S. HRG. 107–456

ALASKA NATIVE SUBSISTENCE AND FISHING RIGHTS

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

TO RECEIVE TESTIMONY ON SUBSISTENCE HUNTING AND FISHING BY THE NATIVE ALASKANS

APRIL 17, 2002
WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE

79–754 PDF WASHINGTON : 2002

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ALASKA NATIVE SUBSISTENCE AND FISHING RIGHTS

WEDNESDAY, APRIL 17, 2002

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met pursuant to notice at 2:02 p.m. in room 485, Senate Russell Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, Campbell, and Murkowski.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Before proceeding, I would like to advise one and all that there will be a roundtable discussion on subsistence hunting and fishing issues in Alaska immediately following this oversight hearing in this room.

The committee meets this afternoon to receive testimony on subsistence hunting and fishing by the native people of Alaska. Long before the United States was formed, the native people of Alaska were providing for sustenance of their children and families. But basic sustenance was not the only objective of subsistence hunting and fishing by the native people. It also served as a fundamental aspect of native culture, native traditions, religious and spiritual beliefs, as well as a way of life that had been practiced for centuries.

Today, we will learn how the subsistence hunting and fishing by Alaska Natives is faring in contemporary times as the United States and the State of Alaska seek to address the provisions of Federal law, the Alaska National Interest Lands Conservation Act, and title VIII of that act which addresses subsistence uses.

So with that, I would like to recognize Senator Murkowski of Alaska.

STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you very much, Senator Inouye. I want to welcome the Alaskans that are here. You have come at a very auspicious time. As you probably know, we are debating the ANWR issue on the floor of the U.S. Senate right now. I just relieved Senator Stevens, so I am going to have to welcome you with a short message and then get back. For those of you who would like to observe the process, it is going to be extremely lengthy. We

anticipate that it will be going well into the evening. If you would like to come into the family gallery, why, we would be happy to invite you to participate in the process.

Some have said that legislation is like making sausage—it is not a pretty sight. I suppose that is appropriate. On the other hand, for those of you who have traveled so far, we can greet you with probably the warmest day of the year. So I would suggest, Mr. Chairman, that Alaska is in the frying pan in one way or another here, not only on this subsistence issue which has been around a long time, and which we hope we will be able to resolve through unity in Alaska, as well as the reality that ANWR has been around here for a long time.

First, in welcoming my fellow Alaskans, I want to compliment the chairman, my good friend, who has been with us on Alaska issues historically, and made I thought an extraordinary speech about 3 days ago supporting Alaska's effort to open up its land area for the benefit of the people of Alaska and the United States as a whole. So I want to comment you, Senator Inouye, for your support.

I look forward to the testimony that each of you is prepared to address, and hope this forum can move us forward toward a solution on the subsistence dilemma that we have been facing for a long time. I think we all share a common interest in bringing resolution of this problem. Decisions on how we manage subsistence in Alaska affect not only subsistence users, but commercial, sport, recreation, fishermen as well, and those who gather and other subsistence users. The only way we are going to find a solution is by working together. We need all the stakeholders together to find that lasting solution, and this committee I think will go a long way in assisting in the careful consideration of the views of each group that will potentially be affected by any subsistence policy.

For this reason, I would ask that the record remain open until those organizations who have had a chance to submit their written testimony for the record have that opportunity.

The CHAIRMAN. Thank you very much. I am pleased to advise my colleague from Alaska that the record will remain open for at least 2 weeks.

Senator MURKOWSKI. That is fine. I certainly appreciate that. We have had an indication of several groups that would like to have testimony submitted for the record.

Finally, clearly we need a subsistence solution that does not discriminate or divide the people of Alaska on the basis of race or culture. We need a solution that is inclusive of all people and cultures in Alaska. I believe the intent of our Alaska State Constitution was basically to accomplish this inclusiveness. I believe the intent of ANILCA was to accomplish this as well. Unfortunately, the problem we often have is in the details. It has been said the devil or someone else lies in there, but there are discrepancies between the two and we need to identify those as much as possible today.

I think our mission is to both amend the State Constitution, which I strongly support, and come up with some clear and specific definitions to the vague language in ANILCA, the source of many of the problems that are being addressed here today, and clearly the court has not helped us in those determinations because it is

still very unclear. Amending title VIII of ANILCA is crucial if we are to reconcile Federal statute with existing State law.

In any case, I want management of all Alaska's fish and wildlife resources put back in the hands of Alaska. I grew up in Alaska and remember the management regime of the Department of the Interior, where the management scheme was one size fits all. It did not work. We had our fishermen on self-imposed limits in Southeastern Alaska. I think it is mandatory that all Alaskans work together to get back the management of these renewable resources.

Most importantly, I want to see clearly defined and enforceable rural preference for subsistence hunting and fishing, one that is legally sound and one that is fair to all Alaskans. As I mentioned earlier, I want to look forward to hearing the testimony you will receive today. I remain committed to finding a solution to the subsistence questions in Alaska, and I certainly thank the Chairman for the opportunity to welcome our Alaskans here this afternoon.

I shall be looking forward to reviewing your testimony as soon as I am able, and I trust that you will excuse me, Mr. Chairman, as I return with Senator Stevens to the floor as we continue the process of trying to resolve one of Alaska's longstanding issues.

Thank you, Mr. Chairman.

The CHAIRMAN. May I call upon the first panel, consisting of Dr. Rosita Worl, chair of the Subsistence Committee of the Alaska Federation of Natives and president of the Sealaska Heritage Foundation of Juneau, AK, who will be accompanied by Professor Robert Anderson, director, Native American Law Center of the University of Washington School of Law in Seattle; and an elder from the North Slope region of Alaska, Isaac Akootchook.

Dr. Worl, you are always welcome here.

STATEMENT OF ROSITA WORL, CHAIR, SUBSISTENCE COMMITTEE, ALASKA FEDERATION OF NATIVES; PRESIDENT, SEALASKA HERITAGE FOUNDATION, ACCOMPANIED BY ROBERT ANDERSON, DIRECTOR, NATIVE AMERICAN LAW CENTER, UNIVERSITY OF WASHINGTON SCHOOL OF LAW

Ms. WORL. Thank you, Honorable Senator Inouye.

Thank you very much for agreeing to hold this hearing on subsistence in Alaska. What I would like to do today is to talk about the significance of subsistence in the contemporary period. But first of all before I begin that, Senator, what I would like to do is to present you with this photo right here in front of the table. The photo is Pauline and Joe Agothlik of Imanuk. What I would like to do is to really bring the people of Alaska here and the essence of Alaska. Here, they are sharing in a fish that was received from the State. We really want to talk about the kinds of things that we are facing today in Alaska, the kinds of shortages and the difficulties some of our people are experiencing.

For the record, I am Rosita Worl and I am the chair of the AFN Subsistence Committee. My testimony today will be drawing from my professional background and also my personal experience as a Tlingit Indian.

It has often been said that subsistence cannot be defined, but Alaska Native people will define it as a way of life. What I would like to do today is to look at the components of subsistence—what

really makes up subsistence. It may begin to sound like a lecture, and for that I apologize. But also in the need for brevity, it may seem as if I am oversimplifying this very complex system. However, it is my sense, as you have stated, that we must have a basic understanding of the dynamic socioeconomic subsistence system in order to analyze how legislation has the capacity to undermine or to protect subsistence.

First of all, I want to assure you, as you have already stated, Alaska Native cultures are vibrant. They remain vibrant in this contemporary period. They also remain very dependent and culturally attached to the hunting and fishing way of life. Subsistence as it is practiced by Alaska Native people is comprised of three major interrelated components: economic, social and cultural. It operates as a cohesive, adaptive and functioning system. The cultural component includes the values and ideologies that govern and direct subsistence behavior and activities.

For example, and this is the one I want to stress, it is the value of sharing. Sharing is key to subsistence and is key to the survival of native societies. Young hunters are taught to share from a very early age. Also, significant amounts of sharing takes place in our ceremonies. The elders also play a very important role in our subsistence economy, not only in terms of teaching the young, but also they receive a special share and portion of the subsistence take. In this way, it functions very much like our Social Security system.

The cultural component also is comprised of our beliefs and ideologies. Here is where we differ from the larger society and the rest of Alaskan society in that Alaska Native people believe that they have a spiritual relationship to the animals and to the wildlife. This relationship requires native people to adhere to certain codes of conduct and to treat animals in prescriptive ways to ensure success in future hunts.

The social aspect refers to the way in which native people organize themselves to participate in subsistence activities. The socioeconomic organization is based on some form of kinship. More often you will hear our people referring to it as the extended family as the hunting unit. The important dimension here is that subsistence operates as a group activity, rather than that of a sole hunter pursuing game.

The third element includes the economic aspect, which consists of production, distribution and exchange, and utilization of natural resources. Production includes the procurement and preservation of subsistence food, while distribution and exchange refers to the movement of subsistence goods or the sharing of subsistence food through the social network.

Subsistence economies also include the exchange of surplus resources for resources that may not be readily or locally available. Utilization includes the food consumption as well as the utilization of the by-parts for arts and crafts or for other sorts of equipment that the hunters and gathers may need, such as skins for the skin boats.

Alaska rural communities are also characterized by a mixed or dual economy. What do we mean by that? In today's subsistence economy, cash is an absolute requirement. It is necessary to purchase rifles, ammo and other tools, supplies and equipment. Cash

is acquired in multiple ways in this socioeconomic unit. The hunter or spouse may be a full-or part-time wage earner or a family member may earn income through the sale of arts and craft or a subsistence service. An elderly member of the unit may also receive a transfer payment and they may then contribute portions of this cash to the subsistence enterprise.

The importance of the subsistence economy in Alaska today cannot be overstated. It provides a major portion of the diet in rural Alaska and in native households. Subsistence can be seen as even more important with the absence or the limited wage income opportunities in rural Alaska and also its seasonal nature. The limitations on wage income opportunities are further exacerbated by the highest cost of living within the United States. Without a subsistence economy, hunger would be the norm in Alaska Native and rural communities. These assertions are all verifiable by hard statistical data.

The persistence of the subsistence lifestyle, however, cannot be attributed solely to the absence or the constraints on the wage opportunities. The social, cultural and ideological aspects remain important to native people and they choose to adhere to their traditional way of being of their lifestyle. So these are also aspects that continue to make subsistence very important to native people today.

I wanted to stress two basic differences between Alaska Natives and the other Alaskans or other people who use resources in Alaska. One I have already talked about—the special spiritual relationship that native people have to the wildlife. The second, and this is really very important in terms of understanding subsistence and understanding why ANILCA is so important to Alaska Native people. And that is the group orientation that native people have, as opposed to the individualistic values of the larger societies.

Native cultural and religious values can sometimes be protected under the freedom of religion policies and laws. We saw that in Alaska in the Carlos Frank case, where a hunter, where the Athabascans needed a moose for a funerary ceremony, and they took a moose out of season. There was a case brought, but because of the freedom of religion they were not charged or were not found guilty in this case.

Laws embody the values of their societies and American law generally reflects the individualistic nature of this society, rather than the group orientation of Native societies. American values, however, recognize the importance of cultural diversities, and theoretically our laws and policies embrace this ideology of cultural diversity. But this does not mean that the laws themselves will reflect the group orientation values held by Alaska Natives and American Indians.

However, the Federal Government does accord Alaska Natives and American Indians a special political status which offers the opportunity to acknowledge and protect the different cultural values and Alaska Native societies. Alaska Natives and their cultural values and subsistence were made possible in part through the Alaskan National Interest Land Conversation Act of 1980. ANILCA has offered the only measure of protection for subsistence against the State of Alaska, which has refused to recognize a rural subsistence

hunting and fishing priority. Title VIII of ANILCA requires that subsistence uses be given priority over the taking of fish and wildlife for other purposes. It defines subsistence uses as the customary and traditional uses by rural Alaska residents.

ANILCA provides a priority for rural residents of communities that have customary and traditional uses of a particular resource. As an anthropologist, I know the significance of ANILCA is that it provides protections for communities or for groups, rather than the individually based uses and protections based on customary and traditional uses.

The prevalent argument advanced by a small, but vocal and successful minority of Alaskans, is to oppose a constitutional amendment because it violates the equal access to fish and wildlife. However, in my testimony I have tried to stress the importance of understanding not only the subsistence lifestyle and culture, but also it is important to assess the underlying meaning of the equal access argument as it is advanced by the subsistence opponents, and to understand the potential ramifications should they be successful in amending ANILCA to embrace this ideology and to extinguish the group orientation and the group protections as offered under ANILCA.

ANILCA as it is written protects the group realities—the nature of Alaska Native subsistence activities. I will pray that Congress will not condone the further erosion of subsistence and cultural protections for its indigenous people. I would hope that Congress will see that ANILCA is a means to ensure the cultural survival of Alaska Natives and to maintain the rich cultural diversity of this country.

I would hope that Congress will continue to support and urge the State of Alaska to advance a constitutional amendment that brings it into compliance with ANILCA. It would be my hope, Senator, that Congress will continue to support ANILCA as it is written unless in its wisdom it should choose to adopt a Native subsistence priority.

Thank you, Senator.

[Prepared statement of Ms. Worl appears in appendix.]

The CHAIRMAN. I thank you, Dr. Worl.

May I now recognize Mr. Akootchook.

STATEMENT OF ISAAC AKOOTCHOOK, ELDER, NORTH SLOPE REGION OF ALASKA

Mr. AKOOTCHOOK. My name is Isaac Akootchook. I was born in Takdorik and I have been there 80 years. So I have a birthday on March 31, just only 17 days ago.

I am surprised to be here to sit over here in front of you, Senator, the first time I have a trip to Washington, DC.

Thank you very much for letting me through the Osloburro hunting. We have a whaling inberro starting in this month, and Tannooslo, my representative from all the way from St. Lawrence Island, Tivalina, Quint Hope, Enright, and Barrow. In that way, he sent me down here to speak in front of you people.

Our life is since I have a recollection since we have born, to take other animals, how we are used for living. We are learning, and again is to go with these people, have a law, recollections in our

life. And I am not really a good speaker in English because I am Inuit and never went to school either. But I have just this morning to try to help my North Slope people. Native people all over have used this land all its life. That is what I speak about. And again, many times we see the law recollection to make it to the animal. I always say about those collars that they put animals—too many, too many collars. And they say, I try to study animal; how far from the direction to all the way to somewhere to study. This is really kind of animal suffering, because polar bears, caribou, and all that things. That is what we use for food for our native people, and nobody much say about it, but we have seen it quite a few times. And those animals, sometimes they have suffering.

We have many things, and he goes through that. I heard sisters speaking here, and I really agree with your speaking because this is a native culture and all that thinking.

Thank you very much. I am end speaking.

The CHAIRMAN. I thank you very much.

Mr. Anderson, would you care to add something?

STATEMENT OF ROBERT ANDERSON, ASSISTANT PROFESSOR OF LAW, DIRECTOR, NATIVE AMERICAN LAW CENTER, UNIVERSITY OF WASHINGTON SCHOOL OF LAW

Mr. ANDERSON. Thank you, Mr. Chairman.

I was asked to address two areas: First, the background material leading to the subsistence law as we see it today reflected in title VIII; and second, the authority of Congress as a matter of constitutional law to provide for a native priority or a rural priority in combination with the native priority on all lands in Alaska, the thinking being that given the State legislature in particular's failure to get back in compliance with ANILCA over the last 12 years, that this is an option that should be considered. I have been asked to write a paper on this, which I have done and it is submitted as part of the record, and also to make myself available to your staff and anyone else who would like to discuss these issues further.

Just a thumbnail sketch of the Federal Government's treatment of hunting and fishing rights in Alaska can begin with the Treaty of Cession which essentially left the law in place with respect to aboriginal or native hunting and fishing rights as they were exercised in Alaska by native people since before the Russian arrival and long before the Treaty of Cession.

A series of statutes passed by Congress beginning in 1870 and through the early 1930's provided native exemptions from regulations governing the taking of fish and game. Those exemptions were uniform and were included in every statute and treaty dealing with native hunting and fishing rights. In 1942, the Solicitor at the Interior Department had occasion to discuss the hunting and fishing rights of Alaska Natives, and in a lengthy opinion that I wholeheartedly agree with, concluded that natives had unextinguished aboriginal rights that continued to be available for their use and protection and that the Federal Government had an obligation to protect.

There was a short period when a smattering of reservations were created in Alaska pursuant to the Indian Reorganization Act and under the President's executive order authority. Those reservations

typically were set aside for the protection of native hunting and fishing rights, as well as for a land base. As you know, all those reservations except one were extinguished when ANCSA was passed.

The Statehood Act in 1959 provided that the State of Alaska should disclaim all right and title to native lands and to fishing rights. Fishing rights were mentioned in particular because of their extreme importance to Alaska Native people. It is commonly stated that Alaska achieved management of fish and game at the moment of statehood. That is not correct. The Statehood Act withheld State jurisdiction over fish and game pending a certification by the Secretary of the Interior that the State had an adequate regulatory regime in place. That certification came out of the Secretary of the Interior in 1960.

As the State of Alaska exercised its authority under the Statehood Act to select up to 100 million acres, and as the route for the Trans-Alaska Pipeline was put into existence and selections were made, native protests that were made to the Secretary of the Interior caused Secretary Stuart Udall to impose a land freeze on all conveyances of land out of the Federal public domain in recognition of native aboriginal hunting and fishing rights and aboriginal title.

That land freeze and resulting political pressures brought about the adoption of the Native Claims Settlement Act in 1971. That Settlement Act did not provide for any protection for native hunting and fishing rights. It extinguished their existence and noted in the Conference Committee report that the conferees, the Senate and the House, expected the State of Alaska and the Secretary of the Interior to use their existing authority to protect and provide for native hunting and fishing rights in Alaska.

One year after ANCSA was adopted, Congress preempted all State law in the Marine Mammal Protection Act and imposed a moratorium on the harvest of marine mammals. That statute, however, contained an exemption for Alaska Natives who dwell on the coast. The next year after that, 1973, the Endangered Species Act placed limits on the harvest of endangered species. Once again, a native exemption was included in the statute.

By the late 1970's, it was quite clear that the Secretary of the Interior and the State of Alaska had failed to adequately provide for subsistence uses of fish and game by Alaska Natives as Congress had expected in 1971. In anticipation of the passage of title VIII of ANILCA, a State subsistence law was passed in 1978 providing for a preference for subsistence uses. At that same time, a bill was working its way through Congress to provide for a native subsistence priority. The State of Alaska objected to a native preference on the ground that it would be unable to administer a native priority under State law, and requested that it be changed to rural. Congress acquiesced in the State's request, and in 1980 title VIII of ANILCA was passed, which provided for the rural preference for subsistence uses on public lands. The State would be entitled to manage resources on Federal public lands if it adopted a statewide law that mirrored ANILCA's protection for a rural preference.

Now, State law provided a subsistence preference, but it did not have a limitation to rural areas. The State immediately ran into

trouble with its own Supreme Court in 1985 when the *Madison* decision came down striking down State regulations that limited the subsistence preference to rural residents. The State legislature responded in 1986 with an amendment that put a rural preference into State law. That statute was in turn challenged in the *McDowell* case in which the Alaska Supreme Court ruled that the equal access provisions of the State Constitution precluded the State from providing a rural preference.

The State made immediate efforts to amend the Constitution. Those failed and the Federal Government took over management of subsistence uses on Federal public lands in 1990. The Administration that took over subsistence management on the Federal level failed to assert any jurisdiction over navigable waterways in Alaska. As a result of that, the *Katie John* case was the gun. Katie John endorsed Charles of Dot Lake who brought litigation to force the Federal Government to apply the priority not only to Federal uplands, but also to Federal waters. They were successful in the Ninth Circuit Court of Appeals in 1995. There were a series of appropriations riders that precluded the Federal Government from implementing the takeover of these fisheries until 2000. In 2001, the Ninth Circuit revisited the *Katie John* case, and an 11-judge panel agreed that the 1995 decision was correct.

So there you have it. As of today, the Federal Government administers the priority for subsistence uses by rural residents on all Federal uplands in Alaska and on approximately 50 or 60 percent of the waters in the State. Very importantly, the fisheries protection does not extend to marine waters for the most part, although there is some litigation in Southeast Alaska about the legality of that. It seems likely that marine waters will not be included, and of course those are very important for subsistence uses.

So given this litigation-driven and relatively unsatisfactory state of affairs, one might ask what could Congress do to provide for a uniform subsistence priority in Alaska. There is no doubt as a matter of Federal law that under the Indian commerce clause and the general commerce clause that Congress has the power to provide a native priority for subsistence uses on all land and water in Alaska, including State lands in Alaska, and certainly native corporation lands which are ironically not protected by the Federal priority right now. The Marine Mammal Protection Act that I mentioned earlier was passed in 1973. It provides a native exemption, and that exemption of course is chiefly utilized and important in State waters—those waters out from the mean high water mark to 3 miles seaward. So Congress has the authority to provide a native preference if it chooses to do so.

Similarly, if Congress chose to provide for a rural plus native priority, I believe that that would likewise pass constitutional muster. There are dozens of statutes that provide benefits for residents of rural areas throughout the United States. A challenge was brought by the same plaintiffs in the *McDowell* case to the Federal rural preference, attempting to mirror their success in the State court litigation. Federal District Judge Holland in 1994 in a lengthy opinion rejected the attack on the Federal rural preference. He found that it passed muster under the equal protection clause, that Congress clearly had the authority to adopt the rural preference.

The Ninth Circuit ended up vacating that decision on technical grounds because the plaintiffs in the case had not shown standing, and the case is working its way through the Federal Court system again right now. But Judge Holland is already on record that the rural preference is permissible, and that seems clear as a matter of Federal constitutional law.

One other issue that has been discussed is whether or not such a preemptive Federal statutory scheme could be made effective only on the vote of Alaskans. I have searched the U.S. Code and found a couple of obscure provisions in the banking law area where Congress has in fact preempted State law with respect to interest rate regulation and given States the authority to have a general election to decide whether or not they want to be preempted. So if that course were to be followed here, Congress could certainly authorize an election to determine whether a preemptive statute ought to be effective or not.

That wraps up my testimony. I would be pleased to answer any questions or submit additional matters for the record, Mr. Chairman. Thank you very much for the opportunity to make a presentation.

[Prepared statement of Mr. Anderson appears in appendix.]

The CHAIRMAN. Thank you, Mr. Anderson.

Because the matter before us is a complex one that involves much law and litigation, would you say that since 1867 when every branch of the Government recognized the special rights and privileges of natives and protected such rights, that the present law, the ANILCA, has stood muster and is still constitutional?

Mr. ANDERSON. Yes; I would say that ANILCA is constitutional in the sense that it provides a rural preference. The fact of the matter is that it was an experimental model for State/Federal cooperation, and the State government first was unable because of its Constitution to maintain its end of the bargain, and now appears to be unwilling to maintain its end of the bargain because the legislature will not let the people vote on a constitutional amendment.

The CHAIRMAN. What percentage of fish and game harvested in Alaska are taken by commercial or sports users?

Mr. ANDERSON. I am going to turn that around and say that less than 2 percent of fish and game taken for any purpose in Alaska are taken for subsistence uses. As to the division between sport and commercial, that is the other 98 percent. I do not know how they are divided up.

The CHAIRMAN. So what is involved is just a small almost unidentifiable amount of fish and wildlife?

Mr. ANDERSON. That is correct.

The CHAIRMAN. Where does the majority of this subsistence activity take place—on Federal or State lands?

Mr. ANDERSON. Well, I think it is split between the two. There is a lot of Federal land in Alaska so the Federal lands are very important. The Federal Government does not have interests in all the waters in Alaska, so I think that many of the subsistence activities that take place in marine waters are extremely important, especially in Southeast Alaska, and those are not covered. There are lengthy stretches of the major rivers like the Yukon-Kuskokwim and Copper River that are not—not the Copper River—but other

rivers in Northwest Alaska that are not covered by the Federal priority. So I would say there are very substantial areas that are not protected by the Federal priority.

The CHAIRMAN. Dr. Worl, on April 6, your governor announced that he will convene a special session of the legislature on May 15. Do you have any hope in the outcome?

Ms. WORL. Senator, the Alaska Federation of Natives has—we have gone to the State legislature. We have supported a constitutional amendment I think about fives times now in five different special sessions. We are hopeful that this legislature might pass a constitutional amendment. We had a vote in Anchorage where 70 percent of the Anchorage voters said that they wanted the State of Alaska to resolve this issue through a constitutional amendment. However, unless that vote in Anchorage persuades some of the urban legislators to change their mind, I do not know. I am just—I have to say that I am not really optimistic about it.

The CHAIRMAN. I have a few other questions, Dr. Worl. In your testimony, you have stated that for Alaska Natives, subsistence means a way of life. Does this hunting, fishing and gathering way of life still provide a food base for Alaska Native families?

Ms. WORL. Absolutely. We have very good data provided by the State Department of Fish and Game that really shows the significance of the food consumption. I think Mary Pete from the Subsistence Division may be speaking to quantifying how much that is. But if we did not have it in rural Alaska today, and you will hear some testimony about the shortages that we have had on the Yukon with the fisheries there and the impacts that it has had on those communities, if we did not have subsistence protections, if we were not able to do that, I would say as I have said, we would have hungry people in Alaska.

The CHAIRMAN. So it is a matter of life and death in some cases.

Ms. WORL. It is absolutely critical. There are some studies that will say that subsistence supplants 20 percent of your diet. If you take 20 percent of that diet away, you are still hungry. So it is critical and it varies from community to community.

The CHAIRMAN. Mr. Akootchook, from your experience, if subsistence priorities were not granted you, would you have been able to carry on your family?

Mr. AKOOTCHOOK. Yes; it is really important to our family—the fishing and hunting is terrible and all those things for us.

The CHAIRMAN. You did not do the hunting just for sport, did you?

Mr. AKOOTCHOOK. No.

The CHAIRMAN. It is for your livelihood.

Mr. AKOOTCHOOK. Livelihood, yes.

The CHAIRMAN. And it provided food for your children and your family?

Mr. AKOOTCHOOK. Exactly. It was another way for our family to go whaling and we would always share always on the North Slope and people living in Fairbanks, and we always share with this with the whale.

The CHAIRMAN. If this was taken away from you, would your family starve?

Mr. AKOOTCHOOK. Pardon me?

The CHAIRMAN. If the right to fish and hunt was taken away from you, would your family starve?

Mr. AKOOTCHOOK. No; I will let my daughter answer that because I really have not English very well.

Ms. ANGASAN. Hi. My name is Ida Angasan. I am the daughter of Isaac Akootchook. The answer to your question is, well, all I can say is long ago when my grandfather and his family went from one place to another, they were starving. I remember my dad telling us that sometimes they would have fish. Other times there was no meat. So they went from one place to another throughout the border of Alaska to Kaftovik, to Flatman Island, Brownley Point, to the mountains, and then toward Barrow for our subsistence way of life. So we need our subsistence way of life. Thank you.

The CHAIRMAN. I thank you very much.

And I would like to thank the first panel. I have many more questions, but since we have a whole list of witnesses, I will be submitting, Dr. Worl if I may, a few written questions to you.

Ms. WORL. Thank you very much, Senator. We will leave you the photo and also this news article about them.

The CHAIRMAN. Thank you.

Our second panel consists of the vice president of Bristol Bay Native Association of Dillingham, Andy Golia; the president of the Association of Village Council Presidents of Bethel, AK, Arthur Lake; fisheries specialist, Tanana Chiefs Conference of Fairbanks, George Yaska; the executive director of the Alaska Nanuuq Commission of Nome, AK, Charles Johnson; and the executive director of Southeast Alaska Intertribal Fish and Wildlife Commission of Juneau, Gordon Jackson.

Mr. Golia.

STATEMENT OF ANDY GOLIA, VICE PRESIDENT, BRISTOL BAY NATIVE ASSOCIATION

Mr. GOLIA. Thank you, Mr. Chairman and committee members.

My name is Andy Golia and I am a resident of Dillingham, AK. It is a community located on the Bering Sea coast about 300 miles southwest of Anchorage. During the winter months, I work as the program manager for economic development for the Bristol Bay Native Association. In the summer, I am a drift gillnet salmon fisherman in Bristol Bay's commercial salmon fishery.

I am honored here to testify on behalf of Harvey Samuelsen whom you invited to testify. I would like to apologize to the chairman. Harvey asked that I present the chairman with an American veteran's cap and I told him I would. I failed to pick up that cap from Harvey to get to you.

With that, our region known as the Bristol Bay region covers about 40,000 square miles and includes 30 villages and 9 major river systems. It also includes the richest and most productive salmon habitat in the world. Our relationship to that fishery and the land and water that sustain us are defined by our subsistence customs and practices that are essential to our way of life.

Approximately 90 percent of the village residents in our region are Alaska Natives. Like other natives across Alaska, we have practiced a subsistence lifestyle for many generations to feed our families and to supplement our cash incomes. Subsistence tradi-

tions govern our family, community, and economic systems and define who we are as a people. We do not consider subsistence a recreational activity. It is a way of life.

The Bristol Bay commercial salmon fishery is the economic base of our region. It has provided us with the cash we need to build and heat our homes, maintain our school system and feed our families. Nearly two-thirds of our households derive more than 80 percent of their income directly from the fishery. Our sons and daughters grew up in this tradition and expect to commercially fish.

However, in recent years, our fishery has collapsed. The main reason why our commercial salmon fishery has fallen apart is because of the farmed salmon industry. The farmed salmon industry has glutted world salmon markets and driven salmon prices down. We have seen our salmon prices drop from a high of $2.25 a pound back in 1988 to just 40 cents a pound last summer. In 1997 and in 1998, our fishery was declared an economic disaster by both the State and Federal Governments because of failed salmon runs, and again by the State in 2001 because of weak salmon prices. We have been declared an economic disaster 3 out of the last 5 years and it does not look good for this upcoming fishing season; 10 years ago, Bristol Bay's salmon fishery had as many as 2 dozen salmon buyers. We are just down to eight today.

Over the last 2 years, we have seen a significant number of villagers leaving their communities. Back in 1990, Chignik Bay had a population of 190. Today, its population is down to 48. Folks are looking for jobs elsewhere because very few jobs are available in the villages.

We have villagers moving out of Naknek, South Naknek, Pilot Point, and Port Heiden. Schools in these particular communities are on the verge of being shut down because they do not have enough students to operate the school.

I guess my point here is our region is going through a very difficult time. Usually when we have a bad fishing season, we rely more heavily on subsistence hunting and fishing to survive. But this is just not a bad business season for Bristol Bay. The long-term outlook for salmon prices in our region looks grim.

I just want to say that I guess the other reason why we need to hunt and fish out in Bristol Bay, Dr. Worl indicated that the cost of living is extremely high. The University of Alaska Cooperative Extension Service completed a cost of food study on 20 communities in Alaska, and Dillingham residents pay among the highest in the State for food. It costs an average of about $190 per week to feed a family of four. This amounts to about $760 a month. In comparison, Anchorage residents pay $101 per week and Portland, OR residents pay $87 per week—or less than one-half of what we pay in Dillingham. One gallon of milk in Dillingham costs $6.48. We pay $2.59 for a gallon of gasoline. We also pay about 23 cents per kilowatt hour for electricity, or twice as much as what Anchorage residents pay. In some of our villages, they have to pay $4 a gallon for 1 gallon of gasoline, $3 a gallon for home heating fuel, and 45 cents per kilowatt hour for electricity.

Essentially what I am saying is that because of the high cost of living, we save through subsistence harvest to help heat and light our homes.

I would like to close by making just a couple of other points here. On the Alaska Peninsula, there has been a decline of the Northern Alaska caribou herd. In 1975, this herd numbered 25,000. Today, the herd is down to 6,000. In spite of this decline and the dependence of subsistence hunters on this food source, this year the State awarded 400 statewide permits to hunt this herd, while Federal subsistence management awarded only 40 permits for 11 villages.

We are also seeing a growing number of native allotment donors selling their native allotments so they could pay their bills. These allotments are being sold in many cases to outside interests who do not always share our subsistence traditions. They seek economic gain by building sports hunting and fishing lodges that compete against us for fish and game resources. We have approximately 104 parcels of native allotments in Bristol Bay for sale right now.

That concludes my testimony. Thank you.

[Prepared statement of Mr. Golia appears in appendix.]

The CHAIRMAN. Thank you very much. I note that most of the witnesses are summarizing their statements and I thank you for that. I can assure you that your full statement will be made part of the record.

Our next witness is President Lake.

STATEMENT OF ARTHUR LAKE, PRESIDENT, ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS

Mr. LAKE. Mr. Chairman, the Honorable Senator Inouye, [statement in native language.]

Senator Inouye, my name is Arthur J. Lake. I am here to speak concerning subsistence, and that introduction, sir, is one of the basic reasons why there are so many problems with subsistence in Alaska.

I am the president of the Association of Village Council Presidents for the Yukon-Kuskokwim Delta, Yup'ik Eskimo. Our offices are located in Bethel, AK in Southwest Alaska. We have submitted written testimony for the record. What I am going to say here is more personal because subsistence is such a personal issue to all the people of my region.

To the Government, the issue of managing hunting, fishing and gathering comes down to a question of control. But to the Yup'ik, it is our very survival. There is not enough vocabulary in the English language to give our term "Nerangnaq Saraq" an adequate definition, but what it comes down to in its awesome simplicity is this, "Nerangnaq Saraq" defines us—the Yup'ik/Cup'ik and other Alaska Natives. The non-native term is "Subsistence."

Ellam-yua, the Great Spirit or God, put the Yup'ik on this earth to play a pivotal role in our environment. We are part of the giving land and living resources of the Delta. We play a role of the natural cycles of life. We take, but we give. It is our responsibility to act as keepers and protectors of the land. Our practices of "Subsistence" is equivalent to the taking of a sacrament. In the taking of a wild fish or animal, we honor its spirit for being put on this earth to provide for us, feed and clothe us, for sustaining us in such an environment we find ourselves in. Despite a demonstrated history of sustainable customary and traditional use of the world around

us, our hunter and gatherer society has been held in limbo over who gets to control our harvest rights.

We are the last of the great hunters and gatherers of North America. We practice our birthright and legacy every day. We also happen to reside in a national wildlife refuge, a public land the size of the State of Washington. We also have State public lands located within our region. We are constantly at the mercy and whim of environmental trends that are meant to form blanket restrictions on all public lands, thereby unwittingly restricting and denying our modest access, use and activities required for "Subsistence."

Our practices reflect migratory patterns. We had been a nomadic people up until about 50 years ago, and still are in spirit and emotion. We still maintain seasonal campsites because as seasons change, so does our quest for fresh food—cyclical natures that can both gratify and humble us, reward us or punish us. There were times of starvation where elders and young, sometimes whole families in villages perished. In our past, there was nothing more humbling than dying hungry, to remind in us the inherent value in protecting the resources to satisfy our subsistence needs today.

We may not have had Western science, but our traditional knowledge and techniques still manage to achieve sustainable conservation and a natural balance. We knew when to restrict ourselves when a species was in trouble. We knew how to practice predator control and enhance habitats. Our region is so vast and yielding and has different characteristics from one village area to the next. What is as easy for a sufficiently infrastructured community resident to do in a few minutes in the supermarket would take 1 day or up to 1 week for a native hunter or gatherer to harvest in the Y–K Delta. Our "Subsistence" diet affects our daily lives, yet we work very hard for it because we eat what we have known for a millennia. Alaska and Federal regulations require permits and licenses. How can we have a piece of paper to allow us to practice our customary and traditional "Subsistence" activities? It is like asking one of your constituent shoppers to get a permit to go into a Safeway or a Giant supermarket. Some regulatory attempts have even asked us to prove ourselves indigent in order to qualify for our "Subsistence" rights. Such attempts demean the nobility of our practices of providing for our families. We should not have to choose to be poor in order to practice our heritage and feed our families. It is a part of our culture.

Our ancestors, our parents, and our children eat our native foods because it is our food. I promise you, even if I won the lottery, which I did not yesterday, and became a millionaire, I would still eat, I would still crave uqsuq or tepa, that is fermented fish heads, a traditional food that would be to you a repugnant smell. To me, it is a delicacy and our people will continue to eat that kind of food despite the availability of other kinds of foods.

Our hunting and gathering practices are not easy. We battle the Arctic elements and sometimes risk our lives to feed our families to find the wild foods we crave. Our surviving "Subsistence" way of life is one of the last great vestiges in our self-preservation and sustaining society.

My verbal testimony is required to be short, and while it is impossible to tell you how important "Subsistence" is, my written tes-

timony is more detailed in an effort to attribute some credit to this way of life. The only way to know "Subsistence" is to live it and experience it. It is a wonder to behold, and we are honored to continue its practice as a tribute to our ancestors and their legacy.

It is not an easy life, but it is ours. It is our duty and our obligation to save it and preserve our culture, our way of life. Our forefathers, the ones before us, and Ellam-yua gave us the gift of "Subsistence," the gift of life, and we will never give that up.

In reference to Mr. Golia's statements 1 minute ago, we have the highest cost of living in the poorest area of the Nation.

Mr. Chairman, thank you for holding this hearing, for giving us a chance to put a voice to something so very important to such a small population. I will be happy to answer any questions that you may have.

Quyana. Thank you.

[Prepared statement of Mr. Lake appears in appendix.]

The CHAIRMAN. Well, Mr. Lake, Mr. President, I thank you very much for your very moving statement.

May I now call on Mr. Yaska.

STATEMENT OF GEORGE YASKA, FISHERIES SPECIALIST, TANANA CHIEF CONFERENCE

Mr. YASKA. Thank you, Mr. Chairman.

My name is George Yaska. My comments today reflect the testimony, the position of the Tanana Chiefs Conference, a consortium of 42 tribes in the interior of Alaska. I have been wanting to talk for many years about a truer subsistence priority, and that is a priority that is difficult to reflect in law, and definitely in practice. We have been thinking about a true subsistence priority for many years. I first raised this issue after, oh, roughly a decade of seeing ANILCA on the ground, managed both public lands and on State lands and on native lands.

A true subsistence priority is difficult to come by, especially when we do not have a full-time priority. I think that is the case in Alaska now, but for the folks who are not here today, I have to speak for them and their thoughts. They are the real experts. I was called, I suppose, because at my company in the Doyon region, I am regarded as a natural resource expert. The real experts, though, are back there in 40-plus villages within the Yukon and Kuskokwim drainages in the interior of Alaska.

They are the folks who have to live there everyday, who have to compete with guided moose hunters and hundreds, thousands of trophy moose hunters, and commercial fishermen throughout the Nation. Oftentimes, our true subsistence priority is not apparent. Although we may at times have a bountiful resource, we practice strong management. We advocate for the best management possible. We work with all the managing agencies—the Alaska Department of Fish and Game, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, all of the convening commissions and boards. We rarely ever get to reap those benefits, when at times we do expect and produce, rather the earth produces a bountiful resource, commercial and sports users are always first in line and actually highly competitive in the arena of harvest, and often gain the greatest benefit.

So those folks back there have asked me to say that the subsistence priority is not always in effect. Although we may have a bountiful resource, there may not be a need for subsistence priorities seemingly. There is just a limited amount of land and a limited amount of resource, and they want me to say that they need a true subsistence priority.

I also work, Mr. Chairman, on a number of comanagement agreements, and I wanted to speak briefly about those today and express the Tanana Chiefs Conference true appreciation for your work in gaining funds for research on the cause of the decline of salmon in Alaska. The Arctic Yukon Kuskokwim Coalition has begun that research with the National Marine Fisheries Service, the Alaska Department of Fish and Game, and the U.S. Fish and Wildlife Service. Some $5 million—we may be pairing that with other resources here real soon. I think there are some real clues about where we might be going with that. So again, thank you for that, Mr. Chairman.

I did want to say and speak about the K River team, probably one of our better accomplishments—a longstanding arrangement with a moose management working group back along the Koyokuk River who has worked with the Alaska Department of Fish and Game and the U.S. Fish and Wildlife Service for about 8 years, 9 years. They are finally beginning to come close to a negotiated agreement with the U.S. Fish and Wildlife Service, Federal agencies, non-BIA–DOI agencies, to assist in the management of the Koyokuk and Kanuti National Wildlife Refuges.

It has been, though, a long struggle, as many things are different in Alaska relative to the rest of the Nation. It has been a long struggle. If we had a mandate that would allow us to work on this in an easier fashion with the Federal agencies, but now the Federal agencies can walk away from the table and that is perfectly fine. They do not have to stay at the table. So it has been a struggle to keep them at the table. But I just wanted to say that we are finally getting there, Mr. Chairman, and with a bit more help, with your help, I think we can weather these difficulties.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Yaska appears in appendix.]

The CHAIRMAN. I thank you very much, Mr. Yaska.

May I now call upon Mr. Johnson.

STATEMENT OF CHARLES JOHNSON, EXECUTIVE DIRECTOR, ALASKA NANUUQ COMMISSION

Mr. JOHNSON. Thank you, Mr. Chairman.

I would like to thank Art and George Yaska for making introductory remarks for my statement, which is on comanagement. Mr. Lake introduced the topic of how do we deal with management issues, how do we manage our subsistence. And George raised the issue of comanagement. That is what my statement is about.

This is the heart and soul of Alaska Native people—subsistence. Through the generations, subsistence has taught us to be the stewards of the land and waters that support us; to take what we need and to return to the land what we do not need. We are taught not to waste and to share. With a respect for and a thorough knowledge of the environment, our ancestors were able to survive and

even thrive in the harshest conditions because we managed our harvest. The principle of not wasting meant that we understood the principle of a sustainable harvest.

