distinction between original and derivative titles are relevant to the proper interpretation of the change of territorial sovereignty that takes place when a new State is created, as in the case of the United States ? The confusion surrounding the concept of sovereignty in the United States is rooted in its derivative title from England, versus the original sovereignty and title of the Inuit.

It has been said that the truth is stranger than fiction. In truth, the United States Constitution never conferred power over Alaska Natives. Today, we have two-hundred years of decisions by the United States Supreme Court and legislation by Congress and the President, lacking Constitutional authority over Natives of Alaska. The United States has also abrogated the liberty and the property of Alaska Natives under the color of the Constitution. This abrogation, however, was no part of the original understanding. If the

United States, the Congress, the President, or the Supreme Court has any authority, with respect to Natives of Alaska, then the Constitution must confer it. And, any such provisions at one and the same time establishes and limits the scope of the power. Notwithstanding assignations of a plenary power to the United States, it remains competent to inquire whether the Constitution confers it or whether subsequent legislative or judicial glosses on the Constitution have, because "the Union meant more," concocted the power.

The Inuit inquiry into the original understanding about Natives of Alaska takes three forms. What does the text of the Constitution state and mean ? What did the Framers intend? To what motives did they give effect through the text? What powers does the structure of the Constitution necessarily imply, and did the Framers necessarily intend, without declaring them?

This is all the Framers said and recorded in the Federal Convention about the relation of Native Americans and the Constitution. First, the Indian commerce clause has been cited for a plenary legislative authority in Congress over Native Americans, but the analysis demonstrates that the clause conferred no such power. Secondly, the treaty clause, the property clause, and the war powers have each been cited to confer upon the federal government constitutionsal authority over Native Americans, but the Framers never mentioned Native Americans during their recorded debates about the treaty clause, the property clause, or the war powers of the Congress. Thirdly, Congress has since been embellished with a status and power of guardianship of Native American tribes, but the Constitution does not establish and the Framers never discussed such a status and plenary power.

We will now analyze the Constitutional text and the Framer's deliberations. This reveals that the original understanding of the national power with respect to Native Americans comprehended only two principles. First, the few Native Americans within the jurisdiction (not limits) of a state and taxed by that state would augment that state's proportions of taxation and representation. However, the three-fifths clause did not require members of Congress to represent these Native Americans or their interests; the formula only determined the ratio of representation and taxation among the states. Native Americans, like women and African Americans, were not actually represented.

Secondly, the national legislative power is limited to commerce with Native American tribes, and extends no farther. The Framers restricted Mr. Madison's proposal of a separate and broad legislative power, "To regulate affairs with the Indians as well within as without the limits of the United States". This became a more partial and narrower power when abridged to; "To regulate Commerce with . . .the Indian Tribes."

The original understanding---that no plenary power exists in the national government---implies that many acts of the United States respecting Native Americans were and are *ultra vires* and therefore these acts cannot become "constitutional" even through Congress enacted them, the President signed them, and the Supreme Court upheld them. Nor could the United States confer upon states powers over Native Americans or Native American lands which the United States did not have itself, such as taxation, civil jurisdiction, criminal jurisdiction, jurisdiction over hunting and fishing rights, and jurisdiction over water rights.

The Inuit inquiry to the original understanding regarding Natives of Alaska should examine not only the Constitution's text and the debates, but also whether the Constitution's structure necessarily implies and the Framers necessarily intended any powers without declaring them. The United States Constitution forever remains silent for Natives of Alaska. The Natives of Alaska are unrestrained by those United States Constitutional provisions specifically as limited on Federal or State authority. (United

States vs. Kagama, (118 U.S., 383), Talton v. Mayes, (163 U.S., 396), and Santa Clara Pueblo v. Martinez, (436 U.S., 49).

The State of Alaska has been less inclined than has the National government to introduce humanity into their transaction with the Natives of Alaska and have themselves undertaken to dominate and to destroy Native tribes of Alaska. This occurs in the guise and pursuant to the Tenth Amendment of the United States Constitution. The Tenth Amendment, of course, does not vest new powers in the States and cannot exceed its original bounds. Under the Tenth Amendment the Natives of Alaska would not be subject to the jurisdiction of the State nor of the States in Congress assembled. By voiding National authority, this original understanding, therefore, implicates much more serious practical consequences for Natives of Alaska and the result is catastrophic as in the McDowell vs. State of Alaska.

The State of Alaska has exercised powers over Natives of Alaska, their lands, without authority, in taxes, in civil jurisdiction, criminal jurisdiction, zoning, hunting and fishing rights, water rights, religion, and general police powers. Congress mandated these activities without the consent of the Natives of Alaska. This mandate is in direct violation of the Compact of the 1959 Statehood Act for Alaska, Article XII, Section 12. The delegation of federal authority to the the State of Alaska, under Public Law 280, without the consent of the Nativews of Alaska, has now exposed this activity as an illegal and unconstitutional assault upon the integrity of real Inuit self-determination. This unconstitutional taking of powers not granted to the United States government and the unjust claim for jurisdiction by the State of Alaska is without United States Constitutional footing. This desire and claim for jurisdiction has created a cause of action for the Inuit, as the unconsented taking of jurisdiction falls under the color of the United States Constitution for the test of the supreme law of the land.

We, the Inuit of Alaska, or Natives of Alaska, conclude that the Statehood Act in no way restricts or diminishes the inherent rights of the Inuit nor their acts. The present claim of Walter J. Hickel, Governor of the State of Alaska, to "One People, one government" cannot muster the constitutional test in McDowell v. State of Alaska. In McDowell, the Supreme Court of Alaska declared the 1986 Alaska Subsistence Law as violative of several sections of the Constitution, namely Article VIII, sections 3, 15, and 17.

The State of Alaska Constitution does not exist in a vacuum. Its genesis is rooted in the Constitution of the United States. Specifically, when congress enumerated the Property Clause of the constitutuon; "The Congress shall have power to dipose of and make all needful rules and regulations respecting the territory or other property belonging to the United States . . " (U.S. Constitution, Article IV, Section 3, Clause 2).

