

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9664 SENATE RESOURCES



Official Business

COMMITTEE:

S. Resources

DATE: 10-17-97

SIGN-IN

Subject of meeting:

SUBSISTENCE - GALENA

PLEASE PRINT!

NAME

ADDRESS (MAILING) & (ZIP)

PHONE

REPRESENTING

DO YOU WANT TO TESTIFY?

Sid Huntington	PO Box 47 Galena AK 99741	656-1212	ALASKA'S people	?
Ebbe Sim	# 122 First Ave. Fairbanks, AK. 99701	451-8416	Huslia, AK.	Yes
Adrienne Blatnick	P.O. Box 359 Galena, AK 99741	656-2117	Urdakleet, AK & PECS	yes
Marie Chiklak	P.O. Box 359 Galena, AK 99741	656-2116	Mtn. Village, AK & PECS	YES
George Yaska	P.O. Box 60691 Fairbanks, AK. 99706	452-8251	myself	yes
Marie Huntington	P.O. Box 124 Galena AK 99741	656-1809	myself	yes
Glenda Huntington	P.O. Box 124 Galena AK	656-1809	self	Yes
Charles Sink	PO Box 111 Galena AK	656-1606	Gana-a Yoo, Ltd.	Yes
Ebbe Nickich	Box 64 Graveling Hill	453-5133	Graveling	Yes
Dan Patrick	Box 66 Galena Hill	656-1278	Self	NO



Official Business

COMMITTEE:

SENATE RESOURCES

DATE: 17 OCTOBER 1997

SIGN-IN

Subject of meeting:

INTERIM MEETING
ON SUBSISTENCE.

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
MAX HUTENDORF	Box 329, GALENA, AK, 99741	907 656-1223	SELF	Yes
Jenny Pelkola	P.O. Box 227 Galena, AK 99741	656-1369	Self	yes
Orville H. Huselup	P.O. Box 71 Galena, AK 99741	656-2004	Self	Yes
Don Stokman	P.O. BOX GALENA, AK, 99741	656-1206	SELF	yes
ROGER HUNTINGTON	Box 10 GALENA 99741		SELF	YES
Violet Dayton	Box 176 Galena		Self	yes
BENEDICT JONES	Box 47 KOVUKUK, 99754		KOVUKUK TRIBAL	Yes
Pat D Sweetser	WOODEN TRIBAL COUNCIL Box 244, Galena		WOODEN TRIBAL COUNCIL	YES
Angela Huntington	Galena Box 16 Galena, AK 99741		Self Galena	yes
Mary Verneti	Box 16, Galena, AK 99741		SELF	yes!



Official Business

COMMITTEE:

S. Resources

DATE: 10/17/97

SIGN-IN

Subject of meeting:

SUBSISTENCE - GALENA

PLEASE PRINT!

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

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
^{Dore} Frank Madros sr	KILTAQ AK 99948		self	yes
Shirley Wice	457 Cindy Dr., FBKS, AK 99701		self	yes
Shannon Carroll	Box 359 Galena Alaska 99741		self + everyone	yes
Lillian Olin				

2004

Huslia

1. Fred Bifelt
2. Jack Wholecheese - 1st Chief Huslia
3. ~~R~~ Catherine Atla
4. Rose Ambrose
5. Franklin Simon
6. Sidney Henry - written statement
read by Ceza
7. Ceza Sam

Nulato

1. Victor Nicholas - Chief
2. Teckla Esmailka
3. Morris McGinty
4. Michael Stickman - 2nd Chief
5. Andy Durney
6. Peter Demoski - tribal administrator
7. Walter Stickman - Councilmember
8. Simeon Mountain
9. & Shirley Christian

COMMITTEE TAPE LOG

COMMITTEE: S. RESOURCES DATE: 17 OCT '97 TIME: 11:15

SUBJECT: SUBSISTENCE

MEMBERS: HARPOD, TAYLOR, TORBERSON, LEMAN, LINCOLN

SPEAKER	TAPE#	SIGNIFICANT INFORMATION
SEN. LINCOLN		
MARVIN YODER		CITY MANAGER, GAUONA
BEV HUNDORF		
WILL MAYO		TANANA CHIEFS CONFERENCE
STEVE GIMMS		CHIEF - FT YUKON, CHAIR AITC (AK INTER-TRIBAL COUNCIL)
JOE DRUCK, SR.		
SIDNEY HUNTINGTON		
FRED		#1 HUSLIA
		#2 HUSLIA
CATHERINE		#3 HUSLIA
ROSE		#4 "
FRANKLIN SMY		#5 "
SIDNEY HENRI		#6 WRITTEN STATEMENT (READS IN RECORD)
CESA SMY		#7 HUSLIA
PETER DAVID, ALAKAKET		
JIM STEVENS (ANCHORAGE)		
ELUSKA JOHN JR		
VICTOR NICHOLAS		MAYOR OF NULATO
		#2 NULATO
MORRIS MCGINLEY		#3 "
MICHAEL		#4 " (2ND CHIEF NULATO COUNCIL)
ANDY GUERNY		#5 "
PETER DEMOSKY		#6 " TRIBAL ADMINISTRATOR
WALTER STICKMAN		#7 " TRIBAL COUNCIL MEMBER
SIDNEY MOUNTAIN		#8 "

HUSA
2:123

GAUONA
3:1:48

NULATO
03.10

The testimony I am about to give is really a recommendation to the two opposing parties involved in this legal battle over the use of Alaska's wildlife resources. Let me first state that if the present situation of Laws and Policies are to continue to exist, I am going to vote for a *rural* ~~preference~~ preference. I have always been a subsistence user and will continue to be one as long as the Law allow. I also understand the need that all hunters have, to be able to hunt and fish when the seasons are open.

When ethical hunters and fisherman utilize the resources in any area they may happen to be, you hardly ever see complaints from the local people of that ~~area~~^{area}. It is the unethical hunter and fisherman that creates problems for all of us and leaves us with these problems to sort out. The biggest problem we see with the present situation is the waste of wildlife meat that has been going on for many years with little or no improvement. We will hear both parties accusing "Well, they also waste meat", but that's not the point. The point is, if everyone is to have access to the resources we have to have a system where those resources are utilized and not wasted.

What I would like to recommend is that laws and policies are based on the caring and utilization of wildlife meat with little, ~~if no~~^{if no}, allowances of those laws. We need harsher penalty's and fines of those violating the laws and to deter others from doing the same thing. When you have laws based on the caring of wildlife meat there is little room for excuses and loopholes of those laws. The bottom line is that you have to make every effort humanly possible to utilize the meat for human consumption. For this to happen both parties must work together in drawing up policies on how the meat is to be used.

The hunters that go out and harvest ~~the~~ wildlife resources for their own use need to bring it back as soon as possible so that the meat will reach its' final destination before spoilage. The hunter that would like to give their meat away would also have to get it back before spoilage, and they can work with the local area people or villages to distribute it out to the people most in need.

As for the laws and penalties in existence today, they are almost a laugh. Take for example when an outside hunter comes to Alaska and has no desire to take care of or return home with the meat, they simply accept the fine and revoked license for a year and return home knowing that it is by far cheaper than paying the cost of freight all the way back home. They don't even need to take this route, all they have to do is plead "not guilty" and the case will rarely ever go to court. As for the guided hunters that continue to accept the current fines and penalties and abuse the system, their guides also need to be accountable for their actions and have their licenses taken or severely restricted for future use.

These types of laws and policies based on use and caring of meat has many possibilities and is a tool that can be made to benefit everyone.

Respectfully,

Wayne Huntington

October 17, 1997

Senator Halford
P.O. Box 670190
Chugiak, Alaska 99567-0190

Dear Senator Halford,

I'm disappointed I did not get to participate in the Senate Resource Committee meeting today, you did not give us enough time to hear everyone's testimony on subsistence. I'm glad your group met in a village and tasted all the delicious native foods that we eat. Subsistence is so very important to us, in the rural villages. The dictionary states, means of supporting life, but why are you having only a one day meeting with us to hear our views when the subsistence issue concerns the rest of our lives? PLEASE PUT THE ISSUE ON THE 1998 BALLOT AND LET US DECIDE FOR OURSELVES!

On behalf of our native people here in Ruby, I would like to tell you our native ancestors and the native people here have all lived the subsistence lifestyle, since before the white man came to tell us what to do. We have hunted, trapped and fished and we are concerned about it, due to the wolf lovers and what I call big game hunters come out our way and go back home with only moose horns, they proudly display as they are driving by Ruby in their big fancy boats. They end up giving away their meat, they have some lame excuses like we have too big of a load or it's going to spoil. I believe all they care about is the moose rack! If they really wanted the meat they should find priority ways to send it home. THE KOYUKUK RIVER WILL EVENTUALLY END UP THE WAY THE NOUTNA RIVER IS RIGHT NOW, WITH ONLY COW MOOSE!!!!!!

The prices in our stores are outrageously high, you people that are trying to control our lives have sales at the super-markets, which we never have, maybe if you all come and live in the village for a few years you will understand where we're coming from. If we were not able to go out and subsist from our land the moose, fish, bear, caribou, rabbits, beaver, muskrats, porcupine, ducks, geese, grouse, ptarmigan, and **spruce** chickens which we take care of right away by cleaning, wrapping, freezing, canning or drying, we would probably go pretty darn hungry, due to the limited jobs and high unemployment rate here. We not only harvest the above but also berries, herbal plants, wild onions, mushrooms, wild chubarb and so on, and we also provide for our families that live in urban area.

In closing, please don't discriminate against us on the subsistence issue, it's our way of life, and our inherent right and always will be.

Sincerely, *Lena McCarty*

Lena McCarty

cc: Senator Georgianne Lincoln
Representative Irene Nicholas

FROM : DAVID R MARTIN

PHONE NO. : 907 567 3306

OCT. 15 1997 03:42:11 PM

David R Martin

HC-2 Box 660

Clam Gulch, AK - 99568

Oct. 15, 1997

Comments on the Governor's Task Force on Subsistence Report.

I can not support the Task Force Report as it is. The report needs to be amended to define Rural area as the State has defined Rural area. "A community or area of the State in which the noncommercial customary and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy or the community or area."

The make up of the Council is not fair. It needs to include a cross-section of the public and not comprised of a majority of subsistence users appointed by the Tribal councils and advisory Committees.

The current Federal subsistence game Board is a total mockery. They are making Customary and Traditional findings on animals that have never even been in the subsistence area. They are making C+T finding on implanted species within the last 20 to 40 years in an area using justifications as flimsy as "my fore-fathers thought about hunting that species. C+T finding must be implemented only with proof of use.

The Barter clause must be kept at an extremely low amount or it will be abused.

With these amendments incorporated into the Task Force Report I would then and only then support it. Thank you for your time and efforts.

David R Martin

"Comments on the Plan for Substructure Priority"

I can only support the recommendations

of the Governor's Task Force on Substructure
the personal use legislation is repeatable.

Right now personal use gives arbitrators
priority to all Alaska residents no matter

when they live.

of personal use isn't repeated the

the possibility that personal use becomes
a priority is a reality that we don't

want to have to deal with.

Steve Vankh
P.O. Box 103
W. N. Ilichik, AK. 99638
567-3470
Oct. 15, 1991

Newhalen Tribal Council
P.O. Box 207 Iliamna
Newhalen, Alaska 99606
(907) 571-1410
(907) 571-1537 FAX

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OCT 07 1997
AUSU.....

September 29, 1997

The Honorable Rick Halford
Alaska State Senator
Chairman of the Senate Resources Committee
P.O. Box 670190
Chugiak, Alaska 99567

Dear Honorable Halford:

I would like to submit written testimony on behalf of the tribal members of Newhalen for the state's subsistence impasse.

The only access to Newhalen is by plane and we are 195 miles southwest of Anchorage. Today, Newhalen remains a fishing village with commercial catches from Bristol Bay and subsistence fishing in Lake Iliamna and Newhalen River.

The Newhalen economy relies on salmon runs, with many of my people relocating to Naknek 90 air mile to fish for the canneries during the summer season. Subsistence harvesting of fish and game is an important traditional source of food. However, the cash needs of my people are great and increases yearly. For heating fuel alone, living in Newhalen is very high; heating oil has been flown in for the past two years and sold at \$2.50 per gallon and \$2.85 for unleaded gas so, the average cost per household is over \$5,625.00.

There are few jobs in Newhalen. The unemployment rate fluctuates around 70%. There are occasional construction jobs, on local projects. In the past when such jobs were available there was usually one person who applied for each job. Recently, for every job that has opened there have been five or six applicants that in 1988 averaged \$18,000.00. This is because the seasonal income has dropped to approximately \$3,000.00- \$5,000.00 by 1996. It cannot even buy heat in many instances. My people desperately need job opportunities, not only so that we may live more comfortably but because it would improve our self esteem and raise us up spiritually.

The demographic community profile is as follows:

Population 178.....18 & over.....	82
Men.....	48
women.....	34
Men presently working.....	14
women presently working.....	15
Men commercial fishing.....46.....	19 Permit Holders
women commercial fishing.....6.....	4 Permit Holders

Another important consideration for the future of my people is that Welfare Reform has revoke the safety net that was once in place for women in my village. 54% of my people are children.