The 1994 reauthorization of the Marine Mammal Protection Act allowed the Secretaries of the Interior and Commerce to enter into, quote, "cooperative agreements" with Alaska Native organizations for the management of the subsistence harvest of marine mammals. Comanagement began in Alaska in 1977 when the Alaska Eskimo Whaling Commission signed an agreement with NOAA to manage the harvest of bowhead whales. This comanagement agreement was successful because of the vast knowledge of the whaling captains that they had on the behavior and the numbers of the bowhead whales, and their willingness to share this information with the management agencies, and the Alaska Eskimo Whaling Commission development of self-regulation and the resolve to abide by these regulations, and the willingness of NOAA to consider the traditional knowledge held by the whaling captains and augment that knowledge with new scientific techniques and equipment, and the willingness of NOAA to share management responsibility with the Alaska Eskimo Whaling Commission, and to support shared management.

The Alaska Nanuuq Commission, which I represent, was organized in 1994 to represent the hunters and villages in North and Northwest Alaska in the negotiation of the United States-Russia Polar Bear Treaty. Thanks to the Native American policy developed by the late director of the U.S. Fish and Wildlife Service, Mollie Beattie, the Alaska Nanuuq Commission became a full partner with the U.S. Fish and Wildlife in the negotiation of the treaty. This treaty was signed on October 16 here in Washington, DC in the year 2000. The treaty is unique in that it recognizes the traditional knowledge of the native peoples of both Alaska and Russia, and provides for their full and equal participation in setting harvest limits and the management of the subsistence harvest of the polar bear.

When the Russian Ambassador to the United States, Yurie Ushakov, signed the treaty, he declared that it was the most democratic treaty that Russia had ever signed. Once the treaty is ratified, the Alaska Nanuuq Commission will have achieved a level of comanagement that only the Alaska Eskimo Whaling Commission has reached. The Alaska Nanuuq Commission is now developing a native-to-native agreement to implement the treaty with the Association of Traditional Marine Mammal Hunters of Chukotka, which represents the native people of Chukotka in Russia.

Other successful comanagement agreements beside the Alaska Eskimo Whaling Commission and the Alaska Nanuuq Commission include, but this is not a complete list, this is just a sample, the Alaska Native Harbor Seal Commission with National Marine Fisheries on harbor seals; the Alaska Sea Otter and Stellar Sea Lion Commission with the U.S. Fish and Wildlife and the National Marine Fisheries on sea otters and sea lions; the Alaska Beluga Committee with NOAA on beluga; the Eskimo Walrus Commission with the U.S. Fish and Wildlife on walrus; and the Yukon-Kuskokwim Delta Goose Management Plan between the Association of Village Council Presidents and the U.S. Fish and Wildlife.

You will note, Mr. Chairman, that all of these agreements are between Alaska Native groups and Federal agencies. We just heard of one with the State, and those are very rare. With the exception of the Goose Management Plan, the agreements cover marine mammals, which have specific legislation—the aforementioned Marine Mammal Protection Act. But the same principles can be applied to terrestrial species and to fish. We have a history of successfully working with the agencies that go back for more than 25 years. With the Federal Government now in control of subsistence in much of Alaska, this is a great opportunity that these comanagement agreements be extended to the regional nonprofit, as George mentioned about the Tanana Chiefs, and to other Alaska Native tribes.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Johnson appears in appendix.]

The CHAIRMAN. I thank you, Mr. Johnson.

May I now recognize Mr. Jackson.

STATEMENT OF GORDON JACKSON, EXECUTIVE DIRECTOR, SOUTHEAST ALASKA INTERTRIBAL FISH AND WILDLIFE COMMISSION

Mr. JACKSON. Thank you, Mr. Chairman.

My name is Gordon Jackson. I represent the Central Council Tlingit-Haida Indians of Alaska. We are a member of the Southeast Alaska Intertribal Fish and Wildlife Commission. On behalf of Chairman Matthew Kookesh, I would like to thank you for hosting this hearing this afternoon.

Over the last year, we have organized many of the tribes by resolution to address many of the subsistence and commercial fishing problems in Southeast Alaska. There are many. Like I said, the Commission is composed of a member from each of the tribes in Southeast Alaska. One of the areas that we started looking at immediately was the comanagement of fish and game in Southeast Alaska. We feel that it is a great solution to many of the problems relating to subsistence and commercial fishing.

As a member of the Central Council, I am also a member of the Migratory Bird Commission. As a commission which is composed of members of the State and Federal agencies and the 12 regions throughout the whole State, we meet quarterly and review the statistics, promulgate rules and regulations for the taking of migratory birds and eggs for subsistence users. The relationship is very professional and everyone takes their responsibilities very seriously. The relationship between the tribes, State, and Federal agencies is very good, and we have learned to trust one another and to secure the best possible policies to protect the subsistence user and the resources.

We do not take too many birds in Southeast Alaska, and we have proposed the promulgation of taking of sea gull eggs outside of Glacier Bay. But just getting together with the folks from the Yukon-Kuskokwim area and talking about such things as the goose management plan gave us a great understanding of the Southeast people as to the value of migratory birds within their region, and have given them our support and helped to develop and promulgate

rules and regulations with them so that that resource continues into the future.

Another member of the Central Council also is a member of the Marine Mammal Commission, and also the Harbor Seal Commission. His name is Harold Martin. Those Commissions are comanagement organizations, and Harold Martin has explained to me that that comanagement plan works really well, very similar to the Migratory Bird Treaty. Over the last few days, the North Pacific Fisheries Management Council authorized subsistence fishery for rural residents and tribes throughout the whole State. In those provisions, they allow for some agreements with tribes and governments for harvesting and monitoring and planning and other issues relating to subsistence use of halibut.

On the Commission, we have started to look at the effects of the Pacific Salmon Treaty as it relates to subsistence and commercial fishing. We have met with the Columbia River Intertribal Fish Commission and really feel very strongly that we need to address that so that we are responsive.

One of the things that—one of the studies that we just finished as a Commission was a regulation and review of all the rules and regulations relating to subsistence in Southeast Alaska as it relates to Southeast Alaska Natives, and also all the court cases. We find that a lot of them are real different from one end of Southeast Alaska to another—in fact, village to village. The State and Federal agencies address it completely different, and we feel real strongly that some kind of comanagement system in which communication between all the entities would give better understanding of the way people live and the policies that affect them would provide for a better system of management throughout the region.

Southeast Alaska tribes are surrounded by Federal land, with some State, Federal, and native corporation lands sprinkled throughout the region. It is one of the goals of the Southeast Intertribal Fish and Wildlife Commission to initiate management plans throughout the region. Indeed, we have already had some success with comanagement plans for sockeye streams that have been identified by local communities for taking of sockeye for subsistence. We really believe in a comanagement system that goes to the lowest common denominator to be a good system.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Jackson.

May I ask the panel members to just stand by because we will be asking questions when the last remaining four witnesses have concluded.

May I now call upon the chairman of the Alaska Inter-Tribal Council of Anchorage, Mike Williams; and the executive director of the Rural Alaska Community Action Program of Anchorage, Jeanine Kennedy.

Chairman Williams.

STATEMENT OF MIKE WILLIAMS, CHAIRMAN, ALASKA INTER-TRIBAL COUNCIL

Mr. WILLIAMS. Good afternoon, Mr. Chairman, members of the committee.

My name is Mike Williams. I am currently the chairman of the Alaska Inter-Tribal Council, and also Juneau-area vice president for the National Congress of American Indians, and also on the board of the Native American Rights Fund.

On behalf of the 188 tribal governments who are members of the Alaska Inter-Tribal Council, I want to express thanks to this committee for taking time to hear our concerns about subsistence. More than that, Senator Inouye, I wish to add thanks to individual tribal members, many, many of whom in this year of 2002 hunt, fish, and gather not only for themselves and their families, but to share the bounty of the land and waters with others in their communities as has been our tradition for hundreds and thousands of years. Thank you for listening to us.

The great majority of our people have never left Alaska. Some rarely ever leave immediate vicinity of their villages. I think it is true to say that many do not read newspapers, and for them a legal brief is an alien document. Policies and written laws and regulations are likewise foreign concepts. Their idea of a law is what they were taught by parents or elders as they set out to learn how to support themselves from the land.

Increasingly, Mr. Chairman, they are feeling the stress of ever more restrictive regulation, ever narrowing seasons, decreasing fish stocks and game populations. Some of our people do deal on daily basis with the task of maintaining legal protections for our way of life. What they have fought over the past 20 or 30 years are more or less public relations and policy battles, for historic accuracy, for regulatory fairness, for semantic truth.

When we speak of historic accuracy, what we want people to remember is the reason why title VIII of the Alaska National Interest Lands Conservation Act exists. Let me read into the record today that reason, as set forth by the late Congressman Morris Udall on November 12, 1980. ANILCA fully reflects the commitment that was made to the Alaska Native people when their land claims were passed by Congress. Although there are many non–natives living a subsistence way of life in rural Alaska, the subsistence title would not be included in the bill if non–native subsistence activities were the primary focus of concern. Rather, the subsistence title and other subsistence provisions are included in recognition of the ongoing responsibility of Congress to protect the opportunity for continued subsistence uses in Alaska by Alaska Native people—a responsibility which is consistent with our well-recognized constitutional authority to manage Indian affairs.

Today, there are people who would like Congress to think that ANILCA was promulgated in a kind of policy vacuum without consideration for the aboriginal rights of our people who earned those rights by using and occupying vast amounts of Alaska for subsistence. Without that history of aboriginal use and occupancy, there would have been no basis for our land claims.

When we speak of regulatory fairness, we speak of a situation where our people's subsistence needs and concerns have been pushed to the bottom of the agendas for the Alaska State Board of Fish and Game. Time after time, we have seen our proposals voted down because the State system requires management by agencies who are staffed by political appointees. And politics, being what it

is, those appointees represent well-funded, well-organized commercial fishers and sport hunters and fishers.

Mr. Chairman, our tribes would have liked to support State management of subsistence because we are not only tribal citizens, we are also Alaskan citizens. But it is difficult, if not impossible, to support a system that routinely neglects the needs of tribal hunters, fishers and gatherers.

Finally, Mr. Chairman, I speak of semantic truth. That word "semantic" comes from the French word "semantique," which in turn derived from the old Greek work "semantikos." Their meaning stems from the verb "to signify," which comes from yet an older word meaning "to mark." We in Alaska have watched a small, but politically powerful group of people attempt to mark out the boundaries of the subsistence issue.

They have almost succeeded in convincing the general public that the subsistence issue is one centered around geography and discrimination. The two arguments are condensed into their strident statement that legal protection of subsistence in the Federal law in ANILCA amounts to discrimination by zip code, which brings us back to accuracy in reporting history. Title VIII of ANILCA says that Federal law shall protect not Alaska Natives or tribes, but rural Alaska residents. That language stems from the compromise that our leaders reluctantly accepted at the time ANILCA was passed by Congress. We accepted it because our villages were, and many still are, located in remote and rural areas of Alaska. But we have never forgotten Morris Udall's assurances that the original intent of title VIII was to protect the ability of our villages to support themselves from the land and waters of Alaska.

Since the enactment of our land claims, the Alaska Native people have expended untold cost in dollars, human resources and the attendant social stresses on our people, on the subsistence issue that is before you today. It is the position of the Alaska Inter-Tribal Council that we would have been better able to direct our precious resources towards improving the quality of life for our tribal members if our aboriginal hunting and fishing rights had not been extinguished at the time our land claims were settled in 1971.

On April 2, the city of Anchorage included on its municipal elections ballot a question: Should Alaska's voters be allowed to vote on the subsistence issue? The result was an uncompromising yes. In spite of that outcome, the leaders of the legislative majority were quoted in the Anchorage Daily News as saying they would still oppose a State law to protect subsistence. Instead, they said they will continue to push for changes to title VIII of ANILCA.

I call on this committee to lead an effort to place this issue back where it belongs, in the hands of Congress. Felix Cohen said this Nation's founding fathers acted in wisdom to place the affairs of tribes in your hands. After all, the States of this Union are committed by law and by politics to consider the desires and needs of every one of their citizens regardless of race. Tribes, as few in number as we are, are vulnerable to the nearsighted policies necessitated by that fact. Only Congress possesses the political objectivity that can see beyond the parochial fights to the best interest of tribes, their governments and their members.

We would like this committee to consider carefully a proposal to repeal the section of the Alaska Native Claims Settlement Act which extinguished our aboriginal hunting and fishing rights. You have that power.

Quyana Chuknook.

[Prepared statement of Mr. Williams appears in appendix.]

The CHAIRMAN. I thank you very much, Mr. Chairman.

And now may I call upon Ms. Kennedy.

STATEMENT OF JEANINE KENNEDY, EXECUTIVE DIRECTOR, RURAL ALASKA COMMUNITY ACTION PROGRAM, INC., ON BEHALF OF DONNE FLEAGLE, PRESIDENT, BOARD OF DIRECTORS, ACCOMPANIED BY EILEEN NORBERT, EXECUTIVE VICE PRESIDENT, KAWERAK, INC.

Ms. KENNEDY. Thank you.

My name is Jeanine Kennedy and I have a voice impediment. And once my voice starts working, I am okay, so I just want to put you at ease.

I am here, Mr. Chairman and members of the committee, to testify for my board president, Donne Fleagle, who intended to be here, but at the last minute could not. The Rural Alaska Community Action Program, also known as RurAL CAP, is a statewide organization that was founded in 1965. I am very proud to say, as I sat here and listened to some of the testimony, the role that RurAL CAP has played in giving grassroots people a voice at the local level.

RurAL CAP provides education, information, training, and advocacy in approximately 70 villages at the current time. And in that process, we bring people together to learn what their ideas are and to help them to be able to come together and meet. Many of the comanagement groups that came into being started with the Rural Alaska Resources Association, which brought people together to talk about how we could get legislation to give comanagement abilities to the people. We followed the model that started in Kwefla, when the tribes out there had a management agreement with the Feds for the caribou. And then, of course, that was followed by the Goose Management Plan.

Just recently, we have been working with a group called the working group on getting halibut as a subsistence food. We had a major success. The chairman of that group, Matt Kookesh had been working since 1981 to come up with agreements wherein people could manage at their local level with the Federal Government, and now that has come into being.

RurAL CAP is governed by a 24-member board of directors that represents virtually every sector of Alaska, public and private, rural and urban, native and non-native. While we have programs whose focus includes urban residents, our closest partners, as I have said, are the people of village Alaska. In 1999, our board met in Fairbanks, and as we do periodically, we took a survey and made a plan among the board members about what their main priorities were. Of course, subsistence was number one.

I was born and raised in Alaska. My mother, who was Athabascan; my father was non-native. I can remember very early on before I was 1-year-old swishing through the forest in a dog sled

as my mother checked her traps, and in the spring being in the back of her parka when she checked her muskrats.

So subsistence is important to me, as it is for the people that I work for.

Increasingly, the activities of subsistence are coming under more and more attack—first, from non-native Alaskans, many of whom came to our State because they place a value on the land and the wild resources; from the State of Alaska which opposed the inclusion of language specifically protecting Alaska Native subsistence in ANILCA title VIII; from an increasing majority of Alaska residents who are not well-versed on Alaska Native history, including knowledge of how our land claims were settled and why there is a title VIII of ANILCA—there would not have been a title VIII in ANILCA if there had not been indigenous peoples, that is why that title VIII is there; finally, from a majority of the Alaska State legislature who would like to amend away the subsistence protection in title VIII.

As you know very well, the State of Alaska would like to regain management over subsistence on all of Alaska's public lands, including the 60 percent that is in Federal lands. Title VIII of ANILCA requires that an essential component of State subsistence management is a State law that mirrors the Federal subsistence protection contained in title VIII. That requirement is at the center of the so-called subsistence impasse, which your committee addresses today.

The Alaska Constitution was approved by Congress in 1958. It includes a section which says that all of Alaska's natural resources are to be reserved for the common use of all Alaskan citizens. Those who oppose the Federal subsistence protections in title VIII of ANILCA have used the Alaska Constitution as a weapon against the Alaska Native way of life. The legislative majority, and their mostly non–native constituents, are a lobby in Congress to change ANILCA, instead of changing the State Constitution to allow a State subsistence protection law.

Over the last several years, Alaska Governor Tony Knowles has mounted a campaign which he says will make things better. During his 8 years as Governor, he has called no less than four special sessions to address subsistence. In fact, last month he called yet for another special session which will begin May 15. In 1996, the Governor appointed a task force to hold hearings. That task force issued a report in 1997 which recommended the issue be presented to voters to ask whether they support an amendment to the State Constitution.

The Governor's task force also recommended changes which they termed technical to title VIII of ANILCA. It must be noted here that the Alaska Native community, including the Alaska Inter-Tribal Council, RurAL CAP, and the Alaska Federation of Natives voiced opposition to a majority of the 1997 task force recommendations.

In 2001, Governor Knowles appointed some 40 Alaskans to participate in what was called a Leadership Summit on Subsistence. Of those 40 Alaskans, the majority represented Alaskan business and commerce, including several Alaska Native corporations and only two could be deemed to be represent tribal interests. The

Summit participants recommended that the question of amending the State Constitution go to the Alaskan voters, and included a value statement on the importance of subsistence to Alaskan tribal cultures.

Last fall, Governor Knowles appointed 1 dozen or so Summit participants to what was called the Subsistence Drafting Committee. The committee's purpose was to develop language for a legislative resolution which if passed by the State legislature would result in a proposition to be placed on the general election ballot. None of Governor Knowles' initiatives to address subsistence included what could be termed an open public process. The Task Force took public testimony on an invitation-only basis for one-half day. The Summit was held in a public setting, but did not include taking testimony. The Drafting Committee meetings were open to the public, but no testimony was taken either. It is therefore predictable that the Alaska Native and tribal community have voiced serious issues regarding the Drafting Committee's product.

In the short time I have to testify, I present the following five concerns. First, no one on the committee represented tribes or their governments. Second, the legislative resolution attempts to appease sport, commercial fishing, and hunting interests by changing whats in ANILCA title VIII is a priority of use for rural subsistence users, to a priority for local users. Third, the legislative resolution calls for the establishment of a second-tier priority for individuals and communities who are able to demonstrate their reliance on fish, game, and other renewable resources. Fourth, the proposal would put question such as allocation and geographic boundaries for use areas into the hands of the legislature and/or the Boards of Fish and Game. Fifth, no measure is included that would advance tribal comanagement of subsistence resources despite, as you heard, the great amount of progress that has been made in regard to comanagement.

I am not a subsistence, but I am an advocate, and Mr. Chairman I believe the time has come for Congress to make remedial action on the issue of subsistence in Alaska. The State of Alaska has had well over 20 years to live up to its side of the agreement that was made when our aboriginal hunting and fishing rights were extinguished. And in 1971, with the passage of ANCSA, our people were assured that our right to the nutritional, economic, cultural and spiritual benefits of subsistence would be protected under Federal and State law.

Our subsistence rights are not based on geography. Our subsistence rights are based firmly in the obligation of the Federal Government to manage native and tribal affairs with the best interests and survival of our people well in mind.

Thank you very much.

[Prepared statement of Ms. Kennedy, delivered on behalf of Donne Fleagle, appears in appendix.]

Ms. KENNEDY. Also, I would like to introduce Eileen Norbert, who is the executive vice president of Kawerak, Inc.

STATEMENT OF EILEEN NORBERT, EXECUTIVE VICE PRESIDENT, KAWERAK, INC.

Ms. NORBERT. Thank you, Mr. Chairman.

Loretta Bullard, our president, did send in testimony, as well as a resolution from our board of directors, with our stand on subsistence. I did also submit written testimony. I am not going to go over all of it. However, I felt it was very important that this committee take a look at our situation in Norton Sound. We are the only one where subsistence fishing was totally closed and we went into what is called a tier-two situation, which I would like to share with you, and the human impacts it had on our people.

In 1991, the Department of Fish and Game closed our subsistence fishing. Everybody was in total shock. We had one elder who walked along the beach. He looked for dead fish. She was so hungry for fish. Since then, we have gone to the Board of Fisheries, which is very political, politically appointed, tried to work with the Governor through the legislature, and you have already heard we have a legislature in Alaska who is hostile toward subsistence. That is the way we feel, for all the actions and non-actions they have taken.

Two years ago, the situation with our fishing was so bad that the State opted to put us into a tier-two fishery, which means that each individual who wants to go subsistence fishing has to fill out several pages of application. Out of 500 or 600 families in Nome, only 10 people got permits. They could get 100 fish. Even though we had recommended to the Board of Fishery, and especially at the urging of our elders, rather than just letting 10 people fish, you know, let 20 or 25 people fish, we will get less. But that is the type of atmosphere that we have to deal with. We can recommend, but we cannot make decisions.

Last year, it improved a little bit. The board did, say, expanded the number of people who could fish to 20, but reduced the number of fish that we could take to 50. Right now, ANILCA is the only law protecting our subsistence. We feel like we are at the mercy, like I said before, of a hostile situation in the State of Alaska. Kawerak opposes any amendment to ANILCA that would weaken subsistence protections for rural Alaskans. If this State legislature fails to address this issue, Kawerak strongly supports a restoration of Alaska Naive aboriginal hunting and fishing rights through an act of Congress. As Mike and several other people had mentioned before, we supposedly extinguished—actually Congress extinguished our aboriginal hunting and fishing rights, but Congress has the power to reinstate those, and that is what we urge you to do.

Thank you very much for this opportunity. I would like to just close by sharing with you what one of our elders said. I had asked her when all this trouble started, is there one word in Inupiaq that means "subsistence." And she said she cannot describe subsistence without describing our spiritual and cultural beliefs. And then after all that, she finally gave me one word, "nufla," which basically means our way of life. But the way we are feeling right now is that this is a slow cultural genocide, and we ask for your help that it will stop, and we ask for your protection.

Thank you.

The CHAIRMAN. I thank you very much.

Before we proceed, I would like those assembled here to note that at this moment there is a very intense debate proceeding on the

Senate floor on the matter of the Artic National Wildlife Refuge [ANWR], which is very close to Alaska, so therefore your Alaskan Senators had asked to be excused, and that is why they are not here.

Second, I think it would be appropriate to note that this hearing was held at the request of Julie Kitka, the president of the Alaska Federation of Natives. She is the one who recommended that a record be made of the concerns and values of Alaska Native people as they relate to subsistence hunting and fishing. But there is also another meeting at this moment, a very important one, a meeting convened by the Secretary of Defense, Mr. Rumsfeld, who is now briefing members of the Senate on the current situation in Afghanistan. As chairman of the Defense Appropriations Committee, I should be there, but I decided this hearing is just as important, if not more important. That is why I am here.

Julie, do you have anything you want to say?

STATEMENT OF JULIE KITKA, PRESIDENT, ALASKA FEDERATION OF NATIVES

Ms. KITKA. Just on behalf of our cochairs Albert Kookesh, Roy Huhndorf and our board of directors and our people, I want to thank you very much for holding this oversight hearing and listening to our people and the concerns.

Our number one objective for the hearing was really for the committee to hear how people are doing on the ground, and be aware of the fact that our Federal protections in the law affect real people and we have many people that are hurting right now. This photographic illustration of an elderly couple—again, a graphic picture, if you will, that there are real people behind this law and we very much are grateful for the committee's interest and attention. We will report how things go in the special session coming up next month. We are working very hard. In the past, we have had our congressional delegation assisting every step of the way—in fact, trying to convince our State legislators, and we hope that we have their support this time again, too.

The CHAIRMAN. Thank you very much, Madam President.

I can assure you that the full testimony and the transcript will be shared with the members of the committee and I will personally urge them to read and study the transcript, and thereby learn of your concerns on this matter.

Thank you very much.

Ms. KITKA. Mr. Chairman, I wanted to ask if Isaac from Kaktovik might be able to explain one thing to you. We were talking earlier today about your name, and he was explaining to us on how in the Inupiaq language that they pronounce your name and what that means in Inupiaq.

The CHAIRMAN. I hope it is good. [Laughter.]

Mr. AKOOTCHOOK. That means "iamulautuk"—that means a good person to help everyone of us since whatever we are. Julie, this is important to, and down in Alaska it is really to help us with the work. That means in the Alaun language, "iamulautuk"—that is a good person. You work for the whole people in the world.

The CHAIRMAN. I thank you very much. I hope my staff heard that. [Laughter.]

In fact, I commented to my staff that I could very well be sitting there because I look like most of you. [Laughter.]

The final panel, Director of the Division of Subsistence, Alaska Department of Fish and Game in Washington, Mary Pete; and the chairman of the Federal Subsistence Board of Nenanna, Alaska, Mitch Demientieff. You will have to pronounce that name for me.

Mr. DEMIENTIEFF. I have been called worse than that, Senator. it is Demientieff.

The CHAIRMAN. Ms. Pete.

STATEMENT OF MARY PETE, DIRECTOR OF THE DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

Ms. PETE. Thank you.

Chairman Inouye, thank you for this opportunity to address you on this topic that has consumed almost all of my professional work. My name is Mary Pete. I am the director of the Division of Subsistence for the State of Alaska, Department of Fish and Game. I started out as a subsistence researcher in Western Alaska in 1984. I am honored to be here to represent the State of Alaska.

For many Alaskans, subsistence is a core value. It is a lifeblood of our cultural, spiritual, economic and physical well-being. It puts food on the table and builds strong families. State and Federal laws provide a priority for subsistence uses in Alaska. The crux of the dilemma is the difference in who qualifies for the preference in State and Federal law, as identified in an Alaska Supreme Court decision in 1989.

All Alaskans potentially qualify for the preference under State law, and only rural residents qualify under Federal law. Federal public lands encompass approximately 60 percent of Alaska, so the rural priority applies in most of the State. The State priority applies in the remaining 40 percent of Alaska. As you can imagine, this dichotomy and dual management objectives creates management complexity and confusion for the public. The majority of Alaskans understand the concept of subsistence, recognize its importance, and clearly support it. Just 2 weeks ago, Alaska Governor Tony Knowles announced another special session of the Alaska legislature to address subsistence. This session will begin following completion of the current regular legislative session in mid-May.

The sixth such session in 13 years, the Governor is building in more momentum than you have seen on this issue in recent years. Earlier this month, Anchorage voters in a landslide, more than 72 percent, said they wanted the opportunity to vote on subsistence. Just last week, the Catholic Church of Alaska issued a rare pastoral letter supporting a subsistence resolution. Last summer, the Governor convened a Subsistence Summit of business, civic, religious, native, fishing and hunting leaders which then produced an innovative draft constitutional amendment. That amendment is currently pending in the Alaska legislature. Every poll indicates that if allowed to vote on the issue, Alaskans will overwhelmingly choose to protect subsistence. For more than a decade, Alaskans have paid a high price for not allowing Alaskans to be heard. We are not protecting subsistence as we should, and management of much our fish and game has been surrendered to the Federal Government.

The urban-rural divide continues to grow. There are other issues that make the urban-rural split even wider, but nothing approaches the frustration over the inability to permanently protect subsistence. The State has had a subsistence priority law that gives preference to rural residents for wild fish and game since 1978. Since then, the State has employed a division of researchers to document and understand the role of subsistence hunting, fishing and gathering in the lives and communities of Alaskans, and to assist the State's management boards in implementing the subsistence priority law.

One of the attachments to this presentation summarizes what we have learned after over 20 years of research on subsistence harvests and uses in Alaska. As expected, we have learned that subsistence is vital to the cultures and economies of rural Alaskans. Subsistence use areas in the State, as defined by the Joint Boards of Fisheries and Game, include 20 percent of the State's population. Although economies in small rural communities are mixed, in that both need production of local wild resources and cash to exist, subsistence is the foundation of their sustainability. Jobs are few and often seasonal, with costs of living being the highest in the Nation. Access to key wild resources such as salmon, caribou, herring and marine mammals is the reason Alaska Native communities are located where they are.

Family-based subsistence production and consumption groups help to maintain the community cohesion and the sense of identity in these primarily Alaska Native communities. Subsistence harvest averages 375 pounds of wild fish and game per capita in rural communities, and provide nearly 44 million pounds of food per year at an estimated strict weight replacement value of nearly $220 million.

This dollar estimate does not include the immeasurable value of the sense of well-being and accomplishment of providing for one's family.

Subsistence happens in the context of families without public funds—families who educate their youth in the intricacies of the harvest and processing of wild foods and clothing and other crafts made from its proceeds. The composition of subsistence harvests attests to the importance of fish in Alaska. Fish make up 60 percent of the wild food harvested statewide and regional averages of up to 82 percent in some coastal areas. Among the Yupiit of Western Alaska, the word for food as a general category is also the word for fish. So if you ask someone in Yup'ik if they have eaten, you will be asking them if they have eaten fish.

I would like to return to the challenges I mentioned earlier associated with dual State–Federal management of subsistence uses. We have had experience with dual management of game since 1990. Federal management of fisheries did not actively commence until October 1999, but we expect that some of the same problems that we witnessed with game management will occur with fisheries management.

Dual State-Federal management of fish stocks compounds an already challenging endeavor, especially with declining returns of important species such as salmon. Economic disasters for salmon have been declared for four out of five recent years in Western

Alaska. The State has implemented the subsistence priority by restricting or closing non-subsistence uses and scheduling fishing times to allow subsistence users scattered throughout affected drainages an opportunity to get what they can.

The narrow scope of Federal authority has disrupted relationships among different uses. The Alaska Board of Fisheries and Game provide for subsistence uses first, then provide for other uses—namely sport, commercial and personal use—based on the availability of the resource.

In some cases, subsistence uses are inextricably linked with commercial uses such as the small-scale commercial fisheries along the Yukon and Kuskokwim Rivers, and the boards know that change in subsistence regulations can have effects on the commercial fisheries and vice versa. Cash generated from commercial uses is used to support subsistence activities, especially when the people and equipment are the same, as in the case of these small-scale commercial salmon and herring fisheries. The Federal Subsistence Board, in its deliberation, does not consider uses other than subsistence. This approach creates a problem inasmuch as actions of the Federal Board may unintentionally disrupt the relationship between subsistence and other uses. This can detrimentally affect subsistence, as well as other uses.

State and Federal allocation procedures are not compatible. State law requires that its management boards identify those fish stocks and game populations subject to customary and traditional uses, and to identify a specific allocation needed for subsistence use and to provide an opportunity for that use. These procedural steps enable the boards to provide a priority for subsistence uses, and if the harvestable surplus allows, to provide for other uses.

The Federal Board is under no obligation to explicitly identify the stocks or populations of concern and the subsistence need, or other uses prior to making a subsistence allocation. To provide a subsistence priority and also accommodate as many other uses as possible requires knowledge of the available resource and the full range of competing uses. These differences and procedures and mandates have resulted in lost hunting and fishing opportunity, and under certain conditions can lead to over-harvest of the resource.

Other more specific problems or differences between State and Federal management include in-season or real-time management and the Federal approach to customary trade. Alaska's fishery management programs have been successful in part because of the ability of on-site managers to effect in-season closures or openings as required to assure conservation and allocation objectives are met. These decisions must be made decisively on available information and are necessarily made on short notice.

Imposing the Federal Board has been problematic. In the summer of 2001, there were unnecessary closures for subsistence salmon fishing to State-qualified subsistence users in the Yukon and Kuskokwim river drainages. Both the State and Federal subsistence laws recognize customary trade as a legitimate subsistence use. The State boards receive proposals for regulations that define and allow for particular customary trade practices. In effect, trade is closed until opened by the board.

In contrast, the Federal Board takes the approach that trade is allowed, yet unregulated unless the Federal Board acts to restrict the activity. The Federal approach is a problem, given the controversial nature of this activity, the potential for this practice to affect other uses including other subsistence uses, and the risk of abuse with subsistence-caught fish being introduced into commercial markets.

The Federal program has filed proposed regulations on customary trade of salmon, and unless it follows overwhelming public recommendation to defer action until thorough review and evaluation of its potential impacts is understood, stands to act on these proposals this summer.

I do not want to leave the committee with the impression that the State has been a whiny passive party to dual management. We have initialed a Memorandum of Agreement with the Federal Office of Subsistence Management that outlines an effective, coordinated dual management approach. The State's goals are to protect the resource, provide for the subsistence priority, and for opportunities for other uses. We have been working on specific protocols under the MOA to implement specific objectives, such as each government's roles in sharing of information, in-season management, and determinations on amounts necessary for subsistence uses, to name a few protocols.

In these efforts, we have involved users, particular Alaska Native tribes and organizations. Another attachment to this testimony is a paper on collaborative management by the Alaska Department of Fish and Game. It includes projects and initiatives we have been or continue to be engaged in with various public groups. Effective management of public resources is a partnership of man parties,, not the least being those most dependent on the resource.

I would like to dispel the sense that the State has been wholly recalcitrant on the subsistence impasse. As you have heard, there have been five special legislative sessions called since 1990 to address this issue. As I noted earlier, Governor Knowles has called three sessions himself and has just issued another call to begin May 15. Resolutions for constitutional amendments and legislation to change subsistence management have also been introduced. The block in efforts to address the impasse have been a small minority of State Senators in the Alaska legislature.

Mr. Chairman, we welcome participation of any member of this committee in urging an Alaskan resolution of the subsistence dilemma. Comprehension of a subsistence way of life, lifestyle or livelihood requires recognition of its cultural, economic and nutritional significance to Alaskans, particularly Alaska's Native people. The State will continue in its efforts to resolve the subsistence dilemma because we believe unitary State management is best for the resource and its users.

This concludes my formal testimony. Thank you for your time.

[Prepared statement of Ms. Pete appears in appendix.]

The CHAIRMAN. Thank you very much, Ms. Pete.

And may I now recognize Chairman Demientieff.

STATEMENT OF MITCH DEMIENTIEFF, CHAIRMAN, FEDERAL SUBSISTENCE BOARD

Mr. DEMIENTIEFF. Thank you, Chairman Inouye.

My name is Mitch Demientieff and I have been the Board Chairman for the Federal Assistance Board for the past seven years. We, of course, as has been well-documented, been operating since 1990, and more recently since 1999 doing fisheries. So I will not dwell on that too much, as has been well-documented by previous testimony as well as our written testimony that we have submitted.

We are of course very concerned about the importance of subsistence and we congratulate you and the committee for having this hearing because it does recognize the importance of that and it gives the people of Alaska the opportunity to express to you what those concerns are.

The strengths of our program in the wake of Alaska's not being able to recapture subsistence management on Federal lands are the very strength of our programs. The foundation of the program is within our Regional Advisory Councils. We have 98 members on 10 regional councils who give willingly of their time. It has been—we demand very much from them. They do that on a volunteer basis, and we are very proud, and it is the work that they do in their villages, in their areas that they serve, that brings the advice to the Federal Board that allows us, or that make recommendations to us that allow us to make decisions on their behalf for the way that they wish to have their resources managed and their Federal subsistence uses per ANILCA implemented in their land.

So we really congratulate that. It has been a strength ever since I have been on the Board and it continues to be, especially now with the expanded role of the fisheries. So we really congratulate those people and we continue to rely upon them. It gives us on-the-ground solid advice.

In addition, we have as Mary pointed out earlier, that we are signing next week, on the 23rd, the MOA with the State and the Federal. We had been operating under an interim MOA for some time now, and we finally got it down to where we have got the principal signatories together next week.

In addition, the Federal program has funded both a State liaison and a Federal liaison, which we provided with our Federal funding so that can continue to have somebody whose sole purpose is to continue to provide a close working relationship with the State and the Federal managers.

In addition, we have funded the State for several, or many different programs with regard to research activities for a specific species, that we share with the State, so that the Boards of Game and the Board of Fish and our Board can utilize the same material. The State has reciprocated. We use very much of the State's own produced material to make our decisions as well.

So we feel that that is an important part of the efforts that we have been trying to make.

We also have our partners in fisheries monitoring, where we are contracting with tribes and other organizations in the State to do research projects. Again, we share those with the regulatory makers, whether they be State or Federal, and we are letting the local people—in many of those cases are doing those actual projects.

I point these things out because in the absence of the State of Alaska not being able to manage, we do our best to have Alaskans managing Alaska's resources. And so we are really reaching out with that regard.

And the final piece to that puzzle is the recently added tribal liaison. There have been some time now there has been a call for us to do tribal consultations with the tribes in Alaska. We added that position, and that position is actively consulting on every major decision that we make with the tribes in Alaska. We do that on request, whether it be a regional meeting, whether the person be requested to go actually to the village, and it has been a very valuable addition to our program.

In closing, Mr. Chairman, the Federal program since the inception continues to support the State recapturing management of Alaska's resources. So nothing has changed as far as that is concerned. We look forward to that date where that very thing happens. So we continue to be solid in that corner, and that has not changed.

As we approach the questions, Mr. Chairman, I point out to you if there are questions for me that I am not an administrator for the Federal program. I am a part-time employee as the Chairman of the Board. I get paid when we meet, basically, to shape policy and to make regulations. So if I run into any questions that I cannot answer, I will take responsibility to get the answer to you promptly. So I just point that out, because I can talk about policy and regulations—those kinds of things that I am actively involved in. But being just a part-time employee, I will get you the answers. Besides that, they will pay me to get you the answers.

So with that, I thank you very much, Mr. Chairman, for the opportunity.

[Prepared statement of Mr. Demientieff appears in appendix.]

The CHAIRMAN. I thank you very much, Mr. Chairman. I appreciate it.

Before I call upon the other panelists, may I ask the both of you a few questions? Ms. Pete, in listening to your testimony, am I correct to reach this interpretation that under Alaska State law the word "rural" subsistence preference may potentially qualify all Alaskans?

Ms. PETE. Mr. Chairman, that is correct. The rural provision remains in law, but in effect the Supreme Court decision has deemed it unconstitutional, so all Alaskans qualify.

The CHAIRMAN. The Supreme Court of——

Ms. PETE. The Alaska Supreme Court.

The CHAIRMAN. So there is no Alaska Native preference?

Ms. PETE. No; potentially all Alaskans qualify, so there in effect is no preference.

The CHAIRMAN. One of the witnesses testified that 2 percent of all the fish and wildlife is taken for subsistence by Alaska Natives, and the remaining 98 percent for recreational sport and commercial purposes—are those statistics correct?

Ms. PETE. The portion that is the subsistence output ranges from 2 to 4 percent, depending on the size of the commercial catch. The commercial fishery fluctuates in part by the size of—primarily the ground fish fishery, which is millions and millions of tons. That is

in the ballpark, and that is 2 to 4 percent of the total wild resource production in the State is taken by rural residents for subsistence, not Alaska Natives per se, but rural residents.

The CHAIRMAN. And the remaining 96 to 98 percent——

Ms. PETE. Approximately 94 to 96 percent is by commercial fishing, and the remaining is by sport use.

The CHAIRMAN. And do you have Alaska Natives involved in commercial fishing and sports fishing?

Ms. PETE. Yes; we do. And in fact, in parts of Western Alaska, many commercial permit holders, commercial salmon and herring permit holders are Alaska Native who are also engaged in subsistence.

The CHAIRMAN. Is that a large number?

Ms. PETE. Of the 700 to 800 permit holders on each of the two major rivers, the Yukon and Kuskokwim, I would say the majority of them are Alaska Native.

The CHAIRMAN. So they are involved in the bulk of commercial fishing?

Ms. PETE. That is for in–State waters. The total of the wild resource output includes very large ground fish fisheries in the Bering Sea and Gulf of Alaska, and those as you may know are done by factory trawlers that employ people from many different countries, not just Alaskans.

The CHAIRMAN. And your definition of rural applies only to Alaska lands, and not Federal lands.

Ms. PETE. That is correct.

The CHAIRMAN. Mr. Chairman, is it your understanding that 4 percent is taken by rural Alaskans?

Mr. DEMIENTIEFF. Yes, sir.

The CHAIRMAN. And of that 4 percent, how many are Alaska Natives?

Mr. DEMIENTIEFF. I would—let me see. I am not real sure of the census counts with regard to that. I would imagine in the more rural areas that definitely a majority of those would be. When you get into some of the hub communities, the larger communities, you get a little bit more non-native population in there. But those still are classified as rural communities for our program.

The CHAIRMAN. The witnesses that appeared before your presentation all indicated that subsistence was absolutely necessary to sustain life. Is that correct?

Mr. DEMIENTIEFF. Yes, sir; being a life-long subsistence user myself, because I still do—born and raised and still reside in Nenanna, I understand that very completely. A large part of our family's food comes from the subsistence resource, but it is tied with our society and also importantly with our cultural activities. We have to have wild resources at our ceremonies and potlatches and those types of things. It is an integral part of our cultural practices.

The CHAIRMAN. What is the geographic scope of your Board's regulatory authority?

Mr. DEMIENTIEFF. About——

The CHAIRMAN. Does it just cover Federal lands?

Mr. DEMIENTIEFF. Right. About 230 million acres in Alaska, and it is checkerboarded in different——

The CHAIRMAN. Does it include all waters within the borders?

Mr. DEMIENTIEFF. Navigable are still managed by the State.

The CHAIRMAN. But all other waters are within your jurisdiction?

Mr. DEMIENTIEFF. Right, within Federal jurisdiction. Right.

The CHAIRMAN. Does your Board have problems in dealing with conflicting definitions of the term "rural"?

Mr. DEMIENTIEFF. No; conflicting between the State's definition—or, I'm not conflicting——

The CHAIRMAN. State and Federal—are they conflicting or are they the same?