Accordingly, the people of Alaska implicitly acknowledged the powers reserved to congress under the property clause when they agreed in the Alaska State Constitution that:

> "The State of Alaska and its people forever disclaim all right and title in or to any property belonging to the United States or subject to its disposition, and not granted or confirmed to the State or its political subdivisions, by or under the act admitting Alaska to the Union. The State and its people further disclaim all right or title in or to any property, including fishing rights, the right or title to which may be held by or for any Indian, Eskimo, or Aleut, or community thereof, as that

right or title is defined in the act of admission. The State and its people agree that, unless otherwise provided by Congress, the property as described in this section, shall remain subject to the absolute disposition of the United States. They further agree that no taxes will be imposed upon any such property, until otherwise provided by the Congress. This tax exemption shall not apply to property held by individuals in fee without restrictions on alienation.

Against this background, the State of Alaska must sustain a heavy burden to show that Congress lacks the authority under the Property Clause to change the subsistence priority set forth by the Alaska National Interest Land Conservation Act of 1980. (ANILCA), and including State of Alaska selected lands.

The State of Alaska's primary argument against congressional power to enact ANILCA is blatently unconstitutional. Factually, the present ruling in McDowell cannot, by itself, reverse the intent of the United States Constitution in Article IV, Section 3, Clause 2, nor the Alaska State Constitution, Article XII, Section 12. ANILCA, Section 810, is nothing more than an exercise of congressional power under the Property Clause to dispose of and make needful rules for the public property.

It appears that the Governor of Alaska and the shifting majority of Alaska's Supreme Court have left the scope and intent provided by the people for the affirmative vote of the Statehood Act and Compact with the Native People of Alaska. And, in recent times, 1982, Alaskan voters rejected the measure of Proposition No. 7 by a vote of 111,770 to 69,679. (Personal Consumption of Fish and Game). This rejection disclaimed the present notion of "One people, one government." This recognition of Inuit sovereignty is still intact within both the U.S. Constitution and by the people of Alaska.

In a third instance, the people of Alaska, with a resounding vote, created the Statehood Commission of Alaska, thereby recognizing the government to government relationships among the Natives of Alaska, the United States government, and the State of Alaska.

Although the United States has granted sovereignty to itself, it fell short of the Constitutional test to conquer, to defeat in war, to honor in peace, to enter into treaties for cessession of lands now occupied by Natives of Alaska. The desire and the original transaction of Russia and the United States is infected with fraud. But, the real party, the Natives of Alaska, the Inuit, have not, with their agents, obligated the acts for the transfer of any rights to the Russians or the United States. Therefore, we are charging the United States and Russia for treaty fraud in the alleged purchase of Alaska. The United States and Russia cannot perfect and grant to themselves sovereignty to the territory and historical waters presently occupied and used by Natives of Alaska. Neither can the United States of Russia grant sovereignty they do not possess as on September 16, 1991 in the United States and the Russian Maritime Boundary Agreement.

The United States-Soviet Maritime Boundary Agreement was signed by Secretary of State Baker and Foreign Minister Shevardnadze on June 1, 1990, after 9 years of negotiation, and was submitted to the Senate for its advice and consent last September, 1991. The Foreign Relations Committee held a hearing on the treaty on June 19, and ordered it reported on June 27, 1990 with the recommendation that the Senate consent to its ratification. On September 16, 1991, the U.S. Senate gave its advice and consent to the new United States and Soviet Maritime Boundary Agreement.

The Maritime Boundary Agreement addressed these conflicts: 1) declaring that the 1867 Convention Line is the maritime boundary between the United States and the Soviet Union. 2) establishing a precise geographic depiction of the line; and 3) providing for the transfer of jurisdiction and sovereign rights in four potential special areas. A treaty wherein negotiations involve fraud is invalid. Whereas the United States and Russia have granted to themselves claims of sovereignty within the territorial dominion of the Natives of Alaska; the Natives of Alaska, themselves, never assented nor consented in treaty to the United States and Russian negotiations. This is now a cause of action for the Natives of Alaska to terminate the military occupation of Alaska by the United States and Russia set forth on September 16, 1991. This can be best defined by Chief Justice Marshal in America Insurance Company vs. Peters. (United States Supreme Court, 1828, 1 Peters 542), : "The usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace."

On the other hand, Alaska as occupied territory, is generally considered to be part of the occupant's realm as far as belligerent purposes are concerned. This common view was expressed long ago by the Supreme Court of the United States in the well-known case of Thirty Hogsheads of Sugar v. Boyle. (1815, 9 Cranch 191), when it held that, : "Although acquisitions made during war are not considered as permanent until confirmed by treaty, yet to every commercial and belligerent purposes, they are considered as a part of the domain of the conqueror, so long as he retains the possession and government of them." Any attempt to supplant the legitimate sovereignty of the Natives of Alaska by absorption of occupied territory during the course of negotiations must be considered as an unlawful premature annexation, whether in 1867 or 1991.

The United States and Russia have created for themselves an international incident of world class folly. Therefore, in lieu of international arbitration over the sovereignty dispute of third parties, the Inuit, or Natives of Alaska, recommend a world class conference for the deliberation of legitimate and permanent sovereignty for the Inuit.

We, the Inuit, Natives of Alaska, recommend to the United States Senate through the leadership of the Senate Select Committee on Indian Affairs with the appropriate committees; Senate Foreign Relations, Senate Judiciary, Senate Committee on Energy and National Resources, under the Senate Rule XXV Standing Rules of the Senate, to convene a joint hearing and an International Conference for the creation of the Republic of the Arctic with the United States and Russia to submit to the United Nations. This to be voted upon by the General Assembly for a final vote for the self-determination of the Inuit and their Republic of the Arctic.