Since, July 1, 1997, the Newhalen Tribal Council has worked diligently to get more people employed. However, the 1997 commercial fishing season has been declared an economic disaster by Governor Tony Knowles. My people returned home without a penny in their pocket and huge debts. Again, the Newhalen Tribal Council has taken an active role in getting my people to work. We made sure that local contractor hired local people and those who could not get a job locally went to work for Arctic Storm (which was organized by the City of Newhalen). Bristol Bay Economic Development Corporation (BBEDC) is a co- owner of Arctic Storm. Arctic Storm has been a god sent to those who needed to work to buy their food and annual supply of heating fuel.

This year Newhalen has been quite fortunate with jobs because of local construction and Arctic Storm. However, the employment future of Newhalen residents will be limited next year because we don't have construction projects scheduled for Newhalen. Also, Senator Ted Stevens and Senator Frank Murkowski has co-sponsored a bill to eliminate off shore fishing factories. I'm only speculating what next years commercial fishing season will be like because the El Nino situation in high seas has been killing a lot of fish. So, next years fishing will be just as bad if not worst than this year. So, our subsistence way of life may be our only form of sustenance because my people won't have the money to purchase their food.

The Iliamna- Newhalen area is an international renowned sports hunting and fishing area. We try to cooperate with the tourists because we need the money that they bring into the communities. However, last year some of the meat that the sport hunters brought into the communities were spoiled and the meat could not be used for human consumption. But, this year the problem has escalated where most of the meat that is brought into the communities are spoiled. The Newhalen Tribal Council is in the process of encouraging the local Fish and Game Advisory Committee to revise its Wanton Waste Policy where the sport hunters will bring in the moose and caribou

Senator Halford
Subsistence Impasse
Page 3

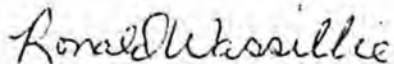
meat before it spoils and the meat can be used for human consumption. Wild fish and game has become a lot more valuable to my people because of the commercial fishing disaster and we are still trying to get heating fuel to my people at a reasonable cost.

I applaud the efforts that the State of Alaska is doing to resolve the subsistence impasse. However, the Newhalen Tribal Council would like to go on record in favor of rural preference on subsistence because subsistence hunting and fishing won't cost my people a lot of money that they don't have to feed their families.

Thank you in advance for your assistance with the subsistence impasse.

Sincerely,

NEWHALEN TRIBAL COUNCIL



Ronald Wassillie
President

CC:

Raymond Wassillie, Lake Iliamna Fish & Game Advisory Committee
Andrew Balluta, Federal Subsistence Board

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OCT 6 1997

FILE NO.

- 1 -

my name is Clara Stone. I was born in Ruby, & raised in Hokines for 10 years. It was while living there that my parents worked hard to put food on the table for their large family. In the summer at fish camp they cut and dried fish caught with a fishnet my mother made and from a fishwheel my dad built. They always put in a large garden from which we ate all kinds of vegetables. They picked a lot of different kinds of berries which was made into jam, jellies, or relish, or put away with sugar in wooden barrels. In the fall they put away ducks, and geese salted down in barrels. These were used for holiday dinners, and made the best meals ever. I always think of these meals, & ~~relish~~ ^{wish} for them when I'm cooking. Thanks-giving dinner when they got a moose in Sept. they made dried meat, and since there was no electricity they bought a pressure cooker, and cans from the Sears Roebuck catalog and canned their fish, and meat for the winter. So nothing was spoiled, or wasted, and every thing was from the land. Except for a few staples, ~~nothing~~ hardly anything was bought from the store.

After I got married my husband and I raised our children the same way we also both worked hard

To put food on the table from the land for our large family, we always had a garden, and we used to take our children and go out in the hills to pick berries. We picked a lot of both Cranberries, and blueberries, this was used for Cranberry bread, jam, and jellies, and a Cranberry Pudding I used to often make for dessert in the winter months which the children just loved, and still talk about today. In the early 60's we still had no electricity in Ruluy so much of the fish, and meat we got we put away by canning. By this time my parents couldn't do too much for themselves anymore so I canned moose meat (which was given to them by my brothers) for them also.

So ~~now~~ there again nothing was spoiled, or wasted.

Now today my children are all grown, living their own lives, raising their families in the subsistence life style also. They cut, and dry fish and can some for the winter. They go out pick berries, and make jam and freeze some, and share with me. In the fall they go out, and hunt moose which they put away, and always share with Don, and I. They also make dried meat, and package and freeze some.

~~Dear Senator Lincoln and Representative Nickolia~~
I thank God that now we have elec-
tricity so work is a lot easier for
them than how it was for my
parents, and for Don, and I.

Today I still live off the land
and put away meat, fish, and
berries. And occasionally I have the
pleasure of taking care of some of my
many grandchildren. If they are with
me during school days, when they
come home from school I give them
snacks of dry meat, salmon strips,
Cranberry pudding, or Cranberry nut
bread. So you can see we are still
'living off the land.' I beg you, please
do not take away our subsistence
life style. Thank you and may
God bless you, & keep you happy
and healthy!

C.C.: Senator Georgianna Lincoln
Representative Irene Nickolia

(C)

R17-1

OCT. 17 1997
Time: 3:10 P.M.

RECEIVED
OCT 20 1997

To whom it may concern?

I'm sure we've all been keeping up with local, state & Fed. issues. We're all aware that there has been cuts in ^{state} revenue sharing and there will continue to be cuts in the future. The welfare reform is also another ~~best~~ avenue to get people off welfare & into jobs. Would you please tell me where the job will materialize from? As far as I'm concerned ~~our~~ our subsistence life style is a year around job. We've been utilizing the renewable resources from our land and we'll continue to do so. It seems to me that if the state, federal & local people work together we can come to a consensus.

But we need to be heard in the outlying ~~and~~ areas, our testimony needs to seriously ~~not~~ ~~to~~ be considered. We're at the grass roots level, we're the one that will be affected by ~~the~~ the decisions be made today and ~~it~~ in the future —>

Substance cannot a probability
will not ever be defined in
a few words on one piece of
paper. In the mean time we
will continue to have 27
the clergy take only what is
needed to put food on our table
and hope that we can work and
live together in common peace
people keeping in mind the
future of our children and their
children.

Sincerely yours

Charlotte M. B. Felt

Charlotte M. B. Felt

SUBSISTENCE

INTERIM

HEARINGS

(FILE 2)



Official Business

ALASKA STATE LEGISLATURE

SENATE RESOURCES COMMITTEE

State Capitol
Juneau, AK 99801

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

RESOURCES COMMITTEE SCHEDULE

Interim hearings on Subsistence

Noticed: September 9, 1997

Wednesday, September 24, 1997: Fairbanks

Meeting time: 3:30 p.m. - 9:00 p.m.
Location: UA Regents' Conference Room
Butrovich Building, Room #109
910 Yukon Drive, UAF

Thursday, September 25, 1997: Mat-Su

Meeting time: 2:00 p.m. - 8:00 p.m.
Location: Wasilla City Council chambers
290 E. Hering Avenue, Wasilla

Friday, September 26, 1997: Kenai

Meeting time: 1:00 p.m. - 8:00 p.m.
Location: Kenai Borough Assembly chambers
144 North Binkley, Soldotna

Saturday, September 27, 1997: Anchorage

Meeting time: 1:00 p.m. - 8:00 p.m.
Location: Anchorage LIO
Second floor conference room
716 West 4th Avenue, Anchorage

SENATE RESOURCES COMMITTEE SUMMARY**GOVERNOR'S SUBSISTENCE TASK FORCE PROPOSAL**

9/22/97

1. **PRIORITY** - Residents of Alaska communities or areas that are classified as rural which is defined as "community or area substantially dependent on fish and wildlife for nutritional and other subsistence uses." Requires subsistence user to be "resident domiciled in the community or area."
2. **CUSTOMARY AND TRADITIONAL** - Defined as "Non-commercial, long term and consistent taking of, use of, and reliance upon fish or wildlife in a specific area and the use patterns of that fish or wildlife that have been established over a reasonable period of time, taking into consideration the availability of the fish or wildlife."
3. **CUSTOMARY TRADE** - Defined as "the limited noncommercial exchange for cash of fish or wildlife or their parts in minimal quantities."
4. **PRIORITY INVOKED** - Requires subsistence regulations at any time there is an identified subsistence use. Priority invoked at any time taking must be restricted.
5. **STANDARD OF PROTECTION** - Provides "reasonable opportunity" for subsistence uses. "Reasonable opportunity" described as "an opportunity consistent with customary and traditional uses, to participate in a subsistence hunt or fishery." No guarantee of success.
6. **NON-RURAL SUBSISTENCE** - Permit for taking fish or game for educational purposes. Authorizes proxy hunting by non-rural residents for family members living in subsistence areas.
7. **USES PROTECTED** - All customary and traditional taking and uses for food, shelter, transportation, fuel, clothing, handicraft items, barter, customary trade, and sharing. Only taking for food may be allowed at Tier II level. Human consumptive uses are highest priority subsistence use to be provided.
8. **NILCA PUBLIC LANDS DEFINITION** - No specific proposed change. Initial proposal by the Task Force indicated that "The definition of federal public lands will be clarified to ensure that it excludes all private and state lands."
9. **FEDERAL COURT OVERSIGHT** - Federal court oversight with limitations of federal court intervention to cases where state regulations are "arbitrary, capricious or abuse of discretion." Federal courts must give state agencies deference. Does not limit federal agencies use of reserved water rights and navigational servitude as preemption authority.

2

10. **STATE CONSTITUTIONAL AMENDMENT** - Permissive authority to legislature to create subsistence priority for taking of fish and wildlife and other renewable resources based on residence. No linkage requiring ANILCA changes.
11. **ANILCA AMENDMENTS** - Required definitions such as "Customary and Traditional", "rural", "customary trade" and "reasonable opportunity." Limits federal court jurisdiction over state and federal lands. No proposed definitions clarifying that "public lands" excludes state and private lands and waters.
12. **RURAL IMPLEMENTATION** - All areas and communities outside of existing non-subsistence areas are considered "rural." Delegates authority to Boards of Fisheries and Game to decide which communities or areas are rural.

SENATE RESOURCES COMMITTEE SUBSISTENCE HEARINGS

KEY ELEMENTS AND OPTIONS IN SUBSISTENCE DEBATE

9/24/97

SUBSISTENCE PRIORITY

- PROTECTED IN STATE CONSTITUTION
- PROVIDED FOR IN LAW ONLY
- APPLICATION TO ALL RENEWABLE NATURAL RESOURCES
- APPLICATION TO ONLY FISH AND WILDLIFE
- COMMUNITY BASED
- INDIVIDUAL BASED

ELIGIBILITY

- RURAL PRIORITY
- BASED ON RACE
- ALL RESIDENTS
- BASED ON NEED
- BASED ON CULTURE
- BASED ON PAST USE
- BASED ON DEPENDENCY
- BASED ON LOCAL PRIORITY

USES PROTECTED

- FOOD
- CLOTHING
- TOOLS
- TRANSPORTATION
- CULTURE
- FUEL
- HANDICRAFT PRODUCTS
- BARTER
- TRADE
- COMMUNITY SHARING

CUSTOMARY TRADE

- LIMITED SALE OF SUBSISTENCE RESOURCES
- PROHIBITION AGAINST SALE OF SUBSISTENCE RESOURCES

CUSTOMARY AND TRADITIONAL

- LIMITED TO ONLY TRADITIONAL METHODS AND MEANS
- INCLUDES MODERN METHODS AND MEANS
- INCLUDES TRADITIONAL SEASONS AND BAG LIMITS
- PROXY HUNTING

WHEN PRIORITY IS INVOKED

- AT ALL TIMES
- WHENEVER ANY RESTRICTIONS ARE APPLIED TO SUBSISTENCE USES

STANDARD OF PROTECTION

- LEAST ADVERSE IMPACT SIMILAR TO ANILCA
- REASONABLE OPPORTUNITY TO HARVEST SIMILAR TO EXISTING STATE LAW

EXTENT OF FEDERAL JURISDICTION

- PREEMPTION AUTHORITY OVER STATE AND PRIVATE LANDS AND WATERS
- LIMITED TO ONLY FEDERAL PUBLIC LANDS AND WATERS

FEDERAL COURT OVERSIGHT

- UNRESTRICTED SPECIAL FEDERAL COURT OVERSIGHT OVER FEDERAL, STATE AND PRIVATE LANDS & WATERS WHEN STATE IS IN COMPLIANCE
- RESTRICTED SPECIAL FEDERAL COURT OVERSIGHT OVER FEDERAL, STATE AND PRIVATE LANDS & WATERS WHEN STATE IS IN COMPLIANCE
- SPECIAL FEDERAL COURT OVERSIGHT OVER JUST FEDERAL LANDS
- NO SPECIAL FEDERAL COURT OVERSIGHT

AMENDMENTS TO ANILCA

- DEFINITION OF CUSTOMARY AND TRADITIONAL
- DEFINITION OF RURAL
- ESTABLISHMENT AND DEFINITION OF REASONABLE OPPORTUNITY

STATE CONSTITUTIONAL AMENDMENT

- SUBSISTENCE PRIORITY OR PREFERENCE ENTITLEMENT IN STATE CONSTITUTION
- PERMISSIVE - ALLOW LEGISLATURE TO CREATE SUBSISTENCE PRIORITY OR PREFERENCE

MANAGEMENT OPTIONS

- REGIONAL SUBSISTENCE COUNCILS WITH DEFERENCE
- REGIONAL SUBSISTENCE COUNCILS WITH ADVISORY AUTHORITY ONLY
- ROLE OF TRIBAL GOVERNMENTS?
- CO-MANAGEMENT
- ROLE OF STATE ADVISORY COMMITTEES

Appendix . Subsistence Management Chronology

1925: Alaska Game Law. Believed to provide for most subsistence hunting during territorial days, the law stated that "...any Indian or Eskimo, prospector, or traveler [can] take animals, birds, or game fishes during the closed season when he is in the need of food."