Mr. DEMIENTIEFF. Yes; they are conflicting. Well, no that is not right exactly. I am not sure about the State's point of view. I am very clear about ours, but I am not sure about the State. As it relates to subsistence, of course, as Mary pointed out, potentially all Alaska residents wherever they are are eligible for subsistence. Whereas rural residents under the Federal program are eligible for subsistence.

The CHAIRMAN. Have Federal agencies made any effort to establish cooperative management agreements with Alaska Natives to implement the subsistence priority?

Mr. DEMIENTIEFF. Yes; and in recent years beyond that, we have tried to on particularly thorny issues have tried to—we have remanded, the Board has remanded some issues back to local areas, and actually have gone to include the State managers, the Federal managers, our regional council representatives, and the State Fish and Game Advisory Committee members to work out issues that have been problematic issues. We have had good success in the last few years. There have been at least one-half of different cases where we have been able to resolve thorny issues with conflicting land ownership and conflicting regulations.

So beyond cooperative, we also have that that is very important to them.

The CHAIRMAN. What is the funding for protecting fish and the wildlife resources essential for subsistence in Alaska?

Mr. DEMIENTIEFF. Mr. Chairman, that would be one of the things I am going to have to get back with you on, on the funding, the full funding breakdown. I have got a partial, but then I could get you the full budget.

The CHAIRMAN. Has it increased or has it decrease?

Mr. DEMIENTIEFF. Well, yes, with the addition of the Fisheries Program, it has increased. But I will get you a full breakdown of that. That will be one of the things I will get.

The CHAIRMAN. I have other questions that are a bit technical in nature, and might require the study of your management group. May I submit them to you?

Mr. DEMIENTIEFF. Sure. Okay.

The CHAIRMAN. Will the others join us now?

Thank you very much, Ms. Pete.

I am not an Alaskan obviously, and therefore my knowledge of Alaska is rather limited, although I believe I know more about Alaska than most of the members of the Senate. But when we speak of subsistence gathering of fish and wildlife, is it for sport and recreation or is it for food and sustenance? I would like to have a response from each of you.

Mr. GOLIA. Mr. Chairman, I consider myself a subsistence user. I go out and generally catch 30 to 40 king salmon every year to make king salmon strips it is part of I guess a family tradition. I generally go out and get five moose per year—I mean caribou per year, five caribou per year, and generally a moose every year. Generally, I would go about getting 20 gallons of salmon berries and 30 gallons of blackberries. If I did not, I would not be married with my wife insisting that we go out and gather these berries for our freezer. So I look at it as a way to feed my family.

The CHAIRMAN. Would your statement represent the activities of your members?

Mr. GOLIA. Pardon me?

The CHAIRMAN. You serve as vice president of the Bristole Bay Native Association, is that right?

Mr. GOLIA. I am listed as vice president of the Bristol Bay Native Association, Mr. Chairman. That is not the case. I am an employee of the Bristol Bay Native Association.

The CHAIRMAN. Do the members of the Bristol Bay Native Association engage in subsistence hunting and fishing for food or for recreation?

Mr. GOLIA. I would say primarily food. I think a lot of the villages, many of them do not have employment opportunities. I think that the only jobs you could find in some of our 30 communities is maybe a job as a janitor at the school; maybe a job as the postmaster; maybe a job as a VPO, or village police officer; and maybe a job teaching in the school. That is it.

The CHAIRMAN. Mr. Johnson.

Mr. JOHNSON. Yes, Mr. Chairman; as I mentioned earlier or as I noted, I am with the Alaska Nanuuq Commission, and we are primarily involved in managing with the Fish and Wildlife the subsistence harvest of Nanuuq or of polar bears. I am real proud to note that Isaac Akootchook is a member of the Alaska Nanuuq Commission, and a very highly respected member at that.

But generally when we take polar bear, it is not for sport. It is not for a trophy. We often usually take it on an opportunistic situation when are hunting for seals or walrus. But engaging in—I am a marine mammal hunter, and I rely heavily on walrus and seals in particular, in particular ugruk is my favorite seal. And we do that for our food.

The fact that we enjoy it as much as I do or as much as we do does not mean that we are out there sport hunting. We are not out there to get trophies. When we do take a polar bear, we want to take a smaller one because the skin is easier to work and the meat is better. So we are not out there sport hunting for trophies. We are out there for food and because it sustains our way of life and our culture.

The CHAIRMAN. Mr. Lake.

Mr. LAKE. Yes, Mr. Chairman; the use of wild fish and game is used primarily for food and also for sharing with relatives, elders in the village and those that cannot hunt or fish for themselves.

The CHAIRMAN. So you are not taking it for trophies?

Mr. LAKE. I have never done one, so I do not know, sir.

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. Yes; I am a full-time hunter and fisherman, and we depend on fish and game for food and for sustenance of our health, and we depend on that food to survive. We have no regard for biggest antlers or going for the trophy. I, for one, do not take home the antlers of what I caught because we cannot eat it. But for carving of those things, maybe we will take them home. But for all the fish we catch, that I catch, and all the moose and the caribou, the bear, we take home and we use it for survival and we also share with our elders in our community. So nothing is wasted, everything is used.

The CHAIRMAN. Mr. Yaska.

Mr. YASKA. Thank you, Mr. Chairman. The question was whether we take it for sport rather than sustenance or subsistence. And the question of course, and within the interior of Alaska for moose, king salmon, spruce chicken, ptarmigan, beaver, all of those species, and many more. Both game and fish are primarily for subsistence, if not exclusively for sustenance. And sustenance has been developed and defined by the 16,000 people working in the interior over thousands of years. It is a highly developed definition and it is a highly treasured definition and not to be, of course, spoken about lightly. Thought it is a great honor to be representing those folks today, and certainly you honor that here by the hearing today. Thank you.

The CHAIRMAN. As a matter of congressional courtesy, the transcript of this hearing will be shared with the legislature of Alaska. If you had the opportunity to address the legislature in 2 minutes, what would you tell the legislators?

Mr. GOLIA. I would request that they pass a vote on the constitutional amendment and actually let the people of Alaska vote on this issue. They have I think held up that particular issue for years now, and I think that the Alaskan people want to see a result to that.

Mr. JOHNSON. Yes, Mr. Chairman; unfortunately many of the legislators that are in Alaska have come from other places. I think my first request to them would be that they try to understand what our needs are for the native people of Alaska as far as subsistence, the spiritual values that we have in relation to that way of life, and then to allow the people of Alaska, because there are many people of Alaska who are not natives that understand us and support our efforts at a subsistence priority, and I would ask the legislature, please let the people of Alaska decide that.

Mr. LAKE. I would let them know and hope that they would understand that our cultural and traditional values to us are sacred and holy, and that without these, there would be no life for us. And that we need this life to pass on to our children that has been passed on to us by our ancestors. And also that they give an opportunity for the people of Alaska to vote on the issue, and one point is that my people, the Yup'ik Eskimo, in their annual convention have indicated to the State of Alaska that they do not want to see a constitutional amendment on subsistence unless there is a change in the conscience of the State of Alaska concerning subsistence—a change of consciousness about that. And it would be so right for them to do that.

The CHAIRMAN. Thank you.

Mr. WILLIAMS. I would tell the legislature that Alaska has greatly benefited from rural areas—oil, gas, timber, minerals, gold. You know, we have expended our resources to the benefit of all of Alaskans, and many have benefited from Alaska. Yet we continue to live in third world conditions in Akiak. You know, I come from a small village of 350, and from the area that is poorest of the poor. And when I look at that, and with all the billions that have come out of Alaska, we still are striving in having equal treatment by State of Alaska. And as we have $30 billion, we still live and are receiving those services that are not coming to us. But as for the subsistence issue, I think that is the only thing that I am asking for, is to protect my subsistence way of life that has been practiced or has been handed down from generation to generation, and they need to respect that. As we have heard here today, we really need that for our survival, and it is not just sport or game. I think it is for survival. So that is what I would tell them to do is to do the right thing for our survival in Alaska as Alaska Native people.

The CHAIRMAN. Mr. Yaska.

Mr. YASKA. Thank you, Mr. Chairman. It is almost a trick question. What do we want to tell them or what would we tell them? We have heard hundreds of testifiers, perhaps thousands in the last 12 years and many more years, actually, about the importance of subsistence from rural folks and people far more eloquent than I, elderly folks, and learned leaders from our region and throughout Alaska. I am not sure how else you could explain the importance of subsistence, the importance of getting along as people in this great Nation. But there is not anything to fear among subsistence managers, among folks from rural Alaska. Do not think we want all of the resources to ourselves. These are all of our resources in this Nation, and we can certainly come to agreement on managing and sharing these resources. There is not anything to fear. Thank you.

The CHAIRMAN. Thank you very much. I am pleased to call upon the vice chairman of the committee, Senator Ben Nighthorse Campbell.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator CAMPBELL. Mr. Chairman, I apologize for not being here throughout the whole hearing. I had an early conflict, and then as you probably know, Secretary Rumsfeld was doing a classified briefing on the problem in Afghanistan. One thing led to another, and I just very frankly apologize to this committee that I could not be here. But I have always been extremely interested in the plight that traditional people have found themselves in when we deal with subsistence. And when I think, of course I was not around then, but as I hear from elders who in turn heard from their elders, and then you compare it with what we go through now in which you have to have a license or permit to be able to hunt in most States, a license or permit to be able to fish in most states, a license or a permit to be able to use the things that were provided by the Creator of all things for this earth.

It is really kind of amazing to me because it was not native peoples, whether they were Alaskan or here in the Lower 48, that depleted the whales. It was profiteering adventurers that killed them off and boiled them down. It was not the native peoples. It was not the native peoples that clubbed tens of thousands of harp seals just for that beautiful white fur. The same thing—it was profiteering, non-native peoples that did that. It was not the native peoples that started killing walrus just to saw off the tusks. It was the ivory traders. And it was not the native peoples that ever benefited from all those things that were depleted.

I know people in the northwest part of our Nation now, native peoples are fighting an endless battle just to try to preserve some of the fishing rights they had for salmon when it was not them that ever depleted the salmon. It was the commercial canners, as everybody knows, or anybody with a lick of sense ought to know. It was never the native peoples.

And yet the native peoples are always the ones that have to suffer. It is the native peoples that always have to try to prevent more erosion of the rights that they have historically had from the beginning of time, long before there was anybody else on the mainland or in Alaska. They can probably track their own ancestry back hundreds if not thousands of years to a time when they did not have to conform to all the laws we now have and they were not on the defensive because somebody else killed off the animals.

I have been to Alaska a number of times, most of the times with Senator Stevens for a variety of things, and have many friends that live in Alaska, and I just know that in some cases Native Alaskans are divided on issues. Some of them are divided on the issue we are dealing with on the floor right now, whether we should open ANWR and you are probably very aware of that debate that some people who follow the caribou were saying we should not. Other people believe that there are opportunities, and native people believe that there are opportunities and we should.

That is one thing when we have the community divided and we are not quite sure what we ought to be doing to help Native Alaskans. But on the question of subsistence, I do not know of two native sides to that. If you are going to do the right thing, there is only one side and that side is that we ought to protect the rights of the aboriginal people that have had that right, used that right, have every right to continue it, whether it is under a court of law in the United States or under a legislative body here in Washington, or under just a basic right in the realm of humankind and human suffering and human subsistence—it seems to me they have that first right.

I just wanted to tell this committee that Senator Inouye has always been on the side of native peoples in the fight for fairness here in Washington, and I have always been by his side, and want you to know that I know something about it. I have probably a lot more to learn, but you have got at least two friends on this committee. I want you to know that.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Are you not glad you waited to hear the words of wisdom?

Senator CAMPBELL. My problem is I always get mad, as you know, Senator Inouye. [Laughter.]

The CHAIRMAN. I would like to announce that the record of this hearing will remain open for 2 weeks, during which time if you wish to submit additional testimony or if you wish to make corrections, please feel free to do so. And we will also be submitting questions to Mr. Demientieff for his response.

So with that, I thank all of you for traveling long distances to be with us. We will do our best to convince the members in the Alaska legislature to do the right thing. Your words will be read by them.

[Whereupon, at 4:12 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF ROSITA WORL, PH.D., SEALASKA HERITAGE INSTITUTE

Honorable Senator Inouye and other members of the U.S. Senate Committee on Indian Affairs. I would like to express my gratitude to the committee for holding this oversight hearing on Subsistence Hunting and Fishing in the State of Alaska. I am honored and humbled that you have been invited me to testify before this committee. The challenges to subsistence protections and the subsistence lifestyles of Alaska Natives are critical, and my testimony will address the necessity of maintaining the Federal protections as they exist under the Alaska National Interest Lands Conservation Act of 1980.

I am Rosita Worl. I am a member of the Board of Directors of Sealaska Corporation, which was created by Congress in the settlement of our aboriginal land claims. I sit on the Board of Directors of the Alaska Federation of Natives and serve as the Chairperson of its Subsistence Committee. I have a joint appointment as the President of the Sealaska Heritage Institute and a professor of anthropology at the University of Alaska Southeast. .

In my testimony, I will be drawing on both my professional training and research and my personal knowledge and experience as a participant in the subsistence culture of the Tlingit. I will apply these perspectives to discuss the significance of subsistence hunting and fishing in Alaska. I hold a Ph.D. from Harvard University in Anthropology. My subsistence studies began in 1975 when I went to the Arctic to study the political development of the North Slope Inupiat. Since that time I have conducted research throughout the circumpolar Arctic and Alaska. I have served on various scientific committees of the National Science Foundation, the Smithsonian Institution, the Alaska Eskimo Whaling Commission and the National Scientific Committee for the Exxon Valdez Oil Spill Studies. I have written numerous scientific articles on subsistence economies and Alaska Native cultures and have a general understanding of the significance of subsistence.

Today my subsistence studies are sometimes referred to as the early work of subsistence research in Alaska. I believe I was among the first anthropologists to study subsistence as an integrated socioeconomic system and to assess its interrelationship with the cash economy. This was in part due to the development of economic anthropology as a theoretical approach. I have applied both qualitative and quantitative methodological approaches to my study of subsistence.

It has often been said that subsistence cannot be defined, and Alaska Natives generally describe it as a "Way of Life." I beg your indulgence if my testimony sounds like a lecture, but I hasten to add that in the need for brevity, it may seem as if I am oversimplifying the complexity of the subsistence systems in Alaska. We must have a basic understanding of the dynamic socioeconomic subsistence systems as they exist today. This knowledge is necessary if we are to ensure that the legal regimes of both the Federal and State government protect the subsistence lifestyles of Alaska Natives and rural Alaska, and second in order to analyze how legislation has the capacity to protect or undermine subsistence activities.

In spite of the overwhelming problems imperiling Alaska Native societies, their cultures remain vibrant. Their languages and cultures have persisted, although changed, despite decades of governmental pressure to assimilate them into the larger society and the extensive forces of sociocultural impacts impinging on their communities. They are among the last societies in North America, who remain largely dependent and culturally attached to a hunting and gathering way of life. The last nomadic hunters in the United States settled in a permanent community in some 60 years ago. Today they continue to practice their ancient ceremonies and to hold the worldview and values of their ancestors. For the United States, they represent a rich cultural resource that is worthy of protection.

Subsistence, as it is practiced by Alaska Natives, contains three basic interrelated components: Economic, social, and cultural. It operates as a cohesive, adaptive and functioning system.

The cultural component includes the values and ideologies that govern and direct subsistence behavior or activities. For example, the value of sharing is key to subsistence and the survival of Native societies. The young are socialized into the value of sharing with kin and community members. Young hunters are taught to share their first take whatever it may be—seal, caribou, or fish and they are rewarded for their behavior. Significant amounts of sharing takes place in ceremonies such as the whaling or seal feast or memorial rituals. Sharing also occurs as part of the value that acknowledges the status of elders. They are given special shares and parts of an animal. This value of sharing with elders functions in many ways like the social security system in which individuals receive retirement benefits. Single women, who act as head of households, also receive special shares.

The cultural component also includes ideologies and beliefs such as the recognition that wildlife has spirits and that Native people have a kinship or special relationship with them. This relationship obligates Native people to adhere to certain codes of conduct and to treat animals in prescriptive ways to ensure success in future hunts and to assure that animals will return to be harvested. You may have heard Native Peoples say that animals "give" themselves to the hunter. This implies, that it is not skill of the hunter that determines success, but rather it is the animal who decides, based on the proper behavior of the hunter, who will be rewarded in the hunt. These cultural values also serve to protect the animal population base and are the basis of the conservation ethic that has been attributed to traditional Native practices. In some ways these ideologies and the accompanying practices can be compared to the effects of the concept of sustained yield harvests. For example, some groups have taboos on hunting in certain sites which serve to restrict hunting areas and levels.

The social aspect of subsistence refers to the way in which Native people organize themselves to participate in subsistence activities. This socioeconomic organization is based on some form of kinship whether it is along a bilateral kinship system characteristic of the Inupiat and Yup'ik or a clan or some other group membership such as that adopted by the Siberian Yup'ik of St. Lawrence Island or the Athabascans of Interior Alaska. More often today you will hear references made to the extended family as the hunting unit. It may, however, also include formal partnerships with non-kin. The important dimension here is that the subsistence system operates as a group activity rather than that of a sole hunter pursing game.

These social relationships and participation in subsistence endeavors also function as an educational system or facilitates the training of the young. Not only are the young socialized into the cultural ideologies and cosmologies of their society, they are instructed in the methods of hunting and preserving subsistence foods. They are taught about the environment and wildlife and how to read climatic changes, ice conditions or changing tides.

The third element of subsistence includes the economic aspect, which consists of the production, distribution and exchange and utilization of natural resources. Production includes the procurement and preservation of subsistence foods.

Distribution and exchange refer to the movement of subsistence goods or the sharing of subsistence foods through the social network. Since land was traditionally owned in common, utilization of land and resources require the sharing of resources. It generally begins with the initial distribution at hunting or fishing sites followed by a secondary distribution through extended kin networks and the ceremonial sharing. Subsistence economies also include the exchange of surplus resources for resources that may not be readily or locally available. Utilization includes the consumption of wildlife and natural resources for food and their use for arts and crafts or other utilitarian objects or equipment such as walrus or bearded seal skins, which are used in the manufacture of boats and other items.

Alaska rural communities are characterized by a dual or mixed economy. In today's subsistence economy, cash is a vital element. It is necessary to purchase rifles,

ammo and other tools, supplies, equipment such as snow mobiles. Cash is acqui red in multiple ways. The hunter or spouse may be a full or part time wage earner or a family member may earn income through the sale of arts and craft or subsistence service. An elderly member of the social unit may receive a transfer payment and contribute portions of this income to support the subsistence enterprise.

The importance of the subsistence economy in Alaska cannot be overstated. It provides a major portion of the diet in rural Alaska and Native households. The subsistence studies conducted by the State of Alaska attest to this importance. The significance of subsistence can be seen as even more important with the absence or limited wage income opportunities in rural Alaska or its seasonal nature. The limitations on wage income opportunities in rural Alaska are further exacerbated by the highest cost of living within the United States. Without a subsistence economy, hunger would be the norm in Alaska Native and rural communities. These assertions are all verifiable by hard statistical data.

Policymakers and social scientists once simply assumed that subsistence hunters and gathers would move in a unilateral direction from subsistence hunting and fishing to a cash economy. The history and case study of Alaska Natives refute this assumption. However, the persistence of the subsistence lifestyles of Alaska Natives cannot be attributed to the absence or constraints of wage opportunities in their communities. Alaska Natives have opposed legislative measures that cast subsistence as welfare or portrays it as a form of underemployment. This perspective ignores the social, cultural and ideological importance of subsistence and the attachment that Natives have to their way of life.

Despite the changes within Native communities, Alaska Natives remain culturally distinct from the larger American culture and society. Their worldview differs in that they recognize and maintain a special or a spiritual relationship to wildlife. I wear the Eagle on my clothing and the Sun and Shark on my jewelry, not for decorative or aesthetic reasons, but because of the relationship I have with their spirits and with my ancestors who acquired these rights and relationships for me and other members of my clan. Another major cultural difference between Natives and non-Natives, that is particularly relevant to the subsistence issue, is that Native societies maintain a group orientation rather than the individualistic nature of the American society and American values.

Native cultural and religious ideologies can sometimes be protected under the freedom of religion'policies and laws. For example, in the Carlos Frank case, the Athabascans won a lawsuit against the State of Alaska in which they had been charged for hunting a moose out of season. In this case, the moose was required for a traditional ceremony. Alaska Natives are required to feed the spirits of their ancestors.

Laws embody the values of their society, and American law generally reflects the individualistic nature of this society rather than the group orientation of Native societies. American values, however, recognize the importance of cultural diversity. Our laws and policies theoretical embrace the philosophical construct of cultural diversity, but this does not necessarily mean they will reflect the group orientation value held by Alaska Natives and American Indians[1]. However, the Federal Government does accord Alaska Natives and American Indians a special political status. This unique political status, which differs from that of all other Americans, implicitly offers the opportunity to acknowledge and protect the different cultural values that characterize American Indian and Alaska Native societies. In the case of Alaska Natives, their cultural values and subsistence protections were possible, in part, through the Alaska National Interest Lands Conservation Act of 1980.

ANILCA is imperfect in fully protecting the cultures of Alaska Natives, but fortunately, as it has been interpreted and implemented, ANILCA has offered the only measure of protection for subsistence against the State of Alaska, which has refused to recognize a rural subsistence hunting and fishing priority. Title VIII of ANILCA requires that "subsistence uses" be given priority over the taking of fish and wildlife for other purposes. It defines "subsistence uses" as the "customary and traditional uses by rural Alaska residents. . . " ANILCA provides a priority for rural residents of communities that have a customary and traditional uses of a particular resource. I am not a lawyer, but as an anthropologist, I note the significance of ANILCA is that it provides protection for "communities" or for groups rather than individual-based uses and protection based on customary and traditional uses.

The State of Alaska has not yet adopted an amendment to its constitution to give a subsistence priority to rural Alaska. The prevalent argument advanced by a small,

[1] The Native American Graves Protection and Repatriation Act recognizes the significance of a group orientation with the designation that items of cultural patrimony should be subject to repatriation claims.

but vocal minority of Alaskans is to oppose a constitutional amendment because it violates "equal" access to fish and wildlife. This argument is used to support amendments to ANILCA rather than to bring the State into compliance with Federal law. My purpose is not to discuss the contradictions and fallacy of the equality argument as it is used in the subsistence debate. All laws make distinctions among classes of people and citizens, and in Alaska, its citizens were willing to amend the State Constitution to give a small number of individuals the right of access to most all of Alaska's fisheries through the Lilmited Entry Permit System (less than 14,000 permit holders take 97 percent of the fishery resources in Alaska). Additionally, Alaska extends to only a 1,000 or more individuals the right to hold guiding perrnits to large tracts of land.

It is important to assess the underlying meaning of the equal access argument as advanced by the subsistence opponents to understand the potential ramifications should they be successful in amending ANILCA to embrace their ideology. I would suggest that they seek to advance an "individualistic" subsistence priority rather than that embodied in ANILCA that recognizes a rural, community-based traditional and customary subsistence use. This "equality" argument as it is used in the subsistence debate is ludicrous given the earlier constitutional amendment that provided for an inequitable allocation of natural resources and in view of the scope of political and fiscal inequity endured by Alaska Natives.

I have attempted to describe the dynamics and significance of Alaska Native subsistence economies and culture. I suggest that ANILCA, as it is written, protects the group realities and nature of Alaska Native subsistence activities. The Native community and AFN have resisted both legal and political attempts that would alter these protections. I would pray that Congress will not condone the 12 further erosion of subsistence and cultural protection for its indigenous populations. I would hope that Congress will see that ANILCA is a means to ensure the cultural survival of Alaska Natives and to maintain the rich cultural diversity of this country. I would hope that Congress will continue to support and urge the State of Alaska to advance a constitutional amendment that brings it into compliance with ANILCA. It would be my hope that Congress will continue to support ANILCA as it is written, unless in its wisdom, it should choose to adopt a Native subsistence priority.

Statement of Robert T. Anderson

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United States Senate Committee on Indian Affairs

April 17, 2002

Good afternoon Mr. Chairman and members of the Committee. Thank you for the opportunity to: 1) provide an overview of the legal history of Native hunting and fishing rights in Alaska; and 2) discuss the authority of Congress to provide a rural, Native or rural plus Native preference for the taking and use of fish and game on all land in Alaska. Such a preemptive scheme could be adopted consistent with the United States Constitution.

I teach Indian law at the University of Washington School of Law in Seattle and am the Director of the Law School's Native American Law Center. Prior to joining the faculty, I was Counselor to Secretary of the Interior, Bruce Babbitt and held the position of Associate Solicitor for Indian Affairs within the Interior Department. I also worked as a Senior Staff Attorney for twelve years with the Native American Rights Fund.

Summary of Federal Preemption to Provide for Native Hunting and Fishing Rights

The United States Constitution provides that the laws of the United States "shall be the

supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding." U.S. Const. Art. VI, cl. 2. This means that when Congress passes a law on a specific matter, such as providing a rural or a Native preference for subsistence, the federal law supercedes any State law or constitutional provision that conflicts with the federal law. The easiest cases arise when Congress expressly states that state law is "preempted," or declares that it is establishing a particular federal right or rule of law. If state law purports to conflict and thus deny the existence of the federal right, the state law cannot be enforced -- it has been preempted.

In order to preempt state law, Congress must be acting pursuant to a power provided to it by the Constitution.[1] In recent years, the questions have not been whether the federal government has *authority* to preempt state law, but whether Congress actually *intended* to preempt state law under a given federal statute.[2] As shown more fully below, Congress plainly has authority to preempt state law to provide priority hunting and fishing rights for Alaska Natives and/or rural residents. In fact Congress has expressly preempted State law with respect to the Native harvest of marine mammals. The Marine Mammal Protection Act provides that: "No State may enforce, or attempt to enforce, any State law or regulation relating to the taking of . . . marine mammals within the State . . ." 16 U.S.C. § 1379. The moratorium on the take of any marine mammals contains an exemption for the "taking of any marine mammal by any

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[1] *See generally*, Nowak & Rotunda, *Constitutional Law* 347 (6th ed. 2000); *McCulloch v. Maryland*, 17 U.S. 316 (1819) ("The government of the United States, then, though limited in its powers, is supreme; and its laws, when made in pursuance of the constitution, form the supreme law of the land, 'any thing in the constitution or laws of any State to the contrary notwithstanding'"); *Gibbons v. Ogden*, 22 U.S. 1 (1824).

[2] Nowak & Rotunda, *supra*, at 350-352; *United States v. Locke*, 529 U.S. 89 (2000); *California v. ARC America Corp.*, 490 U.S. 93, 100-101 (1989).

Indian Aleut, or Eskimo who resides in Alaska and dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such [taking is for subsistence purposes]." 16 U.S. C. § 1371(b).

When Congress passed Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980, it relied on three provisions of the Constitution as authority to provide subsistence protections: 1) the Property Clause;[3] 2) the Indian Commerce Clause;[4] and 3) the Interstate Commerce Clause.[5] 16 U.S.C. § 3111(4). Any federal statute to preempt state law presumably would rely on the same sources. This paper concludes that these sources of authority demonstrate that :

1. Congress has clear authority to adopt a rural or Native priority on all federal lands, all navigable waters and Native owned lands in Alaska;

2. Congress similarly has authority to provide a rural or Native priority on land owned by the State and private parties such as Native corporations. The case for a Native priority may be slightly stronger than the case for a rural priority due to Congress' heightened power over Native affairs and the history of federal control and protection of Native hunting and fishing rights; and

3. Consent by state voters or tribes may be a condition of federal preemption, under certain circumstances.

A preemptive provision could read something like this: "Subsistence uses of a fish, game and other renewable resource by rural Alaskans and Alaska Natives shall be the priority use on

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[3] "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const., art. IV, § 3, cl. 2.

[4] "The Congress shall have Power . . . to regulate Commerce . . . among the several States and with the Indian tribes." Art. I, § 8, cl. 3.

[5] *Id.*

all lands and waters in Alaska. Provided, however, that the voters of Alaska may reject the application of such a priority at an election held pursuant to State law within 12 months of the effective date of this provision." The legal rationale supporting such a preemptive federal statute is set out following a review of the United States' treatment of Alaska Native hunting and fishing rights.

I. Legal History of Native Hunting and Fishing and Rights

[i] History to 1980

From the time of Alaska's purchase in 1867, until the present day, the fish and wildlife uses of Alaska Natives have been protected to some degree by all branches of the government—through exemptions from conservation laws, land reservations and withdrawals.[6] In its first action to protect wildlife resources in the new territory from over-exploitation, Congress restricted the taking of fur seals, but exempted Native hunting for food, clothing, and boat-manufacture.[7] Alaska's first game law,[8] restricted the taking of game animals, but exempted hunting for food or clothing by "native Indians or Eskimos or by miners, explorers, or travelers on a journey when in need of food." The 1916 Migratory Bird Convention with Great Britain

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[6] Prior to Alaska's purchase, Native subsistence rights were protected by the "laws of an antecedent government [Russia]." United States v. Berrigan, 2 Alaska Rep. 442, 446 (D. Alaska 1905). See Second (1821) and Third (1844) Charters, Russian American Company, reprinted in Russian Administration of Alaska and the Status of the Alaska Natives, S. Doc. No. 152, 81st Cong. 2d Sess. at 45, 50-51 (1950). See generally, D. Case, Subsistence and Self-Determination: Can Alaska Natives Have a More "Effective Voice"?, 60 U.Colo. L. Rev. 1009 (1989).

[7] 16 Stat. 180 (1870).

[8] 32 Stat. 327 (1902), amended, 35 Stat. 102 (1908).

exempted Natives from the closed seasons for certain species.[9] The 1925 act creating the Alaska Game Commission authorized "any Indian or Eskimo, prospector, or traveler to take animals and birds during the closed seasons when he is in absolute need of food and other food is not available."[10]

The 1925 act also imposed a one-year territorial residency requirement,[11] amended in 1938 to authorize a three-year requirement for trapping licenses whenever "the economic welfare and interests of native Indians or Eskimos, or the fur resources of Alaska, are threatened by the influx of trappers from without the Territory."[12] The Reindeer Industry Act of 1937,[13] was intended to provide for Native Subsistence needs and establish a Native monopoly over the reindeer industry.[14]

Aside from these positive protections afforded by Congress and the Executive, Alaska Natives possessed unextinguished aboriginal fishing rights. "Those rights have, in consideration of historic tradition and economic necessity, been construed to include the occupancy of water

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[9] 39 Stat. 1702, 1703. Migratory Bird Treaties with Canada and Mexico were amended by protocols in 1997, which exempt the taking of migratory birds and their eggs by Alaska Natives. Treaty Doc. 104-28 and Treaty Doc. 105-26. 143 Cong. Rec. S11167 (Oct. 23, 1997).

[10] 43 Stat. 739, 744 (retained, 54 Stat. 1103, 1104 (1940); 57 Stat. 301, 306 (1943)).

[11] 43 Stat. at 740.

[12] 52 Stat. 1169, 1170 (§ 2). The foregoing territorial statutes were omitted from the United States Code upon Alaska's admission as a State. 48 U.S.C. §§ 192-211 (note).

[13] 25 U.S.C. §§ 500.

[14] *Cf. Williams v. Babbitt*, 115 F.3d 657 (9th Cir. 1997) (interpreting statute narrowly to permit non-Native ownership of imported reindeer).

and land under water as well as land above water."[15] In the Statehood Act, 72 Stat. 339, § 1, Alaska was "admitted into the Union, but "Congress withheld jurisdiction over [Alaska's] fisheries until she had made adequate provision for their administration," and the transfer of that authority became effective in 1960.[16] Further, in § 4 Congress decreed that "all right and title . . . to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts . . . or is held by the United States in trust for said natives . . . shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe." "The fishing-rights provision is unique to Alaska . . . because fishing rights are of vital importance to Indians in Alaska." *Organized Village of Kake v. Egan*, 369 U.S. at 66, 7 L.Ed.2d 573, 82 S.Ct. 562 (1962). By these provisions, Alaska was given concurrent regulatory authority over Native fishing rights unless or until Congress provided otherwise. *Metlakatla Indian Community v. Egan*, 369 U.S. at 58-59, 7 L.Ed.2d 562, 82 S.Ct. 552 (1962). "[T]he transfer of jurisdiction over fishing to the state was subject to rights reserved in § 4" and the purpose of § 4 "was to preserve the status quo with respect to aboriginal and possessory Indian claims, so that statehood would neither extinguish them nor recognize them as compensable." *Organized Village of Kake v. Egan*, 369 U.S. at 58, 65, 7 L.Ed.2d 573, 82 S.Ct.

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[15] Aboriginal Fishing Rights in Alaska, 57 Interior Dec. 461, 474 (Feb. 13, 1942); ("The Indian who has been forbidden [through government callousness or indifference] from fishing in his back yard has not thereby lost his aboriginal title thereto"; "aboriginal occupancy establishes possessory rights in Alaskan waters and submerged lands, and . . . such rights have not been extinguished by any treaty, statute, or administrative action." Id. at 476). See *Organized Village of Kake v. Egan*, 369 U.S. 60, 65-67, 7 L.Ed.2d 573, 82 S.Ct. 562 (1962).

[16] *Metlakatla Indian Community v. Egan,* 369 U.S. 45, 47, 7 L.Ed.2d 562, 82 S.Ct. 552 (1962), citing § 6(3) of the Statehood Act.

562 (1962).

In ANCSA Congress extinguished "any aboriginal hunting and fishing rights that may exist." 43 U.S.C. § 1603(b). At the same time, Congress declared its intent that there be some protection of Native subsistence uses. While the Senate and the House could not agree how to do it, the Conference Report expressed the conviction that "Native peoples' interest in and use of subsistence resources" could be safeguarded by the Secretary's "exercise of his existing withdrawal authority" to "protect Native subsistence needs and requirements"; "[t]he Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives."[17]

After ANCSA, Congress and the Executive continued to afford federal protection to specific subsistence rights. Native hunting and fishing rights have as often as not been protected, or provided for through exemptions from federal laws, or international treaties governing migratory birds or marine mammals. The Marine Mammal Protection Act of 1972 exempted from the moratorium on taking marine mammals any Alaska Native "who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean," if such taking is for "subsistence purposes" or for "creating and selling" handicrafts and clothing. 16 U.S.C. §1371(b).[18] Congress thus pre-empted state authority over marine-mammal hunting throughout

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[17] H. Conf. Rep. No. 92-746, at 37 (1971), reprinted in 1971 U.S. Code Cong. & Ad. News 2247, 2250. Section 17(d)(2) of ANCSA, 43 U.S.C. § 1616(d)(2), directed the Secretary to withdraw up to 80 million acres of public lands for conservation purposes and set in motion the sequence of events culminating in adoption of the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96-487, 94 Stat. 2374 (1980) and the subsistence preference under Title VIII of ANILCA).

[18] *See People of Togiak v. United States*, 470 F. Supp. 423 (D.D.C. 1979); *United States v. Clark*, 912 F.2d 1087 (9th Cir. 1990), *cert. denied*, 498 U.S. 1087 (1991); *Didrickson v. United*

Alaska's territorial sea and coastal inland waters.[19] By amendment in 1981, the Secretary was further prohibited from transferring marine-mammal management authority to Alaska unless the State adopted a subsistence priority law essentially mirroring the program for fish and land mammals mandated by Title VIII of ANILCA. 16 U.S.C. § 1379(f). Implementing regulations are set out at 50 C.F.R. § 18.23 (2001). The MMPA was amended in 1996 to provide for co-management with Alaska Natives, 16 U.S.C. § 1388. The Alaska Eskimo Whaling Commission annually obtains subsistence bowhead whaling quotas pursuant to the International Whaling Convention. Polar bear management agreements and treaties also contain special provisions dealing with Native harvest.[20]

In 1973, the Trans-Alaska Oil Pipeline Act imposed strict damages liability for any harm to the subsistence resources of Natives or others[21] and the Endangered Species Act presumptively exempted subsistence uses by Natives and "any non-native permanent resident of an Alaskan native village" from its coverage. 16 U.S.C. §1539(e)(1). The Secretaries of the Interior and Commerce issued an Order requiring early and substantial consultation between federal agencies

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States Department of the Interior, 982 F.2d 1332 (9th Cir. 1992)(interpreting Native handicrafts exception favorably to Alaska Natives).

[19] *Cf. Alaska v. Arnariak,* 941 P.2d 154 (Alaska 1997)(narrowly construing MMPA's preemptive scope to allow state prohibition of firearms to take marine mammals on state wildlife refuge).

[20] See, Baur, Reconciling Polar Bear Protection under United States Laws and the International Agreement for the Conservation of Polar Bears, 2 Animal Law 9 (1996) and Agreement on the Conservation and Management of the Alaska-Chutkotka Polar Bear Population between the United States of America and the Russian Federation (Oct. 16, 2000)(ratification pending).

[21] 43 U.S.C. §1653(a)(1).

implementing the ESA and affected Alaska Native tribes. Secretarial Order No. 3225 (Jan. 19, 2001). The 1978 Fish and Wildlife Improvement Act authorized the Secretary "to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs." 16 U.S.C. § 712(1). Such regulations are set out at 50 C.F.R. § 13.1 (2001). Finally, the Executive land-withdrawals precipitating passage of ANILCA contained expansive subsistence-protection mandates: fourteen of the seventeen national-monument proclamations signed by President Carter on December 1, 1978, noted the presence of "the unique subsistence culture" and directed the Secretary to protect it. 43 Fed. Reg. 57009 (Dec. 5, 1978), reprinted in 1978 U.S. Code Cong. & Ad. News 9589-9628. The National Park Service and the Fish & Wildlife Service adopted interim implementing subsistence regulations, including providing for "subsistence fishing" in "monument area waters." 43 Fed. Reg. 60252-60258 (Dec. 26, 1978).

[ii] Title VIII of ANILCA

[A] Overview of Federal Law

Congress in 1980 declared that: [T]he continuation of the opportunity for subsistence uses by rural residents of Alaska ... is essential to Native physical, economic, traditional, and cultural existence." 16 U.S.C. 3111(1)(emphasis added).[22] Although a rural preference was adopted, the priority for "subsistence uses" was plainly based in large part on the desire of Congress to protect the traditional Alaska Native way of life. See 16 U.S.C. § 3111(4)(priority necessary to fulfill polices and purposes of ANCSA and invoking Congress' power over Native affairs as

[22] The findings do not mention culture with respect to non-Native subsistence uses. Id.

justifications).[23] The State of Alaska insisted that Congress provide for a "rural" priority, rather than a priority for Alaska Natives. *See* 125 Cong. Rec. 9904 (May 4, 1979); and 126 Cong. Rec. 29, 278-79 (1980). To the extent that this was based on the view that the State could not administer a tribal Native priority, the view was clearly mistaken. Congress could have authorized such a preference pursuant to the Indian Commerce Clause and the Supremacy Clause of the Constitution. *See Washington v. Washington Commercial Passenger Fishing Vessel*, 443 U.S. 658 (1979)(rejecting similar arguments).

Subsistence uses are defined as "the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicrafts out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; and for customary trade."16 U.S.C. § 3113. The operative section of the statute, 16 U.S.C. § 3114 (section 804 of ANILCA), provides that "the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes." Public lands are defined as lands, waters and interests therein, title to which is in the United States. 16 U.S.C. § 3102(3).[24] Section 804 also requires that when subsistence takings must be restricted for conservation purposes or to protect continued subsistence uses, the subsistence priority must be implemented through the application of three criteria (customary and direct dependence, local residency, and availability of alternative

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[23] See also, H. Rep. No. 1045, 95th Cong., 2d Sess., Part I, 182 (1978).

[24] *See Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 548 n.15, 94 L.Ed.2d 542, 107 S.Ct. 1396 (1987).

resources), generally known as the "Tier II" criteria. 16 U.S.C. §3114.

Section 805, 16 U.S.C. § 3115, provides that the federal government will stay its hand as regulator of subsistence uses on the public lands if the State provides for "the definition, preference, and priority specified in sections 3113, 3114 and 3115 of this Title." Id. The intent was that the State of Alaska would provide a rural priority applicable to all land in the State subject to its jurisdiction and thus obtain authority to manage subsistence uses on all federal lands as well. It had been clear to all for some time prior to1980 that Congress would legislate a subsistence priority of some sort. *See Kenaitze Indian Tribe v. State of Alaska*, 860 F.2d 312, 314 (9th Cir. 1989), cert. denied, 491 U.S. 905 (1989). In the event that the state failed to enact and implement a law of general applicability, the federal government would manage subsistence uses on federal lands. 16 U.S.C. § 3115(d). Congress hoped "for the State to have the responsibility for the day-to-day regulation of the taking of fish and wildlife for subsistence uses, under general guidelines applicable without ethnic distinctions, with the Federal role being secondary." H.R. Rep. No. 95-1045, pt. I, at 184.[25]

Section 807 of the statute provides for federal judicial review if either the state or federal government fails to provide for the subsistence priority afforded by section 804. 16 U.S.C. § 3117. It also provides for an award of costs and attorneys fees to prevailing parties aggrieved by the government's failure to provide the priority. *Native Village of Quinhagak v. United States*, 35 F.3d 388, 395 (9th Cir. 1994), *on remand, Native Village of Quinhagak v. United States*, No.

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[25] In fact, the state adopted laws providing a subsistence priority in 1978 in order to comply with Title VIII of ANILCA and thus obtain management authority over federal land and water in Alaska. *See Kenaitze v. Alaska, supra*. Congress' hope has not been realized and the federal government has managed subsistence uses on the public lands since 1990.