THE ALASKA NATIVES AND THEIR SUBSISTENCE RIGHTS: A DISCUSSION OF THE CONSTITUTIONAL QUESTIONS

Prepared by
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July 1977

SOME HISTORY

Since their ancestors crossed the Bering Strait, the Alaskan Natives have thrived in what others would consider a hostile setting largely because they possessed skills which enabled them to make wise use of the rich array of renewable resources which surrounded them. Of necessity, these Natives developed intimate ties with land and its creatures, and the survival skills they perfected were grounded in an unwritten conservation ethic. All resources were used efficiently, and this dominant element of thrift was exemplified by the harvesting of seals: the meat of the seal supplied food, but its by-products also supplied oil to be used in lamps for heat and light, skins for clothing and shelter, raw materials for arts, handicrafts, and utensils--and even materials for the construction of kayaks and dog sleds.

It was the rigors of climate, and the necessity of traveling long distances to procure food by hunting, fishing, and gathering which produced the singular lifestyles of the Alaska Natives. Activity flourished in the summer to gather and prepare the food required for the coming winter. The Natives knew that if plenty of food was stored, winter would not be a hard season. Even when nature was inhospitable, hunters had to gather whatever was available so their families and neighbors would not go hungry. The concept of sharing has always been a vital part of the life of Alaskan Natives, and this meant that in times of shortages, everyone lived lean so there would be enough to go around.

Udall

The cycle of the seasons dominated existence in the Far North, and when winter came, most of the time would be spent indoors where the telling of stories and histories, and the making of arts, handicrafts, and utensils added other elements to Native cultures.

In bush Alaska today, these living patterns are still dominant, and the lives of individuals are still closely attuned to the land and its promises and limitations. Natives who subsist to a substantial degree on renewable resources are instinctive conservationists: they know they will be the big losers if nature is not allowed to replenish its fish and wildlife populations.

For the Alaska Natives, subsistence rights involve far more than normal outdoor recreation: the right to hunt and fish and gather food on the land which surround their homes is the very essence of the Native way of life. And it is now clear that unless positive action is taken to protect Native subsistence rights, the unique Native cultures of Alaska are doomed.

Restrictions on the rights of Natives to subsist is already causing heavy impacts on their lives. In addition to destroying a part of their culture--which in itself would be sufficient reason to allow the continuation of subsistence--there is now a growing danger that the slow strangulation of subsistence rights will destroy the economy of bush Alaska.

Yet the subsistence question is admittedly a very complicated one for it involves federal and state laws and policies as well as the growing demands of non-natives who are interested

in increasing their consumption of Alaska's renewable resources. Complicating the problem even further in 1977 is the unwillingness to this date of either the State of Alaska or the Department of the Interior to take meaningful action to protect the subsistence rights of the Alaska Natives.

This memorandum is intended as a terse discussion (written for lawyers and laymen alike) of the crucial legal and constitutional questions which must be resolved before the traditional subsistence rights of the Alaskan Natives can receive the protection promised when the Alaska Native Claims Settlement Act (ANCSA) was enacted in 1971.

THE CONGRESS AND SUBSISTENCE

Congress passed the Alaska Native Claims Settlement Act in 1971 to settle land claims based on what is known in law as aboriginal title. Aboriginal title is a central concept of U. S. Indian Law. Simply stated, it is a form of legal title based on the use and occupancy of land. It is not a true legal title, however. The term applies only to land used and occupied in the United States by American Indians or Natives. The aboriginal title holder is allowed to continue use and occupancy of the land until the aboriginal title to the land is either voluntarily given up or is extinguished -- with or without compensation -- by Congress or the Courts. As long as the land is held by aboriginal title, it cannot be sold, leased, used, or developed by the claimants. And until Congress takes active

steps to extinguish the title, the Indian claimants can take legal action only against those who trespass on their land.

In order to gain a fully recognized legal title to at least a portion of the lands they claimed by aboriginal right, the Alaskan Natives petitioned Congress for a settlement of their claims. Previously, in all cases where either Congress or the Courts have settled Indian claims of aboriginal title, part of the settlement process has always involved the extinguishment of the aboriginal land claims as part and parcel of the overall solution. This, of course, was the pattern also followed in the enactment of ANCSA. In return for fee simple title to 40 million acres of land and approximately one billion dollars, the Alaskan Natives allowed all their aboriginal claims to land in Alaska to be extinguished. Sections 4(b) and (c) of ANCSA accomplish the termination of these rights.

But some who fail to grasp this principle of law have incorrectly interpreted these sections to mean that Alaskan Natives no longer have any right to subsist by hunting and fishing. The fallacy of this argument is revealed by the legislative history of ANCSA, for while Congress cancelled the old inchoate rights with one hand, with the other it directed the Secretary of the Interior to take action to protect the existing subsistence activities of the Natives on the federally owned lands of Alaska. The legislative history of ANCSA further reveals that it was anticipated that the State of Alaska could -- and would -- assist the Secretary in evolving policies which would likewise

protect the subsistence activities of Natives on the lands granted to the State under the Alaska Statehood Act.

From the beginning of Congressional deliberations on the Native claims settlement the subsistence problem was identified as a major issue. The first "foundation document" submitted to the Congress was a massive compilation of data about Alaska's natural resources and the uses made of those resources by the Natives which was prepared at the request of Senator Henry M. Jackson, the Chairman of the Senate Committee on Interior and Insular Affairs, and was entitled "Alaska Natives and the Land." This document was compiled in 1968 by the Federal Field Committee for Development Planning in Alaska and it offered the conclusion that:

> "There is no dispute that the right of Alaska Natives to go upon federal lands for the purpose of taking fish and game should continue."

When this report was published, the economic and environmental realities of bush life in Alaska compelled such a conclusion and the same realities exist today.

When evaluating the many settlement proposals advanced during the years 1967 to 1971, Congress looked long and hard at the subsistence question. S. 35, the final bill considered by the Senate in 1971, contained a subsistence provision. The Senate Committee Report concluded that the Natives did not need to own the land they used to harvest subsistence resources, and likewise determined that one of the reasons these lands should remain in federal ownership was to ensure the protection of Native subsistence rights. The Committee stated its awareness that "Native livelihoods depend upon the biotic resources of millions of acres," and it is clear that the Senate felt it would not be difficult to protect the existing subsistence rights of the Alaska Natives.