1960: Statehood. The federal government transferred authority for management of fish and game in Alaska to the new state government. Both the federal and the state government recognized subsistence fisheries.

1971: ANCSA. The Alaska Native Claims Settlement Act (ANCSA) extinguished aboriginal hunting and fishing rights. No law was enacted that protected subsistence, but the conference report stated Native subsistence and subsistence lands would be protected by the State of Alaska and the Department of Interior.

1978: State's First Subsistence Law. The state passes its first subsistence law which, once sustained yield has been ensured, requires that subsistence uses be allowed, with a priority if necessary (Ch. 151 SLA 1978). The law defines subsistence as "customary and traditional uses" of fish and game for specific purposes such as food.

1980: ANILCA Passed. Congress passes the Alaska National Interest Lands Conservation Act, creating 104 million acres of new national parks, preserves, and wildlife refuges (P.L. 96-487, December 2, 1980 [94 Stat. 2371]). Title VIII of that act mandates that the state maintain a subsistence hunting and fishing preference for rural residents, or forfeit management of these subsistence uses on public lands. If the state fails to protect subsistence as described in ANILCA, the act stipulates that the federal government will take over management of fish and wildlife on the two-thirds of the state that is federal land.

1982: State Law's Consistency With ANILCA is Established. The joint Boards of Fisheries and Game adopt a regulation specifying that customary and traditional uses are rural uses (5 AAC 99.010), and the Department of Interior certifies the state's consistency with ANILCA.

1982: Repeal Initiative. A statewide effort to repeal the subsistence initiative fails by a large margin at the polls (58.4% of Alaskan voters in favor).

1983: Subsistence Suit. Several Alaskans file suit against the state subsistence law. In McDowell v. State, they argue that the law denies subsistence privileges to some urban residents who have long depended on fish and wildlife resources, while granting those privileges to some rural residents who do not need it, and for that reason the law is unconstitutional.

1985: Madison Decision. The Alaska Supreme Court, in the Madison decision, rules that state regulations limiting subsistence to rural residents (enacted by the Joint Boards in 1982) are not consistent with the state's 1978 subsistence law. The Interior Department notifies the state that the Madison decision violates the provisions of ANILCA and threatens takeover of fish and wildlife on public lands unless the state comes up with a new subsistence law, incorporating the rural limitation.

1986: New Subsistence Law. The Alaska legislature enacts a new law limiting subsistence to rural residents (Ch. 52 SLA 1986; AS 16.05.90). Rural is defined as an area where the "...noncommercial, customary and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy..." In state superior court, the McDowell suit is amended to challenge the new subsistence law. The Kenaitze Indian tribe also files a suit in federal court under ANILCA to protest the classification by the Boards of the Kenai Peninsula as an urban area (Kenaitze Indian Tribe vs. State of Alaska, No. A86-367).

1987: Kenaitzes Initially Denied. A federal court judge rules against the Kenaitze Tribe, saying the state's subsistence law's definition of rural agrees with use of the word "rural" in federal subsistence law.

1987: McDowell Initially Denied. The state superior court holds that the 1986 subsistence law is constitutional.

1988: Kenaitze Decision Reversed. The ninth U.S. circuit court of appeals in San Francisco reverses the Kenaitze decision and holds that the state definition of rural is not consistent with ANILCA (Kenaitze Indian Tribe vs. State of Alaska, 860 F. 2nd 312, (9th Cir. 1988)). The court suggests that a definition of rural hinges on demographic characteristics. The U.S. Supreme court ultimately denies review.

1989: Kenaitze Negotiations. Under direction of the federal district court in a preliminary injunction, the state and the Kenaitze tribe agree to a one-year educational fishery, for plaintiffs in that case only, until a permanent subsistence solution can be found. The state initially believes that a simple amendment to ANILCA, which changes the federal definition of rural to match the state definition, is the best solution. However, that effort failed, and negotiations begin toward reaching a consensus position.

1989: McDowell Decision. On December 22, 1989, ruling in McDowell v. State, the Alaska Supreme Court found that the 1986 state subsistence law was unconstitutional because it excluded urban residents from subsistence activities. On January 5, 1990, the Alaska Supreme Court granted the state a stay in the McDowell decision until July 1, 1990.

April, 1990: Federal Government Moves to Assume Subsistence Management. On April 13, 1990, a Notice of Intent to propose regulations was published in the federal register. Temporary regulations establish a federal program that minimizes change to the state program, consistent with the federal government's ANILCA responsibilities. Temporary regulation were published on June 8, 1990

May 1990: Legislature Debates Subsistence Options. Among options discussed by the legislature was a draft constitutional amendment submitted by Governor Cowper. After lengthy hearings in the final days of the session, the House amended the Governor's proposed amendment, then rejected it by a vote of 20-20 (27 votes needed). The amendment was never voted on by the Senate.

June 8, 1990: Governor Calls Special Session. Negotiations with several interest groups prior to the opening of the session failed to reach an agreement on a solution. On the opening day of the session, the Governor introduced a constitutional amendment that would have required, if approved by the voters at the next general election, a vote on the issue four years later. The amendment would have prevented federal management from occurring on July 1, and would have given groups time to either sue on the constitutionality of ANILCA Title VIII, or amend ANILCA. The governor's proposal was further amended by the Senate to require a vote in two years, and together with legislation creating a Subsistence Review Commission, passed the Senate in early July. However, on July 8, the House failed by one vote (26 in favor, 14 opposed) to obtain a 2/3 majority for a constitutional amendment.

June 1990: Cutler Decision on Severability. The Supreme Court remanded McDowell to the lower court for implementation of their order, and in an opinion dated June 20, with two subsequent clarifications, Judge Cutler found the unconstitutional portion of the state subsistence law to be severable from the rest of the law. This left the state with a subsistence priority law on the books, with its application to rural residents severed.

July 1, 1990: Federal Management Begins. The federal land management agencies initiated a program that assumed management of subsistence uses on federal public lands. This included creation of a five-member federal subsistence board, representing the BLM, NPS, BIA, USFS, and USFWS.

July 1990: New Subsistence Hunts. The Board of Game held an emergency meeting to promulgate hunting regulations for the 1990 fall hunts. Nonresidents were excluded from many hunts, and others were put on a Tier II, individual subsistence application basis.

October 1990: All Alaskans Eligible. At a joint Boards of Fisheries and Game, on October 26, 1990, the Department of Law reported to the Boards that, after the McDowell decision, all Alaskans must be considered potential subsistence users of the fish and game under state jurisdiction. The boards subsequently issued a policy statement that it was impossible, under the legal decisions, to identify subsistence users.

November 1990: New Subsistence Fisheries. The Board of Fisheries met and established new subsistence fisheries in both upper and lower Cook Inlet. A subsequent policy stated that subsistence fishing proposals, throughout the state, would be addressed only if subsistence needs were not being met, or if there was a conservation concern that was addressed by the proposal.

February 1991: Governor's Subsistence Advisory Council is Formed. Governor Hickel appointed an initial subsistence advisory group early in 1991 and reorganized it in November to add public members and remove the state commissioners; in all, the groups met for over a year. The ten-member group was charged with drafting a new subsistence statute that would comply with the state constitution.

Federal Subsistence Program Develops: 1991-92. Publication in the Spring of 1992 of an EIS on the Federal Subsistence Program in Alaska clarified the federal government's intent with regard to managing subsistence on federal lands (mandated by ANILCA). The federal subsistence board established a staff and regular meeting schedule and began accepting public proposals. Other elements of the program included federal regional subsistence advisory councils, and a process for identifying rural areas and customary and traditional uses. The program applied to wildlife and to fishing in non-navigable federal waters.

February 1992: Governor Introduces New Subsistence Legislation. Governor Hickel introduced a bill to the legislature that would establish a new subsistence statute. A key feature of the bill, which was based on the work of the subsistence advisory council, was a presumption that residents of small communities would automatically meet specified subsistence criteria, in mid-sized communities that presumption was "rebuttable", and urban residents must apply for subsistence qualification on an individual basis. Also, nonsubsistence areas were authorized, and implementation would require amending ANILCA. The legislature failed to take action on the bill. Other bills also were considered during the session, but not passed, including an AFN-sponsored bill that provided a rural preference and also a second-level preference for urban residents who could demonstrate community or individual dependence.

June 15-22 1992: Governor Convenes Special Session on Subsistence: 1992 Subsistence Law is Enacted. Governor Hickel presented the legislature with a version of the bill that had been introduced in the previous session. Other bills also are introduced, as are motions to place a constitutional amendment on the ballot. The legislature ultimately passed a subsistence bill that provided eligibility for all Alaskans, included a definition of "customary trade" and allowed the Boards to establish "nonsubsistence areas" in places where subsistence "is not part of the economy, culture, or way of life" of an area.

November 1992: Joint Boards of Fisheries and Game Establish Four Nonsubsistence Areas. Meeting jointly, the boards established nonsubsistence areas around Fairbanks, Anchorage-Matsu-Kenai, Juneau, and Ketchikan. These were areas where subsistence regulations would not be established. Subsistence regulations within these areas were repealed. They issued a call for proposals for other areas also. At a subsequent meeting the following March (1993), an area around Valdez also was designated as a nonsubsistence area. Eventual public proposals for additional areas included GMU 13, all roaded areas, and an area on the Upper Holitna Drainage.

Fall 1993: State Superior Court Finds Nonsubsistence Areas to be Unconstitutional. Judge Fabe, in State Superior Court, found in Kenaitze v. State that the nonsubsistence areas authorized by the 1992 state law were unconstitutional because they "effectively re-establish the rural/urban residency requirement struck down in McDowell" (Kenaitze Indian Tribe v. State of Alaska, 3AN-91-4560 Civil. Order, October 26, 1993). After the Alaska Supreme Court's subsequent denial of the state's motion for a stay, the Boards met in Spring 1994 and authorized the department to enact emergency regulations that would re-establish the previous subsistence regulations for the former nonsubsistence areas. The state also appealed the ruling to the State Supreme Court.

March 1994: U.S. District Court Validates Federal Subsistence Board Authority, Extends Federal Subsistence Management to Include Navigable Waters. Following preliminary rulings in Karv John, in late 1993, Judge Holland issued a final ruling that interpreted ANILCA as giving the federal government broad authority to manage subsistence on federal public lands, and extended jurisdiction to include navigable waters on

federal lands. A parallel ruling in the case of State v. Babbitt found that creation of the federal subsistence regulatory board did not exceed the authority granted by ANILCA. These rulings were immediately appealed to the Ninth Circuit Court of Appeals by both the state and federal governments.

May 1994: Secretary of Interior Declares Intent to Manage Subsistence Fisheries Throughout the State. In a letter to the Governor that urged the state to act to come into compliance with ANILCA, Secretary Babbitt stated his intention to begin management of subsistence fisheries, "pursuant to the direction of the federal courts," if the state doesn't pass a constitutional amendment. The federal subsistence board was told to prepare a subsistence fisheries management plan.

January 1995: State Drops Babbitt Lawsuit. Governor Knowled directed the Attorney General to drop the state's appeal of the Babbitt case.

May, 1995: State Supreme Court Upholds State Subsistence law. The Alaska State Supreme Court overturns the State Superior Court decision in State v. Kenaitze Indian Tribe. This validates use of nonsubsistence areas.

1995: Appropriation Language Prohibits Preemption Actions for FY 96. Alaska's congressional delegation inserts language in appropriations bill prohibiting expenditure of funds to preempt state management on some navigable waters. R

October, 1995: Totemoff Case. The Alaska Supreme Court ruled that the state had jurisdiction to prosecute Mr. Totemoff for spotlighting deer in state navigable waters. The court also ruled that the federal government has no jurisdiction in state navigable waters.

December, 1995: Ninth Circuit Court of Appeals in Katie John Case. The Ninth Circuit Court ruled that the Reserved Water Rights Doctrine provided authority for the federal agencies to extend their jurisdiction into some navigable waters.

April, 1996: Advance Notice of Proposed Rulemaking. The Departments of Interior and Agriculture published their advance notice of proposed rulemaking describing preemptive regulations to be adopted for state and private lands and waters.

May, 1996: Appeal of Katie John Case to Supreme Court. The U.S. Supreme Court denied the Petition for Writ of Certiorari in the Katie John case.

1996: Appropriations Language Prohibits Preemption Action for FY 97. Alaska's congressional delegation inserts language in appropriations bill for 1997 with expanded language prohibiting implementation of federal preemption regulations and state lands and waters.

1996: Line Item Veto Bill Passes. Congress passes line item veto bill which may provide mechanism for President to eliminate appropriations language protecting Alaska from preemption regulations.

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

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

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

MEMORANDUM

September 23, 1997

SUBJECT: Summary of subsistence litigation (Work Order No. 20-LS1151)

TO: Senator Rick Halford

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum summarizes the holdings of significant litigation relating to subsistence uses of fish and game under the Alaska constitution and statutes and under the federal Alaska National Interest Lands Conservation Act (ANILCA).