A93-0023-CV (HRH), Order (Aug. 24, 2001). Section 810, 16 U.S.C. § 3120, applies to leases, withdrawals, permits and other dispositions of public lands which would significantly restrict subsistence uses. Such federal action may be effected only if the relevant agency head determines that such use is "necessary, consistent with sound management principles for the utilization of the public lands" and would involve the minimum amount of land necessary to fulfill the necessary use. The analysis has generally been incorporated into the process required by the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. *See Hanlon v. Barton*, 740 F. Supp. 1446 (D. Alaska 1988). Courts have largely deferred to agency action under the statute and have not given literal effect to the language of section 810. *See, e.g., Hoonah Indian Association v. Morrison*, 170 F.3d 1223 (1999). This approach has been criticized as not giving effect to either the letter or spirit of the provision. See, Naiman, "ANILCA Section 810: An Undervalued Protection for Alaskan Villages' Subsistence," 7 Fordham Envtl. L. J. 211 (1996); Comment "Breaking the Trail of Broken Promises; "Necessary" in Section 810 of ANILCA Contains Substantive Obligations," 27 Envtl. L. 611 (1997).

[ii] State Management: 1982-1990

The state assumed management responsibility when its regulatory regime was certified in 1982 as consistent with the federal law in that state law provided for the definition, preference and participation required under section 805 of ANILCA. 16 U.S.C. § 3115(d). *See Bobby v. Alaska,* 718 F.Supp. 764, 788 (D. Alaska 1989)(copy of letter certifying state compliance). The state accordingly took on the task of managing subsistence uses on public lands. The state's brief time as the regulator of subsistence uses on public lands was marked by judicial setbacks

beginning and ending with the definition of the term "rural."[26] First, in *Madison v. Alaska Dep't. of Fish and Game*, 696 P.2d 168 (Alaska 1985), the Alaska Supreme Court struck down state regulations providing a "rural" preference as not authorized by state law. The Alaska legislature promptly amended the subsistence statute to provide a rural preference. Alaska Stat. 16.05.940(25)(1987). The state's statutory definition was held unlawful in *Kenaitze Indian Tribe v. State of Alaska*, 860 F.2d 312, 314 (9th Cir. 1989), *cert. denied*, 491 U.S. 905 (1989), as it was inconsistent with the plain meaning of the term rural. The state definition did not look to demographics, but instead relied on socio-economic statistics.[27] Before the ruling could be implemented, however, the state lost its authority to manage subsistence uses on public lands. The Alaska Supreme Court ruled that the equal access provisions of the State Constitution preclude the legislature from providing a "rural" priority for subsistence uses. *McDowell v. Alaska*, 785 P.2d 1 (Alaska 1989).

Aside from the "rural" issue, the state was frequently held to be regulating subsistence uses in violation of the substance of Title VIII. In *Bobby v. Alaska*, 718 F. Supp. at 781-782. the court struck down state seasons and bag limits for moose and caribou as inconsistent with the customs and traditions of a Native Village and thus not in compliance with the substantive requirements of section 804 of ANILCA. 16 U.S.C. § 3114. By its terms the priority is in place at all times and precludes restrictions on subsistence uses by rural residents unless all other non-subsistence uses are first eliminated. See Bobby v. Alaska, supra. Similarly in *Katie John, et al.*

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[26] The term is not defined in ANILCA.

[27] As a result, the Kenai Peninsula, an area the size of New Hamphire and Vermont combined, with a population of 25,000 people, was found by the state to be an urban area. *Kenaitze Indian Tribe v. State of Alaska*, 860 F.2d at 314, n. 2.

v. Alaska, No. A85-698 Civil, Order on Cross Motions for Summary Judgment (D. Alaska Jan. 19, 1990), the court struck down state regulations that restricted subsistence fishing at an historic Native fish camp. In *United States v. Alexander*, 938 F.2d 942 (9th Cir. 1991), the court set aside a federal Lacey Act prosecution on the ground that state law prohibiting cash sales from being considered subsistence uses was in conflict with ANILCA's protection of customary trade as a subsistence use. The state's period of management pursuant to ANILCA closed with an Order striking down state regulations governing subsistence hunting of caribou in western Alaska as inconsistent with the customary and traditional harvest patterns of Yupik Natives in Western Alaska. *Kwethluk IRA Council v. Alaska*, 740 F. Supp. 765 (D. Alaska 1990).

The state's losses in these cases were predictable since its regulatory program had long been geared to providing commercial and sport hunting and fishing opportunities and was not oriented toward accommodating the customary and traditional Native uses of fish and game. While the subsistence title provides a "rural" preference rather than a Native preference, the legislative history to the Act makes it clear that but for the fact of the importance of Alaska Native hunting and fishing there would be no subsistence title. As such, the protections should be liberally construed to provide the subsistence priority and the subsistence title should be viewed as a "treaty substitute." *People of the Village of Gambell v. Clark*, 746 F.2d 572, 581(9th Cir. 1984)(applying canons), *rev'd on other grounds, Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 555, 94 L.Ed.2d 542, 107 S.Ct. 1396 (1987)(statute clear so that canons need not be applied); *but see, Hoonah Indian Association v. Morrison*, 170 F.3d 1223, 1228 (9th Cir. 1999)(refusing to apply Indian law canons of construction in action under § 810 of ANILCA); see Wilkinson, American Indians, Time, and the Law 101-103 (1987). It is the

Native customary and traditional uses of fish and game and patterns of take and use that Congress intended to protect when it adopted the subsistence law. See 16 U.S.C. § 3111(1)(protection for subsistence uses essential to protect Native "cultural existence"). Under the supervision of the federal courts, there was some hope that the state would eventually be able to meet the letter and spirit of Title VIII, see *Bobby v. Alaska*, 718 F. Supp at 788-89, but the McDowell decision crushed that hope in 1989.

[iii] Federal Management Pursuant to Title VIII

After 1989, when the state fell out of compliance with Title VIII and was unable to provide a rural priority, the federal government was obliged to take over management of subsistence uses on all "public lands" in Alaska. See 55 Fed. Reg. 23,522 (April 13, 1990). The Secretaries of Interior and Agriculture established a Federal Subsistence Board and a Regional Advisory council system to promulgate regulations governing subsistence uses. 50 C.F.R. §§ 100.10 & 100.11. Regional Councils are required to be composed of residents knowledgeable about subsistence uses. 50 C.F.R. § 100.11(B)(1)(2000). The Federal Subsistence Board is required to accept Regional Council recommendations, except under narrow and specified circumstances. 16 U.S.C. § 3115(c).

Programmatic regulations also developed a definition of the term "rural" and authorized the Board to apply the criteria on a case-by-case basis. Fed. Reg. 27,114 (June 29, 1990); 57 Fed. Reg. 22,940 (May 29, 1992). The current federal regulatory definition of rural may suffer in part from the same defect that caused the State to fall out of compliance in *Kenaitze Indian Tribe v. State of Alaska*, 860 F.2d 312 (9th Cir. 1989), *cert. denied*, 491 U.S. 905 (1989) in that

it looks to factors beyond the usual meaning of rural.[28] The Federal Subsistence Board first defined most communities on the Kenai Peninsula as non-rural in 1990. 55 Fed. Reg. 26,114 (June 29, 1990). On reconsideration the Board found the entire Kenai Peninsula to be rural, 65 Fed. Reg. 40730, 40732 (June 30, 2000), codified at 50 C.F.R. § 100.23(a)(2000), but reversed that decision in 2001.

The geographic scope of the federal takeover has been the subject of extensive litigation. The Secretaries of Interior and Agriculture initially asserted jurisdiction over all federal uplands in Alaska and claimed that navigable waters were not covered by the definition of public lands. 55 Fed. Reg. 27,114 (June 29, 1990); 57 Fed. Reg. 22,940 (May 29, 1992). In a suit filed by Katie John, Doris Charles and the Mentasta Village Council, the federal district court ruled that the federal government's navigational servitude was an interest in waters that brought all navigable waters within the federal public lands definition. *John, et al. v. United States*, No. A92-0264-CV (HRH)1994 WL 487830 (D. Alaska Mar. 3, 1994. The court also rejected Alaska's claim that the federal government lacked authority to manage subsistence uses on federal public lands. Id.[29] The Ninth Circuit reversed as to the navigational servitude and agreed with the plaintiffs' alternative theory that federal public lands include all federally reserved waters in the state. *Katie John v. United States*, 247 F.3d 242 (9th Cir. 2001), (*en banc*), *affirming Alaska v. Babbitt*, 72 F.3d 698 (9th Cir. 1995), *cert. denied*, 516 U.S. 1036

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[28] Compare 50 C.F.R § 100.15 (relying on demographics and socio-economic criteria) with Kenaitze,supra, 860 F.2d at 316 (striking down similar definition).

[29] The State did not appeal the latter ruling and stipulated to a dismissal with prejudice. see *Alaska Legislative Council v. Babbitt*, 181 F.3d 1333 (D.C. Cir. 1999) (rejecting attempt by group of Alaska Legislators to challenge federal exercise of authority).

(1995)(The United States had changed its position and agreed that federal reserved waters were federal public lands, 72 F.3d at 701); See 50 C.F.R. part 100 (2000) for implementing regulations. Thus, the federal government asserts authority over all federally owned uplands and waters subject to a federal reserved water right. 50 C.F.R. § 100.3(b)(listing waters). Also included are non-navigable waters that lie over federally owned lands.[30] Marine waters have not generally been included within the public lands definition, but the issue is in litigation with respect waters included within the Tongass National Forest. *Peratrovich v. United States*, No. 92-0734-CV (D. Alaska).

The regulations do not include Native allotments, or waters within or adjacent to such allotments in the public lands definition. 64 Fed. Reg. 1279 (Jan. 8, 1999). Since there is a federal restriction on alienation of the allotments, the United States certainly seems to have an interest in the land sufficient to bring it within the federal public lands definition. And since many allotments were selected for the very purpose of providing for subsistence fishing, it also seems to follow that a reserved water right would attach to maintain the fishery.[31] The Secretaries of Interior and Commerce have authority to consider changes to the public lands definition and the allotment issue was expressly deferred to further deliberation. See 64 Fed. Reg. 1279 (Jan. 8, 1999); 50 C.F.R. § 100.10(d)(4)(xviii)(2000).

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[30] In *Totemoff v. Alaska*, 905 P.2d 954 (Alaska 1995), cert. denied, 517 U.S. 1244 (1996) the Alaska Supreme Court in dicta opined that federally reserved waters did not constitute "public lands" and expressed disagreement with the ruling in *Alaska v. Babbitt*, 72 F.3d 698 (9th Cir. 1995), *cert. denied*, 516 U.S. 1036 (1995), *affirmed, Katie John v. United States*, 247 F.3d 242 (9th Cir. 2001)(*en banc*).

[31] *See United States v. Powers*, 305 U.S. 527 (1939)(reserved water rights attach to allotments where water is necessary to fulfill the purposes to be served by allotment); *United States v. Adair*, 723 F.2d 1394 (9th Cir.), *cert. denied*, 467 U.S. 1252 (1984).

In a truly ironic twist, the public lands definition, by statute, excludes Native corporation land once it is actually conveyed to the corporation. 16 U.S.C. § 3102. This limitation denies federal protections for subsistence uses on Alaska Native village corporation lands, which are often the most important areas for subsistence hunting and fishing activities of Natives. As noted earlier, subsistence uses of marine mammals and migratory birds are beyond the purview of Title VIII and are protected under a variety of other means without regard to title of land or water.

The federal government's implementation of the subsistence priority has generally received positive reviews from subsistence users as evidenced by the few legal challenges brought by subsistence users pursuant to section 807. 16 U.S.C. § 3117. One notable exception is *Ninilchik Traditional Council v. United States*, 227 F.3d 1186, 1193 (9th Cir. 2000) where the court afforded deference to the Federal Subsistence Board's application of restrictions on subsistence users -- ostensibly for conservation purposes, but without first eliminating non-subsistence uses. The court found it permissible for the board to balance competing aims of subsistence use, recreation and conservation, but noted that the board must provide subsistence hunters with a meaningful use preference. Both the Subsistence Board's ruling and the court seem to be in error for both fail to give the term "priority" its plain meaning. The Board's action appears to have been influenced by political pressure from sport and commercial users in the heavily populated Anchorage area who regularly commute to the Kenai Peninsula for hunting and fishing activities. *See Kenaitze,* 860 F.2d at 314 n. 1. In addition, the recent change in the application of the "rural" definition on the Kenai Peninsula may portend an end to the relatively harmonious relationship developed in the formative years of the federal management program.

Since the state fell out of compliance with Title VIII of ANILCA in 1989, its statutory

scheme maintains a subsistence priority in name, but not in substance, and is far removed from the federal standards. For example, the state has created vast non-subsistence areas, Alaska Stat. 16.05.258(c)(2000); *State v. Kenaitze Indian Tribe*, 894 P.2d 632, 634 (Alaska 1995), and treats its subsistence priority as applying only to use of fish or game after capture and not to allow for traditional means, methods and timing of harvest.[32] These provisions are inconsistent with federal law[33] and thus it appears unlikely that the state will be able to reassume management without making major changes to its Constitution and statutory scheme.[34] In the meantime, dual state and federal management will continue.

II. Discussion

A. Congress May Provide a Native Preference

As shown above, from the Treaty of Cession with Russia in 1867 to the present, Congress has regulated and protected subsistence uses by Alaska Natives and has sometimes also protected such uses by bona-fide non-Native residents of Native villages. Regulation of subsistence hunting, fishing and gathering by Alaska Natives is an area traditionally governed by the federal government and thus is clearly within the scope of Congress' broad powers under the Indian Commerce Clause. "If anything, the Indian Commerce Clause accomplishes a greater transfer of

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[32] *State v. Morry*, 836 P.2d 358, 365-368 (1992); and *Totemoff v. Alaska*, 905 P.2d 954 (Alaska 1995), *cert. denied*, 517 U.S. 1244 (1996).

[33] *Compare, e.g., Native Village of Quinhagak v. United States*, 35 F.3d 388 (9th Cir. 1994); and *Bobby v. Alaska*, 718 F. Supp. 764 (D. Alaska 1989).

[34] ANILCA originally gave the State one year to assume management over subsistence uses on federal public lands, but has now provided for it to reassume management at any time that it complies with the conditions of section 805(d). Pub. L. No. 105-277, § 339(c), 112 Stat. 2681, 2681-296 (Oct. 21, 1998).

power from the States to the Federal Government than does the Interstate Commerce Clause." *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 62 (1996). That broad power would permit application of a Native priority on federal lands, Native allotments, Native corporation lands, State lands and navigable waters in Alaska. The Supreme Court has routinely upheld such preemption of state authority. *Antoine v. Washington*, 420 U.S. 194 (1975)(upholding post-statehood statute creating Indian hunting and fishing rights).[35]

It is clear that Congress could have reserved a Native hunting and fishing right on all lands in Alaska at the time ANCSA was adopted. *United States v. Winans*, 198 U.S. 371 (1905). Instead, Congress chose to rely on the good faith of the State and federal executive branch and extinguished the rights that prompted ANCSA's adoption. "The Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives." H. CONF. REP. NO. 92-746, at 37 (1971), *reprinted in* 1971 U.S.C.C.A.N. 2247, 2250. Congress could abrogate Native aboriginal hunting and fishing rights because it has "plenary power" over Native affairs. *Delaware Tribal Business Committee v. Weeks*, 430 U.S. 73 (1 977); *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903). If Congress may use such power to extinguish Native rights, it also may use that power to protect Native rights. Thus, Congress may resurrect Native hunting and fishing rights on all lands in Alaska. In fact, Congress did exactly that in the federal regime governing marine mammals.

The Marine Mammal Protection Act of 1972, *as amended* (MMPA), 16 U.S.C. §§ 1361 *et seq.*, governs the management of marine mammals in Alaska. The centerpiece of the MMPA

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[35] Congress' power to legislate a rural or Native priority for Native corporation lands, allotments and Native townsite lands pursuant to the Indian Commerce Clause is without doubt.

is its moratorium on the taking of marine mammals. 16 U.S.C. § 1371(a). However, the Act provides an exemption for Alaska Natives if such taking is for subsistence or handicraft purposes and is not accomplished in a wasteful manner. 16 U.S.C. § 1371(b).[36] The 1994 amendments to the MMPA included a provision authorizing the Secretaries of Commerce and Interior to enter into cooperative agreements with Alaska Native Organizations to conserve marine mammals and provide co-management of subsistence use of marine mammals by Alaska Natives. 16 U.S.C. § 1388. It also authorized Congress to appropriate up to $1,000,000 to the Secretary of the Interior and $1,500,000 to the Secretary of Commerce to implement co-management activities in Alaska. *Id.* In authorizing marine mammal co-management, the House Committee on Merchant Marine and Fisheries expressed the view that "the best way to conserve marine mammal populations in Alaska is to allow *full and equal participation* by Alaska Natives in decisions affecting the management of marine mammals taken for subsistence." H. Rpt. 103-439 at 39. Several co-management agreements have been entered into between Alaska Tribal organizations and federal agencies, including agreements between the FWS and the Alaska Sea Otter Commission, the Alaska Nanuuq Commission, and the Eskimo Walrus Commission, and between the National Marine Fisheries Service and the Alaska Native Harbor Seal Commission. These cooperative agreements are funding a wide range of activities, including commission co-management operations, biological sampling programs, harvest monitoring, collection of Native knowledge in management, international coordination on management issues, cooperative enforcement of the MMPA, and the development of local conservation plans. The MMPA thus serves as a useful

[36] There is a provision for transfer of management authority to the State of Alaska, but the State's inability to provide a preference based on residence bars any state effort to assume such authority. 16 U.S.C. 1379 (b).

model for a preemptive Native preference.

B. Federal Lands and Navigable Waters

We can first dispose of the question of Congress' power over federal lands. The power of Congress to adopt either a Native preference or rural preference on federal lands is without question. *Kleppe v. New Mexico*, 429 U.S. 529, 539 (1976)("(t)he power over the public land thus entrusted to Congress is without limitations."). *See also*, Coggins, Wilkinson & Leshy, PUBLIC LAND LAW at 162-164 (4th Ed). Similarly, Congress has broad power to regulate navigable waters under the Commerce Clause. "It has long been settled that Congress has extensive authority over this Nation's waters under the Commerce Clause." *Kaiser Aetna v. United States*, 444 U.S. 164, 172 (1979). In the case of a rural preference justified under the Interstate Commerce Clause, a reviewing court would ask "whether a rational basis existed for concluding that a regulated activity [substantially] affected interstate commerce." *United States v. Lopez*, 514 U.S. 549, 557 (1995). If so, then Congress would have authority to adopt a regulatory program governing the activity and to preempt any contrary state law.[37]

Regulation of fish and game in Alaska surely affects interstate commerce. "It is beyond dispute that taking fish from waters within the State of Alaska substantially affects interstate commerce. The activity supports a $1.2 billion annual industry that comprises nearly 55% of

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[37] State ownership of the bed and banks of stream under the equal footing doctrine does not affect Congress' power to regulate navigable waters. In enacting the Submerged Lands Act (SLA), 43 U.S.C. § § 1301-1315, Congress expressly "retain[ed] all its ... rights in and powers of regulation and control of ... navigable waters for the constitutional purposes of commerce...." *Id.* § 1314(a). *See also Arizona v. California*, 373 U.S. 546 (1963).

United States seafood production and accounts for approximately 40% of Alaska's international exports." *Katie John v. United States*, 247 F.3d 1032, 1035 (9th Cir. 2001)(opinion of Tallman, concurring). Hunting activities also substantially affect interstate commerce as evidenced by the influx of sport-hunters from around the United States. *See Alaska Professional Hunters Ass'n, Inc. v. F.A.A.*, 177 F.3d 1030, 1031 (9th Cir. 1999)("Fishing and hunting are big business in Alaska"); *United States v. Helsley*, 615 F.2d 784,787 (9th Cir. 1979)(even if the dominant purpose of the Airborne Hunting Act, 16 U.S.C. §742j-1, was to regulate game management, "congressional regulation is not thwarted by arguments that the incidental connection between commerce and the regulation is used merely as an expedient to justify the law. . . Congress may find that a class of activities affects interstate commerce and thus regulate or prohibit all such activities without the necessity of demonstrating that the particular transaction in question has an impact which is more than local). There is accordingly little doubt that Congress could preempt State authority on federal lands and navigable waters pursuant to the Commerce Clause or the Property Clause.

C. State Lands

There is also ample federal authority to preempt state law on state land.[38] States may own land, but they do not own the wildlife present on such land. *Hughes v. Oklahoma*, 441 U.S. 322

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[38] The Supreme Court has become increasingly protective of State rights in recent years by limiting Congress' authority to abrogate state sovereign immunity, *see Alden v. Maine*, 527 U.S. 706 (1999), and preventing Congress from forcing state officials to carry out federal programs, *see Printz v. United States*, 521 U.S. 898 (1997). Nevertheless, the Supreme Court has continued to be protective of Indian hunting and fishing rights. In *Mille Lacs Band of Chippewa Indians v. Minnesota*, 526 U.S. 172 (1999) the Court upheld Indian treaty rights against state claims of sovereignty based on the equal footing doctrine.

(1979). The Interstate Commerce Clause provides Congress with authority to regulate wildlife on state and private land – even in areas traditionally governed by the states. *Douglas v. Seacoast Products*, 431 U.S. 265, 272 (1977). Courts have routinely upheld application of federal wildlife laws to state or private lands under the Endangered Species Act and other statutes, based on Congress' authority under the Interstate Commerce Clause. *National Association of Home Builders v. Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997), *cert. denied*, 524 U.S. 937 (1998); (U.S. Fish & Wildlife Service may regulate taking of Delhi Sands Flower-Loving Fly on private lands); *Gibbs v. Babbitt*, 214 F.3d 483, 492 (4th Cir. 2000), *cert. denied*, 121 S.Ct. 1081 (2001)(U.S. Fish & Wildlife Service may regulate taking of wolves on private land); *Palila v. Hawaii Department of Land and Natural Resources*, 472 F.Supp 985 (D. Ha. 1979), *aff'd*, 639 F.2d 495 (9th Cir. 1981)(Endangered Species Act applies to state owned lands). Under this line of authority, the Interstate Commerce Clause provides ample authority for a rural preference that would preempt any contrary Alaska law. *See also Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999)("Although States have important interests in regulating wildlife and natural resources within their borders, this authority is shared with the Federal Government when the Federal Government exercises one of its enumerated constitutional powers.").

III. May Congress condition federal preemption on a vote by all Alaskans or Alaska Tribes?

A. Vote by All Alaskans

Federal legislation may only be adopted or repealed through approval by each House of Congress and approval by the President. U.S. Const. art. I, § 7 ("Every Bill which shall have

passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States . . ."). In *City of New York v. Clinton*, 524 U.S. 417 (1998), the Supreme Court struck down the Line Item Veto Act because it gave the President the authority to modify Bills passed by Congress and allow the remainder of a Bill to become law. *See also*, *I.N.S. v. Chadha*, 462 U.S. 919, 954-55 (1983)(Congress may not enact laws without bicameral passage and presentment of the Bill to the President.). Thus, a preemptive federal statute must be passed by Congress and signed by the President. It then becomes law.

It appears, however, that Congress may condition the operative effect of a preemptive statute on a subsequent event. In one case, Congress adopted a comprehensive statute regulating interest rates, which preempted all state laws limiting certain interest rates.[39] Another provision of the law provided states with the authority to opt out of the preemptive program by adoption of a state law or vote certifying that the people of the state "did not want the [preemptive] provisions" to apply. This is the opposite of an opt-in approach making the preemption effective upon an affirmative vote of the people, but indicates that an opt-out approach may be permissible.[40]

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[39] Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA), 94 Stat. 1647, codified at 12 U.S.C. § 1735f-7 note.

[40] One commentator described this approach with approval. "Assuming that Congress chooses to preempt state lock-in laws, it then must decide how extensively it should do so. Congress may not see absolute preemption as necessary or even desirable. The DIDMCA method of preemption provides a good model because it is moderate in its approach. This method allows states to override federal preemption, but requires the state legislature to feel strongly enough about the matter to legislate actively on it. This provides a means of reassuring those who would oppose preemption on federalism grounds, but still achieves extensive preemption as the default course in the absence of state action." Paul A. Mondor, Comment: Lock-In Laws: Adding More Patches to the Mortgage Lending Quilt.37 Cath.U.L.

However, cases like *Printz v. United States*, 521 U.S. 898 (1997) make it clear that Congress may not compel states to take actions to implement federal programs because of the Tenth Amendment's protection of state sovereignty. Thus, Congress could not *order* the State to call an election on whether to accept a preemptive subsistence statute. This is not a situation like the election held pursuant to the Statehood Act. At that point Alaska was still a territory and Congress had complete authority over Alaska – including the power to set elections. Now that Alaska is a State, any general election would have to be held pursuant to and authorized by State law. There does not appear to be anything to prohibit the legislature from passing a law authorizing such a special election. The problem is that if the legislature failed to call the election, the preemptive federal law would not take effect.

In 1996, Article XII, § 14 was added to the State Constitution.[41] It purports to make federal amendments to the Statehood Act effective only upon approval of 2/3 of each House of the legislature, or by a majority of Alaskans. The latter voting process would occur if a majority of each House passed a resolution placing the matter before the public – at either a the next general election, or a special election. One can easily question the validity of this section. The first sentence of the section is probably invalid, since the federal government's broad authority allows it to change federal law notwithstanding state constitutional provisions. However, some state rights are protected by the 10th and 11th amendments and thus may not be changed by

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Rev. 543, 573-4 (1988).

[41] The section expands upon a statute adopted in 1976, AS § AS 01.10.010, that is similar to Art. 12, section 14. It was construed in a 1995 Attorney General's opinion provided to Robin Taylor, which addresses the question of whether the legislature alone may bind the state to an amendment to the Statehood Act. 1995 WL 867851 Nov. 27, 1995).

Congress. In addition, provisions that provide for transfers real property to states may not be subject to unilateral revocation. *Beecher v. Wetherby*, 95 U.S. (5 Otto) 517 (1877)(statehood act provision transferring section 16 school lands cannot be revoked). But state law has no bearing on the matter, any limitations are found in the federal Constitution.

Of course, there is still no guarantee that an election under Art. XII, § 14 would be called. The legislature would have to act. Even if an election were held, the result might be challenged on the ground that the entire process is invalid as a matter of federal law. The argument would be that federal law does not permit states to declare federal law invalid absent state consent. That could result in the preemptive federal statute falling by the wayside because it would be linked to an unconstitutional provision of state law.

As noted earlier, Congress could pass the preemptive statute and make it effective only upon a vote of the people. The legislature could then just pass a law calling for a special advisory election. Again, the problem would be that the legislature could simply refuse to call an election. A more sure way would be to pass the federal law and make it effective unless rejected by the voters within a year of passage. That approach also has the virtue of being consistent with the congressional precedent in the interest rate legislation.

In our case, the provision could read something like this: "Subsistence uses of a fish, game and other renewable resource by rural Alaskans and Alaska Natives shall be the priority use on all lands and waters in Alaska. Provided, however, that the voters of Alaska may reject the application of such a priority at an election held pursuant to State law within 12 months of the effective date of this provision."

B. Vote by Tribes

Whether a preemptive statute providing for a *rural* priority could be made effective only upon a vote of Alaska's federally recognized tribes is doubtful. Congress has used tribal elections to approve certain jurisdictional transfers in the past, but only when the affected territory was a tribe's own jurisdictional area, *i.e.*, its reservation. For example, Public Law 280, as amended, conditions transfer of certain federal jurisdiction to states on the approval of the affected state and by approval of the affected tribe through a vote of tribal members. 25 U.S.C. § § 1321, 1322 & 1326. It is unlikely that this sort of a mechanism could be used to allocate jurisdiction affecting territory that is not Indian country – at least if the tribes were the only parties eligible to vote.

In *Morton v. Mancari*, 417 U.S. 535 (1974), the Supreme Court upheld a Bureau of Indian Affairs hiring preference for tribal members on the ground that membership in an Indian tribe is a political classification and thus did not constitute discrimination based on race. However, in *Rice v. Cayetano*, 528 U.S. 495 (2000) the Court struck down a State voting scheme that allowed only Native Hawaiians to elect trustees to the Office of Hawaiian Affairs. The State and the federal government argued that the scheme was permissible under *Morton v. Mancari* as a political classification. The Court rejected that argument on the narrow ground that state elections could not benefit from the *Mancari* rule. 528 U.S. at 518-19. The majority's opinion, however, strongly implies that tribes may be singled out for exclusive voting schemes only when internal tribal matters are at issue and then only in federally authorized elections. *Id* at 520-21. A state election over the applicability of a preemptive *rural* priority to all of Alaska would not likely pass muster if it were limited to a vote of tribal members.

However, if a *Native* priority only were at issue, a strong case could be made for allowing tribes alone to vote on whether to accept the preemption. Natives would be the only beneficiaries of the statute and thus the appropriate constituents to accept or reject such a preemptive statute. The Native priority could fairly be viewed as a substitute for the aboriginal hunting and fishing rights extinguished by ANCSA . As such the preference and voting scheme would be rationally related to fulfillment of Congress' trust responsibility to Alaska Natives. *See Morton v. Mancari*, 417 U.S. 535 (1974).

I commend the Chairman and members of the Committee for holding this hearing. I would be pleased to answer any questions.

Testimony of Andy Golia

Before the

U. S. Senate Committee on Indian Affairs
Oversight Hearing on Subsistence
Washington D. C.
April 17, 2002

Mr. Chairman and Committee members, thank you for this opportunity to testify. My name is Andy Golia. I'm a resident of Dillingham, Alaska, a Native community on the Bering Sea coast about 300 miles southwest of Anchorage. During the winter months, I work as the Program Manager for Economic Development with the Bristol Bay Native Association. In the summer, I am a drift gillnet fisherman in Bristol Bay's commercial salmon fishery. I am here today to present the testimony of Harvey Samuelsen, whom you invited to testify.

The Bristol Bay region of Alaska covers about 40,000 square miles and includes 30 villages and 9 major river systems. In also includes the richest and most productive salmon habitat in the world. Our relationship to that fishery and the land and waters that sustain us are defined by subsistence customs and traditions that are essential to our way of life.

Approximately 90% of the village residents in the Bristol Bay region are Alaska Natives. Like other Natives across Alaska, we have practiced a subsistence lifestyle for many generations to feed our families and to supplement our cash incomes. Subsistence traditions

govern our family, community, and economic systems and define who we are as a people. Subsistence is not a recreational activity. It is a way of life.

The commercial salmon industry is the economic base in Bristol Bay. It has provided us with the cash we need to build and heat our homes, to build and maintain our school systems, to feed our families and to practice our subsistence traditions. Nearly two thirds of our households derive more than 80% of their income directly from the fishery. Our sons and daughters grew up in this tradition and want to follow in the footsteps of their elders. But in recent years the commercial fishery has collapsed.

The farmed salmon industry has glutted world salmon markets and driven wild salmon prices down. We've seen our salmon prices drop from a high of $2.25 a pound back in 1989 to just $.40 a pound last summer. In 1997 and 1998, our fishery was declared an economic disaster by both the state and federal governments because of failed salmon returns and again by the State in 2001 because of weak salmon prices. We have had economic disasters 3 out of the last 5 years. The long-term outlook for salmon prices looks grim.

Our salmon stocks are also experiencing some biological problems. In 2000, the Kvichak River, once the world's largest sockeye salmon producer, suffered its first peak-cycle run failure in its 100-year history. In 2000, only 1.8 million sockeye returned out of a

forecasted return of 11 million. In 2001, the minimum escapement goal was 2 million. The actual escapement was about 1 million sockeyes. The pre-season forecast for the 2002 commercial fishing seasons in the Kvichak and other river systems of Bristol Bay are just as bleak. With economic hardships facing Bristol Bay, residents are becoming more and more dependent upon the subsistence resources provided by our lands and waters for survival.

The cost of living in the Bristol Bay region ranks among the highest in the State and nation. A University of Alaska's Cooperative Extension Service Cost of Food Study completed for 20 Alaskan communities in December 2001 showed that Dillingham residents pay the highest cost for food in the State of Alaska. It costs an average of about $190 per week to feed a family of four. This amounts to about $760 per month. In comparison, Anchorage residents pay $101 per week, and Portland, Oregon residents pay $87 per week (less than ½ of what Dillingham residents pay). A gallon of milk in Dillingham costs $6.48, a head of cabbage $7.40. We pay $2.59 for a gallon of gas (Anchorage residents pay about a dollar less). We also pay about $.23 per kilowatt-hour for electricity (more than twice as much as Anchorage residents pay). Some of our village residents pay as high as $4.00 a gallon of gasoline, $3.00 a gallon for home heating fuel, and 45 cents per kilowatt-hour for electricity.

Mr. Chairman and Committee members, as you can see, we need to subsistence hunt and fish to help offset the extremely high cost of living in our area. Every dollar saved through subsistence harvest

means the difference between heat or lights for our homes, moving away or being able to stay in your own village.

High fuel costs prohibit many residents from practicing subsistence hunting and fishing because they simply cannot afford to buy fuel. High fuel prices and reduced energy assistance prohibited villages from purchasing sufficient bulk fuel supplies to last the whole winter. For example, New Stuyahok, a village of about 550 residents on the Nushagak River, depleted its winter supply of gasoline about 2 weeks ago. With the Nushagak River still frozen over, and a runway that is too short for cargo planes, fuel cannot be flown or barged in. Residents are forced to get their gas supplies by sled from Dillingham, if they have enough fuel to get to Dillingham.

On the Alaska Peninsula, we're seeing villagers move out of their homes and leave their communities for jobs elsewhere because of the crash of salmon prices and the high cost of living. Back in 1990, Chignik Bay had a population of 190 residents - today it has a population of 48. Villagers are moving out of Port Heiden, Pilot Point, Egegik, South Naknek, and Naknek and many of their schools are on the verge of being shut down because they don't have enough students.

At the same time, there's been a decline of the Northern Alaska Peninsula Caribou Herd these villages depend upon for food. In 1975 this herd numbered about 25,000. Today the herd is down to about 6,000. In spite of this decline and the dependence of subsistence

hunters on the resource, last fall the State awarded 400 statewide permits to hunt this herd, while Federal subsistence management awarded only 40 subsistence permits split between 11 villages.

During the moose-hunting season in the Nushagak River area last fall there were a total of 1,063 hunters, 641 non-local hunters and 422 locals. A total of 363 moose were taken. Of this number, hunters from out of the region took 226 moose. Local hunters from six (6) villages in the Nushagak River area took 138 moose.

As you can see, along with the pressure of our local economic collapse, we must also live with increased competition for our subsistence fish and game. This is largely due to the State Legislature's refusal to protect our subsistence rights and its insistence on opening our subsistence hunting and fishing to all 627,000 Alaska residents (as subsistence users). We honor our subsistence tradition of sharing our resources with those in need. However, this is becoming less tolerable because of the growing number of non-village hunters coming from outside of our region seeking antlers and adventure at the cost of our survival.

When the Alaska Native Claims Settlement Act was passed in 1971, village councils and Native residents made their land selections largely based upon their traditional subsistence use areas. This guaranteed them continued access to their traditional hunting and fishing sites and to the subsistence resources they depend upon for

cultural and nutritional purposes.

In recent years, as the Bristol Bay commercial fishing economy continues to falter, we have seen a growing number of Native allotments in the region being sold to outside interests in order for village members to pay their bills. These outside interests do not always share our subsistence traditions, and seek economic gains by building sports hunting and fishing lodges that degrade the subsistence values of adjoining Native-owned parcels. 104 of these allotments are offered for sale today.

In Bristol Bay, subsistence hunting and fishing are important parts of our economy. They enable our members to supplement their cash incomes, which is important especially in these economically hard times. Sports hunters and fishers, who compete with us for subsistence resources, threaten our subsistence way of life along with outside interests, who do not share our subsistence values, purchasing Native allotments to turn a profit.

In closing, if there are no objections, I'd like to submit as Exhibit A, a 2-page document that shows the extremely high cost of living and high cost of electricity and fuel in our region.

That concludes my testimony. Thank you.

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Exhibit A

The following are excerpts taken verbatim from the Bristol Bay Native Association's current draft Comprehensive Economic Development Plan:

B. High Cost of Living:

The cost of living in the region is extremely high. The following table shows the cost of living in Dillingham compared to Anchorage, Alaska and Portland, Oregon. The University of Alaska, Fairbanks, Cooperative Extension Service surveyed 20 communities in the state and compiled the data in the table. It shows the cost of items for the month of December 2001. The cost of food is calculated per week for a family of four with two children between the ages 6 to 11 years old.

Category	Dillingham, AK	Anchorage, AK	Portland, Oregon
Food (per week)	$189.45	$101.24	$87.46
Electricity 1,000 kWh	$180.98*	$112.38	$82.29
Heating Oil 55 gallons	$122.65	$61.88	$104.50
Gasoline 55 gallons unleaded	$138.55	$77.55	$65.95
Lumber (2x4x8)	$5.04	$3.04	$2.58
Propane Gas	100# refill	$106.09	$44.52

8

$41.30

*** = Dillingham is eligible for Alaska State's Power Cost Equalization Program.**

While the above table shows the cost for necessities in Dillingham, the cost of groceries is generally higher in the smaller Bristol Bay communities because grocery items must be "shuttled" through Dillingham, Iliamna, or King Salmon.

C. High Cost for Electricity and Fuel:

Because of their remoteness, most of the region's residents living in smaller communities generally pay about twice as much than Dillingham consumers and 4 times as much as Anchorage consumers. In some cases, such as in the community of Egegik, residents pay as much as $.45 per kWh.

The Alaska Power Authority indicates that the goal of the Alaska's Power Cost Equalization (PCE) program is to provide economic assistance to customers in rural areas of Alaska where, in many instances, the kilowatt-hour charge for electricity can be three to five times higher than the most urban areas of the state. The program seeks to equalize the power cost per kilowatt-hour statewide. However, even with PCE rural electric costs are 2-3 times higher than urban energy costs.[1]

Although Alaska's legislature approved a long-term funding plan for Alaska's PCE program, rising fuel cost will drive rates up because most Bristol Bay communities are solely dependent upon diesel generators for electricity.

The cost of gasoline in the region is also very expensive. Back in 2000, area residents in the following communities paid the following amounts for gasoline:

[1] Statement of Alaska's Power Cost Equalization program on the Alaska Energy Authority's Internet site at http://www.aidea.org/pce.htm.

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Bristol Bay Community:	Cost per Gallon of Gasoline:
Dillingham	$2.60
Portage Creek	$3.15
New Stuyahok	$2.75
Koliganek	$2.75
Newhalen	$2.98[2]
Nondalton	$4.00[2]
Iliamna	$2.98[2]
Kokhanok	$3.24[2]
Iguigig	$2.98[2]
Pilot Point/Ugashik	$2.39[2]

Because the cost of gasoline is so high, a number of communities in the region are beginning to experience depleted fuel supplies during the spring months. The State Division of Energy use to provide $100,000 bulk fuel loans to area communities, however because of state budget cuts, this program has been cut to $50,000 per community. With gasoline being very expensive, some of the area communities cannot buy enough fuel to last all winter.

To help offset the high cost of living in the region, most area residents depend upon subsistence hunting and fishing.

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Trip Report on Economic Indicators for Lake and Peninsula Borough completed in Sept. 2000 by Marvin Smith, Community Development Coordinator, Lake and Peninsula Borough, King Salmon.

United States Senate
Select Committee on Indian Affairs

April 17, 2002

Oversight Hearing on
Subsistence Hunting and Fishing Issues in the State of Alaska

2:00 p.m. at Senate Russell Room 485

Testimonial Presented from Witness:

Arthur Lake, President
Association of Village Council Presidents
P.O. Box 219
Bethel, Alaska 99559

Subsistence Hunting and Fishing Issues in the State of Alaska
By the Association of Village Council Presidents

The Association of Village Council Presidents (AVCP) is one of the 12 regional Native non-profit organizations in Alaska. The Village Councils established AVCP in 1964 to work for the benefit of the tribal governments and the people of the Yukon River and Kuskokwim River (YK) Delta[1].

AVCP was involved in the process leading to the federal legislation called the Alaska National Interest Lands Conservation Act and the Alaska Native Claims Settlement Act. Since 1964, AVCP has grown to become a diverse social service agency, tribal rights advocate, and community development organization.

Our services are varied and not limited to operation under the departments of: Administration, Accounting, Education, Employment, Training & Childcare, Natural Resources, Realty, Social Services, Tribal Services, Vocational Rehabilitation, Headstart, Planning, Temporary Assistance to Needy Families Program (TANF,) Village Public Safety Officer Program and the Yup'ik Cultural Center/Museum.

The 56 communities listed on our letterhead are all federally-recognized tribes that make up our organization. Each tribe has a Village Council and representatives of each tribal government make up the AVCP Board of Directors. The Board holds a twice-annual Convention at rotating in-region sites in which to discuss traditional and contemporary issues that affect our culture and communities, with Subsistence undoubtedly the most important issue[2].

AVCP offices are located in Bethel, Alaska. Bethel is the regional "hub" community, with a population of approximately 6,000. Bethel is home to most federal and state agency offices. The Yukon Delta National Wildlife Refuge headquarters are also located in Bethel, managing a land mass equivalent to the State of Washington.