In its report, the Senate Committee said:

> "Despite the passage of control and management over resident fish and wildlife to the State, the federal government still holds the power to control the disposition of and entry upon federal lands. This legislation directs the Secretary of the Interior to classify land for priority use as subsistence resource habitat and authorized the temporary closure of lands to entry for hunting and fishing except for subsistence use where an emergency exists with respect to depletion of these resources."

There were important differences, however, between the Senate's proposals and the approach taken by the House of Representatives. The House Committee felt the subsistence question did not need to be resolved in the Settlement Act. Instead, it anticipated that subsistence would be achieved by other means. The House Committee Report concluded that:

> "The 40,000,000 acres is a generous grant by almost any standard. The number of Natives is estimated to be about 55,000, but less than 40,000 of them live in Native Villages. The rest of them live in cities in Alaska or live outside the State of Alaska. The acreage occupied by villages and needed for normal village expansion is less than 1,000,000 acres. While some of the remaining 39,000,000 acres may be selected by the Natives because of its subsistence use, most of it will be selected for its economic potential. The land selected is not required to be related to prior use and occupancy, which is the basis for a claim of aboriginal title. Moreover, there will be little incentive for the Natives to select lands for subsistence use because during the foreseeable future the Natives will be able to continue their present subsistence uses regardless of whether the lands are in Federal or State ownership."

These differences were ultimately resolved in the Conference between the two bodies when, in haste to produce a settlement before the end of a session of Congress, the Senate yielded to the House position that no legislation was needed because the Secretary of the Interior had authority through existing administrative powers to protect the rights of the Natives. The Conference Committee explained its decision in these words:

> "The Senate amendments to the House bill provided for the protection of the Native peoples' interest in and use of subsistence resources on the public lands. The Conference Committee, after careful consideration, believes that all Native interests in subsistence resource lands can and will be protected by the Secretary through the exercise of his existing withdrawal authority. The Secretary could, for example, withdraw appropriate lands and classify them in a manner which would protect Native subsistence needs and requirements by closing appropriate lands to entry by non-residents when the subsistence resources of these lands are in short supply or otherwise threatened. The Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives."

Although Congress honestly felt it had provided guidelines which would result in a satisfactory solution, events soon demonstrated that it had actually created uncertainty and confusion which have led to what can only be described in 1977 as a "subsistence crisis" for the Natives of rural Alaska.

THE SECRETARY OF THE INTERIOR AND THE STATE OF ALASKA

Nearly six years have elapsed since ANCSA became law. During that interval there have been four incumbent Secretaries

of the Interior who have served under three different Presidents. That not one of these Secretaries has taken any action whatsoever to implement the subsistence solution recommended by Congress is an indication either that they consider the proposed Congressional plan unwise, or feel the Department lacks authority to set up and administer a rational subsistence system in Alaska. In any event, in the absence of any subsistence system supported by law, clouds of doubt have begun to gather over the subsistence rights of the Alaska Natives.

Although no Secretary of the Interior has taken steps to carry out the Congressional mandate, the State of Alaska did make an effort in 1975 to set up a limited subsistence system covering part of Alaska's renewable resources. This plan adopted by the Alaska legislature (Alaska Statute 16.05.257) was limited to subsistence hunting only and instead of establishing rules to deal with subsistence problems on a statewide basis it provided only for the creation of subsistence areas when a minimum of 100 residents--Native or non-Native--of any area requested the establishment of a subsistence plan. However, this modified scheme was not intended as a measure to protect the rights of the Alaska Natives, and it studiously ignores any mention of the Alaska Natives as a special class of citizens.

It is not surprising that the Alaska legislature dealt gingerly with the Native subsistence issue and made no effort to deal with the rights of the Alaska Natives as a special class of citizens. Under its Constitution it is patent that the Alaska legislature cannot grant meaningful subsistence

rights to the Alaska Natives--or to any other group of citizens. Article I, Section 1 of the Alaska Constitution states unequivocally that "...all persons are equal and entitled to equal rights, opportunities, and protection under the law." This clause in the Constitution was given special meaning in a subsequent section (Article VIII, Section 3) which refers to Alaska's renewable natural resources and says:

> "Whenever occurring in their natural state, fish, wildlife and waters are reserved to the people for common use."

Thus the State cannot under its Constitution single out its Natives--or any other distinct class of citizens--and grant them special subsistence rights. This is particularly true with respect to fishing, for Article VIII, Section 15 of the Constitution prohibits the legislature from creating "any exclusive right or special privilege of fishery."

As a consequence, inhibitions contained in Alaska's Constitution have combined with inaction by the Office of the Secretary of the Interior to put the Alaska Natives and their subsistence rights in a legal limbo. Today Natives risk prosecution for violating the State's criminal laws every time a salmon is taken or a moose is shot, and their traditional rights are being gradually whittled away by the Alaska Courts.

All these developments since ANCSA have underscored the paramount conclusion that there can be no subsistence program worth the paper it is written on unless the Congress uses its power under the U.S. Constitution and grants such rights to the Alaska Natives.

CONGRESS AND THE CONSTITUTION

It is beyond argument that the United States Congress has the power to set up a resource management regimen for the Alaskan Natives and confirm their right to subsist on the public lands of Alaska owned by the people of the United States.

Congress derives its authority over Natives from two sources. Article I, §8, cl. 3 of the U.S. Constitution gives Congress plenary authority to regulate "commerce with" the Indian tribes; and the treaty making power of the President confers similar authority. The federal trust responsibility over all American Indians has evolved out of the exercise of these Constitutional powers, and innumerable Federal statutes have been written defining the rights and fixing the responsibilities of Indian citizens.

Unfortunately, a few individuals unfamiliar with Indian law persist in arguing that it is somehow objectionable or invidious to ask Congress to pass "racial" legislation benefiting only Indians. This argument is based on a complete misunderstanding of the provisions of the U.S. Constitution which give all Indians a unique status. From the beginning of this country, every piece of Indian legislation which has been passed is racial in the sense it was deliberately enacted to change the status or the condition of a special class of citizens--Indians. It is a legal non-sequitur (as a unanimous U.S. Supreme Court has pointed out so emphatically in recent cases) to argue that Congress violates the equal protection clause when it writes laws which single out Indian lands or Indian rights for special

treatment.