I. STATE LAW**A. ALASKA CONSTITUTION****1. McDowell v. State, 785 P.2d 1 (Alaska 1989).**

Alaska residents who had previously engaged in subsistence hunting and fishing challenged the 1986 state subsistence law because they resided in areas classified as non-rural by the Boards of Fisheries and Game and thus were barred from participating in subsistence activities.

The Alaska Supreme Court found that the subsistence preference granted to rural residents by the 1986 state subsistence law violated the "open access" provisions (art. VIII, secs. 3, 15, and 17) of the Alaska Constitution. Limitations on access to fish and game user groups based on residence in the rural area of the state are not permitted under the Alaska Constitution.

2. State v. Kenaitze Indian Tribe, 894 P.2d 632 (Alaska 1995).

An Indian tribe challenged the constitutionality of nonsubsistence areas established by the 1992 state subsistence law and the eligibility criteria for Tier II subsistence activities based on a person's proximity to the resource.

The Alaska Supreme Court held that the "open access" provisions of the Alaska Constitution (art. VIII, secs. 3, 15, and 17) do not permit eligibility for participation in Tier II subsistence activities (AS 16.05.258(b)(4)(B)(ii)) to be based on, or to take into consideration, how far a person lives from a subsistence fish or game resource.

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The establishment of subsistence and nonsubsistence areas is consistent with the power of the legislature to provide for the sustained yield management of fish and game resources, provided that the establishment of the areas did not affect eligibility to participate in a user group. The nonsubsistence areas authorized by the 1992 state subsistence law (AS 16.05.258(c)) did not violate the "open access" provisions of the Alaska Constitution.

B. ALASKA STATUTES

1. 1978 Subsistence Law

a. Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985).

Persons who had formerly engaged in subsistence fishing challenged regulations of the Board of Fisheries limiting eligibility for subsistence fishing to residents of rural areas of the state.

The Alaska Supreme Court found that the Board of Fisheries could not restrict subsistence fishing to residents of rural areas, because the 1978 state subsistence statute did not restrict subsistence to rural areas or authorize the board to impose such a restriction. The board could not interpret the term "customary and traditional" in the statute defining subsistence fishing so as to limit access to the subsistence fishing user group. The term "customary and traditional" in the state subsistence statute did not have the same meaning that the term had under ANILCA and did not authorize the board to restrict subsistence fishing activities to rural residents of the state.

b. State v. Fluska, 724 P.2d 514 (Alaska 1986).

A person who had been arrested for unlawful hunting challenged the regulations under which he was charged because the Board of Game had failed to adopt separate regulations for subsistence hunting. The court of appeals accepted that argument and created the "subsistence defense" because the 1978 state subsistence statute required the Board of Game to adopt subsistence regulations.

The Alaska Supreme Court overruled the decision of the court of appeals. The supreme court found that the 1978 state subsistence statute did not create a personal right to take or possess game for subsistence use in the absence of regulations adopted by the Board of Game. A person may not assert a subsistence defense for taking game in the absence of a regulation authorizing the person to take game.

The failure of the board to adopt subsistence regulations did not excuse the unpermitted taking of game for subsistence. The establishment of the "subsistence defense" by the court of appeals spurred the legislature into enacting AS 16.05.259 which eliminated the "subsistence defense".

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2. 1986 Subsistence Law

a. Bobby v. State of Alaska, 718 F.Supp. 764 (D.Alaska 1989).

Subsistence hunters in a rural area of the state challenged state closed season, bag limit, village harvest quota, and management area restrictions as unlawfully denying them a subsistence priority required by ANILCA.

The federal District Court for Alaska found that state subsistence regulations could be set aside for failure to comply with ANILCA if the regulations were arbitrary, capricious, or an abuse of discretion. The court accepted that the 1986 state subsistence law expressly authorized seasonal and bag limit restrictions on subsistence hunting. If the Board of Game performed the analysis required under the state subsistence law, and there was a record to support the board's decision, the board could adopt valid restrictions on subsistence hunting. In adopting subsistence regulations under the state subsistence law, the board

may not consider the availability of a game or fish population as a factor in restricting or reducing the demonstrated customary and traditional use of another game or fish population; an established use of moose may not be reduced solely because fish are available;

may impose bag limits and seasons on subsistence hunting if the restrictions are consistent with customary and traditional uses of fish and game; the level of need for subsistence use of game is not a permissible standard for setting bag limits and seasons; bag limits and seasons must be based on customary and traditional levels of use of game;

must first eliminate other consumptive uses before restricting the customary and traditional uses of game for subsistence purposes;

must accommodate rural traditions of sharing game in setting bag limits.

The court found that under the 1986 state subsistence law an established subsistence use of a particular game population may be curtailed only as a last resort. The limiting or restricting of all consumptive uses of game including subsistence uses in equal or roughly equal fashion is unlawful.

AS 16.05.259 (no subsistence defense) does not preclude a person from challenging the validity of a hunting regulation as a defense to a criminal prosecution. AS 16.05.259 was intended to preclude a defendant from claiming a subsistence right other than that conferred by statute or regulation.

b. State v. Morry, 836 P.2d 358 (Alaska 1992).

A subsistence hunter who was charged with violating brown bear hunting regulations challenged the applicability of the certain tag and sealing requirements to subsistence hunting.

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The Alaska Supreme Court found that under the 1986 state subsistence law and the McDowell decision, the opportunity to engage in subsistence activities (Tier I) is available to all Alaskans.

The Board of Fisheries and the Board of Game may take into consideration the traditional means used to harvest fish and game, but is not required to, in adopting subsistence regulations. Under the state subsistence law, the term "customary and traditional" relates to how fish and game are used not how they are taken for subsistence purposes.

The Board of Game is required to adopt regulations for subsistence hunting. The board cannot rely upon trophy hunting regulations to regulate subsistence hunting by default. The brown bear tag and sealing regulations that were the subject of this case were invalid as subsistence regulations because the board never determined that the regulations were consistent with the state subsistence law.

3. 1992 Subsistence Law

a. Toternoff v. State, 905 P.2d 954 (Alaska 1995); cert. den. 135 L.Ed.2d 190.

A subsistence hunter was charged with violating state hunting regulations for shooting a deer with the aid of a spotlight. The deer was killed on federal land but the hunter was shooting from a boat on navigable water. The hunter challenged the jurisdiction of the state to enforce its hunting regulations on federal land.

In addressing the state law issue in this case, the Alaska Supreme Court found that AS 16.05.259 (no subsistence defense) does not prohibit a person from challenging the validity of a subsistence regulation. (See below for discussion of federal law issues.)

b. Payton v. State, Alaska Supreme Court, Opinion No. 4831, June 13, 1997.

Residents of a rural area of the state challenged the decision of the Board of Fisheries not to allow a subsistence salmon fishery in the upper Yentna River. The board had denied the request for a subsistence fishery because the current uses of salmon in the upper Yentna River area were not sufficiently customary and traditional to qualify as subsistence uses.

The Alaska Supreme Court found that the Board of Fisheries erred when the board had required a familial relationship between current subsistence users and earlier generations. The requirement that subsistence uses be customary and traditional uses only requires that the uses in question have occurred consistently for an extended period of time not that they have been handed down from parent to child or relative to relative.

The court emphasized that the Board of Fisheries and Board of Game are separate entities acting under separate statutory authority and may reach different conclusions on subsistence issues based on the same facts. The Board of Fisheries did not have to permit subsistence

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fishing in an area just because the Board of Game had permitted subsistence hunting in the area. Exclusion of a community from a nonsubsistence area does not mean that the community is entitled to a subsistence preference. Areas excluded from "nonsubsistence areas" are not automatically "subsistence areas".

II. FEDERAL LAW -- ANILCA

A. Kenaitze Indian Tribe v. State of Alaska, 860 F.2d 312 (CA9 1988); cert. den. 491 U.S. 905, 105 L.Ed.2d 695.

Indian tribe challenged the definition of "rural" used in the 1986 state subsistence statute as being out of compliance with the ANILCA definition of "rural".

The Ninth Circuit Court of Appeals found that federal courts have the power to approve or disapprove the state's performance under ANILCA once the Secretary of the Interior has certified that the state's subsistence program is consistent with ANILCA.

The definition of "rural" adopted by the State of Alaska in the 1986 state subsistence law was not consistent with ANILCA and the state is out of compliance with ANILCA. "Rural" normally refers to areas of a certain population density. The state's interpretation of rural as an area in which the traditional use of fish and game was a principal characteristic of the area's economy materially changes the nature of the subsistence preference established by ANILCA.

B. Kwethluk IRA Council v. State of Alaska, 740 F.Supp. 765 (D.Alaska 1990). Kwethluk IRA Council sought an injunction to compel the State of Alaska to authorize the harvest of 50 to 70 animals from the Kilbuck caribou herd. The Kilbuck herd had been closed to hunting since 1985 because the herd had decreased to less than 100 animals. By 1990, the herd had increased to more than 1,400 animals. The Board of Game had denied a request from the Kwethluk IRA Council for a subsistence hunt. The council sought a preliminary injunction to compel the board to authorize a hunt.

The federal District Court for Alaska found that both the state subsistence law and ANILCA were founded on the perpetuation of subsistence game populations. The term "sustained yield" is broad enough to authorize the board to restrict subsistence to rebuild a damaged game population. However, the board must balance the minimum adverse impact on rural residents who depend on subsistence with scientific principles of game management. The court discounted the board's determination that the herd must remain closed to hunting to manage the herd on a sustained yield basis, because the board had not adopted a management plan for the Kilbuck herd and because the term "sustained yield" was not defined. The determination of the board thus was an *ad hoc* decision without an established policy on which to support the decision.

The court found that a subsistence caribou hunt would cause minimal damage to the herd, that the balance of hardships favored the council, and that public policy favored continuation

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of subsistence hunting. Thus the court ordered that 50 harvest permits be issued at Kwethluk for the Kilbuck caribou herd.

In terms of legal precedents this case offers little of value. This case involved a request for an injunction and never reached a complete review of the merits of the case. On the other hand, the case does illustrate that the federal courts may, under the authority of 16 U.S.C. 3117, become involved in the management and allocation of subsistence resources. The case also shows that the courts will not necessarily defer to the policy decisions made by the Board of Game.

C. United States v. Alexander, 938 F.2d 942 (CA9 1991).

Persons convicted of selling subsistence taken roe-on-kelp challenged their conviction.

The Ninth Circuit Court of Appeals found that ANILCA does not limit customary trade to transactions involving personal or family consumption. The sale of herring roe is customary trade. ANILCA allows rural Alaskans to engage in limited sales of herring roe so long as the sales are part of customary trade. State regulations cannot prohibit the sale of herring roe taken in subsistence fisheries because customary trade in fish and game is a subsistence use of fish.

The court remanded the case for a new trial. If the defendants were found at the new trial to have engaged in a sale of herring roe that was more than a limited cash sale then they could be convicted of unlawful selling of subsistence caught herring roe.

D. Native Village of Quinhagak v. United States, 35 F.3d 388 (CA9 1994).

Native villages in southwest Alaska challenged state regulations prohibiting subsistence fishing for rainbow trout and federal regulations defining "public lands" and sought a preliminary injunction allowing them to take rainbow trout for subsistence.

The Ninth Circuit Court of Appeals found that the villages had raised serious issues regarding the extent of federal subsistence jurisdiction in navigable waters under ANILCA. The court concluded that the villages were entitled to the requested injunction because the balance of hardships tipped sharply in their favor. The villages rely heavily upon subsistence fishing. Rainbow trout is a critical source of fat and protein, especially in winter when equivalent food sources are not available. The court also found that state and federal subsistence regulations regarding rainbow trout interfere with the village's way of life and cultural identity. Thus the villages were entitled to a preliminary injunction pending final resolution of the merits of the substantive challenges brought by the villages. The decisions of the court in regard to this preliminary injunction have little precedential value because they are so closely tied to the unique facts of this particular case.

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E. State of Alaska v. Babbitt, 72 F.3d 698 (CA9 1995).

This case consolidated several law suits relating to the extent of federal jurisdiction over subsistence activities in Alaska and the definition of "public lands" under ANILCA.

The Ninth Circuit Court of Appeals found that the navigational servitude is not a property interest in navigable water. The navigational servitude is not public land for purposes of ANILCA. However, the federal government has reserved vast areas of land in Alaska. In doing so the federal government has implicitly reserved appurtenant waters, including navigable waters, to the extent needed to accomplish the purposes of the reservations. Reserved water rights, including rights in navigable waters, are public lands subject to federal subsistence management under ANILCA.

F. Totemoff v. State, 905 P.2d 954 (Alaska 1995); cert. den. 135 L.Ed.2d 190.

A subsistence hunter was charged with violating state hunting regulations for shooting a deer with the aid of a spotlight. The deer was killed on federal land but the hunter was shooting from a boat on navigable water. The hunter challenged the jurisdiction of the state to enforce its hunting regulations on federal land.

The Alaska Supreme Court held that the state may enforce its civil and criminal laws on federal land unless the state consents to or cedes exclusive jurisdiction to the federal government or state law is preempted by federal law. ANILCA does not preempt state regulations that affect subsistence hunters on federal land so long as those regulations do not conflict with federal law. ANILCA does not create a general right to use traditional means and methods of taking game. The state may ban the use of spotlights to take deer.