The YK hosts what is commonly referred to as the Central Bering Sea Eskimo, but the Yup'ik / Cup'ik[3] "the Real People" is the most accurate cultural reference. The very remoteness of the YK Delta as well as the lack of easily extractable and exploitable resources perhaps protected the Yup'ik / Cup'ik culture the most from the Territorial days up to and beyond Statehood. The AVCP region is the least impacted by Western lifestyle in regard to language, art, culture and economy. As a result, our people, our villages, have retained the most basic stronghold of our culture, Subsistence. The Yup'ik / Cup'ik are the most avidly practicing customary and traditional Subsistence users in the State. When 'outsiders' need to learn or experience a taste of what Subsistence is, they are

[1] Reference Map - "Attachment I."
[2] Reference 2001 Annual Report - "Attachment II."
[3] The Cup'ik "C" is pronounced "Ch" (Choo-pik.)
[4] Reference New York Times Article from July 12, 1999 - "Attachment III."

directed to us because we live Subsistence[4]. Subsistence is our way of life, not a lifestyle. Subsistence defines the Yup'ik / Cup'ik, not the other way around.

In recognizing Subsistence as the anchor to our cultural survival and cultural integrity, AVCP's Department of Natural Resources main purpose is to protect Subsistence relevance in State and Federal resource management.

For nearly forty years we have endeavored to apply traditional knowledge and customary and traditional use patterns and practices to Western management regimes. Co-management programs have proved to be the most effective means of bonding the two paradigms. AVCP has experienced some success in resource management programs with the United States Fish and Wildlife Service (USFWS), Alaska Department of Fish and Game (ADF&G), and on shared resource issues, other Native regional groups.

Examples of our past co-management programs with the Yukon (Kuskokwim) Delta National Wildlife Refuge (and in some instances the Togiak National Wildlife Refuge) include the Western Alaska Brown Bear Management Area (WABBMA), the Qauilnguut (Kilbuck) Caribou Herd Management Plan (QCH), the Lower Yukon Moose Management Plan and the Yukon-Kuskokwim Delta Goose Management Plan[5] (which has gone on to inspire implementation of the Amendments of the Migratory Bird Treaty Act in recognizing Alaska Native Spring hunts and egging activities.)

Though AVCP's Imarpigmuit Ungungsiit Murilkestiit (IUM) (Watchers of the Sea Mammals) group does not have a co-management plan nor receives funding from Statewide species management programs, we are invited to participate in meetings with the Indigenous Peoples Commission on Marine Mammals (IPCoMM), the Alaska Beluga Whale Committee (ABWC) and the Eskimo Walrus Commission (EWC.)

While the State and the Federal government draw their lines in the sand, the Alaska Natives watch in bewilderment, the politicizing of a way of living. To the Yup'ik, Subsistence is the pursuit for our very sustenance, it is our daily bread, our sacrament, our activity planner, our exercise, our art, our measure of time in the changing of seasons. Subsistence is our creator and our humility.

Ironically, while Federal laws attempted to protect resource and land use for Alaska's Indigenous Peoples, Federal Law extinguished "Aboriginal Rights." We have since suffered attacks on our Subsistence rights by the Alaska Legislature. The federal mandate under the Alaska National Interests Land Conservation Act (ANILCA) for a rural priority is seen simply as a 'threat' to the non-Native residents' notion of equal protection. When priority was going to be given to Alaska Native hunting and fishing, the State government

[4] Reference New York Times Article from July 12, 1999 - "Attachment III."
[5] AVCP Convention Resolution 02-03-07 Reauthorizing the YK Goose Management Plan "Attachment IV."

told Congress that it could not participate in implementing such a priority; this is why ANILCA's "rural" priority came about.

The first mistake in the history of Subsistence management for Alaska was that Alaska Natives were not treated as a unique interest group, possessing hunting and fishing rights not as "rural" residents, but as Native American.

State funding for Subsistence management has been categorically reduced in recent years; it has led the Alaska Department of Fish & Game, especially the Division of Subsistence to cut critical management programs. This year, the Legislature even went as far as to consider cutting the entire funding for the Division of Subsistence in defiance of Federal law. These cuts to State Subsistence management funding make Federal Subsistence management all the more important.

At its Special Convention last month, the AVCP full Board voted to oppose Governor Knowles' Subsistence Amendment to the Alaska Constitution. Were the State to regain control in management at this time, given a possible change in Administration and the make-up of a hostile Alaska Legislature, the integrity of Subsistence management for the benefit of our people would undoubtedly be compromised. We cannot sacrifice the security of our way of life on the false altar of "regaining State management."

Our Subsistence way of life is vital to our self-determination, health and well being, and the physical and cultural survival of our people.

Our Subsistence way of life is under severe attack from the Alaska Legislature, which is exemplified by the attempts to do away with the Division of Subsistence of the Alaska Department of Fish & Game in its entirety. This action demonstrates the House leadership's true agenda of regaining state control over Subsistence not to manage it, but to destroy it.

While we are not against State reconciliation, we feel that pushing an agenda of State management at this time would not be conducive to appropriate Subsistence regulatory management. Governor Tony Knowles of Alaska should be commended for his efforts, in the face of legislative resistance, to take the high road in abandoning the State's appeal of the *Katie John* case, and to try to find a solution to the Subsistence conflict that would have brought Alaskans together. Unfortunately; however, not everyone in positions of power in Alaska shares his respect for our way of life. Continued Federal management is a necessary shield against State abuses that might undermine or compromise the security of our way of life.

It would be a tragedy if our people were to assist the State in regaining management over Subsistence, only to pave the way for a potentially hostile administration in Juneau that might manage our Subsistence in a disrespectful and destructive manner.

Even under the current administration in Juneau, state managers have not always granted Subsistence a meaningful priority over competing uses during times of shortage, to the

same degree that federal managers have; for example, with Subsistence restrictions in place on in the Yukon and Kuskokwim drainages last summer, the Federal Subsistence Board closed sport fishing on federal waters, but the state managers left sport fishing open on those waters that remained under their sole and exclusive jurisdiction.

Federal management appears to be working well, for the most part, and is more likely to provide meaningful protection for our Subsistence way of life, at least for the time being and for some time into the future.

AVCP is committed to hold and maintain our position that we not amend the Alaska Constitution at this time. AVCP cannot support a return to state management at this time, for the fundamental importance of preserving and protecting our tribal Subsistence way of life must always come first.

Finally, AVCP opposes any compromising amendments to ANILCA, that might be considered as an effort to somehow "sweeten" the deal for the State of Alaska, and thereby induce the Alaska Legislature to put forth a Subsistence amendment to the State Constitution. ANILCA's "rural" priority – flawed as it may be – has at least provided our people with federal protection for our way of life. Unless a Native priority is to be recognized, we cannot support further amendments to or compromising the ANILCA priority[6].

On behalf of the Association of Village Council Presidents, we thank Chairman Inouye and the Committee members for calling for this important hearing that directly affects our way of life. We will be happy to answer any follow up questions in writing for the Chairman or any members of the Committee that were not addressed during the hearing.

Quyana. Thank you.

[6] AVCP Convention Resolution 02-03-01 "Attachment V."

ATTACHMENT III

July 12, 1999, Monday
NATIONAL DESK
Alaska Torn Over Rights to Live Off the Land
By SAM HOWE VERHOVEK (NYT) 1932 words

KWETHLUK, Alaska -- In the clearings along the broad Kuskokwim River where the Yup'ik Eskimos set up what they call their "fish camps," this is a busy time. Families are racing to catch, cut and cure the fish that will last them a year, and salmon turn scarlet as they hang by the hundreds to dry in the early summer sun.

James Nicori and his family were up until 3 the other morning, stringing fish and stoking the alderwood in the smokehouse, not that the time of day matters too much at a point in the season when it does not get dark at all. In August it will be time for gathering berries and wild celery out in the bush. In the fall the men will hunt caribou.

To a remarkable degree, thousands of native people still live off the land here in the Alaskan tundra, taking 90 percent or more of what they eat every year from the great back country, the rivers and the Bering Sea. "This," Mr. Nicori said, beckoning to the Kuskokwim and the vast bush land beyond, "is our supermarket."

But 40 years after Alaska became a state, 20 years after land-claim disputes in the oil rush led Congress to give the people known as "subsistence gatherers" priority rights to fish and game, and 10 years after the state's highest court declared that protection unconstitutional because such natural bounty was for the "common use" of all Alaskans, the debate has reached a crisis point.

Cheering the natives but enraging sportsmen's groups and the state's commercial fishing industry, which are both largely white, Interior Secretary Bruce Babbitt announced recently that the Federal Government would take over allocation of fishing rights and schedules in federally owned sections of Alaska, nearly two-thirds of the state, on Oct. 1 unless the State Legislature acted. State lawmakers could keep Washington from doing so, Mr. Babbitt said, if they agreed on a constitutional amendment to guarantee a "subsistence priority" in times of shortage for those who rely on the land and rivers here for their primary food supply.

But the state's Republican-controlled Legislature has not reached accord on a measure to put before the voters, prompting the Democratic Governor, Tony Knowles, to warn that they could be letting in "the Trojan horse of Federal management" in a state that fiercely values its last-frontier style of independence.

In many ways, the debate over Alaska's subsistence culture starkly echoes those elsewhere over affirmative action, creating similar racial tensions. The natives say the issue is their civil rights, while the sportsmen say the natives are demanding "special rights" and unfair

quotas.

But this fight is not over schools, contracts or employment, but over food and a way of life that in some respects has remained strikingly unchanged for centuries.

"This is not 19th-century history here, some historical injustice we can do nothing about today," said George Irvin, policy director for the Alaskan Federation of Natives, which represents the Eskimos, Indians and Aleuts in their battle for subsistence rights. "These are the last aboriginal Americans still striving to live as they always have, on their homelands. There has to be room in the American system for them to survive."

To an outsider, the dispute at first seems eminently solvable. After all, the subsistence gatherers take only 2 percent or 3 percent of the state's fish and game harvest a year, and polls show that at least 60 percent of Alaskans favor granting priority rights to such people. And the issue mainly arises in times of scarcity, which come every few years when regulators determine that fish are running low in some rivers or that caribou or moose herds have thinned.

But allocating these rights can be immensely complicated, which partly explains why the Legislature has so far failed, despite years of trying, to resolve the issue.

Who, exactly, should be defined as a subsistence gatherer? Although subsistence is rooted in native cultures, some white people also live off the land, while many natives live in Anchorage and Fairbanks and are just as likely to shop in a supermarket or eat at McDonald's as a nonnative.

Furthermore, insuring subsistence gatherers the ability to carry out a traditional way of life sometimes means, say, closing off rivers for several weeks to everybody else. That not only irritates those who fish as a hobby but possibly makes the difference between profit and loss in the season of a commercial fishing operator.

Beyond the logistical considerations, it is clear that the issue has touched a deep emotional nerve.

That is particularly true for nonwhite Alaskans, or native peoples, as they prefer to call themselves, who were the majority in Alaska into the 1940's but now make up only about 15 percent of the state's population. Many native leaders complain of mistreatment by the white majority, a sentiment clearly in evidence at a rally in Anchorage in May in which native groups pressed for protection of subsistence rights.

"Apartheid is alive and well and it lives in the Arctic, it lives in our schools, and I'm sad to say it lives in the halls of the State Legislature," Desa Jacobsson, who is Gwich'in Indian on her mother's side and Yup'ik Eskimo on her father's, told the crowd. Ms. Jacobsson, who ran unsuccessfully for Governor last year as the Green Party candidate, was jailed briefly several years ago after a subsistence fishing protest.

But strong emotions are also felt by many whites, whose numbers swelled from migration in the oil rush of the 1970's, but also include many who were born here and feel they, too, are natives.

"Our adversaries marched for 'special rights' -- and called it civil rights," says a brochure produced by the Alaska Outdoor Council, one of the principal groups representing sportsmen and sportswomen in the state. It urges members to fight efforts to "enshrine that terrible Federal subsistence law in our state's Constitution."

That law, Title VIII of the Alaska National Interest Lands Conservation Act, was passed by Congress in 1980, establishing a subsistence priority, loosely defined as applying to rural residents of the state and thus covering what it termed the "customary and traditional" uses of subsistence gatherers. That measure guaranteed that in years of low yield, steps should be taken to guarantee that those gatherers had first rights to the harvests of fish and game. It grew out of an agreement a decade earlier, reached in the rush to clear a right-of-way for the building of the Trans-Alaska Pipeline, that native subsistence rights would be protected.

But those are the protections that the state court later deemed unconstitutional. And, after years of prodding the state to change its Constitution, the Federal Government is set to wield its hammer, in the form of Secretary Babbitt's threat to take over fishing management on federally owned property in Alaska.

The state has been managing fishing on those lands and has asked to keep doing so while it tries to work out language to protect subsistence rights, but Mr. Babbitt said earlier this month he was disappointed that the Legislature had not brought the issue before voters and that it was time to act.

About half of Alaska's 100,000 native peoples live off the land to a significant extent, according to the Alaska Federation of Natives. For some, that may mean taking only a third or so of their food from the land. But thousands, like Mr. Nicori and his family here on the Kuskokwim, get 90 percent or more this way.

The food involved runs the gamut, from berries and roe air seaweed to fish, moose, caribou, arctic hare and the parka squirrel.

The natives who live off the land are hardly living in the past. In many of their villages, there are motorboats and snowmobiles, satellite television dishes and Coca-Cola.

"There's no way you can stop it completely," said 64-year-old Mary John, laughing as she skinned a huge bucketful of herring one recent afternoon with her 14-year-old granddaughter Kimberly Kassaiuli in the village of Newtok, in southwestern Alaska. "Kids do like the taste of potato chips."

Across the village, hard by the Niutaq River, several of Stanley and Elizabeth Tom's eight children were inside the house, watching a Disney "Mighty Ducks" cartoon movie as they also gutted and intricately braided fish with tundra grass, then hung them for drying.

Except for a big bowl of rice, lunch that afternoon at the Toms' small home came from the land: half-smoked salmon, dried herring dipped in seal oil, salmon berries preserved last fall.

"This is a big part of who we are and what we are all about," said Mr. Nicori, here on the Kuskokwim, who had nearly 100 king salmon and hundreds of smaller reds and chums hanging on the lines and in the smokehouse at his fish camp. "It is something we must never lose, no matter how modern the world becomes."

Under the current system, the state gives priority in some cases to subsistence gatherers. For instance, they were allowed to fish in the Kuskokwim for several weeks this year before it opened to commercial operators. But critics challenge that system, saying it is not strong enough to guarantee protection in all cases, as would the Federal law, which Mr. Babbitt wants enshrined in the state Constitution.

From 1994 to 1998, several rivers in southwest Alaska had poor fish runs, and around Bristol Bay, the state had to deliver fish caught elsewhere to nearly 100 communities, an act of compassion that was also deeply wounding to those who survive off the land.

Governor Knowles is expected to call one more special session, probably in September, in a last-ditch bid to avert the Federal takeover of fishing regulations on the Government's lakes and rivers.

Though both sides say they are open to compromise, it is not clear that much common ground exists. And an unlikely alliance of forces may work against an agreement: natives who favor the Federal action and conservative lawmakers who could reap considerable political hay out of the anger that a Federal intervention could spark among many white Alaskans.

Ron Somerville, a board member of Territorial Sportsmen Inc., one of the oldest and largest sportsmen's groups in the state, said it made no sense "to allow our state to institute a bad Federal law that discriminates against our own residents."

But Myron Naneng, president of the Association of Village Council Presidents, representing 56 native villages here in the Yukon-Kuskokwim Delta of southwest Alaska, put the matter in very different terms.

"We are a very law-abiding people," Mr. Naneng said. "But when obeying the law means that our children go hungry, something is wrong with the law."

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ATTACHMENT IV

AVCP
Association of Village Council Presidents
P.O. Box 219, Bethel, Alaska 99559
Phone: 543-3521

RESOLUTION 02-03-07

TITLE: REAUTHORIZING THE YUKON-KUSKOKWIM DELTA GOOSE MANAGEMENT PLAN WITH CHANGES TO THE BLACK BRANT POPULATION GOAL AND MINIMUM POPULATION LEVEL

WHEREAS The Association of Village Council Presidents, Inc. (AVCP) is the recognized tribal organization and non-profit Alaska Native regional corporation for its fifty-six member indigenous Native villages within western Alaska and supports its member villages; and

WHEREAS AVCP fully supports its member villages' endeavors in all aspects of their self-determination, health and well-being; and

WHEREAS The Yukon-Kuskokwim Delta Goose Management Plan has protected both the migratory waterfowl on which our villages depend, and residents of our villages who engage in the customary and traditional spring hunt of waterfowl, by requiring certain minimal conservation measures, and by guaranteeing a meaningful role for AVCP, the Waterfowl Conservation Committee (WCC), and the tribal governments of our villages in enforcement and implementation decisions; and

WHEREAS The Goose Management Plan was renewed in 1999 for a two-year term ending in 2001, but has not been renewed since, even though all parties to the Goose Management Plan have continued to follow its provisions; and

WHEREAS Efforts to fully implement the now-legalized spring hunt recognized by treaty are currently underway, but it is desirable that the Goose Management Plan be renewed for at least another two-year period, in order to ensure that its protections remain in place until such a time as they can be fully incorporated into any regulations that will govern the legalized spring hunt; and

WHEREAS The current black brant population objective agreed to in the Goose

Management Plan is 185,000 birds, and the current minimum population level agreed to is 120,000 birds; the estimated black brant population level last year was only slightly over 120,000 birds, and if it were to fall below 120,000 birds, all subsistence hunting of black brant would be halted under the Goose Management Plan as currently written; and

WHEREAS The U.S. Fish & Wildlife Service, the Alaska Department of Fish & Game, and the wildlife agencies of Pacific Flyway states all agree that the black brant population objective and minimum population level have been set needlessly high for conservation purposes, and that by setting the minimum population level needlessly high, the Goose Management Plan creates an unnecessary risk of a closure of subsistence hunting should estimated population levels fall below 120,000 black brant; and

WHEREAS These agencies recently asked the WCC whether it would agree to lowering the black brant population objective from 185,000 to 150,000 birds, and the minimum population level from 120,000 birds to 90,000 birds, when the Delta Goose Management Plan is reauthorized; and

WHEREAS The WCC felt that this question of the proper black brant population objective and minimum population level was one that should be addressed by the Full Board of AVCP at this special convention, along with the question of Goose Management Plan reauthorization.

WHEREAS It is desirable that the Goose Management Plan be reauthorized with a recommendation that the black brant population objective be reset at 150,000 birds, and the minimum population level at 90,000 birds.

NOW THEREFORE BE IT RESOLVED THAT the AVCP Full Board hereby directs that the Yukon-Kuskokwim Delta Goose Management Plan be reauthorized, as amended to reflect a revised black brant population objective of 150,000 birds, and a black brant minimum population level of 90,000 birds, and that this current reauthorization extend through 2004.

Adopted this 21st day of March, 2002, at AVCP's Special Convention in Bethel, Alaska, at which a duly constituted quorum of delegates was present.

ATTACHMENT V

AVCP
Association of Village Council Presidents
P.O. Box 219, Bethel, Alaska 99559
Phone: 543-3521

RESOLUTION 02-03-01

TITLE: **REAFFIRMING AVCP'S POSITION THAT SUBSISTENCE CANNOT BE COMPROMISED, AND OPPOSING THE AMENDMENT OF THE ALASKA CONSTITUTION TO REGAIN STATE MANAGEMENT AT THIS TIME**

WHEREAS The Association of Village Council Presidents, Inc. (AVCP) is the recognized tribal organization and non-profit Alaska Native regional corporation for its fifty-six member indigenous Native villages within Western Alaska and supports its member villages; and

WHEREAS AVCP fully supports its member villages' endeavors in all aspects of their self-determination, health and well-being; and

WHEREAS Our subsistence way of life is vital to our self-determination, health and well-being, and the physical and cultural survival of our people; and

WHEREAS Our subsistence way of life is under severe attack from the Alaska Legislature, which recently expressed its hostility to our subsistence when the Alaska House proposed a budget that would do away with the Division of Subsistence of the Alaska Department of Fish & Game; this budget proposal exposed the House leadership's true agenda of regaining state control over subsistence not to manage it, but to destroy it; and

WHEREAS Governor Tony Knowles of Alaska should be commended for his efforts, in the face of legislative resistance, to take the high road in abandoning the State's appeal of the *Katie John* case, and to try to find a solution to the subsistence conflict that would have brought Alaskans together; and

WHEREAS Despite Governor Knowles' efforts, we cannot be blind to the fact that Alaska will elect a new governor this November, and there is no guarantee that this new governor will be a supporter of our subsistence way of life, or will appoint a Fish & Game Commissioner, or Board of Fish and Board of Game members, who will respect our subsistence way of life, instead of trying to undermine it in favor of hostile interests or for political ends; and

WHEREAS It would be a tragedy if our people were to assist the State in regaining

management over subsistence, only to pave the way for a potentially hostile administration in Juneau that might manage our subsistence in a disrespectful and destructive manner; and

WHEREAS Even under the current administration in Juneau, state managers have not always granted subsistence a meaningful priority over competing uses during times of shortage, to the same degree that federal managers have; for example, with subsistence restrictions in place on in the Yukon and Kuskokwim drainages last summer, the Federal Subsistence Board closed sport fishing on federal waters, but the state managers left sport fishing open on those waters that remained under their sole and exclusive jurisdiction; and

WHEREAS Federal management appears to be working well, for the most part, and is more likely to provide meaningful protection for our subsistence way of life, at least for the time being and for some time into the future; and

WHEREAS AFN has spoken in support of Governor Knowles' proposed constitutional amendment to regain state subsistence management, despite some stated misgivings about flaws in this amendment as worded; and

WHEREAS In October 2000, at the AVCP Convention in Alakanuk, this Board passed Resolution 00-10-17, which recognized subsistence as an inalienable right of our Tribes, and directed that AVCP must "preserve and protect tribal subsistence ways of life from undue outside influences and pressures."

NOW THEREFORE BE IT RESOLVED THAT AVCP's Full Board hereby reaffirms Resolution 00-10-17, and recognizes that the no compromise position taken in this resolution prevents us from supporting any constitutional amendment which would allow the State to regain control over subsistence management at this time, when the current political climate here in Alaska makes it far from clear that state management would be consistent with AVCP's mandate "to preserve and protect tribal subsistence ways of life from undue outside influences and pressures."

BE IT FURTHER RESOLVED THAT AVCP recognizes and appreciates Governor Knowles' efforts to bridge the subsistence divide in our State, and extends to the Governor our heartfelt thanks for his efforts to bring Alaskans together on subsistence, but recognizes that political forces largely beyond his control have made a return to state management too risky for now.

BE IT FURTHER RESOLVED THAT AVCP opposes any amendment to the Alaska Constitution to regain state management at this time, but prefers instead the continuation of federal subsistence management until such time as the State of Alaska has had a true change in consciousness on subsistence.

BE IT FURTHER RESOLVED THAT AVCP staff is directed to write AFN, to ask AFN to reconsider its position on amending the Alaska Constitution at this time, and to write Governor Knowles to thank him for his efforts, but to explain to him why AVCP cannot support a return to state management at this time, in light of the mandate of Resolution 00-10-17, and the fundamental importance of preserving and protecting our tribal subsistence ways of life from the undue outside influences and pressures that hostile legislators and potentially unsympathetic state officials have directed, or may direct, against our vital subsistence traditions and cultural practices.

Adopted this 21st day of March, 2002, at AVCP's Special Convention in Bethel, Alaska, at which a duly constituted quorum of delegates was present.

TANANA CHIEFS CONFERENCE, INC.
122 FIRST AVENUE, SUITE 600
FAIRBANKS, ALASKA 99701

TESTIMONY OF GEORGE YASKA OF TANANA CHIEFS CONFERENCE TO THE SENATE INDIAN AFFAIRS COMMITTEE ON INDIAN AFFAIRS APRIL 17, 2002

Good afternoon, Mr. Chairman, Members of the Committee. My name is George Yaska. My comments today reflect the position of the Tanana Chiefs Conference. The Tanana Chiefs Conference is a consortium of forty-two (42) tribes located within the Doyon region along the Yukon and Kuskokwim Rivers. The Yukon spans a distance of more than a thousand miles through the region. There are seventeen (17) Conservation System Units located within the region, including National Parks and Preserves, National Recreation Areas and National Wildlife Refuges. The area is roughly the size of Texas. Tribes and other fishers and hunters use much of these lands to harvest resources.

We state these facts in order to explain a part of the problem with subsistence management today. The land is so great that it seems that there is not enough for everyone and, of course, this is not true. Although managing agencies maintain a strong program and subsistence hunters harvest plenty of predators that help to produce a viable moose population, the country cannot keep up with demand. A similar situation existed with

Chinook salmon until the recent downturn into the current poor production regime. Eighty percent (80%) of king salmon were harvested commercially at the mouth of the Yukon so that most of the kings didn't make it up to subsistence users further up the river. Commercial and sport use of moose and Chinook salmon has long over-shadowed subsistence uses within the interior and we have never has a true subsistence priority. We have worked for more than fifty years to establish bountiful resources for all user groups but we do not realize the benefit. Additional resources only insure additional sport and commercial users. It has seemed that subsistence users have ended up within nothing but left-overs for the past few years. If tribes were in a stronger position to assist in the establishment of management regimes and regulations to manage resources, we could work towards both a bountiful resource and a truer subsistence priority. As long as other user groups out-number subsistence users, this problem will remain. We respectfully request that this committee begin to review possible avenues for solutions.

Tanana Chiefs has long been involved in efforts to co-manage fish and game and our efforts continue today. We appreciate the efforts of Congress to help the AYK Coalition in its' investigation of the causes of decline in certain salmon species in Alaska. Poor production may be related to a coccolithiform bloom or sterile zone in the upper trophic regime within the

Bering Sea. High water temperatures within river drainages have also complicated the management picture. We have weathered previous difficulties and we thank you for your efforts to see us through this latest problem.

We are working with subsistence users to assist the USF&WS and the Alaska Migratory Waterfowl Council with the implementation of the migratory waterfowl treaty. The group is considering the rules that will establish the spring hunt in Alaska, particularly within our region. Tribes will be finalizing metes and bounds description of their hunting areas around their community and proposing opening and closing dates. They may also get an opportunity to work on similar issues as we approach the season nest spring.

Koyukuk River villages have formed a co-management team that has proposed to the USF&WS a contractual relationship with the Koyukuk and Kanuti National Wildlife Refuges. The team formed several years ago and they have done an outstanding job to date in assisting refuges in completing its mandate for public lands management. They can see shortfalls in the regulatory scheme that are not easily apparent to the average manager. These shortfalls often present substantial difficulties for hunters and better

management could clean these up quickly. In order to solve several of these problems, they have proposed to conduct visitor center operations, habitat assessments, wildlife enumeration and participate in key refuge planning efforts.

Tanana Chiefs has also pushed managing agencies to form joint working groups to solve particular problems in wildlife management. We advocate that all user groups and affected parties participate in these groups. Our wildlife problems usually extend themselves over many land boundaries and conflicts can become major headaches with so many parties without a working group. However, there is not a mandate that compels agencies to work together in this type of group to resolve complex management issues.

We are just now developing a working definition of co-management with agencies within our region. Non-BIA agencies within the DOI are still getting used to the fundamental issues found within the Indian Self-Determination and talks regarding these issues sometime proceed very slowly. This may compel us to seek your assistance when the situation warrants such discussion. However, we have found this to be a rare practice. The term "working groups" was founded, for application in Alaska, within ANILCA. These groups have brought back to life many areas within our

region that were thought to be no longer viable. This is one of the most valuable practices for managing agencies. We can see now situations that cry out for working groups but there is no mandate that would compel agencies to participate in such discussions. So we offer a little more light on the subject of co-management and the importance of a true subsistence priority. We thank you for this opportunity. I remain open for questions and comments. Thank you.

TESTIMONY OF CHARLES JOHNSON
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To the U.S. Senate Committee on Indian Affairs
April 17, 2002, Washington, D.C.

Mr. Chairman, It is an honor for me to address this committee on an issue that is heart and soul to Alaska Native Peoples, subsistence. Through the generations a subsistence life has taught us to be the stewards of the land and waters that support us. To take what we need and to return to the land what we don't need. We are taught not to waste and to share With a respect for and thorough knowledge of the environment our ancestors were able to survive and even thrive in the harshest conditions because we managed our harvest. The principle of not wasting meant that we understood the principle of sustainable harvest.

The 1994 re-authorization of the Marine Mammal Protection Act allowed the Secretaries of Interior and Commerce to enter into "Cooperative Agreements" with Alaska Native Organizations for the management of the subsistence harvest of marine mammals. Co-management began in Alaska in 1977 when the Alaska Eskimo Whaling Commission (AEWC) signed and agreement with NOAA to manage the harvest of bowhead whales. This co-management agreement was successful because:

- The vast knowledge the whaling captains held on the behavior and numbers of bowhead whales and their willingness to share this information with the management agency
- The AEWC development of self regulation and their resolve to abide by these regulations
- The willingness of NOAA to consider the traditional knowledge held by the whaling captains and augment that knowledge with new scientific techniques and equipment
- The willingness of NOAA to share management responsibility with AEWC and to support shared management

The Alaska Nanuuq Commission was organized in 1994 to represent the hunters and villages in North and Northwest Alaska in the negotiation of the U.S./Russia Polar Bear Treaty. Thanks to the Native American Policy developed by the late Director of the U.S. Fish and Wildlife Service, Mollie Beattie, the Alaska Nanuuq Commission became a full partner with the U.S. Fish and Wildlife Service in the negotiation of the treaty. The treaty was signed on October 16, 2000 here in Washington, D.C. The treaty is unique in that it recognizes the traditional knowledge of the native people of both Alaska and Russia and provides for the their full and equal participation in setting harvest limits and

the management of the subsistence harvest of polar bear. When the Russian Ambassador to the U. S., Yurie Ushakov, signed the treaty he declared that it is the most democratic treaty that Russia had ever signed. Once the treaty is ratified, the Alaska Nanuuq Commission will have achieved a level of co-management that only AEWC has reached. The Alaska Nanuuq Commission is now developing a Native-to-Native Agreement to implement the treaty with the Association of Traditional Marine Mammal Hunters of Chukotka, which represents the native people of Chukotka, Russia.

Other successful co-management agreements beside the Alaska Nanuuq Commission and the AEWC include:

1. Alaska Native Harbor Seal Commission with NMFS on harbor seals
2. The Alaska Sea Otter and Stellar Sea Lion Commission with the USFWS and NMFS on sea otters and sea lions
3. The Alaska Beluga Committee with NOAA on beluga
4. The Eskimo Walrus Commission with USFWS on walrus
5. The Yukon/Kuskokwim Goose Management Plan between the Association of Village Council Presidents and USFWS

You will note that all of these agreements are between Alaska native groups and federal agencies. And with the exception of the goose management plan the agreements cover marine mammals, which have specific legislation, the MMPA. But the same principles can be applied to terrestrial species and to fish. We have a history of successfully working with the federal agencies that goes back for than 25 years. With the federal government now managing subsistence the opportunity is there to solve management issues by developing co-management agreements with Regional Non-profits and Alaska Native tribes.

Oversight Hearing: Subsistence in Alaska
Senate Select Committee on Indian Affairs
April 17, 2002

Testimony of Mike Williams
Chair, Alaska Inter-Tribal Council

Good afternoon, Mr. Chairman, Members of the Committee.

On behalf of the 180 tribal governments who are members of the Alaska Inter-Tribal Council, I want to express thanks to this Committee for taking time to hear our concerns about subsistence. More than that, Senator Inouye, I wish to add the thanks of individual tribal members, many, many of whom, in this year of 2002, hunt, fish and gather not only for themselves and their families, but to share the bounty of the land and waters with others in their communities, as has been our tradition for hundreds of years. Thank you for listening to us.

The great majority of our people have never left Alaska; some rarely ever leave the immediate vicinity of their villages. I think it is true to say that many do not read newspapers, and for them a legal brief is an alien document. Policies and written laws and regulations are likewise foreign concepts. Their idea of a law is what they were taught by parents or elders, as they set out to learn how to support themselves from the land. Increasingly, Mr. Chairman, they are feeling the stress of ever more restrictive regulation; ever narrowing seasons; decreasing fish stocks and game populations.

Some of our people do deal on a daily basis with the task of maintaining legal protections for our way of life. What they have fought over the past twenty or thirty years are more or less public relations and policy battles:

- for historic accuracy;
- for regulatory fairness;
- for semantic truth.

When we speak of **historic accuracy**, what we want people to remember is the reason why Title 8 of the Alaska National Interest Lands Conservation Act exists. Let me read into the record today that reason, as set forth by the late Congressman Morris Udall, on November 12, 1980:

> "...ANILCA...fully reflects the commitment that...[was] made to the Alaska Native people [when their land claims were passed by Congress]....
>
> "Although there are many non-Natives living a subsistence way of life in rural Alaska...**the subsistence title would not be included in the bill if non-Native subsistence activities were the primary focus of concern.** Rather, the subsistence title and other subsistence provisions are included in recognition of the ongoing responsibility of the Congress to protect the opportunity for continued subsistence uses in Alaska **by the Alaska Native people**, a responsibility [which is] consistent with our well-recognized constitutional authority to manage Indian Affairs."

Today, there are people who would like Congress to think that ANILCA was promulgated in a kind of policy vacuum, without consideration for the aboriginal rights of our people, who earned those rights by using and occupying vast amounts of Alaska – for subsistence. Without that history of aboriginal use and occupancy, there would have been no basis for our land claims.

When we speak of **regulatory fairness**, we speak of a situation where our peoples' subsistence needs and concerns have been pushed to the bottom of the agendas for the Alaska State Boards of Fish and Game. Time after time, we have seen our proposals voted down because the State system requires management by agencies who are manned by political appointees. And politics being what it is, those appointees represent well-funded, well-organized commercial fishers and sport hunters and fishers.

Mr. Chairman, our tribes would have liked to welcome and support State management of subsistence, because we are not only tribal citizens, we are also Alaskan citizens. But it is difficult, if not impossible, to support a system that routinely neglects the needs of tribal hunters, fishers and gatherers.

Finally, Mr. Chairman, I speak of **semantic truth**. That word, *semantic*, comes from a French word, *semantique* which, in turn derives from an old Greek word, *semantikos*. Their meanings stem from the verb, "to signify" – which comes from yet an older word meaning, "to mark".

We in Alaska have watched a small but politically powerful group of people attempt to mark out the boundaries of the subsistence issue. They have almost succeeded in convincing the general public that the subsistence issue is one centered around geography and discrimination. The two arguments are condensed into their strident statement that legal protection of subsistence in the federal law in ANILCA, amounts to "discrimination by zip code".

Which brings us back to accuracy in reporting history. Title 8 of ANILCA says that federal law shall protect not Alaska Natives or tribes, but "rural Alaska residents". That language stems from a compromise that our leaders reluctantly accepted at the time ANILCA was passed by Congress. We accepted it because our villages were, and many still are, located in remote and rural areas of Alaska. But we have never forgotten Morris Udall's assurances that the original intent of Title 8 was to protect the ability of our villages to support themselves from the land and waters of Alaska.

Since the enactment of our land claims, the Alaska Native people have expended untold costs in dollars, human resources, and the attendant social stresses on our people, on the subsistence issue that is before you today. It is the position of the Alaska Inter-Tribal Council that we would have been better able to direct our precious resources toward improving the quality of life for our tribal members, if our aboriginal hunting and fishing rights had not been extinguished at the time our land claims were settled in 1971.

On April 2, the City of Anchorage included on its municipal elections ballot a question: should Alaska's voters be allowed to vote on the subsistence issue? The result was an uncompromising, 'Yes'. In spite of that outcome, the leaders of the legislative majority were quoted in the Anchorage Daily News as saying they would still oppose a State law to protect subsistence. Instead, they said, they will continue to push for changes to Title 8 of ANILCA.

I call on this Committee to lead an effort to place this issue back where it belongs: in the hands of the Congress. Felix Cohen said this nation's founding fathers acted in wisdom to place the affairs of tribes in your hands. After all, the states of this union are committed by law (and by politics) to consider the desires and needs of every one of their citizens, regardless of race. And tribes, as few in number as we are, are vulnerable to the nearsighted policies necessitated by that fact. Only Congress possesses the political objectivity that can see beyond the parochial fights, to the best interests of tribes, their governments, and their members.

We would like this Committee to consider carefully a proposal to repeal the section of the Alaska Native Claims Settlement Act, which extinguished our aboriginal hunting and fishing rights. You have that power.

Senate Select Committee on Indian Affairs
Oversight Hearing on Subsistence
April 17, 2002

Testimony of Donne Fleagle
President, Board of Directors
Rural Alaska Community Action Program, Inc.

Mr. Chairman and Members of the Committee, thank you for this opportunity to testify on behalf of the Rural Alaska Community Action Program.

RurAL CAP was founded in 1965, one year before the establishment of the Alaska Federation of Natives. Our policies and programs are directed by a Board of Directors that represents virtually every sector of Alaska, public and private, rural and urban, Native and non-Native. While we have programs whose focus includes urban residents, our closest partners are people who live and work in Village Alaska.

In 1999 our Board met in Fairbanks and, as we like to do periodically, engaged in an exercise to discover which issues require the largest part of our attention. It came as no surprise to most of us that the issues that capture our most devoted interest continue to be the legal and political aspects of subsistence.

Mr. Chairman, I was born the year Alaska became a State . My children were

born in the State of Alaska. We live on a native allotment five miles from the town of McGrath, which is located on the Kuskokwim River and not connected by road to any other place. We live and work in a community which has always looked to the land and waters for food. The activities associated with hunting game, fishing, trapping and gathering berries, greens and firewood, are activities that form the core of our individual, familial and cultural identity.

Increasingly, those very activities are coming under attack from a variety of sources:

- first, from non-Native Alaskans, many who came to our state because they place a value on the land and its wild resources
- from the State of Alaska, which opposed the inclusion of language specifically protecting Alaska Native subsistence, in ANILCA, Title 8;
- from an increasing majority of Alaskan residents who are not well-versed in Alaska Native history, including knowledge of how our land claims were settled, and why there is a Title 8 of ANILCA;
- finally, from a majority of the Alaska State Legislature, who would like to amend away the subsistence protections in Title 8.

As you well know, the State of Alaska would like to regain management over subsistence on all of Alaska's public lands, including the sixty percent that is in federal hands. Title 8 of ANILCA requires that an essential component of State subsistence management is a State law that mirrors the federal subsistence protections contained in Title 8. That requirement is at the center of the so-called "subsistence impasse" which your Committee addresses today.
The Alaska Constitution was approved by Congress in 1958. It includes a section

which says that all of Alaska's natural resources are to be "reserved for the common use" of all Alaskan citizens. Those who oppose the federal subsistence protections in Title 8 of ANILCA, have used the Alaska Constitution as a weapon against the Alaska Native way of life. The legislative majority, and their mostly non-Native constituents, are lobbying Congress to change ANILCA, instead of changing the State constitution to allow a State subsistence protection law.

Over the last several years, Alaska Governor Tony Knowles has mounted a campaign which he says could make things better. During his seven-plus years as Governor, he has called no less than four special legislative sessions to address subsistence. In 1996 he appointed a Task Force to hold hearings; that task force issued a report in 1997 which recommended the issue be presented to voters to ask whether they support an amendment to the State constitution. The task force also recommended changes which they termed 'technical', to Title 8 of ANILCA. It must be noted here that the Alaska Native community, including the Alaska Inter-Tribal Council, RurAL CAP, and Alaska Federation of Natives, voiced opposition to a majority of the 1997 task force's recommendations.

In 2001, Governor Knowles appointed some forty Alaskans to participate in what was called a 'leadership summit' on subsistence. Of those forty Alaskans, a majority represented Alaskan business and commerce – including several Alaska Native corporations; and only two could be deemed to represent 'tribal' interests. The Summit participants recommended that the question of amending the State constitution go to Alaskan voters, and included a values statement on the importance of subsistence to Alaskan tribal cultures.

Last fall Governor Knowles appointed a dozen or so Summit participants to what he called a 'subsistence drafting committee'. The Committee's purpose was to develop language for a legislative resolution which, if passed by the State Legislature, would result in a proposition to be placed on the general election ballot.

None of Governor Knowles' initiatives to address subsistence included what could be termed an open public process. The task force took public testimony on an invitation-only basis for half a day. The Summit was held in a public setting, but did not include taking testimony. The drafting committee meetings were open to the public, but no testimony was taken there, either.

It is therefore predictable that the Alaska Native and tribal communities have voiced serious issues regarding the Drafting Committee's product. In the short time I have to testify, I present the following five concerns:

- no one on the Committee represented tribes or their governments;
- the legislative resolution attempts to appease sport and commercial fishing and hunting interests, by changing what in ANILCA, Title 8, is a priority of use for 'rural' subsistence users, to a priority for 'local' users;
- the legislative resolution calls for the establishment of a second-tier priority for individuals and communities who are able to demonstrate their reliance on fish, game and other renewable resources;
- the proposal would put questions such as allocation and geographic boundaries for use areas into the hands of the Legislature and/or the Boards of Fish and Game;
- no measure is included that would advance tribal co-management of

subsistence resources, despite a Summit recommendation supporting that concept.

As a subsistence user and tribal advocate, Mr. Chairman, I believe the time has come for Congress to take remedial action on the issue of subsistence in Alaska. The State of Alaska has had well over twenty years to live up to its side of the agreement that was made when our aboriginal hunting and fishing rights were extinguished. In 1971, with the passage of the Alaska Native Claims Settlement Act, our people were assured that our right to the nutritional, economic, cultural and spiritual benefits of subsistence would be protected in both federal and State law.