This principle was recently reiterated in Morton v. Mancari, 417 U.S. 525 (1974), a case which upheld a 1934 law granting Indians a preference in hiring and promotion within the Bureau of Indian Affairs. In it the Court said in a unanimous decision that "the plenary power of Congress to deal with the special problems of the Indian is drawn both explicitly and implicitly from the Constitution itself." The Court said that "As long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians, such legislative judgments will not be disturbed."

Similarly, in United States v. Antelope, _____U.S._____ (1977), Indians tried and convicted under the Federal Major Crimes Act claimed that they were discriminated against since a non-Indian would have been tried in the court of the state in which the crime was committed. Had the case been tried in the state court, the burden of proof assumed by the prosecution would admittedly have been more stringent. As a consequence of being tried under the Crime Act, the Indians were convicted on less evidence than would have been necessary in the state court. In yet another unanimous decision, the Court revisited the subject of Native rights and the Constitution and stated:

> "The decisions of this Court leave no doubt that federal legislation with respect to Indian tribes, although relating to Indians as such, is not based upon impermissable racial classification. Quite the contrary, classifications expressly singling out Indian tribes as subjects of legislation are expressly provided for in the Constitution and supported by the ensuing history of the Federal Government's relations with Indians."

Since the Alaskan Natives use subsistence resources to supply both physical and cultural needs, Congress clearly has the authority to set up a subsistence system giving preference to the Natives which satisfies the U.S. Constitution and is "tied rationally to the fullfillment of Congress's unique obligation toward the Indian." When this authority is combined with the plenary power Congress also has under the property clause to regulate the use of the renewable resources of the public lands there can be no doubt that where this issue is concerned, a fateful burden rests on the Congress of the United States: only Congress has the power to establish a workable subsistence system for Alaska Natives which can withstand any challenge from any quarter.

August 31, 1997

Alaska Inter-Tribal Council
Membership and Communities

Dear AITC Membership,

This is an overview of what happened at the August 1997 Alaska Native Subsistence Conference in Anchorage. I was there at the beginning of the land claims and so I know the origins of current treaties, statutes and laws and how we became entangled in this misrepresentation of justice.

At the conference, and for the past twenty plus years, the State of Alaska never has answered Article XII (Twelve), Section 12 of the Constitution of the State of Alaska. Article XII (Twelve), Section 12 recognizes Eskimos, Indians, and Aleuts as the people whose inherent rights are "disclaimed" by those people making a plea for the status of "statehood". In order for those people to be awarded "statehood" by the United States government, those people had to first "disclaim" all rights and title to our lands, including fishing rights, forever. No "Eskimo, Indian, or Aleut" is to be intimidated or arrested for feeding his or her family. This includes all forms of barter; including all national monies. The State of Alaska dare not answer or address Article XII (Twelve), Section 12 because their attorneys know that the state will lose on that legal ground. That is why Eskimos, Indians, and Aleuts are arrested for practicing hunting, fishing, or trading and then, after an average of two years, with no jail time, the case is dismissed. Only the Eskimos, Indians, and Aleuts who plead guilty are taken, by their own lack of will and with the purposeful wrong advice of malpracticing attorneys, to a State of Alaska jail. Otherwise, with Article XII (Twelve), Section 12 of the State of Alaska Constitution our inherent rights cannot be alienated.

The state constitution doesn't say the disclaimer is good until 1971, it says forever. Please obtain a copy of the State of Alaska Constitution and read of our special status for yourselves. This is the basis of our rights in federal and international law. And, understand that the Alaska Native Claims Settlement Act was not a jurisdictional act. That means that all of our rights still stand. No matter that our own Native legislators encourage us to back an amendment to the state constitution in order to save themselves the embarrassment of standing apart from the non-Native legislators. As Irene Nicholai said, "The problem is not solved, or else we wouldn't be here." Are, we the problem? In otherwords, if we disappear, then will the problem be solved? Or is her lack of will and legal scholarship the problem? Why must we be asked to characterize ourselves as a "problem" for the non-Native people.

Neither have the governors, much less the consecutive Alaska state legislatures, answered the Federal Supremacy Clause of the State of Alaska Constitution which is Article XII (Twelve), Section 13. This federal supremacy clause simply means that the State of Alaska is subject to the sovereign powers of the United States of America. This has great import for ourselves as we continue to establish our government to government postition within our homeland of Alaska.

Again, regarding Article XII (Twelve), Section 12, the State of Alaska and the Western states west of the Mississippi, are all "disclaimer" states. Had ANILCA language reflected this State of Alaska Constitutional Disclaimer Clause, there would be no constitutional issues raised in Alaska. Understand that the federal government made, as a pre-existing condition for statehood, the disclaimer clause, for the western states.

You might wonder how in the world did the word "rural" come to be in ANILCA rather than the specific recognition in the disclaimer clause of Eskimos, Indians and Aleuts. The self-same person who spoke to the Second Guideing Principle during our August 1997 conference brought that word into ANILCA on August 20, 1977; thus causing division and strife and undermining our recognition in favor of the State of Alaska. "Rural" is a dehumanizing term similar to the term "subsistence" which, in the eyes of the citizens of the State of Alaska, undermines our social and political status. That person is Byron Mallott. At the conference he reminded us that Guiding Principle Two still stands for "rural". Mr. Mallott now has the opportunity to prove himself to be a senior statesman and to correct the errors and suffering he has caused the Eskimos, Indians, and Aleuts. In 1977 he was president of the Alaska Federation of Natives and in that year he substituted the words "rural preference" and "residents" when the issue could have been legally resolved by inserting "Eskimos, Indians, and Aleuts" as in the disclaimer clause.

In order for Eskimos, Indians, and Aleuts to have cultural continuity and to establish our legal relationships it would be best that ANILCA reflect the same language as Article XII (Twelve), Section 12. The State of Alaska is out of compliance with ANILCA, which is Indian legislation, and we have to change a few words in ANILCA. ANILCA and ANCSA have already been amended over 2,000 times. My point is that we ought to agree upon established legal continuity and intent of already existing legal precepts all the way from the time of Great Britains arrival to the present.