ANILCA does not curtail the state's authority to regulate hunting and fishing in navigable waters. The Alaska Supreme Court disagreed with the State of Alaska v. Babbitt decision of the Ninth Circuit Court of Appeals and held that neither the navigational servitude nor the reserved water rights doctrine gives the federal government authority to manage fishing or hunting in navigable waters. The Alaska court found that navigable waters are generally not "public lands" under ANILCA.

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97-212.plm

FRANK H. MURKOWSKI
ALASKA

COMMITTEES:

CHAIRMAN
ENERGY AND NATURAL RESOURCES
FINANCE
VETERANS' AFFAIRS
INDIAN AFFAIRS

United States Senate

WASHINGTON, DC 20510-0202
(202) 224-6666

222 WEST 7TH AVENUE, BOX 1
ANCHORAGE, AK 99513-7570
(907) 271-3735

101 12TH AVENUE, BOX 7
FAIRBANKS, AK 99701-8278
(907) 456-0233

P.O. BOX 21647
JUNEAU, AK 99802-1647
(907) 586-7400

130 TRADING BAY ROAD, SUITE 350
KENAI, AK 99611-7716
(907) 283-6808

109 MAIN STREET
KETCHIKAN, AK 99901-6489
(907) 226-6890

May 22, 1997

RECEIVED

MAY 02 1997

Ans'd.....

The Honorable Rick Halford
Senator
Alaska State Legislature
State Capitol
Juneau, AK 99801

Dear Rick:

By the time summer comes to a close in Alaska a Congressional moratorium will expire, and the Federal Government will implement regulations to take control of Alaska's fish and game resources. This will result in Washington having total control over fish, game and most land uses throughout Alaska, thereby nullifying the key powers conferred at Statehood. The effect of this will not only be felt by commercial, sport, and subsistence fishermen and hunters but all businesses and homeowners seeking to do most anything in the State. Therefore, if we do not act now, Alaska is heading in a direction that will result in us becoming the only state in the nation to lose the right to manage our fish and game resources.

It is within our capabilities to reverse this course. Therefore, as Chairmen of the Congressional committees with jurisdiction over this issue, we are putting forth our approach to solve it. This approach combines what we believe to be the best components of past ideas and unites them with some new ideas. While this proposal addresses the federal side of the equation, in order to realize the full benefits, there must be some action by the State to make changes to the Constitution as well. We believe this proposal, and any final resolve that should result from it, should return management of Alaska's fish and game resources to the State and be fair to all current and future Alaskans. We also believe that an inclusive process must be set in place to allow you, and all Alaskans, maximum participation in development of the final resolve.

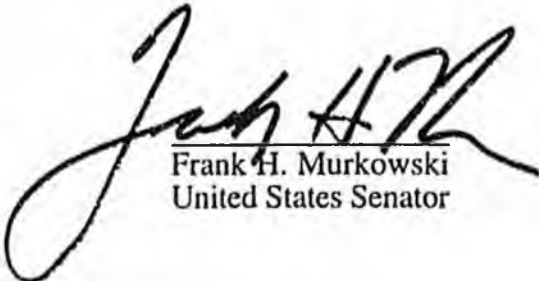
We are sending this proposal to you and other Alaskans in the hopes that you will take the time to understand and evaluate its implications and relay your thoughts to us. We would like your comments no later than July 7, 1997. Once we have received input, we will respond, either individually or collectively. It is our intent, after evaluating your input, to move forward with a legislative proposal. You should also anticipate that we will be seeking your participation as a bill moves through the legislative process here in Congress.

Our vision of Alaska in the 21st Century does not include a return to the failed federal management of Alaska's living resources. No Alaskan should agree to federal control. It usurps all of our sovereign authority and undermines the health and quality of the fish and wildlife resources. The time to put this problem behind us is now.

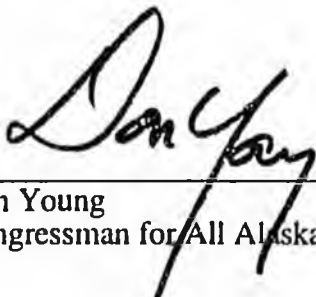
The Honorable Rick Halford
May 22, 1997
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We look forward to hearing your comments on this proposal and your participation in working toward a final resolve.

Sincerely,



Frank H. Murkowski
United States Senator



Don Young
Congressman for All Alaska

Enclosure

Discussion Draft of Proposed Amendments to ANILCA Title VIII

Summary

The purpose of these proposed changes to ANILCA Title VIII is to address difficulties experienced in the implementation of the law by the State of Alaska in order to make it easier for the State to take actions necessary to regain management authority over fish and game throughout Alaska. The proposed amendments emphasize local use of fish and game resources providing a priority to local users in times of shortage.

Section 803.

The definition section is amended to limit the subsistence priority to individuals who have a customary or direct dependence on subsistence uses of local fish and wildlife. Residents of remote villages, communities and areas of Alaska where direct personal or family consumption of wild, renewable resources constitute a significant share of the community economy or are a recognized aspect of the culture or traditions of the community are presumed to have the necessary customary or direct dependence on local fish and wildlife to qualify for the subsistence priority. This presumption can be rebutted where it is clear based on readily available facts that the individual does not have either a customary or direct dependence on the local fish and wildlife. This section is also amended to make it clear that fish and wildlife taken for subsistence uses can not be used for commercial purposes.

Section 804.

Where fish and game are plentiful all Alaskans should have opportunities to hunt and fish. The section addressing the priority for subsistence uses makes it clear that subsistence users have an absolute priority over all other users of fish and game. Subsistence users must be afforded a reasonable opportunity to meet their customary or direct dependence on local fish and wildlife. Their opportunity to meet their needs can not be jeopardized in order to protect the viability of a fish or wildlife population unless all other taking has first been eliminated. If the opportunity to hunt or fish for subsistence purposes must be limited to protect the viability of fish and wildlife populations, a priority is given to subsistence users who are closest to the fish or wildlife, rely on the resource as a mainstay of their livelihood and are far away from alternative resources. Amendments to this section also make it clear that subsistence users have a right to a reasonable opportunity to meet their customary or direct dependence on local fish and wildlife and not an entitlement to the resource itself.

Amendments also clarify the jurisdiction of the Federal government. Federal authority to enforce the subsistence priority does not extend to State or private lands or waters. This includes any Federal claim to reserved water rights or navigational interests.

Section 807.

The section granting review by the Federal courts of State implementation of the subsistence preference is amended to eliminate Federal court oversight if the State Constitution protects the priority for local subsistence users to have a reasonable opportunity to meet their needs. While constitutional authority for the State to implement the priority for subsistence users would allow the State to regain management of fish and game, constitutional protection for the priority itself would be required to eliminate Federal court oversight.

Discussion Draft of Proposed Amendments to ANILCA Title VIII

(New or Amended Language is Underlined)

DEFINITIONS

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

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

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

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

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

(C) "non-commercial customary trade" means the exchange of fish or wildlife or their parts, taken for subsistence purposes, for other food or for nonedible items if the exchange is of a very limited and noncommercial nature.

(3) "rural Alaska" means remote villages, communities and areas in Alaska where direct personal or family consumption of wild, renewable resources constitute a significant share of the community economy or are a recognized aspect of the culture or traditions of the community;

and

(4) "qualified residents of rural Alaska" means individual Alaska residents with a customary or direct dependence on subsistence uses of local fish and wildlife; individuals residing in rural Alaska are presumed to have customary or traditional dependence on subsistence resources although this presumption may be rebutted in cases in which readily available facts show that an individual does not have the requisite customary and direct dependence on such resources.

PREFERENCE FOR SUBSISTENCE USES

Section 804(a) Except as otherwise provided in this Act and other Federal laws, the reasonable opportunity to take fish and wildlife for nonwasteful subsistence uses on public lands by qualified residents of rural Alaska shall be accorded an absolute priority over the opportunity to take fish and wildlife for other purposes. Federal authority to enforce this priority shall not extend to and shall not affect the regulation of taking fish and wildlife or other wild, renewable resources on State or private lands, waters, including but not limited to any reserved waters, or interests therein. Federal jurisdictional interests and authorities, including but not limited to navigational servitudes, do not constitute public lands for the purposes of this Title.

(b) Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria:

(1) customary or direct dependence upon the populations as the mainstay of livelihood:

(2) proximity for the subsistence use to the populations; and

(3) the availability and proximity of alternative resources.

Section 805. - (changes necessary to allow State reassumption)

Section 806. - (no change)

Section 807. (a) Local residents and other persons and organizations aggrieved by a failure of the State or the Federal Government to provide for the priority for subsistence uses set forth in section 804 (or with respect to the State as set for in a State law of general applicability if the State has fulfilled the requirements of section 805(d)) may, upon exhaustion of any State or Federal (as appropriate) administrative remedies which may be available, file a civil action in the United States District Court for the District of Alaska to require such actions to be taken as are necessary to provide for the priority. In a civil action filed against the State, the Secretary may be joined as a party to such action. The court may grant preliminary injunctive relief in any civil action if the granting of such relief is appropriate under the facts upon which the action is based. No order granting preliminary relief shall be issued until after an opportunity for hearing. In a civil action filed against the State, the court shall provide relief, other than preliminary relief, by directing the State to submit regulations which satisfy the requirements of section 804, when approved by the court, such regulations shall be incorporated as part of the final judicial order, and such order shall be valid only for such period of time as normally provided by State law for the regulations at issue. Local residents and other persons and organizations who are prevailing parties in an action filed pursuant to this section shall be awarded their costs and attorney's fees.

(b) This section is the sole Federal judicial remedy created by this title for local residents and other residents who, and organizations which, are aggrieved by a failure of the State to provide for the priority of subsistence uses set forth in section 804 unless the State has

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constitutionally protected the priority. Where the priority of subsistence uses set forth in section 804 is protected by the State Constitution, the Federal Courts shall not have jurisdiction and the Federal judicial remedy created by this title shall not be available.

Sections 808 - 816. (no change)

Congress of the United States
Washington, DC 20515

July 23, 1997

The Honorable Tony Knowles
Governor
State of Alaska
P.O. Box 110001
Juneau, AK 99811-0001

Dear Governor Knowles:

We write to provide our comments on the proposal prepared and distributed by the Governor's Task Force on Subsistence. Recent polling shows that over 80% of Alaskans support a solution to the subsistence policy dilemma that would return all management of fish and game to the State of Alaska by amending both federal law and the Alaska State Constitution. Clearly, you are on the right track. We have reviewed the details of your proposal, considered the views of commentators and received many comments from individuals and groups across Alaska, such as the Outdoor Council and the Tanana Chiefs Conference. On the basis of these inputs we make the following suggestions for changes to your proposal.

1. Your proposal provides a subsistence priority to rural Alaska residents. We propose you further limit the subsistence priority to those rural Alaska residents who need local fish and game resources for personal or family consumption or for customary and traditional uses. Further, the subsistence priority should not be enforced unless subsistence needs can not be met in a particular locality under the fish and game laws applying to all Alaskans. We believe these changes can be accomplished without creating an unreasonable burden on rural residents or the administration of the program.
2. Your proposal correctly provides for proxy hunting and fishing to meet the subsistence needs of aged and disabled rural Alaskans. We propose you tighten the proxy hunting provisions to insure against abuses.
3. Your proposal does not address federal jurisdiction over fish resources in Alaska recently established by the federal courts. Despite the opinion of the federal courts, it is clear to us that ANILCA Title VIII was never intended to reach so far as to undermine state fishery management. We believe you should consider changes to ANILCA which would preserve the state primacy over fishery management Alaska achieved through statehood. This could be done while allowing ANILCA Title VIII to appropriately protect subsistence uses of fish resources.

-2-

4. While you have provided in the state statute for customary trade to include exchange for cash of fish or game in minimal, noncommercial quantities, we believe a similar provision should be included in ANILCA.

5. We support your creation of regional subsistence councils and their relationship to the local fish and game advisory committees. However, we recommend you limit the closure authority of the advisory committees to covering only local areas and resources for which the appropriate regional subsistence council has been advised and the Alaska Department of Fish and Game has confirmed a shortage exists. In addition, we propose enfranchising local fish and game advisory committees, and through them local subsistence users, in local enforcement of the subsistence priority and in monitoring and making recommendations concerning the health of local fish and game populations.

6. We believe we must be clear in the federal law about when the state does and does not have authority to enforce the subsistence priority for fish and game in Alaska. We propose amending ANILCA to guarantee that at such time as the State of Alaska enacts and implements a law of general applicability which the Secretary of the Interior certifies provides for the subsistence priority contained in ANILCA Title VIII the State shall immediately assume fish and game management on all lands and waters in Alaska. The State could only be found not to be in compliance with ANILCA Title VIII if this state subsistence law was later repealed. The Secretary of the Interior would be required to annually certify to Congress only that the State of Alaska had in place a law of general applicability providing for the subsistence priority contained in ANILCA Title VIII.

7. We agree that federal court review of agency actions should be limited to a determination of whether such actions are arbitrary, capricious, or an abuse of discretion and that when reviewing State agency actions the federal courts should give deference to State agency determinations. In addition, in a civil action filed against the State, the federal court should not engage with the State agency in the re-writing of state regulations implementing the State subsistence law. The federal court should provide relief, other than preliminary relief, by specific order addressing the needs of the petitioner for subsistence resources.

Thank you for this opportunity to comment on the very good work you have done to date. We can not emphasize enough how important it is that your effort succeed. Success will of course be measured by adoption of changes to the state statute and ANILCA and the approval of an amendment to the Constitution by the voters in November of 1998. Unless we can quickly show substantial progress to achieving these results we will not be able to forestall implementation by the Department of the Interior of the federal court order requiring federal management of Alaska's fisheries and regulations asserting federal jurisdiction over fish and game on state and private lands. This would be a dramatic step backward for Alaska. We can not and should not let this occur.