To date, the federal government has lived up to that promise. Since the Department of Interior took over management of subsistence on Alaska's federal public lands, we have seen the regional advisory councils and the Federal Subsistence Board wrestle successfully with issues relating to subsistence uses, even in areas where more controversy exists due to the proximity of traditional users to encroaching roads and growing communities.

Native communities which are situated on or near State lands, on the other hand, have had to deal with the politics built in to the Board of Fish and Board of Game proceedings. The State Legislature proposed as recently as March of this year, to totally eliminate funding for the Subsistence Division of the Alaska Department of Fish and Game. Meanwhile, members of the legislative majority have accused our people of seeking "special rights", and have called federal subsistence management, "discrimination by zip code".

Our subsistence rights are not based on geography. Our subsistence rights are based firmly in the obligation of the federal government to manage Native and tribal affairs, with the best interests and survival of our people well in mind.

Thank you for your attention.

Testimony by Mary Pete, Director, Division of Subsistence,
Alaska Department of Fish and Game
U.S. Senate Indian Affairs Committee Oversight Hearing on Subsistence
April 17, 2002

Chairman Inouye, Members of the Committee, thank you for this opportunity to address you on this topic that has consumed almost all of my professional work. My name is Mary Pete; I am the Director of the Division of Subsistence for the State of Alaska Department of Fish and Game. I started out as a subsistence researcher in western Alaska in 1984. I am honored to be here to represent the State of Alaska.

For many Alaskans, subsistence is a core value. It is the lifeblood of our cultural, spiritual, economic and physical well being. It puts food on the table and builds strong families.

State and federal laws provide a priority for subsistence uses in Alaska. The crux of the dilemma is the difference in who qualifies for the preference in state and federal law, as identified in an Alaska Supreme Court decision in 1989. All Alaskans potentially qualify for the preference under state law and rural residents qualify under federal law. Federal public lands encompass approximately 60 percent of Alaska so the rural priority applies in most of the state. The state priority applies in the remaining 40 percent of Alaska. As you can imagine, this dichotomy and dual management objectives creates management complexity and confusion for the public.

The majority of Alaskans understands the concept of subsistence, recognize its importance and clearly support it. Just two weeks ago, Alaska Gov. Tony Knowles announced another special session of the Alaska Legislature to address subsistence. This session will begin following completion of the current regular legislative session in mid May.

The sixth such session in 13 years, the governor is building on more momentum than we've seen on this issue in recent years. Earlier this month, Anchorage voters in a landslide – more than 72 percent – said they wanted the opportunity to vote on subsistence. Just last week, the Catholic Church of Alaska issued a rare pastoral letter supporting a subsistence resolution.

Last summer, the governor convened a Subsistence Summit of business, civic, religious, Native, and fishing and hunting leaders, which then produced an innovative draft constitutional amendment. That amendment is currently pending in the Alaska Legislature.

Every poll indicates that if allowed to vote on the issue, Alaskans will overwhelmingly choose to protect subsistence.

For more than a decade, Alaskans have paid a high price for not allowing all Alaskans to be heard. We're not protecting subsistence as we should and management of much of our fish and game has been surrendered to the federal government.

And the urban-rural divide continues to grow. There are other issues that make the urban-rural split even wider, but nothing approaches the frustration over the inability to permanently protect subsistence.

The state has had a subsistence priority law that gives preference to rural residents for wild fish and game since 1978. Since then, the state has employed a division of researchers to document and understand the role of subsistence hunting, fishing, and gathering in the lives and communities of Alaskans and to assist the state's

management boards in implementing the subsistence priority law. One of the attachments (Subsistence in Alaska: A Year 2000 Update) to this presentation summarizes what we have learned after over twenty years of research on subsistence harvests and uses in Alaska.

As expected, we have learned that subsistence is vital to the cultures and economies of rural Alaskans. Subsistence use areas in the state, as defined by the Joint Boards of Fisheries and Game, include 20 percent of the state's population. Although economies in small, rural communities are mixed, or need both production of local wild resources and cash to exist, subsistence is the foundation of their sustainability. Jobs are few and often seasonal, with cost of living the highest in the nation. Access to key wild resources, such as salmon, caribou, herring, and marine mammals, is the reason that Alaska Native communities are located where they are.

Family-based subsistence production and consumption groups help to maintain the community cohesion and sense of identity in these primarily Alaska Native communities. Subsistence harvest averages 375 pounds of wild fish and game per capita in rural Alaska compared with 23 pounds per capita in urban Alaska. Subsistence harvests in rural communities provide nearly 44 millions pounds of food per year at an estimated strict weight replacement value of nearly $220 million. This does not include the immeasurable value of the sense of well being and accomplishment of providing for one's family.

Subsistence happens in the context of families, without public funds, who educate they're youth in the intricacies of the harvest and processing of wild foods and clothing and other crafts made from its proceeds.

The composition of subsistence harvests attests to the importance of fish in Alaska: Fish make up 60 percent of the wild food harvests statewide, and regional

averages of up to 82 percent in some coastal areas. Among the Yupiit of western Alaska, the word for food as a general category is also the word for fish. So if you ask someone in Yup'ik if they have eaten, you will be asking them if they have eaten fish.

I would like to return to the challenges I mentioned earlier associated with dual state-federal management of subsistence uses. We have had experience with dual management of game since 1990. Federal management of fisheries did not actively commence until October 1999, but we expect that some of the same problems that we witnessed with game management will occur with fisheries management.

Dual state-federal management of fish stocks compounds an already challenging endeavor, especially with declining returns of important species such as salmon. Economic disasters for salmon have been declared for four out of five recent years in western Alaska. The state has implemented the subsistence priority by restricting or closing non-subsistence and scheduling fishing times to allow subsistence users, scattered throughout the affected drainages, an opportunity to get what they can.

The narrow scope of federal authority has disrupted relationships among different uses. The Alaska Boards of Fisheries and Game provide for subsistence uses first then provide for other uses, namely sport, commercial and personal use, based on the availability of the resource. In some cases, subsistence uses are inextricably linked with commercial uses, such as the small-scale commercial fisheries along the Yukon and Kuskokwim rivers, and the boards know that change in subsistence regulations can have effects on the commercial fisheries and vice versa. Cash generated from commercial uses is used to support subsistence activities, especially when the people and equipment are the same, as in the case of these small-scale commercial salmon and herring fisheries.

The Federal Subsistence Board (FSB), in its deliberation, does not consider uses other than subsistence. This approach creates a problem, inasmuch as actions of the FSB

may unintentionally disrupt the relationship between subsistence and other uses. This can detrimentally affect subsistence, as well as other uses.

State and federal allocation procedures are not compatible. State law requires that its management boards identify those fish stocks and game populations subject to customary and traditional uses and to identify a specific allocation needed for subsistence use, and to provide an opportunity for that use. These procedural steps enable the boards to provide a priority for subsistence uses, and if the harvestable surplus allows, to provide for other uses. The FSB is under no obligation to explicitly identify the stocks or populations of concern and the subsistence need, or other uses, prior to making a subsistence allocation. To provide a subsistence priority and also accommodate as many other uses as possible, requires knowledge of the available resource and the full range of competing resources. These differences in procedures and mandates have resulted in lost hunting and fishing opportunity and under certain conditions, can lead to overharvest of the resource.

Other more specific problems or differences between state and federal management include in-season or real time management and their approaches to customary trade. Alaska's fishery management programs have been successful in part because of the ability of on-site managers to effect in-season closures or openings as required to assure conservation and allocation objectives are met. These decisions must be made decisively on available information and are necessarily made on short notice. Imposing the FSB has been problematic. In 2001, there were unnecessary closures for subsistence salmon fishing to state qualified subsistence users in the Yukon and Kuskokwim river drainages.

Both state and federal subsistence laws recognize customary trade as a legitimate subsistence use. The state boards receive proposals for regulations that define and allow for particular customary trade practices. In effect, trade is closed until opened by the board. In contrast, the FSB takes the approach that trade is allowed, yet unregulated,

unless FSB acts to restrict the activity. The FSB approach is a problem, given the controversial nature of this activity, the potential for this practice to affect other uses, including other subsistence uses, and the risk of abuse with subsistence caught fish being introduced into commercial markets. The federal program has filed proposed regulations on customary trade of salmon, and unless it follows overwhelming public recommendation to defer action until thorough review and evaluation of its potential impacts is understood, stands to act on these proposals this summer.

I do not want to leave the committee with the impression that the state has been a whiny, passive party to dual management. We have initialed a Memorandum of Agreement with the Federal Office of Subsistence Management that outlines an effective, coordinated dual management program. The state's goals are to protect the resource, provide for the subsistence priority, and for opportunities for other uses. We have been working on specific protocols under the MOA to implement specific objectives, such as each government's roles in sharing of information, in-season management, and determinations on amounts necessary for subsistence uses, to name a few.

In these efforts, we have involved users, particularly Alaska Native tribes and organizations. Another attachment to this testimony is a paper on Collaborative Management by the Alaska Department of Fish and Game. It includes projects and initiatives we have been or continue to be engaged in with various public groups. Effective management of public resources is a partnership of many parties, not the least being those most dependent on those resources.

I would like to dispel the sense that the state has been wholly recalcitrant on the subsistence impasse. There have been five special legislative sessions called since 1990 to address this issue. As I noted earlier, Governor Knowles has called three sessions himself and has just issued another call to begin May 15. Resolutions for constitutional amendments and legislation to change subsistence management have also been

introduced. The block in efforts to address the impasse has been a small minority of state senators in the Alaska Legislature.

Mr. Chairman, we welcome the participation of any member of this committee in urging an Alaska resolution of the subsistence dilemma.

Comprehension of subsistence as a way of life, lifestyle, or livelihood requires recognition of its cultural, economic, and nutritional significance to Alaskans, particularly Alaska's Native peoples. The state will continue in its effort to resolve the subsistence dilemma because we believe unitary state management is best for the resource and its users.

This concludes my formal testimony. Thank you for your time.

Subsistence Management Chronology
1925 – 2001

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.

1974: Board of Game Authority. The Board of Game gains statutory authority to set up subsistence hunting areas, control transportation within hunting areas, and open or close seasons to protect subsistence hunting. This law was never used to set up a subsistence hunting area, although other methods and means were used to address perceived subsistence needs.

1975: Caribou Crash. With the crash of the Western Arctic Caribou Herd, ADF&G and the Board of Game attempted to set up a system that would give hunting permits to residents most dependent on caribou. Three criteria were developed for this purpose: customary and direct dependence, local residency, and availability of alternate resources. This approach was challenged by a Fairbanks sportsman's group on the grounds the board could not allocate to individuals. The courts decided the case in favor of the plaintiffs. This led others to consider ways to include subsistence protections in federal legislation, which eventually became ANILCA.

1978: State's First Subsistence Law. Following indications of imminent federal action in ANILCA, the state passed its first comprehensive subsistence law which required, once sustained yield has been ensured, that reasonable subsistence uses be allowed, with a priority if necessary (Ch. 151 SLA 1978). The law defined subsistence as "customary and traditional uses" of fish and game for specific purposes such as food.

1980: ANILCA Passed. Congress passed 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 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 ballot initiative to repeal the state subsistence law fails at the polls (59% of Alaskans voted against repeal).

1983: Subsistence Suit. Several Alaskans file suit against the state subsistence law. In McDowell v. State, plaintiffs argue the law is unconstitutional because it 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.

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 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 State 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 regulations 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 initiate a program that assumed management of subsistence uses on federal public lands. This includes creation of a five-member federal subsistence board, representing the BLM, NPS, BIA, USFS, and USFWS.

July 1990: New Subsistence Hunts. The Alaska Board of Game held an emergency meeting to promulgate hunting regulations for the 1990 fall hunts. In anticipation of a larger pool of subsistence users (because all Alaskans were expected to be eligible to participate), nonresidents were excluded from many hunts, and other hunts

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 confirmed that, following 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.

1991-92: Federal Subsistence Program Develops. 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 were introduced, as were motions to place a constitutional amendment on the ballot. The legislature ultimately passed a subsistence bill that provided eligibility for all Alaskans, detailed a stepwise process for implementing the subsistence preference, 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. Later public proposals for additional areas, including GMU 13, all roaded areas, and an area on the Upper Holitna Drainage, were not adopted.

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 Katie 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 Knowles directed the Attorney General to drop the state's appeal of the Babbitt case. In doing so he noted the case did not address the fundamental question of the constitutionality of ANILCA, some claims were time barred or not ripe for review, and other claims had been previously rejected. He further noted the state's continuance of the Katie John case.

April 1995: U.S. Ninth Circuit Court of Appeals Decides Katie John Case. The court of appeals held that ANILCA's subsistence priority applies to waters in which the United States has reserved water rights. The court further held that the federal agencies that administer the subsistence priority are responsible for identifying those waters. Federal agencies continued development of a fisheries plan and began a process for identifying waters where the plan would apply.

May 1995: Alaska Supreme Court Decides Nonsubsistence Areas Are Constitutional and the Tier II Proximity Criteria is Not. The Alaska Supreme Court, in the case of Kenaitze v. State, determined that "...the Tier II proximity of the domicile factor violates the Alaska Constitution because it bars Alaska residents from participating in certain subsistence activities based on where they live." Also, the court decided that the nonsubsistence area provision in the 1992 state subsistence law is constitutional because "...it bars no Alaskan from participating in any fish or game user class." With this ruling, the previously designated nonsubsistence areas were automatically reinstated. The Kenaitze's challenge to the findings of the Joint Boards that resulted in the establishment of the Anchorage-MatSu-Kenai Peninsula nonsubsistence area was remanded back to the Superior Court. Briefing on remaining issues should be completed by late April, 1996.

August 1995: Alaska Supreme Court Disagrees with Federal Court on the Scope of the Federal Subsistence Law. In the case of Totemoff v. State the Alaska Supreme Court made three significant findings: the federal subsistence law does not preempt nonconflicting state law; interpreted ANILCA as not protecting customary and traditional means and methods; and directly disagreed with the Ninth Circuit Court of Appeal's finding in State v. Babbitt (the Katie John case) that public lands include certain navigable waters. Because of the direct conflict with the federal court interpretation, the state filed a petition for review by the U.S. Supreme Court on December 5, 1995.

1995 - 1996: Governor Directs Lt. Governor to Begin "Quiet Diplomacy" Effort: In an effort to develop a consensus position on subsistence, Lt. Governor Fran Ulmer consulted with affected groups and produced a conceptual approach to resolving the subsistence impasse. This work addressed changes to the state constitution, state statutes, and federal law (ANILCA). This became the basis for subsequent Knowles administration positions.

April 1996: Federal "Advance Notice of Rulemkaing" in Navigable Waters with Reserved Water Rights. On April 4, 1996, the U.S. Departments of the Interior and Agriculture publicized an "advance notice of proposed rulemaking" in the federal register. They announced their intention to amend the scope and applicability of the federal subsistence program to include subsistence activities on inland navigable waters in which the U.S. has a reserved water right. In addition, the rule amendments would authorize the federal subsistence board to restrict or eliminate hunting, fishing and trapping on state and private lands when the board determines that these activities interfere with their provision of the subsistence priority on public lands.

May 1996: U.S. Supreme Court Denies Petition to Review Katie John. After the Ninth Circuit Court issued its final opinion on the Katie John case in December 1995, the state petitioned the U.S. Supreme Court to review the decision. The U.S. Supreme Court denied the state's petition on May 13, 1996.

1997: Governor Knowles convenes 7-member subsistence task force. A task force recommendation released in January, 1998, was "an interdependent package of amendments to ANILCA, the Alaska constitution, and the Alaska statutes." The effective date of the ANILCA and statutory amendments would have been the date of passage of the constitutional amendment.

January 1998–October 1999: Sen. Stevens delays implementation of federal subsistence fisheries management. Senator Stevens negotiated a one-year moratorium on implementation of Katie John, in 1998, said that would be the last delay, then acquiesced in 1999 and extended until Oct 1, 1999, the effective date of federal management of fisheries. Sen. Stevens includes the task force ANILCA amendments in the FY 1998 appropriations bill, with a sunset provision if the legislature does not enact a constitutional amendment and state laws complying with ANILCA.

January 1998: Governor Knowles introduces subsistence legislation. Governor Knowles asks Legislature to pass a Constitutional amendment and statutory changes during the regular session. The legislature does not take any action.

January 1998: Legislative Council lawsuit. In January 1998, the Alaska Legislative Council and seventeen state legislators filed suit challenging title VIII and federal regulations for subsistence harvests. The district court dismissed the case in July 1998. On July 13, 1999, the Court of Appeals for the D.C. Circuit affirmed on other grounds, ruling the plaintiffs lacked standing to sue.

May 1998: Knowles calls Special Session on Subsistence. Following the regular legislative session during which subsistence was not addressed, the special session on subsistence results in failed votes on a resolution in both chambers (Senate: 13-7; House: 24-16).

July 1998: Knowles calls Special Session on Subsistence. Lawmakers fail to pass a constitutional amendment or other laws pertaining to subsistence management. Secretary Babbitt states federal agencies will publish regulations that assume management of subsistence fisheries on October 1, 1999.

January 1999: Knowles again introduces subsistence legislation. Again, the legislature fails to pass a constitutional amendment or subsistence law allowing the state to comply with ANILCA

September 1999: Governor Knowles again calls the legislature into Special Session to address subsistence. Governor Knowles asks Legislature to pass a Constitutional amendment. The House votes to place a constitutional amendment on the ballot (28 to 12) but the amendment fails in the Senate (12 to 8).

1999 – 2001: Expanding Federal subsistence program. In January 1999, the Secretaries issued a final rule implementing the Katie John decision. The rule became effective October 1, 1999. The final rule expanded the federal subsistence program to include all waters within the exterior boundaries of 34 identified federal areas, including waters passing through in-holdings within these areas, as well as inland waters adjacent to the exterior boundaries of the 34 areas. The federal subsistence management program expanded significantly with the assumption of fisheries responsibilities. Subsistence fishing regulations have diverged over this time, as in the cases where federal waters were closed to non-rural residents, by the federal board.

2000: Final District Court judgment in Katie John and State Appeal. After the Secretaries' final rule became effective, the Federal District Court for Alaska issued a final judgment, affirming its prior ruling on ANILCA's reach to navigable waters. The State again appealed and asked for "en banc" consideration by the 9th Circuit Court of Appeals. In an "en banc" appeal, all eleven appellate judges, not just three, consider the case.

2001: Appellate Court decision in Katie John. A majority of the judges of the 9th Circuit Court of Appeals, sitting en banc, ruled that the court's earlier decision should not be changed. That decision holds that ANILCA gives the federal government the power to manage subsistence uses on navigable waters that are covered by the federal reserved water rights doctrine. Three appellate judges said that ANILCA should be interpreted to give the federal government power over all navigable waters, and three said that it should be interpreted to give it power over no navigable waters. The State asked for, and was granted, an extension until October 4, 2001, to file a petition for certiorari which would ask the United States Supreme Court to review the circuit court's decision.

1999 - 2001 and beyond: State/Federal work groups begin dual management coordination efforts. Federal and state fisheries and wildlife managers meet together under the terms of a draft Memorandum of Understanding that was initialed in 2000. Areas highlighted for coordinated actions include development of regulations, in-season management, research, special action requests, customary trade and barter, customary and traditional use

determinations, and Advisory Committee/Regional Council activities.

Subsistence in Alaska: A Year 2000 Update

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Introduction

Subsistence fishing and hunting are important for the economies and cultures of many families and communities in Alaska. Subsistence exists alongside other important uses of fish and game in Alaska, including commercial fishing, sport fishing, personal use fishing, and general hunting. This report provides an update on subsistence in Alaska, including the dual state-federal management system.

What is Subsistence?

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

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

Who Qualifies for Subsistence?

Federal and state laws currently differ in who qualifies for subsistence. Rural Alaska residents qualify for subsistence under federal law. About 20% of Alaska's population (123,118 people in 270 communities) lived in rural areas in 1999 (see Fig. 1). Of the rural population, 62,646 (51%) were Alaska Native and 60,472 (49 %) were not Alaska Native. Of Alaska's urban population (498,882 people), about 35,243 (7%) were Alaska Native and 463,639 (93%) were not Alaska Native. Under state law, rural residents qualified for subsistence from 1978-1989. Since 1989, all state residents have qualified under state law.

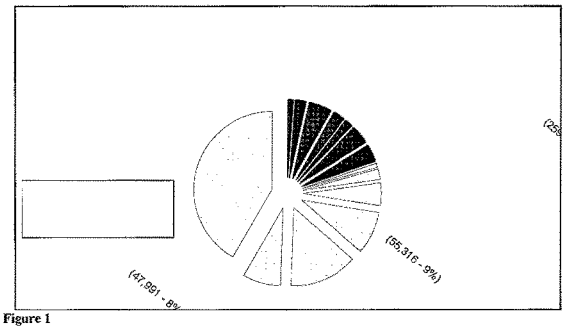

Figure 1

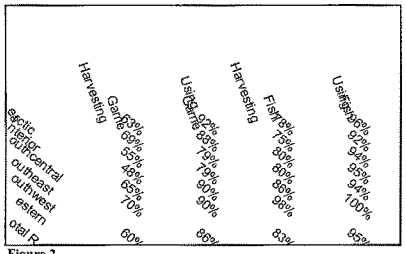

Figure 2

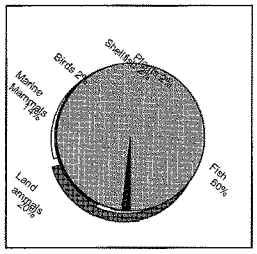

Figure 3

Who Participates in Subsistence?

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

What is the Rural Food Harvest?

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

How Large is the Subsistence Harvest?

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

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

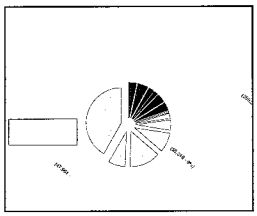

Figure 4

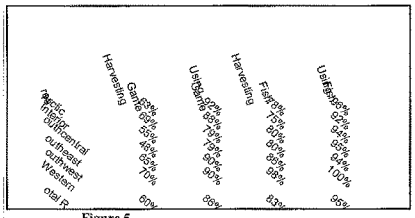

Figure 5
Nutritional Value of Subsistence

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

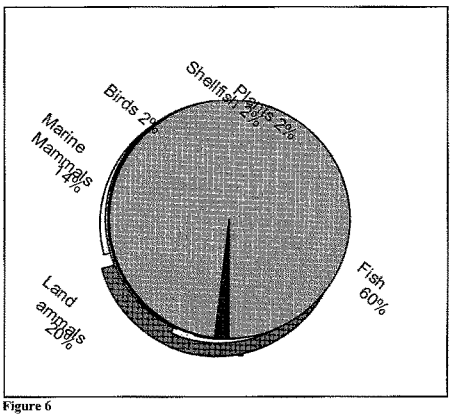

Figure 6

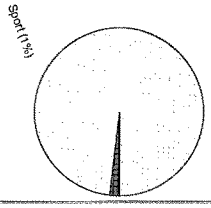

Figure 7
Traditional Harvest Areas

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

The Monetary Value of Subsistence Harvests

Subsistence fishing and hunting are important to the rural economy. Attaching a dollar value to wild food harvests is

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

Subsistence and Money

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

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

Dual Subsistence Management

Subsistence fishing and hunting in Alaska are regulated by the State of Alaska and the federal government, depending upon where the harvests occur. This system is called a " dual management system" because there are overlapping state-federal jurisdictions in many areas. The federal government regulates federal subsistence fisheries and hunts on federal public lands and federally-reserved waters in Alaska. The State of Alaska regulates state subsistence fisheries and hunts on all Alaskan lands and waters. A harvester should consult both the federal subsistence regulation booklet and the state subsistence regulation booklet, to be appraised of the complete set of hunting or fishing regulations in a particular area

The Alaska Board of Fisheries and the Alaska Board of Game create regulations for state subsistence fisheries or hunts. The Federal Subsistence Board creates regulations for federal subsistence fisheries or hunts. In creating regulations, each board follows procedures for obtaining information and comment on proposed regulations from the public, agencies, and other interests.

Hunting of marine mammals is managed by the federal government through the National Marine Fisheries Service (seals, sea lions, and whales) or the U.S. Fish and Wildlife Service (polar bear, sea otters, and walrus). There is an exemption in the federal Marine Mammal Protection Act to allow for the traditional harvest and use of marine mammals by coastal Alaska Natives.

Subsistence hunting and fishing are closed in non-rural areas of Alaska by the federal and state programs. Federal law recognizes subsistence harvests only by residents of rural areas. State law recognizes subsistence harvests in subsistence areas outside the boundaries of "nonsubsistence areas". The Federal Subsistence Board and the Alaska Joint Board of Fisheries and Game have determined that the areas around Anchorage-Matsu-Kenai, Fairbanks, Juneau, Ketchikan, and Valdez are non-rural areas, where fish and

game harvests may be allowed under sport, personal use, or commercial regulations, but not under subsistence regulations.

The Subsistence Priority

Subsistence uses of fish and land mammals are given a priority over commercial fishing and recreational fishing and hunting in state and federal law. This means that when the harvestable portion of a fish stock or game population is not sufficient for all public uses, that subsistence uses are restricted last by regulation.

By and large, urban fishers and hunters have not experienced major changes in harvest opportunity due to the subsistence priority. General hunting and sport fishing regulations continue to provide opportunities for residents and non-residents. Personal use net fisheries provide for established food fisheries of urban residents in areas closed to subsistence fishing.

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

The greatest effect of state and federal subsistence laws has been to legally recognize customary and traditional harvest practices and uses in rural areas. Because of the law, the Alaska Boards of Fisheries and Game and the Federal Subsistence Board have created subsistence regulations designed to provide opportunity for the continued harvest of the rural food supply. While impacts on urban residents have been relatively small, the impacts on rural areas have been great. Rural residents have a legally protected opportunity to fish and hunt to feed families following long-term customs and traditions.

Robert J. Wolfe, Research Director, Division of Subsistence, ADF&G, Juneau, March 2000

Collaborative Stewardship of Fish and Wildlife Resources

Alaska Department of Fish and Game
April, 2002

I. Use of Terms

The terms "collaborative stewardship" and "management agreement" are used in this paper to describe a broad range of shared decision–making arrangements, including "collaborative," " cooperative," and "co-management" arrangements. "Co-management" as it is used here primarily refers to specific management arrangements authorized in law that imply co-equal authority, such as the co-management agreements required by the Marine Mammal Protection Act and the protocol amendment to the Migratory Bird Treaty Act. In addition, however, some ongoing projects are referred to as co-management, or cooperative management, because the term is in the name of the project or its goals, even though authority is not shared to the same degree as with marine mammals or spring waterfowl harvest. For example, the Western Arctic Caribou Herd Working Group has been conducting discussions, referred to as co-management discussions, for several years. While the terminology can be confusing, most participants agree the structures of the various management agreements are more important, and certainly more descriptive, than the labels given to them.

II. Statement of Intent to Use Management Agreements

Alaska has managed resources collaboratively for many years. In light of these successes, ongoing efforts by department staff to establish collaborative projects, and frequent inquiries by members of the public regarding the department policy in this area, the following statement of intent to engage in future management agreements in Alaska is appropriate:

> **The Alaska Department of Fish and Game shall identify opportunities for collaborative management of fish and wildlife in the areas of research, harvest assessment, management planning, regulation development, education, and implementation of management plans, as appropriate to achieve the conservation, protection, management, use, and restoration of fish and wildlife in Alaska. Management agreements between the department and other entities shall be consistent with the statutory or constitutional authorities of the State of Alaska and the department over fish and wildlife within its jurisdiction. Management agreements can include agreements between the department and other government and non-government entities including municipal governments, tribal governments, fishery or wildlife organizations, and non-profit corporations.**

III. Purpose

The Alaska Department of Fish and Game (ADF&G) is frequently called upon to engage in discussions about management agreements for hunting and fishing in Alaska. These discussions have ranged from those focused on a particular species and geographic area to the consideration of management agreements as a general principle. The purpose of this paper is to assist these discussions by providing historical background and general policy guidance. Actual management agreements will be created based on local input and circumstances. This paper will describe examples of management agreements in Alaska and will describe general principles that are likely to apply to future management agreements.

Alaska's fish and wildlife belong to Alaskans. This simple fact provides the framework for the mission and the work of ADF&G. We will only be successful in sustaining healthy fish and wildlife resources and their uses if we are successful in allowing Alaskans to contribute to, and take a measure of responsibility for, their management. This involves improving the existing management decision-making process by allowing, encouraging, and educating for more effective public participation. Sharing management responsibility is an integral part of management agreements, by any definition.

The department can more effectively meet the responsibilities outlined in our mission statement by working collaboratively with all segments of the public and we are committed to this stewardship model of fish and wildlife management through the use of management agreements.

Use of management agreements is an evolving concept in Alaska. However, this paper describes examples and basic principles of management agreements that are current at this point in time. Revision and amendment to this material will occur as needed.

IV. Management Agreements in Alaska: the Concept and the Practice

Management agreements in Alaska have been defined as much by practice as by theory. Literature on this subject defines terms like collaborative stewardship, collaborative management, and co-management as a range of management structures providing for shared responsibilities by government and users of wild resources. Within this conceptual framework, collaborative management examples range from the state's Fish and Game Board-Advisory Committee System (where users have a formal representative body consulted by the Boards in developing regulations), to resource-specific co-management structures like the Round Island Walrus Cooperative Management Plan (where each signatory holds formal responsibilities over aspects of the hunt) or the Kuskokwim River Salmon Management Working Group (where decisions are made cooperatively concerning salmon fisheries on the Kuskokwim River).

ADF&G has a long history of creating management agreements between state government and affected groups of people; some involve formal agreements, while others are informal. As described below, shared responsibilities in particular cases can include research, harvest assessment, management planning, regulation development, and implementation of resource management systems. Well-conceived management agreements have advantages over other mechanisms because they can achieve certain goals not achievable otherwise. Specifically, solutions arrived at through a cooperative and participatory process can make better use of local knowledge, have the backing of the affected parties, and result in greater compliance. Part of

the challenge of management agreements is deciding on what approach to use in a given circumstance.

Collaborative management of fish and wildlife in Alaska derives from changing circumstances. For example, governments are being faced with increased pressures on fish and wildlife resources and there is inadequate funding for research and management. An increasingly informed public wishes to have a stronger voice in wildlife management. There is increasing public sensitivity to cultural differences and to the difficulties inherent in more intensive management of animal and fish populations that move across jurisdictional boundaries.

Many management agreement models exist today. Most, including those used in Canada, provide that the ultimate decision-making responsibility rests with the government, and this is the case in Alaska as well. However, the strength of a good management agreement rests on its success in consensus building. Ideally, where management agreements are in place, each party sees mutual decision making as being preferable to the unilateral action of state or federal governments.

In order to see how management agreements can fit within the mission of ADF&G, it is useful to consider the five major elements of our fish and wildlife management program:

Regulation and Allocation (Boards of Fisheries and Game)
Research and monitoring
In-season and pre-season management
Habitat protection
Enforcement

As the following examples demonstrate, management agreements can occur to varying degrees in any or all of these areas.

V. Management Agreements in Alaska: Examples

ADF&G plays a fundamental role in many ongoing efforts involving management agreements. The following is a listing of current department initiatives with governments, rural communities, tribes, and organizations.

Regulations and Allocation:

The Boards of Fisheries and Game, and the Fish and Game Advisory Committee System: These regulatory bodies consist of stakeholders on both boards and advisory committees, and an open public process that is integral to the development of hunting and fishing regulations in Alaska. To supplement the advisory committee process the boards have increased the use of special committees during board meetings. Committees involve public participants, department staff, and board members working toward consensus on key issues. Some standing committees have been formed to address larger issues.

Allocation issues are some of the most contentious issues facing our use of fish and wildlife

resources. Similar to the process for developing management agreements between governments and the public, user groups must work together to resolve allocation issues. The state's role is to facilitate such discussions.

Yukon River and Pacific Salmon Negotiations (explaining and defending interests of Yukon River and Southeast Alaska fishers). These negotiations include local fishermen sitting with ADF&G, the U.S. Fish and Wildlife Service (USF&WS), the National Marine Fisheries Service (NMFS), the states of Washington, Oregon, the Pacific Northwest Treaty Indian tribes, and the U. S. State Department, to determine US/Canada salmon allocation. The bilateral relationship between the United States and Canada is a co-management relationship, where neither government has the ultimate authority.

Research and Monitoring:

Stock Assessment and Rehabilitation. The department cooperates with several tribes, communities, local and regional organizations, and local fishers to conduct salmon, herring and groundfish monitoring projects, which are essential for ADF&G management in-season and post-season. Projects include **test fisheries, sonar projects, weirs, counting towers and trawl surveys. Rehabilitation projects include streamside egg-box incubators and lake fertilization.** The involvement of tribal and other groups including the Native Village of Kwinhagak (NVK), Orutsararmiut Native Council (OSC), the Bering Sea Fisherman's Association (BSFA), and the Kuskokwim Native Association (KNA) have been vital to the success of these efforts, as have AVCP and TCC. A listing of such projects may be found as **Attachment A**.

Beyond the specific projects listed in the attachment members of the public cooperate and assist in resource management by reporting sport fish and wildlife harvests, reporting commercial fish harvests on fish tickets and providing subsistence harvest information through return of permits and surveys. Salmon enhancement regional planning teams (RPTs), aquaculture associations, commercial fishing industry gear groups, and municipalities are also frequent cooperators in addressing the fisheries management issues that affect them. For example, the Kodiak Regional Aquaculture Association is a cooperator in projects for **sockeye smolt enumeration, presmolt stocking, limnological sampling, adult sockeye and chum enumeration, catch sampling, and straying evaluation**.

Subsistence Harvest Monitoring: Working with regional organizations and tribal councils, ADF&G manages projects in which local people conduct **marine mammal, waterfowl, and salmon subsistence harvest surveys** in many regions of the state. Management agreements with Native organizations and hiring non-permanent village research assistants are the main methods used for these community-based studies. Financial support comes from ADF&G, NMFS, USF&WS, and BSFA.

In 1998, marine mammal harvest studies employing community residents were conducted in Hooper Bay, Quinhagak, Emmonak. Migratory bird harvest studies were conducted in Buckland, Kiana, Kivalina, Kobuk, and Noorvik, and are about to begin in Ambler, Deering, Kotzebue, Noatak, and Selawik.

Since 1997, surveys of large mammal harvests have been conducted in ten **Koyukuk River** villages. Local residents conducted surveys while department staff designed the projects and provided oversight. Village fishwheel permits are distributed and harvests monitored by the **Copper River Native Association. The Bristol Bay Native Association** has recently conducted big game harvest surveys in that region, funded by ADF&G and the USFWS. The **Alaska Native Harbor Seal Commission** contracts with the department for a biosampling project.

Salmon subsistence harvest surveys have been conducted for the 43 communities along the **Yukon River** annually since 1961 and in numerous communities along **the Kuskokwim River** since 1960. Subsistence salmon harvest data for these rivers are a critical element of the department's assessment of total returns. Salmon harvest surveys were conducted in most all Kawerak and **Maniilaq** region communities in 1998 and 1997. In 1997, community-based marine mammal harvest surveys were conducted in **Brevig Mission, Gambell, Golovin, Savoonga, Shaktoolik, and Stebbins;** and migratory bird harvest studies were conducted in **Gambell and Savoonga** Subsistence salmon harvest surveys occur annually in the **AVCP, Kawerak, and Maniilaq** regions.

A collaborative pike research project is underway on the **Dall River,** in which the department and the Stevens Village Tribal Council are gathering information needed for managing a growing sport fishery for pike. Trophy moose hunting is also an issue in these areas, as well as on the **Koyukuk River**, where a collaborative moose management planning effort has recently begun.

In Season and Pre-Season Management:

The **Kuskokwim River Salmon Management Working Group** consists of representatives of Kuskokwim R. stakeholder groups who meet with ADF&G staff to provide recommendations for salmon management including in-season recommendations about opening and closing fisheries. Working Group decisions are very seldom overruled by ADF&G. Similar working groups implement the **Western Alaska Brown Bear Management Plan** (BBWG), and the Unit 4 Brown Bear Committee. Other examples are the **Hooper Bay Waterfowl Conservation Agreement** (WCC), the **Lower Yukon Moose Management Working Group**, and the **Kilbuck Caribou Working Group** (this is described in greater detail below). The **Fortymile Caribou Management Plan** is a collaborative project involving Alaska Native organizations with other user groups. The **Yukon Fall Chum Salmon Management Plan** was developed with the Yukon River Drainage Fisheries Association (YRDFA), which continues to be instrumental in its implementation. YRDFA brings more than 40 communities together to work with the department on both pre- and in-season salmon management issues along over 1000 miles of river. Proposals from YRDFA to the Board of Fisheries carry considerable weight.

Other high priority issues in western Alaska with potential for management agreements are the **Aniak** and **Kanektok River** fisheries. Discussions exploring possibilities for collaborative management of these fisheries will continue during 2000. Similar issues and management agreement opportunities exist in the TCC region, specifically on the **Dall River** near Stevens Village.

Inseason meetings with processors and fishermen across the state are used to allow managers to maximize roe percentage in sac roe herring fisheries. In the Togiak herring fishery, and other similar herring sac roe fisheries across the state, the quality of the harvest is almost exclusively dependent on commercial fishermen volunteering, at no cost to the state, to collect samples, and the industry volunteering to analyze them.

ADF&G managers often consult with fishing industry associations and task forces, in an effort to understand the needs of the fishing industry and incorporate those needs to the extent possible into fishery management plans. Examples of industry groups who work with the department in a consultation and advisory role include the **Prince William Sound Seine Task Force, the Southeast Alaska Seine Task Force, and the Southeast Alaska Gillnet Task Force, and the Northern Panel of the Pacific Salmon Commission.** Legislation creating the Southeast Alaska regional Dive Fishery Association mandates consultation between industry representatives and ADF&G in developing cooperative and co- management plans.

ADF&G is in its fourth year of collaborative management of the **Round Island walrus hunt**. Because of the fact that the state's authority in this area is limited, and participants share decision-making responsibilities, the hunting plan is often called a co-management agreement. Signatories to the agreement include the state, the USF&WS, the Qayassiq Walrus Commission, and the Eskimo Walrus Commission. This agreement establishes the timing and other conditions for a walrus hunt at Round Island, and assigns responsibility for activities including overall coordination, harvest reporting and population monitoring.

Productive management discussions have been underway since 1995 with communities in the range of the **Western Arctic Caribou Herd** (WACH). From its start, this project has been described as a co-management effort, even though it is clear that ultimate caribou management authority must lie with the state. A WACH Working Group, composed of WACH users, and a technical committee, composed of government and regional non-profit Native organization representatives, has been in place since 1997 to address management, assessment, and harvest monitoring.

Habitat Protection and Restoration:

The Kenai River is one of the most productive and economically important rivers in Alaska. Sport and commercial fishery harvests targeting Kenai River fish populations contribute as much as $78 million annually to the state's economy. Human use and development along the river and throughout the watershed threaten key habitats for fish and wildlife. To address habitat issues on the Kenai, a coalition of government agencies, local communities, private landowners, and affected user groups is attempting to reverse this trend. The following agencies are among those that collaborate in many ways on **Kenai River habitat protection and restoration**: ADF&G, Alaska Department of Natural Resources, USF&WS, Kenai Peninsula Borough, U.S. Forest Service, City of Soldotna, City of Kenai, Kenai Sportfishing, Inc., The Nature Conservancy, U.S. Geological Survey, Alaska Flyfisher's Association, and Katchemak Heritage Land Trust.

Enforcement:

Collaboration in fish and wildlife enforcement is increasing through the use of state and federal efforts to provide funding and support, including training and equipment, for local law enforcement programs, including Tribal programs.

Federal Co-Management Initiatives in Which the State is a Participant:

Under terms of the **Migratory Bird Treaty Act** the focal point for formal co-management discussions in the AVCP region is the spring waterfowl harvest. Discussions have been held in the past year on how to implement treaty language on co-management. The operative treaty language refers to the creation of "relevant management bodies" as follows:
"Indigenous inhabitants of the State of Alaska shall be afforded an effective and meaningful role in the conservation of migratory birds including the development and implementation of regulations affecting the non-wasteful; taking of migratory birds and the collection of their eggs, by participating in relevant management bodies."

The President's Letter of Submittal for the treaty amendment further describes a cooperative and co-management structure for spring waterfowl harvest:
"...management bodies will be created to ensure an effective and meaningful role for indigenous inhabitants in the conservation of migratory birds. These management bodies will include Native, Federal and State of Alaska representatives as equals, and will develop recommendations for, among other things: seasons and bag limits; law enforcement policies; population and harvest monitoring; education programs; research and use of traditional knowledge; and habitat protection. Village Councils shall be involved to the maximum extent possible in all aspects of management. Relevant recommendations will be sent to the U. S. Fish and Wildlife Service of the Department of the Interior (DOI/FWS), and to the Flyway Councils. Regulations established should be enforced to prevent conservation problems.

Creation of these management bodies is intended to provide more effective conservation of migratory birds in designated subsistence harvest areas without diminishing the ultimate authority and responsibility of the DOI/FWS..."

International management of Polar Bear now takes place under the terms of the "Protocol of Intentions Between the Indigenous People of Chukotka and Alaska on the Conservation, Protection, Management, and Study of the Bering and Chukchi Seas Shared Polar Bear Populations," signed in 1994.