The disclaimer clause (Article Twelve of the State of Alaska Constitution) originated to ensure that the United States gained the most from the Eskimo Indian, and Aleut traders (trappers, hunters, and fishermen). Eskimo, Indian, and Aleut trade is, I repeat is in the arena of international trade. (ie. government to government) Once you understand this, it becomes more apparent why the

State of Alaska is so anxious for us go along with their fraudulent plan to amend the state constitution.

This is the legal chronology of the disclaimer clause: First the Royal Proclamation of 1763. Then, those principles carried over into the Jay Treaty and the Treaty of Paris. This recognition of the Eskimo, Indian, and Aleut hunting, fishing, and trading rights was also a condition between the United States and Russia in 1824. There, the Secretary of State, John Quincy Adams, articulated that commerce with the Northwestern Natives was to exist between themselves (The United States) and the Natives (Eskimos, Indians, and Aleuts) and that it was to exist "unmolested." In otherwords, our status as Eskimos, Indians, and Aleuts is to exist "unmolested" for the monetary and material benefits of the government to government trading rights of the United States federal government.

It is important for you to know that the issue of "tribes" is a phony issue. The United States has already recognized the existence of tribes in the 1824 treaty between the United States and Russia. And, more recently in the list of recognized governments from the desk of Assistant Secretary of the Interior, Ada Deer.

The McDowell case only deals with privileges and licenses for natural resource management for citizens of the State of Alaska. As the recognized Eskimos, Indians, and Aleuts of Alaska, we have <u>inherent</u> rights derived from historical use and occupation. We have an ancient right , not created under state law. Had McDowell been an Eskimo, Indian or Aleut, his defense would have been the strict enforcement of Article XII, Section 12. This is the difference and is meant to focus your attention upon the very real racist crimes against humanity which are occurring here under the guise of "one people" under statehood. We <u>are</u> the Americans, so to speak. No one can question our loyalty. Our National Guard and veteran achievements speak for themselves. Now we must ask the State of Alaska and their representatives; "Are <u>you</u> loyal to the precepts of the treaties and federal supremacy clauses of the United States of America?"

And, as one Yakutat man put it at the evening hearing; "Why aren't certain legislators proud of us, proud to be the recipients of knowing us as distinct peoples?" We <u>are</u> Alaska. Our languages and ourselves have been created from this land, water, weather, animals, and plants. Instead, we are threatened with withdrawal of state support. As if we must prostitue ourselves to be recognized as Eskimos, Indians, and Aleuts. At this 1997 Subsistence Conference former governor Jay Hammond even attempted to instill fear with a veiled threat of violence against ourselves; a former governor inviting violence by way of prediction. That was a backhanded insult. But, then, so are many

recent policies of the State of Alaska; including "Limited Entry". "Limited" to whom?

The Equal Protection Clause, or Section VIII (Eight) of the State of Alaska Constitution, as differentiated from Section XII (Twelve), is for the non-Native citizens within the State of Alaska. The State of Alaska cannot ignore its compact with Eskimos, Indians, and Aleuts in Section XII (Twelve) because the State of Alaska must comply with the federal supremacy clause of its own constitution. For example, in the Genocide Convention Treaty signed by the United States in 1988 it is written: "Any act designed in whole, or in part, to destroy a people, is genocide." (That is Section 4 of ANCSA.) The limitations of equal protection only occur when racist non-Native people decide that they have been wronged. The State of Alaska Supreme Court is silent on Article XII (Twelve), Section 12 as a condition for enforcement of the supremacy of its entire constitution. Please note, that the 1988 Genocide Convention is applicable backwards and forwards in time and naturally supercedes a lower court act designed as a quick fix for the oil companies; namely ANCSA.

The 1971 Alaska Native Claims Settlement Act was not a jurisdictional act and it did not intend to deny Eskimos, Indians, and Aleuts their historical inherent rights to survive as recognized Peoples. If that is the intent, then that is one of many faces of genocide. "Extinguishment" is not now, nor ever has been, acceptable to civilized peoples. We do not want to disappear just to appease the state legislature. We are Eskimos, Indians, and Aleuts; not "rural". There is no "Rural Tribe". More specifically, we are Inupiat, Yupik, Tlingit, Haida, Gwich'in, and so on.

The State of Alaska does not make a great effort to explain that it lost a sovereignty case in 1974. (6 to 2) In United States v. Alaska the State of Alaska tried to establish Cook Inlet as a historical bay. This would have awarded it sovereignty which the state never had. Instead, the United States Supreme Court decided that the State of Alaska is a derivitive state. Meaning, it derives from the sponsorship of the U.S. Congress and it is subject to the supreme law of the land. This is why the State of Alaska does not want to enforce itself against Article XII (Twelve), Section 12 upon its own lands. Because the state would lose every time.

So you see, the disclaimer states have such disclaimers only for the purpose of enforcing federal supremacy. The State of Alaska again lost in 1997 in U.S. vs. State of Alaska. Again in a 6 - 2 margin in a case regarding general revenue sharing. The state lost on the grounds that it is derivative of the federal government and therefore not entitled to receive monies as a sovereign. They (State of Alaska) cannot have sovereignty and so neither can the Eskimos, Indians, and Aleuts. This political fight, like the stock market, is actually emotionally run. And, the basis is greed. Behind the smooth demeanor and

carefully chosen English words is the face of greed. What they cannot have we are not to have. However, our rights are inherent and the State of Alaska has arrived to our homelands under federal supremacy.

Also, Article I, (One) Section 8, or the Commerce Clause, of the United States Constitution, must be executed by the federal government to maintain international trade with Eskimos, Indians, and Aleuts on the high seas. In Alexander v. United States in the Ninth Circuit there was established the definition of "customary and traditional trade" with which the State of Alaska cannot interfere. All State of Alaska attorneys know these laws and those who hide this knowledge from you are practicing fraudulent deception upon yourself as an Eskimo, Indian, or Aleut.