-3-

Good luck at your next meeting. As always, we stand ready to assist in any way we can.

Sincerely,



Don Young



Frank H. Murkowski

- cc: Honorable Fran Ulmer
- Honorable Gail Phillips
- Honorable Mihs Miller
- Honorable Jay Hammond
- Mr. Charlie Cole
- Mr. Byron Mallott

Rural Alaska Community Action Program, Inc.

September 15, 1997

Senator Rick Halford, Chairman
Senate Resources Committee
PO Box 670190
Chugiak, Alaska 99567

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Dear Senator Halford,

At the request of Senate President Mike Miller, I am sending you several documents for your information for the upcoming Senate Resources Committee hearing in Fairbanks, Alaska, September 24, 1997. It was not clear to me exactly which documents Mr. Miller wanted sent, but I assumed he wants guessed that the ones I submitted to the Governor's Task Force hearing.

On August 26, 27, and 28, the Native community did come together to develop a single united Native position. RurAL CAP, the Alaska Inter-Tribal Council and the Alaska Federation of Natives are working together on that. At this time, we have a resolution and a set of guiding principles. The current Native position on Subsistence is AFN's, "No Net Loss position." You will find that position on page 133 under Tab 5, "*Native Positions*," in the "Subsistence Roundtable" document enclosed.

The documents being forward to you are:

- RurAL CAP Subsistence Roundtable Information (February 1997)
- Subsistence Roundtable Executive Summary (February 1997)
- AFN Subsistence Summit Resolution/Guiding Principals (August)
- RurAL CAP's Analysis of the Governor's Proposal

If you need further information, please do not hesitate to call me.

Sincerely,



Jeanine Kennedy, Executive Director
Rural Alaska Community Action Program, Inc.

cc: Senator Mike Miller, President of the Senate

AFN POLICY CONCERNING RESOLVING THE SUBSISTENCE ISSUES

At its meeting of March 4, 1996, the AFN Board of Directors adopted the following POLICY PRINCIPLES according to which the Native community will conduct any discussions with the State of Alaska on resolving the subsistence impasse:

1. The overall management principle contemplated by ANILCA is that regulation of subsistence uses by state or federal authorities must be carried out in a manner that causes the "least adverse impact" on customary and traditional taking and use patterns of Alaskan communities. Restrictions, such as individual bag limits and seasons, may not be imposed if they are inconsistent with customary and traditional use patterns. This includes both the quantity of game, the traditional seasons and places for hunting or fishing, and restrictions on methods and means of harvest. It is a significantly higher standard than the "reasonable opportunity" language in existing state law.
2. The Native community will insist that the following conditions be part of any resolution of the current federal-state impasse:
 - a) there must be no net loss from the current level of federal subsistence protections, including, but not limited to the following points:
 - 1) The availability of one species of fish or game cannot be used as a basis for restricting opportunities to take another species in a customary and traditional manner;
 - 2) Regulations must provide opportunities to harvest each particular "stock" of fish and "population" of game that has been customarily and traditionally used;
 - 3) The Boards of Fish and Game cannot have unfettered discretion to place restrictions on harvests without a reasoned explanation of what "sustained yield" means and a reasoned determination of the number of fish or animals necessary to produce sustained yield;
 - 4) ANILCA's definition of "customary trade" includes sales for cash and does not require that fish or game used for customary trade be harvested only for personal or family consumption;

- 5) The word "rural" has a plain meaning, which includes at least part of the Kenai Peninsula and any attempt to limit the subsistence law's application through the use of a restrictive definition of rural is inconsistent with the plain meaning of the Act.
 - 6) ANILCA recognizes that subsistence is a group activity and a group way of life, as opposed to being an individual lifestyle; and
 - 7) The subsistence priority applies to *all* times, not just when there is a resource shortage. The Boards are required to provide fully for customary and traditional uses before any non-subsistence uses may be allowed.
- b) There must be basic reforms of state regulatory and management systems:
- 1) changes in Board structure and processes, to ensure fair treatment of subsistence uses;
 - 2) use of regional advisory councils, composed of subsistence users, whose proposals generate subsistence regulations, as in Federal Subsistence Board deliberations; and
 - 3) use of co-management contracting to delegate functions and powers to Native communities and organizations; and
- c) There must be no non-subsistence use areas in state law.
3. Resolution of the impasse should also include a strengthening of the federal preference (e.g., by changing to a Native or "Native-Plus" preference, or by defining "rural" so as to guarantee that Native communities that are historically surrounded by non-Native majorities will not be dropped from the preference).
 4. A subsistence amendment to the Alaska Constitution must be worded and placed so as to ensure that a state statute that complies with Title VIII cannot, on any grounds, be struck down by the Alaska Supreme Court. In addition, such an amendment should:
 - a) state that the subsistence preference may not violate the constitutional mandate to manage for sustained yield;

- b) require, rather than permit, the Legislature to enact a statute complying with federal law (e.g., "...the Legislature shall...", rather than "...the Legislature may...");
 - c) state that subsistence is the priority use of fish and game in Alaska;
 - d) include "culture" as a basis for differentiating among residents for application of the subsistence preference; and
 - e) be worded broadly enough to permit state law to comply with an improved federal preference in the future.
5. All discussions with the State of Alaska will be predicated on the fact that Title VIII of ANILCA is Indian Law, enacted under the plenary power of the Congress to regulate Indian affairs, derived from the Commerce Clause of the U.S. Constitution.
6. No resolution of the ANILCA impasse will be agreed to by AFN without approval by the larger Native community through a statewide subsistence summit or convention, with advance written explanations distributed to all communities and regions and with adequate lead time allowed for preparatory village and regional meetings.
7. During any period in which the state refuses to comply with federal law, the Native community supports full federal management:
- a) over all public lands (including the broadest possible definition of "reserved waters");
 - b) over all selected/unconveyed lands (specifically including state and ANCSA over-selections); and
 - c) providing for maximum extraterritorial reach off public lands.
8. On October 1, 1996, the state subsistence law adopted in 1992 will sunset unless extended by the Alaska State Legislature. If the 1992 law sunsets, the 1986 law will come back into force. AFN believes that the following changes would make marked improvements to the 1992 law:
- a) Basic reforms of the state regulatory and management systems to ensure that the subsistence priority is implemented fully:

- 1) re-establishment of regional subsistence advisory councils, composed of subsistence users, whose proposals generate subsistence regulations, as in Federal Subsistence Board deliberations;
 - 2) direction to the Alaska Department of Fish and Game to enter into co-management agreements that delegate functions and powers to Native communities and organizations; and
 - 3) involvement of the regional subsistence advisory councils in determinations of non-subsistence areas.
- b) Amend current state law definitions by ensuring that subsistence regulations provide the maximum (not guaranteed) opportunities for subsistence hunting and fishing and ensuring consistency with customary and traditional harvesting (timing, length of seasons, methods and means, etc.) and use patterns.
- c) Amend the criteria for determination of subsistence areas (those not included in non-subsistence areas) to include cultural criteria.
- d) Provide for an expanded "cultural" permit system for tribes located within non-subsistence areas that requires the Boards to allocate the amount of fish and wildlife necessary to satisfy the needs of the tribes.

AUGUST 28, 1997

NATIVE SUBSISTENCE SUMMIT

RESOLUTION 97-01

Concerning the subsistence rights of the Alaska Native People.

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

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

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

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

- 1.
 - (a) Appreciation is extended to the many Native delegates who came despite pressing unfinished subsistence work to demonstrate their deep commitment to the preservation of their customary and traditional subsistence lifestyle.
 - (b) The delegates to the Native Subsistence Summit express their appreciation for the hard work and dedication of Governor Knowles and the other members of the Governor's Task Force in developing its proposal and

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

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

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

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

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

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

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

6. Any resolution negotiated by the representatives must be ratified by a full and informed consent by the tribal organizations and other organizations.

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

005.005

GUIDING PRINCIPLES

Establishment of a legal system based upon principles which achieve:

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



P.O. Box 20761, Juneau, Alaska 99802

Phone/FAX (907) 789-2399

September 22, 1997

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

and

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

Dear Senator Halford and Representatives Ogan and Hudson:

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

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

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

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

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

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

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

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

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

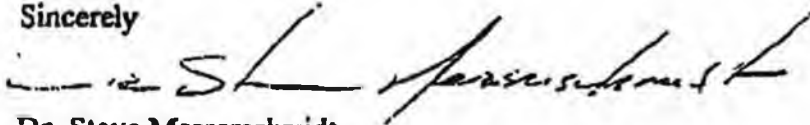
It is our opinion that the state has not exhausted its litigation options and in fact may have an excellent chance of succeeding in court once the federal regulations are in place. It is imperative that Alaska get its case before the U.S. Supreme Court. The Territorial Sportsmen still maintains that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

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

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

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

Sincerely



Dr. Steve Messerschmidt
Secretary/Treasurer

Attachment

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



P.O. Box 20761, Juneau, Alaska 99802

Phone/FAX (907) 789-2399

July 18, 1997

Governor Knowles' Subsistence Task Force
P.O. Box 110001
Juneau, AK 99811-0001

Dear Governor Knowles and the Subsistence Task Force:

These are the official comments of the Territorial Sportsmen Board of Directors concerning the proposed draft Subsistence Proposal.

Territorial Sportsmen, Incorporated is a Juneau based sportsmen/conservation organization dedicated to the principles of good conservation, wise use and equal treatment under our Constitution. We have always defended our Constitutional rights and strongly support state management of our fish and game resources. Our organization has existed for over 50 years and has a total membership of about 2,000.

First, we want to express our support for the development of a comprehensive solution to the existing subsistence crisis. We agree with the basic goal of the task force to return effective fish and wildlife management to the state. We also recognize the importance of subsistence in the lifestyles of many Alaskans and support providing a carefully crafted preference for true subsistence uses when taken for personal or family consumption..

The Territorial Sportsmen have always opposed amending the equal protection and common use provisions of our Constitution for any purpose. We have always opposed Constitutional amendments and laws which divide Alaskans along ethnic or other grounds which tend to pit Alaskans against each other. From our perspective, any modifications of our Constitution must be balanced with major concessions from Congress to remove federal oversight and preemption authorities and return effective management to the state.

This proposed package is patterned after LL Governor Ulmer's proposal with some major improvements. There are, however, some issues which must be addressed before the Territorial Sportsmen could actively support a Constitutional amendment coupled with statutory changes in both ANILCA and state statutes.

We have reviewed the Subsistence Proposal crafted by the Subsistence Task Force and have the following comments:

FEDERAL COURT OVERSIGHT

As we stated in our comments to Lt. Governor Ulmer, we cannot endorse any proposal which provides federal court oversight over all lands in Alaska. We reluctantly agree that federal court oversight of federal lands in Alaska is inevitable and that the basic subsistence priority thrust in ANILCA may not be radically changed for federal lands. In view of this, we recommend that all subsistence suits emanating from Alaska federal lands be required to be filed in the federal court system within Alaska.

It is our belief that Congress did not intend to preempt state management on state and private lands and waters and that is, from our standpoint, a bottom line position. We are adamant that the balance struck in ANILCA be maintained at all cost. Any compromise package must remove any federal court oversight over any private and state lands and waters.

STATE JURISDICTION

It is imperative from the standpoint of our organization that it be made abundantly clear that ANILCA did not intend to provide authority for federal preemption of state management on state and private lands and waters. As we mentioned to Lt. Governor Ulmer, the definition of "public lands" in ANILCA must be clarified to exclude any state or private lands and waters, including navigable waters.

In addition, we support the language in Senator Murkwoski's and Congressman Young's proposal which said:

"Federal authority to enforce this priority shall not extend to and shall not affect the regulation of taking fish and wildlife or other wild, renewable resources on State or private lands, waters, including but not limited to any reserved waters, or interests therein. Federal jurisdictional interests and authorities, including but not limited to navigational servitudes, do not constitute public lands for the purposes of this Title."

CONSTITUTIONAL AMENDMENT LINKAGE

If a Constitutional amendment must be considered then this proposal does not have adequate linkage language tied to the amendment. It is our opinion that any Constitutional amendment must be tied specifically to amendments to ANILCA. If the ANILCA amendments are not adopted or if adopted and later amended by Congress then the Constitutional amendment must be declared null and void.

RURAL QUALIFICATIONS

If it is the collective decision of our elected officials to craft a subsistence use solution using "rural" community qualifications rather than individual qualifications, then we recommend several modifications. It is not acceptable to assume that all communities residing outside existing non-subsistence areas be initially classified as "rural." We recognize that this is the direction taken by the federal subsistence regulators and some of the past Boards of Fisheries and Game but it is the source of much contention and social unrest in Alaska. If we are going to fix the subsistence conflicts then it is critical that we all bite the bullet and narrow the subsistence qualifications to the "true" subsistence users. Communities like Kodiak, Cordova, Sitka, Petersburg, Nome and Bethel should not qualify as rural subsistence communities. It is imperative that the final package clearly identify which communities are classed as "rural."