The **Eskimo Walrus Commission (EWC)** was created in 1978; in 1980 it established an informal walrus management agreement with the USF&WS. In 1987 the EWC, USF&WS, and ADF&G signed a mutual cooperation agreement for walrus management and research.

The **Alaska Eskimo Whaling Commission** operates under terms of a 1989 cooperative agreement with the National Oceanic and Atmospheric Administration, which manages whales in U. S. waters. The agreement includes a process for identifying harvest quotas and for monitoring harvests.

The **Alaska Native Harbor Seal Commission** and NMFS recently signed a co-management

agreement.

The **Alaska Sea Otter Commission** signed a Memorandum of Agreement with the USF&WS and the state in 1993.

Other Collaborative Management Efforts in Alaska:

ANILCA grants substantial deference to the **Federal Subsistence Regional Council System** and this body, now part of the federal subsistence management program, is often described as an example of shared responsibility for making resource allocation decisions.

Education is an aspect of cooperative management that is often overlooked. The department is in its fourth year of an internship program in Bristol Bay. The Bristol Bay Economic Development Corporation funds two positions during the Bristol Bay season. These positions are then exposed to all facets of the department's role in managing the fisheries. Persons applying for the positions must be Bristol Bay area residents.

Other collaborative educational programs that include ADF&G involvement and rural outreach are: Alaska Water Watch; Adopt-a-Stream; STREAM, Classroom Salmon Egg Incubation Program; Fly Fishing Mentorship Program; Ice Fishing School program; Federal Aid Outreach. Activities that use community volunteers include youth fishing clinics, teacher training workshops; school classroom and field activities; stream rehabilitation projects; and outdoor skills and safety training.

The Qavilnguut (Kilbuck) Caribou Agreement began to evolve in 1989 with discussion among government agencies and Native villages. This resulted in production of the Qavilnguut Caribou Herd (QCH) management Plan, which establishes a basis for mutual cooperation in herd management, and establishment of a limited subsistence harvest. One important feature of this plan is the creation of a community-based permitting process. Principles are the eighteen villages in the vicinity of Kwethluk, the USF&WS, and ADF&G.

ATTACHMENT A:

ADF&G Management Agreements List (New Date)

Yukon River	Mainstem at Mountain Village	Test Fishery	Asa'carsarmiut Traditional Council with ADF&G and Bering Sea Fishermen's Assoc. (BSFA).
Yukon River	Mainstem River Delta	Test Fishery	With Emmonak Tribal Council and BSFA
Yukon River	Mainstem at Pilot Station	Sonar	Support from Assoc. of Village Council Presidents (AVCP) and BSFA
Yukon River	Mainstem at Tanana Vill.	Test Fishery	Support from BSFA
Yukon River	Nulato River	Counting Tower	Joint project with Nulato Traditional Council and BSFA
Yukon River	Henshaw Creek	Weir	Tanana Chiefs Conference and BSFA
Yukon River	Clear Creek	Tower	Tanana Chiefs Conference and BSFA
Yukon River	Kaltag Creek	Tower	City of Kaltag, AK Cooperative Extension Service and BSFA
Yukon River	Yukon River	Ichyophonus study	BSFA support
Yukon River	Salcha River	Counting Tower	BSFA support
Yukon River	Tanana River	Mark-Recapture	BSFA support
Norton Sound	Salmon Management	Biologist Intern	NSEDC Support
Norton Sound	Eldorado River	Counting Tower	Kawerak with ADF&G and BSFA
Norton Sound	Kwiniuk River	Counting Tower	Norton Sound Economic Development Corp. (NSEDC) support
Norton Sound	Niukluk River	Counting Tower	NSEDC support
Norton Sound	Nome River	Weir	NSEDC support
Norton Sound	North River	Counting Tower	Kawerak with ADF&G and BSFA and NSEDC
Norton Sound	Pilgrim River	Counting Tower	Kawerak with ADF&G and BSFA and NSEDC
Norton Sound	Snake River	Counting Tower	Kawerak with ADF&G and BSFA and NSEDC
Norton Sound	Salmon/Glacial Lake	Lake Fertilization	With NSEDC and Bureau of Land Management
Norton Sound	Hobson Cr.	Streamside Incubation	With Norton Sound Bering Strait Regional Aquaculture Assn. and NSEDC
Norton Sound	Unlakleet	Herring Test Fishery	Support from NSEDC
Norton Sound	Regionwide	Subsistence Salmon Harvests	Support from BSFA
Kotzebue Sound	Kotzebue Sound	Commercial catch sampling	Support from BSFA
Kotzebue Sound	Kotzebue Sound	Trawl Survey	BSFA project, support from ADF&G
Kotzebue Sound	Regionwide	Subsistence Salmon Harvests	Support from BSFA
Kuskokwim	Aniak River	Sonar	Support from AVCP and BSFA
Kuskokwim	George River	Weir	Kuskokwim Native Assoc. (KNA) project, support from BSFA
Kuskokwim	Kanektok River	Counting Tower	Support from Native Village of Kwinhagak project, USF&WS and BSFA
Kuskokwim	Kwethluk River	Counting Tower	AVCP project, support from ADF&G and BSFA
Kuskokwim	Takotna River	Counting Tower	Takotna Charter School project, support from ADF&G & BSFA
Kuskokwim	Tatlawiksuk River	Weir	KNA project, support from BSFA
Kuskokwim	Kuskokwim Mainstem	Bethel Test Fishery	Orutsararmuit (ONC) support
Kuskokwim	Kuskokwim Mainstem	Kuskokwim Sonar	ONC support

Kuskokwim	Lower Kuskokwim	Monitoring inseason subsistence harvests	Support from OSM for joint project with ONC
Kuskokwim	Bethel	Post-season subsistence harvest monitoring	Support from OSM for joint project with ONC
Kuskokwim	Middle Kuskokwim	Monitoring inseason subsistence harvests	Support from OSM for joint KNA
Kuskokwim	Upper Kuskokwim	Monitoring inseason subsistence harvests	Support from OSM with McGrath Village Council
Kodiak	Frazer Lake	Sockeye smolt enumeration, adult fish ladder operation, weir operation, escapement sampling, spawning ground surveys	With support from Kodiak Regional Aquaculture Association (KRAA)
Kodiak	Spiridon Lake, Spiridon terminal harvest area	Smolt enumeration and bypass, adult enumeration, escapement and catch sampling	With support from KRAA
Kodiak	Big Kitoi Lake, Little Kitoi Lake, Jennifer Lake, Ruth Lake	Sockeye smolt enumeration, presmolt stocking, limnological sampling, adult sockeye and chum enumeration, catch sampling, straying evaluation	With support from KRAA
Kodiak	Waterfall terminal harvest area, Little Waterfall Lake, Portage Lake, Pauls/Laura/Gretchen lakes	Smolt sampling, weir operations, fish bypass operations, escapement sampling, catch sampling	With support from KRAA
Kodiak	Malina Lakes	Sockeye smolt enumeration, adult escapement enumeration, spawning surveys	With support from KRAA
Kodiak	Laura, L. Waterfall, Afognak, Lower and Upper Malina, Spiridon, Hidden, Upper Jennifer, Ruth, Little Kitoi, Crescent, Saltery, Portage, Frazer and Upper Station lakes	Limnological and zooplankton sampling	With support from KRAA
Kodiak	Hidden Lake, Thorsheim Creek	Sockeye smolt sampling, adult return sampling and enumeration, weir operation, straying investigations	With support from KRAA
Kodiak	Ugak Bay, Saltery Lake, Lake Rose Tead	Weir operation, brood stock investigations, spawning habitat evaluation, genetic sampling	With support from KRAA
Kodiak	Spiridon, Hidden, Little Waterfall, Saltery, Afognak	Hydroacoustic survey, fry and smolt sampling	With support from KRAA
Chignik	Chignik River	Sockeye smolt enumeration and sampling	With support from Chignik Regional Aquaculture Association (CRAA)
Chignik	Black and Chignik lakes	Limnological sampling, overwinter fry investigations	Natural Resources Consultants, with support from CRAA
Chignik	Black and Chignik lakes	Sockeye GSI investigations	With support from CRAA
Chignik	Chignik Lagoon	Weir	Joint project with Chignik Lagoon Village Council
Perryville	Kametolook River	Egg box incubators	Joint project for coho restoration
Alaska Peninsula	Bear Lake	Sockeye stock identification, limnology	Fisheries Research Institute, with support from Aleutians East Borough (AEB) and Concerned Area M Fishermen (CAMF)
Alaska Peninsula	Ilnik River	Sockeye stock investigations	With support from University of Washington, AEB, and CAMF

Alaska Peninsula	King Cove	Catch sampling	With support from AEB, CAMF, and the Pacific Seafood Processors Association
Alaska Peninsula	Red Cove and John Nelson lakes	Channel maintenance	AEB
Cook Inlet	Nanwalek Area	Subsistence salmon harvests	Nanwalek Village Council with support from ADF&G

STATEMENT OF MITCH DEMIENTIEFF, CHAIR
FEDERAL SUBSISTENCE BOARD
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
OVERSIGHT HEARING ON SUBSISTENCE HUNTING AND FISHING
IN THE STATE OF ALASKA

Mr. Chairman and Members of the Committee, I am Mitch Demientieff. I am the Chairman of the Federal Subsistence Board. I appreciate the opportunity to testify before you today. I have had the pleasure of chairing the Board for the last seven of the twelve years since the Board's institution in 1990. The Board was established to administer the priority for subsistence uses of fish and wildlife by rural residents on federal lands, as this priority is set out in Title VIII of the Alaska National Interest Lands Conservation Act, or ANILCA. My comments will focus on the Board's implementation of Title VIII and the relationship of this law to Alaska Natives. There is no more important issue to Alaska Natives than subsistence and sustaining this lifestyle for future generations. When Alaskans speak of subsistence, the importance of protecting those who depend on subsistence, as well as the conflict between the federal law and the state constitution, are the defining issues. In 1980, Congress passed ANILCA which established a priority for subsistence uses of fish and wildlife by rural Alaska residents on federal lands in Alaska over other purposes. By its terms, Title VIII of ANILCA declared, in section 801(1) that:

> the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands and by Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence.

The statute allows the State of Alaska to implement this priority if state laws exists that are generally applicable to this federal requirement. The State enacted such laws and implemented the rural subsistence priority from the late 1970's until 1989, when the Alaska Supreme Court determined that the rural resident subsistence priority in state law violated the Alaska

Constitution's guarantee of equal access to the state's resources. Since 1990, federal agencies in both the Departments of the Interior and Agriculture have implemented this priority on the federal lands in Alaska, primarily for subsistence hunting. Since October 1999, as a result of the Ninth Circuit Court's ruling in the Katie John case, federal agencies have also been managing subsistence fisheries that occur in those rivers and other inland waters appurtenant to the federal land units in Alaska.

There have been numerous attempts over the years to resolve this conflict between federal and state laws, primarily through efforts to create a state constitutional amendment that would allow a subsistence priority for rural residents in compliance with federal law. Such an amendment requires approval by two thirds of the Alaska Legislature, and then approval by a majority of the voters in a statewide general election. However, passage of a state constitutional amendment has not occurred.

From the beginning of federal management, the federal government has been reluctant but committed managers. The federal agencies, and the Federal Subsistence Board, which has been delegated regulatory responsibilities by the Secretaries, have been serious about implementing the subsistence priority mandated by Title VIII. Even so, it has always been a primary federal goal to return unified management of fish and wildlife to the State when compliance with ANILCA is achieved. To that end, the federal agencies have been walking a fine line between performing due diligence regarding Title VIII responsibilities and minimizing duplication with state management of fish and wildlife.

It is especially challenging to manage a program that is temporary by design, but is without resolution. In view of this, the execution of the Federal Subsistence Program has been focused in three areas: 1) maximizing involvement in the federal program by Alaskans, 2) upholding the purposes of Title VIII to conserve the fish and wildlife resources and protect the subsistence priority; and 3) maximizing cooperation with the State of Alaska in the management of fish and wildlife.

Involvement by Alaskans in the Federal Subsistence Program:

I will now address how federal management has involved Alaskans in the program. The primary goal of Title VIII is to protect subsistence uses by rural residents of Alaska, including both Natives and non-Natives, who depend on fish and wildlife. To that end, the federal program has taken steps to insure that those directly affected by federal management are afforded the opportunity to play an active and meaningful role in the program. Title VIII requires a system of Regional Advisory Councils to review, evaluate, and make recommendations concerning proposals for regulations, policies, management plans and other matters relating to subsistence uses of fish and wildlife within their regions. The ten Federal Subsistence Regional Advisory Councils are made up of 98 citizen volunteers appointed by the Secretary of the Interior. The members are respected community and regional leaders who have demonstrated knowledge and experience in the use and management of fish and wildlife. These councils meet at least twice each year to develop recommendations regarding subsistence hunting and fishing regulations for their respective regions. Individual members of these councils also serve on various committees and task groups appointed for specific purposes, and to resolve issues of statewide importance. These councils help achieve the Congressional finding in ANILCA that "an administrative structure be established for the purpose of enabling rural residents who have a personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska."

The federal program also cooperates with a variety of organizations in the collection of information about subsistence harvests and the status and trends of the various wildlife and fish populations. These organizations include the Alaska Department of Fish and Game, Alaska Native tribes, statewide and regional Native organizations, and academia. With the advent of federal fisheries management in 1999, a monitoring program specific to addressing fisheries information needs was established to augment similar efforts by the State of Alaska. The

program provides critical information to support federal subsistence fisheries management decisions, as well as assisting state management, while directly engaging the State, and Alaska Native, local involvement in subsistence fisheries monitoring projects and local hires. In the last two years, $14 million has been expended to fund 119 fisheries monitoring studies. To date, the State of Alaska has received $5.9 million, and Alaska Native and local rural organizations have received $5.3 million to perform this work.

Recently, the Federal Subsistence Program announced the first installment of funds to support the "Partners in Fisheries Monitoring" program. This year, approximately $900,000 will be provided to six Native and tribal organizations to hire and support seven fisheries and social science professionals. These new hires are intended to add capability to these organizations so that they become effective partners with the federal agencies, as well as the Alaska Department of Fish and Game. These new positions will enable these organizations to develop, coordinate, and execute fisheries monitoring studies within their respective regions, identify management issues, and conduct community and regional outreach and education. These positions will work alongside their federal and state counterparts as a means of building trust and cooperation with these Native organizations who have long felt removed from the management of the resources important to their subsistence way of life.

In addition, during the past year we have added a tribal liaison specialist to our staff. This person is actively engaging with state-wide and regional level Native and tribal organizations, as well as individual tribes at the community level. This staff member helps to lead and implement the Department's tribal consultation responsibility.

Federal State Coordination:

Since the outset of the federal program in 1990, we have recognized the need to work closely with Alaska's Department of Fish and Game. Due to the conflicting state and federal laws about allocation of subsistence resources in Alaska, coordinated management by state and federal

agencies has become a requisite for responsible stewardship of these resources. This has been accomplished so far by dual management, which consists of coordination between the two managers to schedule harvest opportunities on their respective lands and meet their individually mandated objectives while ensuring the continued health of the wildlife populations.

Dual management occurs under a variety of scenarios. Healthy fish populations, for example, support a commercial fishing industry, sport/recreational fishery, state subsistence harvest opportunities (which are open to both urban and rural residents), and federally qualified rural subsistence users. Therefore, federal managers have established harvest regulations for the federally qualified rural residents, while state regulations are applied on both federal and non-federal lands to provide opportunities for commercial fishing, sport fishing and other subsistence fishing. This system of dual regulations for the same resource requires careful coordination. When applied to migratory fish stocks such as Pacific Salmon, which pass through a checkerboard land ownership pattern, dual management requires precise choreography with cooperative and skilled field managers. Over-harvest by commercial fishing on state waters at the mouths of rivers can significantly affect subsistence opportunities of rural residents on federal lands as the salmon migration moves upstream.

Even in situations where non-federally qualified rural residents are restricted from harvest activities on federal lands because of low or recovering wildlife populations, dual management continues. Populations such as migratory caribou herds move between federal and non-federal lands where the herd is exposed to either state or federal regulations over the course of their movements. Dual management consists of coordination between the two managers to schedule harvest opportunities on their respective lands, to meet their individually mandated objectives, while ensuring the continued health of the wildlife population.

Dual management between the Alaska Department of Fish and Game and the Federal Subsistence Program is currently being guided through an Interim Memorandum of Agreement (MOA). This document provides a foundation and direction for coordinated interagency

subsistence fisheries and wildlife management consistent with state and federal statutes. More specifically, it is intended to protect and promote the sustained health of fish and wildlife populations, to ensure conservation and stability in fisheries and wildlife management, and to include meaningful public involvement.

Through the implementation of the MOA, the federal agencies have worked with the State of Alaska to develop specific protocols that provide detailed guidance to the field managers for various aspects of dual management. Development of protocols is a continuing effort. These protocols address information sharing between the agencies, coordinated research projects and monitoring activities, and coordinated in-season management decision making.

Full time federal and state liaison positions have also been established to facilitate this cooperative effort. Federal funding to support the State's liaison and coordination efforts is provided through cooperative agreements on an annual basis. This year's agreement provides $470,000 to the Alaska Department of Fish and Game for this purpose.

On the topic of fisheries, when the Federal Subsistence Board undertook subsistence fisheries management in 1999, the salmon crisis in western Alaska was already underway. In particular, the salmon stocks from the Yukon and Kuskokwim Rivers were in a downward trend. In our first two years of management, both state and federal fisheries managers were faced with developing a management strategy requiring some restrictions to all uses including commercial, recreational, and subsistence. This significantly impacted the 3,500 households along these two rivers. In these regions, both commercial and subsistence fisheries are intertwined with small commercial harvests, providing cash supplements to support the purchase of boats, fuel, nets, ammunition and other items critical to their subsistence lifestyle. The management strategy was unfolded through closures of non-subsistence uses, and a schedule of openings and closures of subsistence uses. The ultimate goal of this approach was to deliver fish to support subsistence uses to all the communities spread throughout these two rivers.

In conclusion, although the State of Alaska is not presently implementing the subsistence priority mandated by Title VIII of ANILCA, Alaskans are very much involved and participating in the federal program. As stated previously, it has always been the goal to return subsistence management to the State of Alaska as soon as the State returns to compliance with the provisions of ANILCA. It has been our hope, as we have designed and implemented our management systems, that we fulfill the purposes and intent of Title VIII, maximize cooperation with state management, and maximize the involvement in the program by Alaskans, particularly those who are directly affected by management decisions. As the program has evolved, we have created innovations in the way the users are involved in providing input to the important decisions that affect their lives. We are committed to this course of action. I would be happy to respond to any questions you and the committee may have. Mr. Chairman, thank you again for the opportunity to testify before you today.

Written Testimony of
Loretta Bullard
President of Kawerak Incorporated

for the Committee on Indian Affairs
Oversight Hearing on
Subsistence Hunting and Fishing Issues
April 17, 2002

Mr. Chairman and Members of the Committee, thank you for this opportunity to submit written testimony on subsistence hunting and fishing in Alaska. My name is Loretta Bullard. I am President of Kawerak Inc., which is the regional tribal consortium serving the Bering Straits Region of Alaska. We are authorized by the region's twenty federally recognized tribes to provide services to their memberships. The President or Chief of each Tribal Council serves on the Kawerak Board.

Our service area is approximately 26,000 square miles or roughly the size of Ohio. The region's population is about 9,500 people, of which 80% are Alaska Native. We have 16 distinct communities that, except for Nome, are very isolated. Nome is served by daily jet service. The region is not connected by road to any other area of the State. Small commuter planes serve all villages except for Diomede. Diomede has weekly helicopter mail service during the ice-free months and, when a runway can be cleared on the sea ice, they have small plane service. Jobs in the villages are very scarce.

The region's Native people continue to be **very** dependent on subsistence resources. Hunting and fishing is the foundation of our indigenous culture around which our lives revolve. Some cultures are based on farming or trade, our culture is based on hunting and fishing. If we are not able to hunt and fish, our culture and way of life will die. Many of us **prefer** our Native food – since it is what we grew up on and are used to. Because of the cost of transportation, imported food is **very** expensive in our communities and many families simply can't afford to purchase the bulk of their food from the lower 48. Rural Alaska is one of the few places in the United States where people can still live off the land and have the skills to do so.

In summary, Kawerak:

* **Opposes any amendment to ANILCA that would weaken subsistence protections for rural Alaskans.**

* **Supports a state constitutional amendment allowing the state to come into compliance with ANILCA. Kawerak supports the constitutional**

amendment proposed by Governor Tony Knowles, provided that it is coupled with implementing legislation that brings the state into compliance with ANILCA.

* **If the state legislature fails to address this issue, Kawerak supports a restoration of Alaska Native aboriginal hunting and fishing rights through an act of Congress.**

BACKGROUND

ANILCA is the only law protecting rural and Native Alaskans who are dependent on fish and game resources. We urge Congress to not allow any amendments to weaken the ANILCA subsistence protections.

We believe that any morally defensible policy toward fish and game use in Alaska will protect the subsistence needs of Alaska Natives. Most rural villages in Alaska are located where they are because of access to subsistence resources. Harvesting and using fish, game, and plant resources is so integral to Native culture and identity, that the loss of the subsistence-based lifestyle would be tantamount to destruction of Alaska Natives as a people – in short, a kind of genocide. The ANILCA "rural resident" priority, while not perfect, achieves the purpose of protecting the ability of rural, mostly Native, communities to continue to follow traditional ways of life.

Regardless of how anti-subsistence activists and legislators may dress up their arguments in terms of equal protection, states' rights, or "common use," in essence they are arguing that the urban majority has a paramount right to destroy a minority indigenous culture by sheer weight of numbers. While Alaska state law provides that subsistence is the highest priority use of fish and game, state court decisions have decided that **everyone** in Alaska is a subsistence user. Under state law, doctors, lawyers and oil executives from Anchorage and Fairbanks are considered to be as much a subsistence user as someone living in Brevig Mission. They have as much right to hunt in our back yards as we do, even in times of shortage. In reality, there is no protection for subsistence users under Alaska state law.

The opponents of the rural subsistence priority offer no improvements or alternatives to ANILCA. At best, they want to turn subsistence protection into a kind of welfare system for individuals, which is totally at odds with reality of village subsistence practices.

Although Kawerak supports a state constitutional amendment and a return to unified fish and game management consistent with ANILCA, this is by no means universal within the Native community. Because the Bering Strait Region is highly mineralized, a large amount of the land in the region was

selected by the State of Alaska as part of their land entitlement under the Statehood Act. Most of this region will remain under the state fish and game management system simply because the federal government owns so little land in-region. The federal subsistence management system is increasingly appealing, especially in regions where most of the land is federal. Continuing attacks on Native and rural interests, in a variety of contexts, by urban legislators undercuts our trust in state institutions.

The Alaska Boards of Fish and Game, for example, are politically appointed; their composition depends on the political whim of the governor and legislature. In prior years, we've seen situations where the governor and the majority of the legislature were actively hostile to our interests. We are not willing to trust that these institutions will protect our way of life when they may be ignorant of, or hostile to, our subsistence use of resources. There is a real risk in Alaska that individuals and institutions that oppose our Native way of life will be vested with the authority to destroy the very foundations of our culture. We need continued federal oversight to protect our ability to live off the land. The past decade has certainly demonstrated the state legislature is unwilling to do so.

Title VIII of ANILCA is the modern equivalent of a treaty. It replaces the aboriginal hunting and fishing rights that were extinguished in ANCSA, and is just as much a part of the overall settlement as the transfer of title to Native corporation lands. It is a solemn and binding undertaking and guarantee by the federal government. We believe that the federal trust responsibility toward Native people would require the federal government to act to protect our subsistence needs even if Title VIII had never been enacted. Nothing - not the U.S. Constitution, not the 1867 "purchase" of Alaska from Russia, not the Statehood Act, not ANCSA, and certainly not ANILCA - gives the majority urban society in Alaska the moral or legal right to destroy the very foundation of our culture.

If the Alaska State Legislature continues to not allow Alaska voters to vote on a constitutional amendment that would provide for a subsistence priority consistent with ANILCA, then we encourage Congress to restore Alaska Native aboriginal hunting and fishing rights through an Act of Congress. This would avoid opening up ANILCA to massive amendments, but still address our need for protection for our subsistence way of life over the long term.

For thirty years now, the subsistence issue has been an enormous drain of energy, time, and resources - for Alaska Natives and non-Natives alike. It is polarizing this state. If the State Legislature can't or won't address this issue, then perhaps it's time for Congress to explore a solution. I thank the committee for holding this hearing.

Attached to this written testimony is the Kawerak Board resolution which further explains our position on subsistence.

Thank you for this opportunity to testify.

KAWERAK, INC.
P.O. BOX 948 • NOME, ALASKA 99762
TELEPHONE: (907) 443-5231 • FAX: (907) 443-~~3708~~ 4452

SERVING THE VILLAGES OF:
BREVIG MISSION
COUNCIL
DIOMEDE
ELIM
GAMBELL
GOLOVIN
KING ISLAND
KOYUK
MARY'S IGLOO
NOME
SAVOONGA
SHAKTOOLIK
SHISHMAREF
SOLOMON
STEBBINS
ST. MICHAEL
TELLER
UNALAKLEET
WALES
WHITE MOUNTAIN

KAWERAK, INC.
RESOLUTION NO. 01-03

ESTABLISHING KAWERAK'S POSITION ON SUBSISTENCE

WHEREAS, Kawerak, Inc. is a tribally authorized regional non-profit organization that seeks to empower its member tribes; and

WHEREAS, the St. Lawrence Yupik, Yup'ik and Inupiat people have resided in the Bering Strait Region for thousands of years; and

WHEREAS, the location of our villages is closely connected to the subsistence resources upon which we depend; and

WHEREAS, our subsistence rights are based in our culture which is unique and distinct to Native peoples living in a circumpolar region of the world; and

WHEREAS, our traditional practices of hunting, fishing and gathering the resources of the Bering Sea, Bering Strait, Norton Sound and Seward Peninsula region is based in our unique cultural adaptation to the same; and

WHEREAS, subsistence and our cultures will continue to exist regardless of the laws or regulations that may or may not provide for subsistence; and

WHEREAS, the St. Lawrence Yupik, Yup'ik and Inupiat people had our aboriginal land title to our traditional homelands extinguished under the Alaska Native Claims Settlement Act of 1971; and

WHEREAS, the Alaska Native people made enormous concessions for the construction of the oil pipeline and transportation corridors with the understanding that our ability to hunt and fish would be protected; and

WHEREAS, Alaska Natives collectively are the largest private landowners in the nation and own 11% of the State of Alaska; much of this land was selected for its subsistence and other resource potential; and

WHEREAS, the Alaska National Interest Lands Conservation Act (ANILCA) of 1980 provides a priority for rural subsistence uses of fish and game on federal lands in Alaska, and was intended to apply statewide through state laws of general applicability; and

WHEREAS, in 1989 the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural subsistence priority provided by state law was unconstitutional under the state constitution, leaving state law in conflict with federal law and subsistence largely unprotected by the state; and

WHEREAS, the *McDowell* decision has led to more than a decade of litigation, and resulted in dual fish and game management systems in Alaska, with the federal government managing subsistence uses on federal public lands, including some navigable waters, and the state having fish and game management authority on non-federal lands; and

WHEREAS, the State of Alaska owns most of the land within the Seward Peninsula and Bering Straits Region and retains most fish and game management authority in the region; and

WHEREAS, since the *McDowell* decision numerous opinion polls have shown that Alaskans support by a wide margin an amendment to the state constitution to provide rural Alaskans with a subsistence hunting and fishing priority; and

WHEREAS, the Alaska Legislature has not recognized the wishes of the majority of voters in the state who wish to see subsistence protected through a state constitutional amendment; and

WHEREAS, some members of the Alaska Legislature and other opponents of the ANILCA subsistence protections have sought to have Congress amend ANILCA to reduce or eliminate federal subsistence protections;

NOW, THEREFORE, BE IT RESOLVED that Kawerak opposes any amendments to ANILCA except those that strengthen rural or Native subsistence protections;

BE IT FURTHER RESOLVED that Kawerak will support a state constitutional amendment if one is placed on the ballot that provides for a rural subsistence priority consistent with ANILCA, or provides greater rural or Native subsistence protections than ANILCA;

BE IT FURTHER RESOLVED that Kawerak will strongly oppose any constitutional amendment that would reduce or adversely affect the rural subsistence protections;

BE IT FURTHER RESOLVED that Kawerak shall seek to ensure that the state legislation accompanying a constitutional amendment shall:

1) provide a strong regional council system similar to the federal model;
2) allow co-management initiatives between Rural and Native Alaskans, their representatives bodies and the State of Alaska;

BE IT FURTHER RESOLVED that Kawerak supports the development of a fish and game management system that will protect and provide for our dependence on subsistence resources, and have the following features:

1) A regional management council system empowered to make decisions on fish and game at the regional level;
2) Statewide Boards of Fish and Game with board members appointed by the regional councils;
3) A subsistence preference for residents of rural Alaska, or for rural residents and all Alaska Natives;
4) A system for negotiating co-management agreements for fish and game on a government-to-government basis, so that our tribal governments make decisions on resource management issues and processes;

BE IT FURTHER RESOLVED that the Kawerak Board of Directors, on behalf of the St. Lawrence Yup'ik, Yup'ik and Inupiat people of the Bering Straits Region, declares:

-That our right to live off the land is a basic cultural right; we refuse as Alaska Native people to allow our resource dependent cultures to be regulated out of existence, we have lived off the land since time immemorial and have the right to continue to do so;

-That as Alaska Natives and rural Alaska residents, we must be recognized by the State as having a right to actively participate in the management of the fish and wildlife resources on which we depend, and that our ability to live a subsistence lifestyle should not be subject to political whims;

-That it is our long term goal to achieve full recognition from the State and Federal government of our inherent right to continue living off the land, to harvest and manage fish and game resources now and in the future;

BE IT FURTHER RESOLVED that the resolves herein establish the general policies and goals of the Kawerak Board of Directors regarding subsistence and do not establish particular political strategies or limit the discretion of Kawerak or its representatives to the Alaska Federation of Natives, or other forums, to support legislative initiatives which further, but may not completely meet, Kawerak's goals;

BE IT FINALLY RESOLVED, that Kawerak, Inc. will seek to protect Native subsistence lifestyles in all available forums through advocacy, education, litigation and local empowerment of tribes.

Robert Keith

Robert Keith, Chairman

CERTIFICATION:

This certifies that the foregoing resolution was adopted by the Kawerak Board of Directors at a duly called and noticed regular meeting on the 6th day of April, 2001, and that a quorum was present.

Mary Darlene Charles, Secretary

DOT LAKE VILLAGE COUNCIL
NATIVE VILLAGE OF DOT LAKE
BOX 2279
DOT LAKE, AK. 99737

16 April 2002
UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS

WRITTEN TESTIMONY REGARDING SUBSISTENCE HUNTING & FISHING IN ALASKA

The following are some of the concerns and comments of the residents of the native village of Dot Lake, regarding Title VIII of ANILCA:

1. Sec. 801 (1); WE FEEL THAT THIS SECTION IS VERY IMPORTANT, AS IT SETS THE STAGE FOR THE REST OF THE TITLE:

A. The continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives on public lands and BY ALASKA NATIVES ON NATIVE LANDS is essential to Native physical, economic, traditional and CULTURAL existence and to NON-NATIVE physical, economic, traditional and SOCIAL existence.

THE FOLLOWING SHOULD BE NOTED, CONCERNING THIS PART OF TITLE VIII

(A) A distinction is made between public lands and Native lands. Neither the Federal Government nor the state of Alaska has ever addressed this difference. Natives have never been given any consideration on Native lands.

(1) A large amount of the lands selected by the Native Corporations under ANCSA were selected because of their subsistence value and use by the Tribal Members. The Federal Government and the state of Alaska has refused to protect this land for Tribal use. Under the state trespass laws, if an individual leaves when requested, nothing can be done. This same individual can continue to return and trespass and must be told each time to leave. The only time anything is done is if the individual refuses to leave.

(2) We agree that Federal lands are public lands, we also believe that Native Corporation lands, obtained under ANCSA should be considered as Native lands as defined in Sec. 102 (11), and treated as such under this section. As noted above, these lands were selected by the villages because of their subsistence value.

(3) We feel that all Native Allotments, Native Corporation and Native Village owned lands should be considered as Native lands under this section [reference Sec. 102(11)] and that seasons and bag limits should be established on these lands to meet the needs of the local Native villages, which are not being at the present time, under present fish & game laws. (example: the Native village of Dot Lake, located in the

interior of Alaska has shown a traditional and historic need for an absolute minimum of six to seven moose per year. The Dot Lake Native Corporation has selected approximately 69,000 acres of land within the traditional hunting area of the village. The Natives traditionaly hunted for moose during July and August to make dry meat and during September thru October to obtain meat for winter. Their present hunting season is from 1 - 15 September, which is also the open season for all hunters in Alaska on these lands. During the 2001 season, the entire village only harvested two moose.

B. Second, as reflected in this section, there is a different need between Native and non-Native residents.

(1) The need by Natives is stated as a CULTURAL need. It is our belief that this is demonstrated by the psychological and physiological need of the Alaskan Natives for their "Native Foods". This need can not be satisfied with other types of food such as pork, chicken or beef.

(2) The need for non-Natives is stated as a SOCIAL need. It is our belief that this is to reflect the need by non-Natives to be able to hunt, fish or use the resources as a social function.

(3) We feel that primary consideration should be given to any individual with an economic need. That is those that would suffer economic hardships without the use of the resource.

(4) Second consideration should be given to Natives because of their cultural need for the resource.

(5) Third consideration should be given to those that have a traditional use of the resource.

(a) Traditional use of Alaskan resources is something that is developed over generations and not just a matter of a few years. Very few non-Natives can claim traditional use of Alaskan resources. They may have traditional use of resources in the state of Washington, Montana, Nevada etc. but not of Alaskan resources.

(b) A statement we have often heard is "I was born in Alaska and am an Alaskan Native". These individuals may be Native Alaskan but they are not Alaskan Natives.

2. Sec. 802 (3): This section requires that Federal land managers cooperate with adjacent landowners and land managers, including Native Corporations:

A. No Federal agency or state agency has contacted the Dot Lake Native Corporation for any type of input into a land use plan in regards to managing subsistence activities.

3. Sec. 803 (1): This section defines "Family" as all persons related by blood, marriage, or adoption, OR any person living within the household on a permanent basis.

A. The state of Alaska, has in the past, attempted to interpret this as "all persons related by blood, marriage or adoption AND living in the household.

B. We interpret this to mean that persons related by blood, marriage or adoption to individuals that have a rural preference should have the same preference.

C. There is a difference between SUBSISTENCE, TRADITIONAL AND CULTURAL. We feel that these should be defined and that individuals should be classified as to which category or categories they fit into.

(1) SUBSISTENCE: means of support or livelihood. Those individuals that depend on the resource in order to survive or live. This could be physical, psychological and or physiological. All of our elder Alaskan Natives fit into this category along with a large number of our younger Alaskan Natives. Some Alaskan Natives may not fit because of the cultural changes that have been forced upon them. It is the desire of a number of our elders to bring these individuals back to the traditional ways.

(2) TRADITIONAL: means the handing down orally of customs, beliefs, stories, etc. from GENERATION TO GENERATION. This is something that can not be accomplished in a matter of a few years or generations. It is something that requires many generations. All Alaskan Natives have a traditional use of the resources within Alaska. Very few, if any non-Natives can claim traditional use of Alaskan resources.

(3) CUSTOMARY: means a usual practice or habit, social conventions carried on by tradition. Again, because it is something carried on by tradition, it requires generations of use to establish customary use. All Alaskan Natives would fall within this category.

(4) CULTURAL: means the skills,arts, etc. of a given people in a given period; civilization. Again, because it is something carried over a given period of time, it requires generations to establish cultural use. All Alaskan Natives would fall within this category.

D. All Alaskan Natives have the traditional customary and cultural need for their native foods; regardless of where they live. Non-Natives do not share this need on a traditional or cultural basis, but may on a customary basis. We feel that Alaskan Natives should be allowed to qualify for obtaining the natural resources they require. Not based on where they live, but based on who they are and their TRADITIONAL AND CULTURAL needs.

4. Sec. 805: In the past, the state Fish and Game Advisory Committees and Regional Advisory Councils were not working the way they should. The system established to select these committees and councils were find. Each committee member was elected by residents of the area and the councils were comprised of the chairman of each committee within the region. It was the state required composition of these units that was not working. The state required that at least three user groups be represented on each committee [reference 5AAC96.060(e)(1)] Committees were formed that were completely urban and had no subsistence representation at all on them. In addition to this, the State Boards of Fish and Game have in the past refused to act on the

recommendations of theses entities. Fish and Game Board members are political appointees and react to the political pressures within the state and/or outside the state. One example was the big issue of Wolf Control. The local committee within state game management units 20D, 20F and 12, along with the local biologist and old time local natives recommended that some action be taken to reduce the number of wolves in the area. They submitted a plan which included reduction in numbers of wolves and bears in the area, in order to increase the number of moose which was the main subsistence resource. The board of game rejected the proposals, even when they were shown that one pack of 8-12 wolves had killed an average of one moose every four to five days (10 moose within a 45-50 day time frame) in an area that was showing a decline in moose population of almost 10% per year. The same area requested the removal of the bear tag requirement in an attempt to increase the incidental take of bear. This proposal was also rejected. Only on rare occasions, had the state boards complied with Sec. 805(d) and given a factual basis and reasons for their decisions. It had basically been "because that is how the vote went".

We also have the following questions:

1. How can subsistence fishing be provided for if navigable waters are excluded from federal control? The primary subsistence fish is salmon. This fish migrates from Alaskan waters to the sea and back. The commercial take of salmon has a marked effect on the subsistence take. We feel that some agreement must be made to provide for the subsistence take of salmon, as well as access and gear requirements for traditional users (Example: in the Batzulnetas area, the traditional users from the Native Villages of Dot Lake and Mentasta can subsistence fish. They are restricted to using fishwheels, dipnets in the river and dipnets and spears in Tanada creek. Traditionally, these people used fishtraps in the creek, which would be compatible to the use of a gilnet, which is now prohibited. In addition, the only access is by a trail which is almost impassable for a number of our elders. We have been prevented from improving the trail so as to allow access by our tribal members (this problem is presently being addressed). Also, subsistence fishing is restricted, while commercial fishing is allowed at the mouth and along the river.

2. When an individual Native Village is identifiable, serious consideration should be given to providing a community bag limit for big game. This would be more in line with the traditional and cultural way of obtaining and sharing game. In addition, if the federal government retain control of subsistence fishing, the same would be true.

3. Seasons should also be established according to the traditional seasons in each area. This could be based on documented studies of when fish and game were taken prior to the establishment of the present seasons.

4. In regards to "rural/non-rural determinations, we feel that serious consideration must be taken in making these

decisions. As noted in prior testimony, we feel that all Native Villages should be determined as rural. This is based on the fact that they all have traditional and cultural ties to the resources. Other communities should be determined based on their social and economic structure. A community that has a high employment rate, commercial establishments to supply needs, mainly transit type residents (such as military), and majority of public services provided locally should not be considered as rural.

5. Continued federal management of non-subsistence resources that have a direct relation to subsistence resources should be maintained. Example: bear and wolf may not be a subsistence resources in a certain area, but they have a direct effect on the moose and caribou populations, therefore they should be regulated to insure a stable subsistence population of the moose and caribou.

6. A complete review of all rural areas and their subsistence use areas should be accomplished. There are a number of cases where the state made a determination that a resource was not use by the residents of an area, based on the non-use for a period of time. This should not be the case. Some resources were used as a secondary source of food when the primary source was not adequate. At other times, individuals were prevented from using a resource because of seasons, permits, controlled use areas etc. They were than considered as non-users because they did not use the resource.

THE FOLLOWING ARTICLE WAS PREPARED BY A NON-NATIVE RESIDENT OF THE NATIVE VILLAGE OF DOT LAKE AND IS ATTACHED TO SHOW NON-NATIVE SUPPORT FOR NATIVE ISSUES:

I have resided in Alaska since 1959 and have been very involved in the problems faced by Alaskan Natives over the years. I presently reside within the Native Village of Dot Lake and know, first hand, many of the problems faced by these original inhabitants of Alaska.

After reading a number of news articles and "Letters to the Editor" dealing with Alaskan Native affairs, I believe that a large number of individuals, including most of our government officials and those elected to represent us, have very little historical knowledge of these issues, have given very little thought to what they write, or just don't what to know or care about the truth.

The Alaskan Native people are the original inhabitants of and have occupied this land, that we now know as Alaska, for time immemorial. As a whole, they have never been conquered by or surrendered to any foreign power. They practiced conservation of and sincere respect for all natural resources as a method of survival.

When the first foreigners arrived, the Alaskan Natives shared their knowledge and resources with the newcomers and showed them how to survive in this harsh environment. This may have been their biggest mistake, as it seems it is leading to their demise and the end of their actual existence as a independent nation of proud and noble people.

The original settlers (Russians), killed large numbers of Natives. They raped the land and resources, and gave nothing back. When Western civilization began to develop in this great land, the Natives were the ones to suffer. The Natives were considered barbaric and told that their traditions, culture, language and way of life were evil. Children were taken from their families and sent to missionary or BIA schools. They were prohibited from speaking their language or practicing their traditions. There was a very strong attempt to "westernize" these children, and through them to assimilate these "barbaric" peoples into the western world. Through all this, the Alaskan Native culture, traditions, language and way of life have survived.