In closing, please remember that RurAL CAP and AFN cannot speak for the tribes because they, the tribes, have never waived their sovereign immunity. This created a false sense of security at the 1997 August Subsistence Conference; as if they, RurAL CAP and AFN, did something when, in fact, they did nothing but through lack of will became co-conspirators in the obstruction of justice and crimes agains peace against Eskimos, Indians, and Aleuts. (The phrase "crimes against peace" is from the Genocide Treaty Convention and upholds our inherent rights in internation, federal, and state law.)

We have perceived veiled threats against the maintenance of our status. However, in Title 31 of the U.S. Code, it is prohibited that any state, including the State of Alaska, should arbitrarily use federal revenue funds in a discriminating manner. At this conference we felt the whip of the Democrats. When the legislature reconvenes we'll feel the whip of the Republicans. Remember that our rights of continuity as distinct Peoples were upheld, admittedly for the purposes of trade, by the United States even before the Democratic or Republican parties were formed.

Sincerely,

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

Sept. 26, 1997

JOHN D. RILEY
4125 PTARMIGAN TERRACE
ANCHORAGE, ALASKA 99516-4056

SENATE RESOURCES COMMITTEE
P.O. BOX 670-190
CHUGIAK, ALASKA 99567-0190

ATTN: SENATOR RICK HALFORD

SUBJECT: SUBSISTENCE HEARINGS

THE ENCLOSED EXPRESS MY VIEW OF THE SUBSISTENCE HUNTING & FISHING PROBLEMS, AND THEIR SOLUTIONS MUCH BETTER THAN I COULD.

I HAVE HIGH-LIGHTED GOVERNOR HAMMOND'S 3 ESSENTIALS WHICH SEEM TO BE NECESSARY TO A SUCCESSFUL SOLUTION.

AN EARLY AND FIRM RECOMMENDATION BY THE SENATE RESOURCES COMMITTEE IS VITAL.

RESPECTFULLY SUBMITTED,

JOHN D. RILEY

Christopher Shays, R-Conn., fluence in Washington.

ANCHORAGE NEWS PAGE G-2 JULY 27, 1997

Legislators, let public vote on subsistence

JAY HAMMOND

There are some legislators so opposed to amending our constitution or discriminating further between Alaskans that they would prefer to hazard a federal takeover rather than compromise "principle."

PORT ALSWORTH — When Gov. Tony Knowles requested House Speaker Gail Phillips, Senate President Mike Miller, ex-Attorney General Charlie Cole, Byron Mallot, and me to join Lt. Gov. Fran Ulmer and him on a "subsistence task force," a staff member facetiously dubbed us The Magnificent Seven. Others thought "malevolent," "misguided," or "misinformed" more appropriate adjectives. However, none were so rude as to suggest "moronic," though some might doubt the sanity of anyone volunteering to march into the subsistence minefield.

Because of remarkably astute staff work, liaison with the congressional delegation and Interior Secretary Bruce Babbitt, plus abundant cooperative effort, I believe we met our assignment as best as it can possibly be met. That assignment: assuring that Alaskans will continue to manage their fish and game rather than having the federal government wrest such management from us, while also assuring that those dependent upon subsistence resources are accommodated to the best and fairest degree possible.

However, we fashioned only the skeletal structure. Left up to the Legislature and Fish and Game boards was the addition of muscle and sinew.

A Frankensteinian monster? Only if you the voters permit it to be so constructed. And even if so, you'll have ample opportunity to drive a stake through its heart at the ballot box. The creature will have three major segments, none of which can stand by itself. All must be voter-approved or it dies aborning. Those segments are 1. a constitutional amendment permitting, not mandating, a rural preference; 2. amendments to state statutes which, among other things, fine-tune the definition of "rural"; and 3. ANILCA amendments reducing potential for federal manipulation or mischief.

That all seven members signed off on our proposal demonstrates only that we feel we met our assignment as best as possible and that the public should be permitted to vote on the package. Therein lies my major concern.

There are some legislators so opposed to amending our constitution or discriminating further between Alaskans that they would prefer to hazard a federal takeover rather than compromise "principle." Ironically, their staunchest allies may well be those who will oppose passage in the belief the federal government will vastly increase discrimination on their behalf. The former seem to believe they can pummel an opponent's fist into submission by thumping it with their nose, while the latter will gleefully cheer them on and cry for more blood.

Hopefully, those who would stand on principle will not be so duped but instead couple courage of conviction with courage of confrontation and take their arguments to the public arena. Let the public assess them and then vote accordingly. To do otherwise indicates either lack of conviction that those arguments have sufficient merit or an insufferably paternalistic attitude reflecting belief that voters are not to be trusted. Despite suspicion their own election may bolster that premise, I would hope they'd rise above same and give voters a shot at the package.

Meanwhile the governor has fulfilled his obligation to come up with a viable plan. Now it's up to the Legislature to let the public accept or reject it. If it's shot down and a federal takeover occurs, let the public be the ones to have manned the Gatling guns. Don't bury this land mine of an issue deep in committee and thereby permit timorous cohorts to tiptoe around it unscathed.

Legislators for years have failed to solve this dilemma; perhaps for good reason. So now, legislators, make your case to the public, and if they deem it valid, they will so vote. If the voters don't buy your case, you'll not have lost honor and will at least be off the hook upon which you'll otherwise dangle, to be targeted by every Alaskan who is dismayed by the outcome.

❑ Jay Hammond was governor of Alaska from 1974-1982.

Subsistence train wreck must never occur

4-7-97

To best protect Alaskans' subsistence rights, let us all put Alaska first.

If we let the federal government take over by default, we will forever regret what we have done.

Gov. Tony Knowles' subsistence panel, working with Alaska Natives, sportsmen and the public, has fashioned a workable solution. Sen. Murkowski and Congressman Young have done the same.

A constitutional amendment alone will not solve the problem. Changes in federal law are necessary to recognize the state's primary role in fish and wildlife management. Changes in state law are needed to define what is rural and to decide who, in time of shortage of a resource, has first call.