We recommend that the legislature either list each community that initially qualifies and eliminate those that the preponderance of the economy is other than subsistence-related, or establish a reasonable base from which to start, such as communities with a population under 1,000. It is recognized that the Boards of Fisheries and Game will be empowered to review these rural designations and restrict or add to the list under criteria established by the legislature. The political realities are that the proposal as drafted will limit the Boards to only deleting communities from subsistence use under the definition of rural. Clear legislative standards must be provided.

From the standpoint of our membership, this proposal can only lead to further restrictions for the residents of Juneau. As we mentioned to Lt. Governor Ulmer, everyone in southeast Alaska has a priority over residents of Juneau and Ketchikan. If king salmon, cohos, chum salmon, pink salmon, steelhead, halibut, ling cod and other species are declared as Customary and Traditional subsistence resources, then the priority use in this region will be extended to everyone except those living in Juneau and Ketchikan. We truly question whether our neighbors in Petersburg or Sitka have a greater need or dependency on the resources of our region than those living in Juneau. It also doesn't take much imagination to see the potential for increasing social strife—unfortunately spearheaded by a proposed Constitutional amendment to sections designed to guarantee equality.

DEFINITION OF "RURAL"

The criteria utilized to-date for determining "rural" eligibility are too vague. The proposed package improves on the definition of "rural" but we also propose that it be amended to say:

"rural community or area" is a community or area substantially dependent on fish and game for direct personal or family nutritional and other subsistence needs.

We also recommend that "substantial" be defined as follows:

"substantially dependent" means a community which at least 50% of the economy is dependent on subsistence resources.

In our opinion, this truly reflects where "true" subsistence needs exist and should be given a preference.

REGIONAL SUBSISTENCE COUNCILS

The proposed regulatory structure including the re-establishment of Regional Subsistence Councils appears to be a duplication or overlap of responsibilities with the existing advisory committees. The already overloaded Boards of Fisheries and Game are going to have their calendars extended even further than they are today. The regulatory process will, in our opinion, be almost unworkable due the complexity of the system and inherent problems with bureaucratic processes.

We do recognize the improvements made in this proposal from what exists with the current federal regional council and regulatory board processes. Some of the changes will certainly assist the state Boards in their deliberations. We are concerned, however, that the changes are not substantial enough to make the resulting structure workable.

This can be addressed in any legislative session, but possible changes to the existing advisory committee system should be considered to help streamline the regulatory process and simplify the public input process.

With this type of concession to the federal law we strongly recommend language which says that regional councils will only exist if the federal government pays for them.

SUBSISTENCE PRIORITY

This proposal changes the exiting state law providing a "preference" for subsistence to mirror the federal law which provides a "priority." We support the existing state law which recognizes a "preference" for subsistence uses. From the standpoint of our Board of Directors, a preference means additional benefits or special opportunities whereas a "priority" implies a higher degree of protection and an absolute guarantee.

CONCLUSION

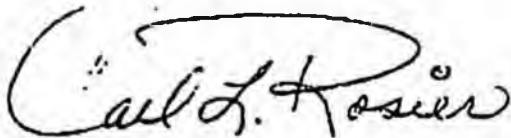
In conclusion, the Territorial Sportsmen Board of Directors have and will continue to participate in the negotiations regarding state management of our fish and wildlife resources. There are some major areas of the proposed subsistence solution which must be addressed before we recommend to our members that it be supported. We do support the efforts of our political leaders to bring about a permanent solution to this growing crisis. We are not, however, willing to accept a package, including a

Constitutional Amendment unless certain amendments and legal guarantees are included in the package.

The Territorial Sportsmen also recommend that any solution which is presented in final form to the public clearly spell out whether an individual or community is "in or out" as far as qualifying for the subsistence priority. To pass a vague package of amendments to the Constitution, state statutes and ANILCA without clearly identify qualifications for the public would be irresponsible. It is not satisfactory for us to leave it up to future politically appointed Boards or the federal court system to decide eligibility. History has shown the unpredictability of this issue and the public deserves a clear picture so that they can cast an enlightened vote.

Thank you for the opportunity to comment on this proposed subsistence package. We certainly applaud you and the working group for taking on the task of attempting to craft a long term solution to the subsistence issue.

Sincerely,



Board of Directors, Territorial Sportsmen
Carl L. Rosier, Vice President

**An Issue by Issue Comparison
Between the Governor's Task
Force Proposal on Subsistence
and the AFN Proposal**

	<i>Changes to Current Law</i>	<i>When is Priority Invoked?</i>	<i>Standard of Protection for Subsistence Harvests</i>	<i>Who is Eligible for Priority?</i>
TASK FORCE	<p>Constitutional amendment, ANILCA changes, and statutory changes "linked" together.</p> <p>Note: Linkage does not currently require all suggested changes to ANILCA prior to constitutional amendment</p>	At all times when there is a subsistence use	"Reasonable opportunity" to take subsistence resources	Constitutional amendment permits Legislature to authorize a preference for rural residents of Alaska
AFN	Mandatory rural preference in constitutional amendment plus few or no changes to ANILCA	At all times	"Least adverse impact" on customary and traditional subsistence uses	Constitutional amendment with mandatory rural preference plus a native preference
OTHER				

	<i>Subsistence Opportunities for Urban Natives</i>	<i>What Uses are Protected</i>	<i>Geographical Extent of Priority</i>	<i>Co-Management</i>
TASK FORCE	No urban natives qualify under general plan. May qualify under proxy program	Non-commercial, customary and traditional uses for direct personal or family consumption as food, shelter, fuel, clothing, tools, transportation and making/ selling handi-crafts.	All rural lands and waters	No
AFN	All non-rural natives qualify	Same as Task Force plus cultural and religious uses Also drop Tier II limitation to food	All rural lands and waters	Yes. State and tribes manage as equals Delegation and sharing of management functions and powers to native communities and organizations
OTHER				

	<i>Federal Court Oversight</i>	<i>ANILCA Amendments</i>	<i>Extent of Federal Jurisdiction When State is Out of Compliance</i>	<i>Subsistence Defense Against Criminal Prosecutions</i>
TASK FORCE	State agency decisions accorded deference by Federal Courts; not to be overturned unless arbitrary, capricious, or an abuse of discretion	Changes providing definitions and limitations on Federal Court oversight Designed to match state statutory scheme	"Federal lands" only, meaning not lands titled in the State of Alaska after 12/02/80, native lands or private lands	No
AFN	Maximum Federal Court oversight and no changes to ANILCA	Opposed to all proposed changes to ANILCA	All public lands including navigable waters; and all other lands when necessary to provide for subsistence uses	Yes
OTHER				

	<i>Definition of "Customary and Traditional"</i>	<i>"Customary Trade"</i>	<i>State Management Reforms</i>	<i>Definition of "Rural"</i>
TASK FORCE	"Non-commercial, long-term, consistent taking of, use of, or reliance upon fish or wildlife in a specific area and the patterns of taking or use of that fish or wildlife that have been established over a reasonable period of time, taking into consideration the availability of the fish or wildlife."	"The limited non-commercial exchange for cash of fish or wildlife or their parts in minimal quantities."	Boards of Fish and Game establish regional advisory committees which make recommendations re: all uses that directly affect subsistence; committee to receive deference if unanimous	An area that is substantially dependent on fish and wildlife for nutritional and other subsistence uses
AFN	No statutory definition; must mirror local customary and traditional patterns of use.	Allow trade to occur unless Federal Courts determine that it is abusive on a case-by-case basis.	Support Federal Regional Subsistence Councils Regional Councils would have full regulatory authority	Maintain current Federal Subsistence areas
OTHER				

	<i>Proxy Hunting</i>	<i>Where can priority be exercised?</i>	<i>Congressional certification that state is in compliance with Title VIII</i>	
TASK FORCE	Permitted by family member living in non-rural area or by another in the same rural area	Only in rural area where user is domiciled	Yes, Amendment contained in ANILCA	
AFN	Unnecessary because under this proposal all natives urban and rural qualify for priority	In any rural area	Not included	
OTHER				

	<i>Applicability to other issues</i>	<i>Which communities qualify as "rural"?</i>		
TASK FORCE	<p>ANILCA amendment making the proposal neutral on questions of Indian Country and sovereignty</p> <p>Proposal not to be construed as Indian Law</p>	<p>Maintain current state regulatory classifications until Boards of Fish and Game make community and area determinations based on new state definition of ""rural"</p>		
AFN	<p>Recognizes ANILCA as Indian Law by providing a native preference</p> <p>Recognition in Alaska Constitution of Alaskan natives as political institutions</p>	<p>Maintain Federal classifications of rural/non-rural areas</p>		
OTHER				



Alaska Outdoor Council

PO Box 73902

Fairbanks, AK 99707-3902

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

e-mail: outdoor@polarnet.com

www2.polarnet.com/~outdoor

Statement on the Subsistence Issue

Accepted by Board of Directors on
September 4, 1997

The following general tenets are supported by the Alaska Outdoor Council relative to the subsistence issue.

- The Council supports the personal consumptive use of Alaska's fish and wildlife resources. The Council recognizes the enormous contribution of personal consumptive resource uses to Alaskans' lifestyles, livelihoods, standards of living and the overall economy.
- The Council supports management and consumptive uses of fish and wildlife on ANILCA created parks, monuments, preserves and refuges as stated therein: "Subsistence uses by local residents shall be allowed in national preserves and, where specifically permitted by this Act, in national monuments and parks." (emphasis added)
- The Council supports the Alaska State Constitution, which requires that fish and wildlife resources be managed for common use on the sustained yield principle, for the maximum benefit of all the people.
- The Council is opposed to any harvest preference based on group criteria such as residency, culture or ethnic background.
If "Subsistence is a basic human right" as proclaimed at the Native Subsistence Summit, then not one human should be denied that right simply because of his/her ZIPcode, culture or race.

In addition the Council strongly advocates that:

1. Any preferential use must go to only those Alaskans who rely principally on fish and game to meet nutritional needs;
2. Preferential harvests can not be sold in commercial markets;
3. Any preferential use must be based on individual, not group, criteria;
4. The federal demand, accepted in the Task Force proposal, that this priority applies to all renewable natural resources (timber, water, etc.) is unacceptable;
5. Any preferential use goes only to those who participate minimally in the cash economy;

6. If preferential use is established, all members of a community may be presumed to get the preference only if it is tied to a refutable or "rebuttable presumption". A rebuttable presumption means: any individual within the community may be legally challenged on the basis that he/she does not meet the established individual criteria to harvest under preferential regulations. This community allowance may only accommodate small, remote, long-established communities where few employment opportunities exist and there is minimal participation in the cash economy.
7. The Legislature must establish the individual criteria for defining who qualifies for a harvest preference -- and the criteria to identify communities where all residents are initially presumed to qualify. This is not a job for people who are appointed to make hunting and fishing regulations, i.e. the Boards of Fisheries and Game.
8. Proxy provisions must not be expanded beyond the generous provisions in Alaska law to accommodate people with physical limitations; these provisions have not yet been put to any real test.
9. The existing Fish and Game Advisory Committee system should be supported and strengthened; the proposed Regional Councils, biased by racial requirements, would be another inefficient and expensive layer of bureaucracy.
10. "Customary and traditional use" must not be the standard for priority harvest as it has been defined by federal law in the Bobby decision -- (essentially "no season, no bag limit").
11. Federal law and judicial oversight of fish and wildlife management must not apply on state navigable waters, other state waters, state lands or private lands and waters.
12. Any compromise must ensure that Alaska has the authority to manage fish and game. The State must not simply carry out federal mandates which are enforced by federal courts. No other state suffers this burden.
13. In contrast to the current Task Force proposal, the final proposal must assure that none of ANILCA argues for "Indian country". Any compromises will be reconsidered in the event that Venette wins in the Indian country case.

KETCHIKAN GATEWAY BOROUGH

RECEIVED

RESOLUTION NO. 1358

SEP 10 1997

A RESOLUTION OF THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA, SUPPORTING A SUBSISTENCE USE POLICY MANAGED BY ALASKA THAT TREATS ALL ALASKANS EQUAL; AND ESTABLISHING AN EFFECTIVE DATE.

RECITALS

A. The seafood industry constitutes nineteen percent (19%) of the basic sector employment in Ketchikan with an annual payroll of approximately twenty two million dollars (\$22,000,000).

B. The harvesting and processing of seafood products is an integral component in the economy of southern Southeast Alaska.

C. The sport, commercial and personal use of Alaska's fish and wildlife resources represents a unique and essential role in the lifestyle of Alaskans.

D. Title VIII of ANILCA requires the state to adopt a rural subsistence preference as a condition to retaining state management of fish stocks and game populations on federally owned land in Alaska and the State of Alaska has been unable to enact a policy that both conforms with ANILCA and satisfied the equal access clause, the non-exclusive privilege clause and common use clause in the state constitution.

E. The federal government is preparing to assume management authority over Alaska's fisheries effective October 1, 1997.

F. The Alaska Department of Fish and Game has an outstanding record of managing fish stocks and game populations that has allowed these renewable resources to evolve and grow at long term sustainable rates.

G. Under the Alaska Constitution and state statutes Alaska residents have been provided equal and adequate opportunities to have access to resources where need and tradition exists.

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE FACTS, IT IS RESOLVED BY THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA, as follows:

Section 1. The Ketchikan Gateway Borough recognizes the importance of the fisheries and wildlife resources in Southeast Alaska for all user groups including commercial, sport, subsistence, personal and all remaining uses.