I've always felt that people living on a river system, who depend on local fish to live, should have that preference in time of shortage, based on lifestyle and need. In-state management will meet those goals; out-of-state management can't be guaranteed to do s

T. subsistence plans put forward do not answer every question. But they leave it to us, as Alaskans, to settle the problems rather than delegate them to a place that is distant, with decision-makers who don't know our unique part of the world.

Some Native leaders have told me they believe they could get a better deal by letting control cede to the federal government. Yes, current federal law would bring in managers with one objective in mind — protection of subsistence. But other issues all Alaskans care about could be swept aside. Unlike Alaska, Uncle Sam has no mandate to care for our commercial and sport fisheries — or our sport hunting.

WALLY HICKEL

If we cede control of our fish and game to Uncle Sam, how long will it be before subsistence is something we can't otect?

As ose involved in subsistence whaling, for example, if we as Alaskans don't have to defend our lifestyle in Washington — and in far-off meetings of world powers — virtually every year. The United States could decide to deal our whaling rights away — because it has the power to manage that resource.

Some of our elected conservative leaders have told me they don't support the solution. Their reasons vary — from the idea that a train wreck on this issue will help replace Knowles to the idea that the statehood compact guaranteed Alaskan control of our fish and game and therefore we should be challenging the federal law that could take it away in court.

Statehood did not take away the federal government's special relationship with Alaska Natives. Our compact gave us control of fish and game, but it clearly did not resolve a number of issues pending then between Uncle Sam and Alaska Natives, and subsistence is one that remains.

If Uncle Sam were to run our fish and game to the detriment of our commercial and sport fisheries, we might then have a legal case that says our compact was broken, but I sure wouldn't want to get that far.

As for those who would replace Knowles, let me say this: Subsistence is one issue where all sides — political friends and political adversaries — have to get into the tent if we're going to keep our basic rights as a state.

This problem can't be solved without a bipartisan solution, and it should be solved this year. There's plenty of time — and plenty of issues — next year to fight for, or against, Knowles' re-election.

Subsistence is not a "Native" thing; it is an Alaska thing. Subsistence means food. Some of us who live here depend on the land and the sea to put food on the table. I have no doubt the framers of our constitution intended that those who need a fish to eat should have it. As for how we do it, we can — and will — work it out. We've had a point system that worked before, and there are ways to make it work again.

A core part of our state's constitution says the resources of the state belong to us all. We do nothing to water that down when during a shortage we allow an appropriation of some of those resources to a group in need. It is no different from helping the poor, providing for the public health or providing for special education when there is a need — all of which the state does now with its money and resources.

While I believe it is in Alaska's best interest overall to make these changes, it is clear to me that some groups — on all sides — find it more beneficial to see a train wreck.

I ran for governor in 1990 on the theme of bringing our decision-making home — and it would be a sad, sad thing for this state if we couldn't lay down our differences enough to be united on this issue now before we lose it all

❑ Wally J. Hickel is a a former secretary of the interior and two-term governor of Alaska.

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Some legacy

IT'S A REAL shame to think of the legacy this Legislature appears willing to leave. A reputation of achievement that the majority caucus worked so hard to earn is about to be tossed out the window.

Let's consider the achievements first.

Just a few years ago, experts were sounding an alarm that the state was on a suicide course to economic disaster. Alaska's annual spending was climbing sharply, income was declining rapidly, and it was only a matter of time until all available state savings were tapped out.

The crisis, some folks said at the time, demanded drastic action. Among the options put forward were establishing a state income tax, doing away with the Permanent Fund dividend program and making the Longevity Bonus program needs-based.

The public said phooey to these ideas, and the Legislature listened. The Republican leadership designed a different, more direct solution to address the problem — it simply cut state spending.

For three years in a row, it has found ways to make cuts — bravely confronting the howling protests of bureaucrats and professional agitators who prefer more, not less, state spending.

As a result, the impending fiscal crisis is no longer atop the state's priority list. It isn't considered as urgent as it was. To their credit, House and Senate leaders are determined to make additional reductions in the coming year. And based on its past performance, the Legislature can be expected to make good on the commitment.

Fiscal restraint isn't the only accomplishment. The majority has passed laws to reduce government red tape, address crime and to strengthen family values. Legislators can point to a long list of new laws they've produced to meet Alaska's priorities. Except on one issue.

Subsistence.

The inability to come to grips with this problem is not the leadership's fault. The House speaker and Senate president helped Gov. Tony Knowles and others design a fair, bipartisan solution. It's one that all Alaskans could live with — except, perhaps, for the bullheaded.

Unfortunately, a number of these are members of the legislative majority. Their number appears to be sufficient to thwart giving Alaskans the opportunity to vote on the issue.

Like some obstinate character in a Dr. Seuss storybook tale, these legislators appear willing to hand over state fisheries management to the federal government.

Years from now, it won't be the accomplishments that Alaskans will recall about this Legislature. It will be the tragic fact that it let the state down on subsistence.

Official Business

COMMITTEE: SENATE RESOURCES

DATE: 17 OCTOBER 1997

Subject of meeting: INTERIM HEARING ON SUBSISTENCE.

SIGN-IN

PLEASE PRINT! NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Steve Ginnis	P.O. Box 392 Ft. Yukon, AK.	662-3078	Native Village of Ft. Yukon & Ft. Yukon Tribal Council	yes
Joe Druck Sr.	Chalkyitsik	No phone	Village of Chalkyitsik	yes
Peter David	Allakaket	968 2282	Village of Allakaket	yes
Jim Stevens	3705 ARCTIC #2156 ANCHORAGE AK 99503	243 2513	SELF	YES
Elmer Jakes Jr.	P.O. Box 10 Shageluk, AK. 99665	473-8239	Shageluk I.R.A Tribe	yes
Edna Ungudruk Peters	Box 129 Ruby, AK 99768	468-4408	Ruby Tribal Council	yes
Carl Knudsen	Box 299 GALENA, AK 99741	656-1883	GALENA SCHOOL	yes
Parry Walker	Box 43 Holy Cross, AK 99602	MESS 476 7162	Holy Cross Tribal Council	yes
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