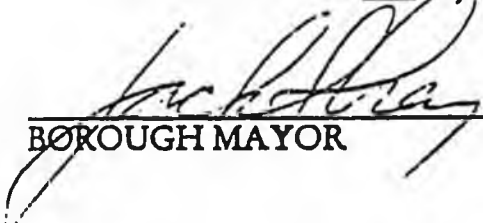
Section 2. The Ketchikan Gateway Borough supports a subsistence use policy managed by the State of Alaska that treats all Alaskans equally, provides equal opportunities for Alaskans to harvest fish and game to feed their families where need and tradition exist, and preempts the federal management of fish and game in Alaska.

Section 3. The Ketchikan Gateway Borough further requests the Alaska Congressional delegation, the Alaska Legislature and Governor Knowles to work cooperatively to reach a solution before October 1, 1997.

Section 4. The Borough Clerk is directed to send a copy of this resolution to the Alaska Congressional delegation, the Alaska Legislature and Governor Knowles.

Section 5. This resolution is effective upon adoption.

ADOPTED this 2nd day of September, 1997.


BOROUGH MAYOR

ATTEST:


BOROUGH CLERK

Approved as to form:


BOROUGH ATTORNEY

EFFECTIVE DATE: 9/02/97			
ROLL CALL	YES	NO	ABSENT
CONLEY	X		
COYNE	X		
ELKINS	X		
MARTIN	X		
MARSHALL	X		
TIPTON	X		
VAN HORN	X		
MAYOR (Tie Vote Only)			N/A
4 AFFIRMATIVE VOTES REQUIRED FOR PASSAGE			

SEPTEMBER 11, 1997

SENATE RESOURCE COMMITTEE
SENATOR RICK HALFORD, CHAIR
ALASKA STATE LEGISLATURE,
STATE CAPITOL (MS3100)
JUNEAU, AK. 99801

On the subsistence issue, we are opposed to any harvest preference based on group criteria, such as residence, culture or ethnic background and support the Alaska State Constitution which requires that fish and wild life resources be managed for common use on the sustained yield principle, for the maximum benefit of all the people.

Your efforts towards keeping the control of harvesting our resources within the State and maintaining our State Constitutional right that we are all considered equal when it comes to harvesting our fish and game.

Sincerely,

Charles L. Crawley
Charles L. Crawley

Joanne E. Crawley
Joanne E. Crawley

1117 Ivy Drive,

FAIRBANKS, AK. 99709-4743

September 17, 1997

Senator Rick Halford
Senate Resources Committee
PO Box 670190
Chugiak AK 99567-0190


RECEIVED
SEP 23 1997
A150.....

Re: Subsistence and Personal Use Permits

If you didn't use it, you are not losing it. Why not a limited entry permit system for system for subsistence and personal use permits? Those who have had permits in the past would be "grand-fathered" for these permits. The State has records of past permit users. Not everyone in the rural areas used permits in the first place. Personal use permits for people in larger populated areas (such as myself) would not lose permit use.

Let's drop the rural reference all together. All of Alaska is RURAL! The entire state's population is less than a small suburb of Los Angeles.

Limited entry subsistence and personal use permits could not be sold like the commercial permits, but only passed down within the immediate family of the original permit holder. Also, this immediate family member must qualify as a resident of the State of Alaska and also be a permanent dividend recipient. (This would clear up the resident factor). This could leave our system State managed as provided in the State Constitution, as were commercial fishing permits.


Ed Marksheffel
PO Box 9324
Ketchikan AK 99901
(Voter Registration #1397)

DATE: 9/10/97

TO: Senator Rick Halford, Chairman
Senate Resources Committee
Alaska State Legislature
907/694-0549 fax

FROM: Robert Robb
P.O. Box 1296 (mail); 1216 Mineral Creek Rd. (shipping)
Valdez, AK 99686
907/835-2078 (phone); 907/835-4738 (fax)

RE: Subsistence in Alaska

Dear Senator Halford,

I am writing today to express my concerns over the present debate on subsistence in Alaska, an issue about which I feel very deeply, as most Alaskans do.

I am an avid sport hunter, much more than most. I make my living writing about the subject for a variety of national hunting & fishing magazines, and have been doing so for 20 years now. That profession has given me a deep appreciation of the importance of hunting to millions of Americans, including Alaskans, who dream about their chance to experience spring and fall hunting and cherish the opportunity to put meat on the table for themselves and their families. For me, hunting seasons are dreamed about and planned for 365 days a year. I live and breath it. It is, in large measure, a definition of who I am. Many of these people, and my friends, are the same.

Those friends, like myself an "urban Alaskan," are strong supporters of the personal consumptive use of Alaska's fish and game resources. I also support the right of all *local* residents to be allowed to participate in consumptive fish and game use in the national parks, monuments, preserves and refuges created by ANILCA.

However, I have an insurmountable problem with the belief that any group, native or non-native, urban or rural, be granted a harvest preference based on group criteria like race, religion, culture, or ethnic background. To grant such a preference would create a divisive climate between the haves and have nots that will never be healed. I am a strong believer in the concept that all Americans, and all Alaskans, should be considered as equals in all things, including the opportunity for employment, education, and other state and federal benefits. To grant preference to one group over another in any of these things, including subsistence, is a violation of basic civil rights tenets.

In following the recent Alaska Federation of Natives summit in Anchorage through the information I was privy to in the newspapers, I saw that AFN declared that subsistence was/is a "basic human right." Yet in their thinking this "basic human right" should be

granted *only* to so-called native Alaskans. How can a governmental body agree that it is right to deny a basic human right to the vast majority of the population? To my way of thinking, a basic human right must be granted all state residents equally, regardless of where they live, who they are, or what their ethnic background might be. That is why I strongly support the Alaska State Constitution, which requires that fish and wildlife resources be managed for common use, on the sustained yield principal, for *all* the people. After all, how can one argue with a state compact that unequivocally grants equal rights in all things to all the state's peoples?

Regarding subsistence, I have no problem with the concept of allowing preferential use of fish and game resources to those Alaskans who truly and honestly rely on those resources to meet their nutritional needs, and whose participation in the cash economy of the state is so limited that they have a difficult time meeting these nutritional needs any other way. This preference must be based on individual, not group, criteria, including where someone lives, and again should not be based on race, culture, or ethnic background. The concept of "customary and traditional" use as currently used in Alaska is, to me, a divisive and inequitable measure of subsistence qualification. Also, game and fish resources harvested for personal use under subsistence laws must not be permitted to be sold or bartered, but only used to satisfy nutritional needs. To permit their sale is to, in effect, turn these resources into a welfare program.

Sir, the thought of federal control of our state fisheries, as the feds currently control hunting on federal lands, is abhorrent to me. However, to knuckle under to an arbitrary deadline and adopt a present governor's Task Force recommendations for subsistence simply to beat that deadline would be the wrong thing to do. More important is to resolve the subsistence issue in such a manner that all user groups are granted equal access to the resource, just as they should be granted equal access to all other rights and privileges of state residency. To do otherwise is to create a system of classes that can only, in turn, create unending distrust, envy, and dislike between those groups that have been given the resource, and those groups that would have their access to those same resources severely restricted. And in time, when state populations grow and rural and urban boundaries become muddled, and this growth intrudes upon the habitat needed to keep our game animal populations at current levels -- much as they have in the lower 48 states -- this will mean that some user groups will simply be eliminated from the picture. This can only further divide Alaskans, not bring them together, as we must do if we are to move toward making our state a fair and equitable place for all to live, work, and raise their families.

I thank you for your time in considering my views -- views which, I believe, reflect those of the majority of Alaskans -- when working to solve the subsistence problem. This is, without question, one of the most important decisions that will ever be made in Alaska, one that will affect Alaskans for many generations. I hope that you, and your committee, will strongly recommend that all Alaskans be granted equal access to all the state's resources, including our precious and treasured game and fish populations.

Sincerely,

Robert Robb

RECEIVED

9/12/97

SEP 15 1997

Good Afternoon, thank you for accepting my testimony,

Ans'd.....

First, Tribal Sovereignty and Subsistence are the same, both are a way of life to Alaska's indigenous Natives. If the controlling governments take one or both away, it can be considered a United Nations genocidal act.

Alaska Native Claims Settlement Act (ANCSA) is a treaty supported by the corporated back Alaska Federation of Natives and the governments. Alaska National Interest Lands Conservation Act (ANILCA) is the current bleeding band-aid covering ANCSA. At no time has the majority of aboriginal Natives in Alaska freely voted to except either treaty. This subsistence issue is moot until the indigenous people effected have voted and are fully informed on what they are giving up with Alaska's resources.

It's a proven fact that States are the worst enemies to their aboriginal inhabitants and this is the reason why the Federal government still needs a ruling law that protects the disadvantaged Natives in Alaska. The continued erosion using statues and policies are very destructive to these land based Natives. The powerful and numerous special interest groups are taking away the unique way of life that these orginal inhabitants have enjoyed since time-immoral.

All indigenous Natives rural and urban must be allowed to subsist into the 21st century. ANCSA with time is proving what it was intended for; the complete seperation of land and resources from its orginal inhabitants.

These Federally formed ANCSA corporations were created with the social, econmic and culture needs to be protected for ever.

My ANCSA corporation is Cook Inlet Region, Inc. (CIRI). CIRI for over twenty-six (26) years has not protected shareholders rights and culture. I have seen Fish creek, Kenai river, and Kasilof river change from subsistence to "personal use", subsistence caribou hunting change to the "Tier system". CIRI has not lived upto its responability to protect its shareholders because why else is a hunting and fishing camp located across from Kenai called "Silver Salmon Camp" which is owned and built and maintained with CIRI shareholder money. This ANCSA land is reserved only for Directors, Officers and close business associates. The continued disadvantaged shareholders of CIRI can only watch and wait year after year for these abuses to be corrected.

Inclosing, the voice of aboriginal people all over the world is to protect mother earth and its surrounding enviroment. The control of subsistence must be managed by the people that are mostly effected. Tribal inhabitants, Federal and State governments agreement to comanage Alaska's resources is possiably one small step into the right direction.

Thanl. You,


James Grotha

500 20 20TH AVE - ANCHORAGE AK

Issue	1) Governor's Task Force Proposal	2) Murkowski/Young ANILCA Amendments
A The Priority: Who is eligible?	Residents of Alaska communities that are <u>rural</u> , defined as "community or area substantially dependent on fish and game for nutritional and other subsistence uses." No population categories. No criteria for deciding which places meet above definition. (State Boards will set criteria, subject to ANILCA.) Applies to communities and areas; no individual qualification.	Rural-remote villages, communities and areas. No direction as to what remote means (e.g., from Bethel, Anchorage, jet service, road system, etc.). Individual eligibility, with presumption that all residents in the eligible areas qualify. Presumption can be rebutted with readily available evidence. Raises constitutional questions as no new entrants are permitted in the system.
B Definition: "Customary & Traditional"	"...Non-commercial, long-term and consistent taking of, use of, and reliance upon fish or game in a specific area and the use patterns of that fish or game that have been established over a reasonable period of time, taking into consideration the availability of the fish or game." (Same as in current State law.)	C&T would no longer be a part of the subsistence system. Subsistence uses are based upon <u>direct personal or family consumption...of wild renewable resources</u> . No direction as to how subsistence regulations are to relate to customary and traditional uses.
C Definition: "Customary Trade"	"Exchange for cash of fish or game in minimal, noncommercial quantities, as determined by regulation." (State Boards set regulations.) Does not restrict money sales of furs and furbearers.	Includes exchange of fish or game for other food or nonedible items if the exchange is of a very limited and noncommercial nature. Appears to eliminate trapping for money on federal lands and other exchanges for even limited amounts of money.
D When the priority is invoked	No change from ANILCA: Requires subsistence regulations at any time there is an identified subsistence use. Tier I or II priority invoked at any time takings must be restricted (e.g. shortage).	At all times.
E Standard of protection for subsistence harvests	"Reasonable Opportunity." Allows subsistence user to participate in hunt or fishery with reasonable expectation of success (not a guarantee of success). State Boards must "consider" C&T seasons; however, it is unclear whether State Boards must mirror local C&T practices.	Subsistence uses are to have a reasonable opportunity. "Reasonable opportunity" is not defined.

Issue	1) Governor's Task Force Proposal	2) Murkowski/Young ANILCA Amendments
<p>F Subsistence opportunities for urban Natives:</p> <ul style="list-style-type: none"> historically rural Native communities/areas now defined as urban; individual Natives who moved to urban communities/areas 	<ul style="list-style-type: none"> <u>Historically rural Native communities/areas now defined as urban:</u> Native (or non-Native) resident may get permit for taking fish or game to teach and preserve historic or traditional uses and harvest practices. <u>Individual Natives who moved to urban communities/areas:</u> Native (or non-Native) resident of any urban community/area may act as a proxy hunter or fisher in a rural area for a family member living there. 	
<p>G What uses are protected (human consumption, nutrition, etc.)?</p>	<p>All C&T takings and uses for:</p> <ul style="list-style-type: none"> direct personal or family consumption (food, shelter, transportation, fuel, clothing, tools); handicraft production/sale; barter; customary trade for cash; sharing for personal or family consumption. <p>At Tier II, State Boards must adopt regulations that eliminate C&T uses other than food.</p>	
<p>H What is the geographical extent of the priority (on which lands and waters)?</p>	<p>All rural lands and waters. Note: definition of "rural" in Row A above. (Excluded: places currently within State's non-subsistence use areas.)</p>	
<p>I Are management reforms included?</p>	<p>Yes. See reforms listed below in row J.</p>	