The Alaskan Natives did not know of land ownership, to them God put all things here for man to use and take care of for future generations. Land and resource use was controlled through mutual respect. Individuals and groups respected those lands and resources used by other individuals and groups and would not attempt to infringe on them without permission or invitation. Sharing was a way of life for these original inhabitants, they depended on one another and the natural resources to sustain them.

As Western civilization spread, so did the western ways. A piece of paper decided who owned the land and who had the right to use it. Traditional hunting, fishing and gathering areas were taken over and natural resources extracted for profit. These lands were not purchased from the Native people, they were taken by the new governments and individuals. Natives, not being schooled in western ways, did not know how to protect their rights, lands, resources and way of life.

Alaska became a United States territory and eventually the forty-ninth state, without consideration of or consultation with the original Native inhabitants. At this point, the Natives seemed to have lost all their rights as original inhabitants and became "Alaskans", with no compensation being considered or given for what was taken from them. All their lands were now broken up and being claimed by the federal government, the new state government or individuals.

Eventually, when oil was discovered, the Alaskan Natives, who had become somewhat educated, filled a claim on the all their aboriginal lands. As a result of this claim, a "land freeze" was placed on all lands and the development of those lands. The State of Alaska, the Federal Government and the big oil companies, in a greedy attempt to make large profits from the oil, pressured Congress into the passage of the "Alaska Native Claims Settlement Act" (ANCSA). The two hundred plus individual Native Tribes were not consulted during the development of this act. The Alaskan Federation of Natives attempted to represent the Alaskan Natives as best they could.

This act was just another attempt to assimilate the Alaskan Natives into the mainstream western culture. The final result of this Act was that the Alaskan Natives were required to form state chartered corporations as a prerequisite to receiving some land and cash as a part of the settlement. This requirement assisted in the attempts to pit one Tribe against another. The corporations now owned the land and were responsible for maintaining it and attempting to show a profit for their shareholders.

The land was not being given, it was being returned and the cash was intended to be compensation for those lands retained by the Federal Government, the State of Alaska and individuals.

ANCSA was not an act of welfare, as many "new" Alaskans see it, it was supposed to be a settlement of aboriginal claims. Many Alaskan Natives believed that they still had aboriginal rights and powers on the lands transferred to these new corporations, and only gave up any future claims or powers over those lands retained by others.

This belief was proved wrong, when the U.S. Supreme Court rejected Venetie's claims of "Indian Country", which was just another attempt to assimilate the Alaskan Natives. It seems that every time the Alaskan Natives win a case in the western court, the rules change and they have to start over again. This is just more proof of the attempts being made by our "representatives" to assimilate the Alaskan Natives and have one dominant culture within Alaska.

Because of all the confusion caused by the poorly worded ANCSA, many revisions and other acts, such as the "Alaska National Interest Lands Conservation Act" (ANILCA) were passed, in an attempt to appease the Alaskan Natives. These seem to have only added to the confusion.

Title VIII of ANILCA was intended to help in a small way to preserve true Native Culture and Traditions through providing a subsistence base for, not only Alaskan Natives, but other individuals that have chosen to reside in rural Alaska.

How many more indignities must the Alaskan Natives suffer? Their grave yards and old village sites are dug up and disturbed in the name of Anthropology. The knowledge and stories of their elders are exploited by those that would make a profit from them. Their arts and crafts are imitated and sold. What is left, except for their dignity and willingness to share? Lets not take these away from them also.

It is about time the Federal Government, the State of Alaska and those of us that are not aboriginal inhabitants of this great land open our eyes.

The Alaskan Natives, as aboriginal inhabitants of Alaska, have the inherent right to self governance, to include the right to pursue their traditions and culture, without interference from us. We are the outsiders in Alaska. What gives us the right to impose our beliefs and way of life on these people. Haven't we done enough damage by introducing alcohol, drugs and new diseases, which almost destroyed the aboriginal peoples of Alaska. We can all live together in peace and harmony, if we only learn to respect one another and stop believing that the western culture and way of life must dominant at any cost.

In closing, I would like to leave all nations and peoples with the following thought, which was developed by the Dot Lake Village Council as a guide to decision making:

"May the decisions we make in life be guided by the wisdom of the owl, the strength of the grizzly bear, the cunning of the wolf and the sincerity of the eagle.

May we always walk in the light of the sun, while not being blinded by its brightness, and may our good fortune be as continuous as the flowing waters of the river."

If we all take the above to heart and really attempt to be fair and honest, there may still be hope for the Alaskan Native peoples and someday, what is rightly theirs, will be returned to them and we will all live together as friends and neighbors.

WILLIAM J. MILLER
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WRITTEN TESTIMONY FOR MAY 27, 1989 HEARING ON STATUS OF ALASKA NATIVES (ANCHORAGE ALASKA)

MY NAME IS WILLIAM MILLER. I REPRESENT THE TRIBAL MEMBERS OF THE NATIVE VILLAGE OF DOT LAKE ALASKA, AS WELL AS THE DOT LAKE VILLAGE COUNCIL, THE GOVERNING BODY OF THE NATIVE VILLAGE OF DOT LAKE ALASKA.

A. THE FIRST THING I WOULD LIKE TO ADDRESS IS THE AFN REPORT ON THE STATUS OF ALASKA NATIVES.

1. IF THIS REPORT HAD BEEN TITLED " STATUS OF ALASKAN NATIVE TRIBES " AND BEEN FOR A FEDERAL AGENCY, IT WOULD MOST LIKELY HAVE BEEN BLANK. ALL FEDERAL REPORTS, REGULATIONS, LAWS, AND REQUEST FOR PROPOSALS REFER TO OUR TRIBES AS "ALASKA NATIVE VILLAGES OR ALASKA ENTITIES". A LARGE NUMBER ALSO CARRY A DISCLAIMER IN REFERENCE TO GOVERNMENTAL AUTHORITY, INDIAN COUNTRY AND AUTHORITY OVER LAND. IS THIS DONE WITH OTHER TRIBES IN OTHER AREAS?

2. THE REPORT WAS VERY INTERESTING AND INFORMATIVE. THE MAJOR PROBLEM WITH THE REPORT WAS THAT IT ADDRESSED THE PROBLEMS PRIMARLY WITHIN WESTERN ALASKA. THE ALASKAN NATIVES AND TRIBES WITHIN THE INTERIOR OF ALASKA FACE THE SAME PROBLES AND THEN SOME. BECAUSE A LARGE NUMBER OF THE INTERIOR VILLAGES ARE ROAD CONNECTED AND/OR CLOSE TO URBAN AREAS, THESE VILLAGES FACE ADDITIONAL PROBLEMS.

a. WE MUST COMPETE WITH THE EVER INCREASING HUNTING AND FISHING PRESSURES FROM THESE URBAN AREAS. THE STATE OF ALASKA HAS DONE LITTLE, IF ANYTHING TO IMPROVE THESE CONDITIONS. IN A LARGE NUMBER OF OUR TRADITIONAL HUNTING AREAS, SEASONS HAVE BEEN GREATLY REDUCED OVER THE LAST 10 - 15 YEARS. WITHIN THE TRADITIONAL HUNTING AREA OF DOT LAKE VILLAGE, THE MOOSE SEASON HAS GONE FROM APPROXIMATELY 75 DAYS A YEAR TO 10-20 DAYS, WHILE THE SUBSISTENCE AND NON-SUBSISTENCE SEASON STILL REMAINS IDENTICAL. HARVEST OF MOOSE FOR THE VILLAGE HAS DECLINED TO A POINT THAT PRESENTLY THERE IS NO MOOSE MEAT IN THE VILLAGE. A RECENT ATTEMPT BY THE VILLAGE RESIDENTS, THROUGH THEIR VILLAGE COUNCIL, TO OBTAIN THREE PERMITS TO TAKE MOOSE,

WAS REJECTED BY THE STATE OF ALASKA, BOARD OF GAME. THE BOARD DID NOT FEEL IT WAS AN EMERGENCY AND THE VILLAGE WAS TOLD TO MAKE ANOTHER ATTEMPT AT THE SPRING 1990 BOARD MEETING. WAS THIS THE INTENT OF ANILCA ? THE STATE OF ALASKA WANTS TO INTERPRET THE WORD "ECONOMIC" WITHIN THE CONTEXT OF ANILCA TO MEAN THE OVERALL ECONOMY OF A VILLAGE AND/OR COMMUNITY WITH NO CONSIDERATION BEING GIVEN FOR THOSE INDIVIDUALS WITHIN THE VILLAGE OR COMMUNITY THAT ENGAGE IN SUBSISTENCE HUNTING OR FISHING. MOST OF THE ACTIONS OF THE STATE OF ALASKA, TO DATE, HAVE BEEN IN FAVOR OF THE SPORTSMAN, WITH JUST A SUPERFICIAL ATTEMPT TO COMPLY WITH THE INTENT OF ANILCA. RIGHT NOW, AS THESE HEARINGS ARE TAKING PLACE IN ALASKA, A BILL IS BEING INTRODUCED IN THE HOUSE IN WASHINGTON D.C., AT THE REQUEST OF GOVERNOR COWPER, THAT WOULD GIVE A DEFINATION TO THE WORD "RURAL" IN REGARDS TO ANILCA, THAT WILL EXCLUDE A LARGE NUMBER OF OUR NATIVE VILLAGES FROM ENJOYING THEIR RIGHTS GRANTED UNDER TITLE VIII OF ANILCA. IS THE FEDERAL GOVERNMENT ONCE AGAIN SPEAKING WITH A FORKED TOUNGE?

b. BECAUSE OF THE PRESSURES FROM THE NEARBY URBAN AREAS, A NUMBER OF OUR PEOPLE HAVE HAD TO LEAVE THE VILLAGE TO FIND EMPLOYMENT AND LEARN TO LIVE IN A CASH ECONOMY. THERE IS LITTLE INCENTIVE FOR OUR VILLAGES TO BUILD AN ECONOMIC BASE, BECAUSE UNDER CURRENT STATE REGULATIONS, IF A VILLAGE BECOMES ECONOMICLY SOUND, IT MAY LOSE ITS' TRADITIONAL AND CULTURAL RIGHT FOR SUBSISTENCE HUNTING AND FISHING. NO CONSIDERATION IS GIVEN TO PHYSICAL AND PHYSIOLOGICAL DEPENDENCY OUR PEOPLE HAVE FOR THEIR NATIVE FOODS. IT IS THE OLD STORY OF WESTERN CULTURE "IF YOU HAVE MONEY, BUY SOMETHING ELSE." THIS IS NOT OUR WAY.

c. THE STATE OF ALASKA PASSED LEGISLATION A FEW YEARS AGO THAT WAS INTENDED TO HELP VILLAGES THAT WANTED TO COMBAT THEIR ALCOHOL PROBLEMS. WE WERE GIVEN OPTIONS, THAT WE COULD VOTE ON. THE NATIVE VILLAGE OF DOT LAKE PETITIONED THE STATE OF ALASKA TO HOLD AN ELECTION WITHIN THE VILLAGE BOUNDRIES ON THE QUESTION AS TO IF POSSESSION OF

ALCOHOL SHOULD BE BANED WITHIN THE VILLAGE. WE WANTED THIS OPTION TO PERTAIN ONLY TO THE VILLAGE AND NOT TO THE NEAR-BY NON-NATIVE COMMUNITY. THE STATE OF ALASKA, DEPARTMENT OF ELECTIONS INFORMED THAT BECAUSE WE WERE NOT INCORPORATED AND DID NOT HAVE BOUNDRIES THAT THEY RECOGIZED, THE WHOLE AREA HAD TO VOTE ON THE PROPOSED OPTION. WE LOST. THE NON-NATIVE COMMUNITY DOES NOT HAVE AN ALCOHOL PROBLEM AND THEY ARE THE TYPE OF INDIVIDUALS THAT THINK THAT THERE ARE TOO MANY LAWS NOW. WE HAVE BOUNDRIES, LISTED WITHIN OUR VILLAGE CONSTITUTION, WHY ARE THEY NOT RECOGNIZED BY THE STATE?

B. THE NEXT THING I WOULD LIKE TO ADDRESS IS ANCSA.

1. A NUMBER OF OUR ELDERS AND OTHERS WORKED ON THIS ACT. IT WAS THEIR UNDERSTANDING AS WELL AS THE UNDERSTANDING OF OTHERS AT THE TIME, THAT THE SETTLEMENT WOULD GO TO THE VILLAGE GOVERNMENTS. THIS WOULD HAVE ALLOWED THE VILLAGE COUNCILS TO ESTABLISH PROGRAMS TO BENIFIT THEIR TRIBAL MEMBERS. IT WOULD HAVE ALSO GIVEN THE NATIVE PEOPLE AND THE TRIBES A LAND BASE. OUR PEOPLE HAVE ALWAYS HAD VERY STRONG TIES TO THE LAND AND TO THEM, IT GAVE LIFE. THE FEDERAL GOVERNMENT, IN ITS GREAT WISDOM AND KNOWLEDGE OF NATIVE LIFESTYLES, TRADITIONS, CULTURE AND VALUES, REQUIRED THAT CORPORATIONS BE FORMED UNDER ALASKA STATE LAW PRIOR TO ANY LAND OR CASH BEING TRANSFERED. BEING VERY KNOWLEDGEABLE OF TRADITIONS AND CULTURE, AND THE HISTORY OF NATIVES ALWAYS SHARING, THE GOVERNMENT EVEN REQUIRED THAT THESE CORPORATIONS SHARE THEIR PROFITS WITH ONE ANOTHER (SEC. 7i)
(HAS THE FEDERAL GOVERNMENT EVER REQUIRED A STATE TO FORM A PRIVATE CORPORATION FOR ITS CITIZENS BEFORE TRANSFERING FEDERAL LAND TO STATE CONTROL?)

2. INSTEAD OF IMPROVING THE TRADITIONAL BELIEF OF SHARING, ANCSA HAS HAD THE OPPOSIT EFFECT. VILLAGES HAVE BECOME DIVIDED OVER LAND MATTERS. CORPORATIONS HAVE OBJECTED TO NATIVE ALLOTMENTS WITHIN THEIR BOUNDRIES. BECAUSE OF LIBILITY LAWS AND THE THREAT OF LOSING THE

LAND, CORPORATIONS HAVE BECOME VERY PROTECTIVE OF IT. A NUMBER OF CORPORATIONS WILL NOT EVEN ALLOW THEIR OWN SHAREHOLDERS TO USE THE LAND WITHOUT PAYING A FEE, BECAUSE THEY FEAR LAWSUITS FROM OTHER SHAREHOLDERS IF THEY DO NOT OBTAIN FAIR MARKET VALUE FOR THE USE OF THEIR ASSETS. OWNERSHIP OF LAND UNDER THE LAW IS NOT THE SAME AS MUTUAL RESPECT FOR ONES RIGHT TO USE THE LAND AND ITS RESOURCES. IN THE TRADITIONAL WAY, A FAMILY OR INDIVIDUAL WOULD UTILIZE A SECTION OF LAND FOR HUNTING, FISHING, TRAPPING ETC. THEY WOULD FARM THE RESOURCES TO INSURE THAT THESE RESOURCES WERE AVAILABLE WHEN NEEDED. THESE LANDS AND RIGHTS WERE RESPECTED BY OTHERS AND NO ONE WOULD ATTEMPT TO HUNT, FISH OR TRAP UNLESS INVITED TO DO SO.

3. EVER SINCE THE PASSAGE OF ANCSA, A NUMBER OF AGENCIES AND INDIVIDUALS FAIL TO REALIZE THAT THE CORPORATIONS AND THE VILLAGE COUNCILS ARE DIFFERENT ENTITIES. THE VILLAGE COUNCILS ARE THE GOVERNING BODY OF THE VILLAGE AND THE CORPORATIONS OWN THE LAND AND HAVE THE CASH. FEDERAL AGENCIES ADD TO THIS CONFUSSION BY GROUPING THE VILLAGE COUNCILS, THE VILLAGE CORPORATIONS AND THE REGIONAL CORPORATIONS INTO ONE GROUP IN REFERENCE TO A NUMBER OF PROGRAMS AND LISTINGS. IS THIS JUST ANOTHER ATTEMPT TO TAKE THE TRIBAL STATUS AWAY FROM THE VILLAGES?

4. ANCSA ONLY ADDRESSED THOSE ALASKA NATIVES THAT WERE BORN BEFORE 1971. BECAUSE OF THIS, MANY PEOPLE AND SOME AGENCIES VIEW NATIVES BORN AFTER 1971 AS BEING NON-NATIVE. THESE CHILDERN ARE TRIBAL MEMBERS AND ARE ENTITLED TO ALL RIGHTS AS SUCH. EVEN THE 1991 AMENDMENTS DID NOT SOLVE THIS PROBLEM. IT LEFT IT UP TO THE CORPORATIONS AND THE SHAREHOLDERS. MANY QUESTIONS ARE STILL LEFT UNANSWERED.

5. THE LANDS TRANSFERED UNDER ANCSA TO THESE CORPORATIONS, WERE NOT TRANSFERED <u>FREE AND CLEAR</u>. THEY WERE TRANSFERED, SUBJECT TO VALID EXISTING RIGHTS. MANY CORPORATIONS HAVE EXPENDED LARGE AMOUNTS OF

THEIR SETTLEMENT MONEY IN ATTEMPTS TO RETAIN THE LAND THAT WAS "GIVEN TO THEM". BATTLES BETWEEN CORPORATIONS AND THE STATE OF ALASKA AS WELL AS BETWEEN THE CORPORATIONS AND INDIVIDUALS MAY WELL CONTINUE UNTIL SOME OF THE CORPORATIONS RUN OUT OF MONEY OR JUST GIVE UP.

6. MANY OF OUR PEOPLE FEEL THAT ANCSA WAS DESIGNED TO FAIL. THE WHOLE CORPORATE STRUCTURE IS ALIAN TO THE NATIVE PEOPLE, AND THEIR WAY OF LIFE. ANCSA HAS TURNED INTO THE LAWYERS, THE AUDITORS AND THE CONSULTANTS RETIREMENT FUND. THE SERVICES OF THESE PROFESSIONALS WILL CONTINUE, RIGHT DOWN TO THE LAST CORPORATE DOLLAR.

C. THESE ARE SOME OF THE THINGS THAT ARE NEEDED NOW:

1. THE OFFICIAL TRIBAL STATUS OF NATIVE VILLAGES IN ALASKA MUST BE RECOGONIZED BY BOTH THE FEDERAL AND THE STATE GOVERNMENTS.

2. THE STATE OF ALASKA MUST PUT OUR VILLAGE GOVERNMENTS ON THE SAME LEVEL WITH AS GOVERNMENTS ORGANIZED UNDER STATE LAW.

a. SERVICES AND ASSISTENCE PROGRAMS MADE AVAILABLE TO CITIES WITHIN ALASKA, MUST ALSO BE MADE AVAILABLE TO OUR VILLAGES ON AN EQUAL BASIS.

b. OUR VILLAGE BOUNDRIES, AS ESTABLISHED BY THE VILLAGE MUST BE RECOGONIZED BY THE STATE OF ALASKA.

3. OUR TRIBAL GOVERNMENTS, JUST LIKE ANY OTHER GOVERNMENT, MUST HAVE A LAND BASE. A SIMPLE METHOD TO TRANSFER LANDS FROM THE CORPORATE STATUS TO THE VILLAGE COUNCILS MUST BE DEVELOPED. THE ORIGINAL LAUNAGE IN THE 1991 AMENDMENTS ALLOWED FOR THE TRANSFER OF LANDS. THE CORPORATIONS AND THE LARGE ORGANIZATIONS THAT REPRESENTED THEM WERE SO INTERESTED IN OBTAINING PROTECTIONS FOR THE CORPORATIONS UNDER THE 1991 AMENDMENTS, THAT THEY ALLOWED THE LAUNAGE WHICH WOULD HAVE PROVIDED FOR LAND TRANSFERS, TO BE DROPED FROM THE FINAL BILL, ALL THE TIME CLAIMING TO REPRESENT THE INTEREST OF THE NATIVE PEOPLE OF ALASKA. THE VILLAGES, WITH NO ASSETS OF THEIR OWN, COULD NOT STAND UP AND FIGHT THESE ORGANIZATIONS. ONCE AGAIN THE VILLAGE CONCERNS

WERE BRUSHED ASIDE IN FAVOR OF THE CORPORATIONS. IF THE LANDS WERE TURNED OVER TO THE VILLAGE COUNCILS, THEY COULD FUNCTION AS THEY WERE MENT TO AND PROVIDE FOR THE WELFARE OF THEIR TRIBAL MEMBERS.

D. WITH THE RETURN OF THE LAND TO THE TRIBE, THE RECOGNIZATION OF TRIBES IN ALASKA, EQUAL STATUS WITH OTHER AMERICAN INDIAN TRIBES, EQUAL CONSIDERATION WITH INCORPORATED ENITITES WITHIN THE STATE, THE NATIVE PEOPLE OF ALASKA CAN ONCE AGAIN HOLD THEIR HEADS HIGH, HAVE PRIDE AND STAND TALL. THEY WILL NO LONGER BE 2ND CLASS CITIZENS NOR WILL THEY BE A DIVIDED PEOPLE.

E. YOU ASK HOW THE NATIVE PEOPLES OF ALASKA CAN BE HELPED. GIVE THEM BACK THEIR LAND AND THEIR PRIDE. LISTEN TO THEM ON ISSUES THAT CONCERN THEM. DO NOT ASK LARGE PROFIT CORPORATIONS WHAT IS BEST FOR THE NATIVE PEOPLES. REMEMBER THE NATIVE PEOPLE OF ALASKA NEVER VOTED FOR ANCSA OR THE OTHER LEGISLATION THAT WAS PASSED TO "HELP THEM". DO NOT REFER TO US AS ALASKAN NATIVE GROUPS OR ALASKAN NATIVE COMMUNITIES. WE ARE, ALWAYS HAVE BEEN AND ALWAYS WILL BE NATIVE VILLAGES AND NATIVE TRIBES. NO MATTER WHAT EFFORT IS PUT FORTH TO TAKE THESE THINGS AWAY FROM US.

THANK YOU FOR TAKING THE TIME TO READ THIS STATEMENT

DOT LAKE VILLAGE COUNCIL
BOX 272
DOT LAKE, ALASKA, 99737

Testimony of Roy Huhndorf
Co-Chairman of the Alaska Federation of Natives

Before the United States Senate Indian Affairs Committee

April 17, 2002

Thank you for the opportunity to testify before the Committee. My name is Roy Huhndorf. I am co-chairman of the Alaska Federation of Natives. My testimony will focus on the importance of an active co-management role for Alaska Natives in the management of fish and wildlife under ANILCA. AFN believes that co-management is central to effective subsistence management and a key component to resolving the impasse over subsistence management in Alaska.

The management of fish and wildlife, as applied to Alaska Natives and other indigenous peoples, has changed dramatically since the enactment of ANILCA. No longer, in the view of Alaska Natives, is it simply a matter of whether Alaska Natives and their subsistence rights will be managed by the "federal" or "state" governments. Over the last two decades, co-management between Alaska Native tribes and organizations, and State and federal partners, has become the model for effective subsistence management in Alaska. The old model of management, in which Native ways of knowing are too frequently dismissed, and Native people are often simply told what they can and cannot do, undermines what many Native people most want to protect. That is, subsistence as a way of relating to the world and as an important component of their identity. The time has come to extend co-management to ANILCA. This must be mandated by federal law.

Over the years, AFN has supported legislative changes to both state and federal law in order to provide an active role for Alaska Natives in the management of the fish and game. At its special Convention in February 2000, AFN made it clear that it would no longer support efforts to return subsistence management to the State unless such management included a meaningful co-management role for Alaska Natives. In the face of recurring fish disasters and other subsistence management problems and resource shortages, and efforts within Alaska to undermine federal protections for subsistence uses, AFN has resolved to commit its efforts to strengthening provisions of federal law to provide for tribal co-management.

AFN's commitment to extend co-management to fish and game resources managed under ANILCA was endorsed by the Governor's Leadership Summit on Subsistence held in August of 2001. Governor Knowles brought together a diverse group of Alaskans to consider a resolution to the subsistence impasse that has evaded resolution in Alaska for over a decade. Summit participants, from different political, cultural, occupational and geographical backgrounds, came together on several key value statements. They recognized the vital importance of subsistence to Alaska's Native peoples, expressly noting that subsistence continues to be "integral to the lives and essential to the survival of Alaska Native peoples and

communities." They agreed that fish and wildlife resources would be best managed through a single system, directed by Alaskans and "involving Alaska Natives and local residents in the decision-making process." Significantly, the summit participants urged the Governor to have a continuing policy dialog conforming to the values adopted by the summit, including "possible co-management systems" that could be enacted upon passage of a constitutional amendment.

It is not surprising that co-management emerged as a central theme during the Governor's Leadership Summit on Subsistence. Co-management is becoming commonplace in Alaska. Tribal governments and regional Native organizations are actively and successfully co-managing the subsistence use of marine mammals. Alaska Native villages have gained, through international treaties signed by the United States, a role as co-equals with state and federal managers in the subsistence management of migratory birds and polar bears. The Alaska Eskimo Whaling Commission continues to be an essential partner with the federal government and international bodies in the management of bowhead whales. These partnerships have created jobs and opportunity in Native Villages, and have provided more appropriate, more efficient and more equitable management of the resources. Numerous tribes and other Native organizations have successfully contracted with federal and state agencies for fish and wildlife management projects, establishing themselves as capable and dependable partners.

Understanding Co-Management

The concept of co-management revolves centrally around the notion that management responsibility must be fairly balanced and equitably shared between government agencies and the communities using the resources. Throughout the world, wildlife has traditionally been managed by two fundamentally different systems, although both have had the same overall objective -- the sustainable use of living resources. The one we are most familiar with in this country is the technical system, which relies primarily on the accumulation, organization and analysis of scientific data. It is highly compartmentalized, and relies on other systems for its enforcement. It is also influenced heavily by economic, social and political factors, often through the activities of lobbying groups or other governments.

The other system is older and is pursued by aboriginal subsistence harvesters. It relies on the accumulated experience of the community and the sharing of experience from one generation to the next. Another prominent feature is the sharing of experience, knowledge, and harvests by all social units comprising the community. It is not a compartmentalized system and management decisions are usually achieved by consensus.

"Co-management" is simply a means of blending these two styles of management in a way that takes advantage of the best features of both. Unfortunately, many federal and state agencies remain suspicious of the concept and jealously guard their authority and jurisdiction. Even so, co-management has worked in Canada and there are many success stories in Alaska involving management of fish and game species that are harvested for subsistence purposes. While many of the co-management regimes currently in existence in Alaska are quasi-voluntary initiatives, i.e., the government agencies were not required to participate by legal or legislative directive, they nevertheless attest to the benefits of co-management.

Lessons Learned from Successful Co-Management Regimes

Experience with co-management or cooperative management regimes in Alaska demonstrates that many of the goals of local communities in resource management can be attained through co-management. Alaska Native Villages and regional corporations own some 44 million acres of land in Alaska. Tribal governments are the most effective, and often the only, governments in many parts of rural Alaska. Co-management provides a way to decentralized decision-making. By bringing the decisions closer to home, co-management can reduce conflict, incorporate traditional management and knowledge and achieve compliance with joint management plans. Because it makes sense, fish and game managers, both state and federal have begun to realize the advantages of co-management. The Alaska Commission on Rural Governance and Empowerment in its Final Report to the Governor in 1999 recognized the importance of greater cooperation between local people and State agencies on natural resource management issues. The Commission urged the Governor and the administration to encourage and cooperate in the efforts of tribal governments and regional organizations to develop co-management plans with federal agencies to manage and regulate tribal members' subsistence use of fish and wildlife on federal public lands in Alaska. There is no reason this same advice would not apply to state agencies and subsistence uses of fish and wildlife on state and Native lands.

There are a number of lessons that have emerged over the years from successful co-management:

The establishment of an on-going management forum where face-to-face discussions and joint decision-making between managers and Native leaders representing subsistence users of the resource can take place.

The attainment of a level of trust and mutual respect between fish and wildlife managers and the Native leadership in communities that rely on the resource for subsistence. As a result, negotiation and cooperation have replaced litigation.

Jobs and opportunity are created at the Village level. Rather than having insensitive research forced upon them from outside agencies, tribal governments and village people are engaged in planning and conducting research, harvest monitoring and the collection and documentation of traditional knowledge. Some tribes are also engaged in enforcement activities through their Village police officers or through cooperative agreements with US Fish & Wildlife Service. Native youth who leave the Village for education in natural resource fields can now often find engaging and rewarding work at home. A sense of hope, pride and responsibility has begun to replace the distrust and hostility that is often the result of the old model of management.

While some issues, when viewed individually, may appear incapable of a negotiated solution, a give-and-take compromise has the potential of creating a solution that ultimately gives each of the parties more than a court would have been able to order had the matter been litigated.

Innovative approaches that are community-based are possible -- for example, permitting provisions for transferring permits among hunters and for proxy hunting permits might work in

one community, but not another.

Participation in developing the management plan for a species or for a community or region often engenders a sense of ownership over the management system among Native participants leading to greater voluntary compliance even in cases where severe harvest restrictions are necessary.

Agency and tribal managers and subsistence users come to understand and acknowledge the interdependence on one another for sustainable management of the resource. Actions taken by government agencies or tribes in pursuit of their own goals can affect the numbers in pursuit of their own goals can affect the numbers and well-being of fish and wildlife throughout their range. Without coordination with the other governments' actions, neither will be totally successful in achieving its goals. Rather than seeking to expand their respective authority to control resources, and defending their actions in the resulting litigation, tribes and government agencies have moved toward co-management agreements as a way of providing for the interaction of wildlife managers and the coordination of resource management goals.

Cooperative research results in improved harvest data gathering and collection of biological samples. The collection of traditional knowledge has enhanced the knowledge about the animals and their ways.

Conclusion

Wild animals and fish do not respect political boundaries, so wise resource management demands coordination of goals and regulatory approaches between the various governments and landowners with jurisdiction and/or control over the resources. Alaska Natives control 44 million acres of land. There appears to be a real desire on the part of land managers and wildlife managers to cooperate in the management of Alaska's fish and game. Alaska Natives feel strongly that a meaningful management role for them is essential for the preservation of their way of life and for the wise and effective management of subsistence resources in Alaska.

Tribal-State-Federal co-management is an established practice for many subsistence resources in Alaska. It is an excepted and growing practice in the lower-48 states, and similar co-management agreements are built into the Canadian Native land settlements. Broadening co-management in Alaska to fish and game management under ANILCA will direct energy away from the litigation that has plagued the subsistence debate for the past three decades and toward protecting the resource for the benefit of Native and non-Native users alike. Co-management plainly offers the best strategy for the future management and conservation of Alaska's renewable resources.

AFN firmly believes, however, that true and meaningful Alaska Native co-management will only occur if mandated by federal law. Congress should establish a co-management role for Alaska Natives regardless of whether final regulatory authority continues to reside in the federal government or is transferred back to the state after it complies with the priority and other provisions mandated in ANILCA.

Examples of Co-Management of Subsistence Resources in Alaska

Migratory Birds. The Migratory Bird Treaty Act and recently amended treaties with Canada and Mexico provide for subsistence uses of migratory birds by the indigenous inhabitants of Alaska. The treaties mandate that the indigenous inhabitants of Alaska "be afforded an effective and meaningful role" in management through "participation on relevant management bodies." These management bodies are composed of "Native, Federal and State of Alaska representatives as equals," and are given the responsibilities to develop recommendations for, among other issues, seasons and bag limits, law enforcement policies, harvest and population monitoring, research and the use of traditional knowledge, and educational programs. Village governments are "involved to the maximum extent in all aspects of management." Recommendations from the co-management bodies are forwarded to the Secretary of the Interior who retains final regulatory authority.

Marine Mammals. The Marine Mammal Protection Act of 1972 governs the management of marine mammals in Alaska. The centerpiece of the MMPA is its moratorium on the taking of marine mammals. Section 101(b) of the Act provides an exemption for Alaska Natives if such taking is for subsistence or handicraft purposes and is not accomplished in a wasteful manner. Regulation of the nonwasteful Native take of marine mammals for subsistence and handicraft purposes by the federal or state governments is permitted only if the species is depleted.

The 1994 amendments to the MMPA included a provision authorizing the Secretaries of Commerce and Interior to enter into cooperative agreements with Alaska Native Organizations to conserve marine mammals and provide co-management of subsistence use of marine mammals by Alaska Natives. Congress was authorized to appropriate up to $1,000,000 to the Secretary of the Interior and $1,500,000 to the Secretary of Commerce to implement co-management activities in Alaska. In authorizing co-management of marine mammals, the House Committee on Merchant Marine and Fisheries expressed the view that "the best way to conserve marine mammal populations in Alaska is to allow full and *equal* participation by Alaska Natives in decisions affecting the management of marine mammals taken for subsistence."

Several co-management agreements have been entered into between Alaska Tribal organizations and federal agencies, including agreements between the FWS and the Alaska Sea Otter and Sea Lion Commission, the Alaska Nanuuq Commission, and the Eskimo Walrus Commission; and between the National Marine Fisheries Service and the Alaska Native Harbor Seal Commission. These cooperative agreements are funding a wide range of activities, including commission co-management operations, biological sampling programs, harvest monitoring, collection of Native knowledge in management, international coordination on management issues, cooperative enforcement of the MMPA, and the development of local conservation plans.

Whales. One of the earliest examples of co-management in Alaska involves the Alaska Eskimo Whaling Commission (AEWC). AEWC, under the authority of a "Cooperative Agreement" between the National Oceanic and Atmospheric Administration (NOAA) and AEWC (Dec. 19,

1994, *as amended*), has taken responsibility for conducting its own research, developing whaling regulations, allocating the national whale quota among the participating villages, and enforcing both the quota and the regulations. The research is conducted both independently and in partnership with whale biologists from other organizations; regulation and allocation is almost entirely the responsibility of the AEWC and its members; and AEWC has principal responsibility for enforcement, with the federal government providing only a backup role.

NOAA has also entered into an agreement with the Alaska Beluga Whale Committee (ABWC), which was created to encourage conservation and informed management of the beluga whales and to involve Native subsistence hunters in the management of this important resource. ABWC received its first grant from NOAA in 1992 to undertake research and harvest monitoring.

Polar Bears. In 1973, the U.S., Norway, Denmark, Canada and the former Soviet Union signed an international treaty to protect polar bears and their habitat. The United States ratified the Agreement in 1976, and it became the responsibility of each nation to develop conservation programs to comply with the Agreement. The Marine Mammal Protection Act of 1972 (MMPA) vested authority in the U.S. Fish and Wildlife Service for the management and conservation of polar bears. The MMPA also included strong directives on international cooperation and coordination. The Polar Bear Agreement tracks the primary concerns reflected in the MMPA.

In 1978, the Fish and Game Management Committee of the North Slope Borough in Alaska (F&GMC) and the Inuvialuit Game Council of Canada's Northwest Territories (IGC) entered into an agreement to govern the management of the Beaufort Sea polar bear population. This agreement protects all bears in dens or constructing dens, and family groups made up of females and cubs-of-the-year and yearlings. It prohibits the use of aircraft or large motorized vessels for taking polar bears; establishes hunting seasons; establishes procedures for setting and allocating harvest quotas. The agreement has been widely recognized as an effective management tool and an example of how Native user groups have formalized their traditional practice of self-regulation.

More recently, the Alaska Nanuuq Commission and the U.S. Fish and Wildlife Service successfully negotiated the U.S. Russia Polar Bear Treaty, signed October 2000. The government-to-government agreement delegates important management and implementation responsibilities, including proposed allocation, quotas, and enforcement measures jointly to the Alaska Nanuuq Commission and its Russian counterpart.

Walrus. The Eskimo Walrus Commission was formed in 1978 by villages throughout Western, Northwestern and Northern Alaska. In 1987, EWC, FWS and ADF&G entered into a formal Memorandum of Agreement for the joint management of walrus. Under the MOA, the parties have worked on conservation and management planning for the walrus. In 1995, ADF&G, FWS, the Eskimo Walrus Commission and the Qayassiq Walrus Commission (representing Bristol Bay hunters) signed a co-management agreement allowing limited subsistence hunting on Round Island in the Walrus Island State Game Sanctuary in Bristol Bay. Such hunting had been banned for 30 years. Under the agreement, the Qayassiq Commission has authority to allocate hunting access permits issued by ADF&G. The first subsistence hunt in recent history

was held in October 1995.

Halibut. In October 2000, the North Pacific Fishery Management Council (NPFMC) authorized a subsistence fishery for halibut in Alaska for rural residents and members of Alaska Native federally recognized tribes. The Council also authorized agreements with tribal governments for harvest monitoring, local area planning and other issues affecting subsistence use of halibut.

Threatened and Endangered Species. In January 2001 the Secretaries of the Department of Commerce and Interior signed Secretarial Order No. 3225, which requires these federal agencies to "seek to enter into cooperative agreements for the conservation of [endangered or threatened species] and the co-management of subsistence uses . . .. The participation of affected Alaska Natives will be ensured to the maximum extent practicable in all aspects of the management of subsistence species that are candidate, proposed or listed under the ESA." The Secretaries decision to make this commitment to Alaska Natives was greatly influenced by the success of co-management regimes in Alaska, including the Yukon-Kuskokwim Delta Goose Management Plan (renewed annually) between the Association of Village Council Presidents (AVCP) and AVCP's Waterfowl Conservation Committee, FWS, the National Biological Service and the Departments of Fish and Game for the States of Washington, Oregon and California. The Goose Management Agreement represents a sharing of authority over enforcement of migratory bird hunting, under which the federal government enforces a set of agreed upon bans on hunting and/or egg collecting of four species of birds while Native groups regulate subsistence hunting of all other species. The plan contains a variety of provisions setting out how law enforcement will be carried out, including joint efforts at implementation and notification to the Villages of possible violations. The plan has been an essential element in the ongoing recovery of the four Goose populations of concern.

Cooperative Management Authority over Fish and Game

The Qavilnguut (Kilbuck) Caribou Cooperative Management Plan grew out of litigation. It involves 18 Yupik villages and the federal and state governments.

Nushagak Peninsula Caribou Herd. In 1994, a cooperative management plan was developed between the FWS, the State of Alaska and the Traditional Councils of six northern Bristol Bay Villages (Clark's Point/Ekuk, Aleknagik, Dillingham, Manokotak, Togiak and Twin Hills) to manage the 146 caribou reintroduced to the Nushagak Peninsula in 1988. The herd now numbers over 1,500. The 1994-95 winter marked the first time in over 100 years that area residents were able to harvest caribou on the Nushagak Peninsula. In 1995, a harvest of 300 animals was allowed. Continued cooperative management is expected to increase harvest opportunities.

Fortymile Caribou Herd. The Fortymile Caribou Management Plan is another example of cooperative management involving the BLM, FWS, National Park Service, Canada's Yukon Department of Renewable Resources, ADF&G and local users of caribou. The herd is one of the most important herds in Alaska and the Yukon for subsistence and recreation uses. However, since 1973 the herd rarely migrated into the Yukon. Since the 1980's, competition for the Fortymile caribou has continued to increase. The five-year cooperative management

plan, completed in 1995, guides recovery of the herd and the ecosystem upon which it depends.

Porcupine Caribou Herd. *Agreement between the United States and Canada on the Conservation of the Porcupine Caribou Herd,* T.I.A.S. No. 11259, 1987 W.L. 283917 (Signed and entered into force July 17, 1987), establishing the International Porcupine Caribou Board.

Written Testimony of
Kawerak Elders Advisory Committee
For the Committee on Indian Affairs
Oversight Hearing on
Subsistence Hunting and Fishing Issues
April 29, 2002

Senator Inouye and Members of the Committee, my name is Robert Iyatunguk. I am Chairman of the Kawerak Elders Advisory Committee (EAC). I am testifying on subsistence hunting and fishing on behalf of the EAC. We represent Elders from the Bering Straits region and give advice and guidance when we can.

Subsistence is our way of life. We Elders have lived the subsistence way of life all of our lives and we ask the federal government to protect our right to continue that lifestyle for ourselves and for the generations to come.

Our people have been living under increasing stress. We no longer have control over our subsistence hunting, fishing and gathering. The lands and waters in our area fall under State management. Our subsistence fishing has been closed or heavily restricted here in the Nome area since 1991 (10 years). Since that time, we've testified to the Alaska Board of Fisheries but it has only gotten worse. This is not acceptable to us or to our people.

Our people are under Tier II fishing management which means that anyone who wants to subsistence fish has to fill out an application. Then everyone is rated. The first year only 10 families got to fish here in Nome (there's about 1200 households in Nome of which approximately half are Eskimo). Last year Alaska Department of Fish and Game allowed 20 families to fish for salmon under Tier II. Under Tier I management, everyone is eligible to fish in our rivers and surrounding ocean, even in times of shortage. This means that any resident of Alaska, whether they are a bar owner from Anchorage, an oil executive from Kenai or a storeowner from Fairbanks can compete with our families for subsistence resources.

It weighs heavily on our minds that we are not able to pass our traditions on to our young people. We give guidance and education on our Inuit heritage, our values, and our way of life. When we go hunting, fishing and gathering we teach them about the animals and fish, plants and berries and our land and waters. We teach them our values – to work hard, to provide for ourselves, to work together, to share and to help each other.

A majority of legislators in Alaska favor a constitutional amendment. However because a constitutional amendment requires 2/3rds support in each house of the legislature, a minority has been able to prevent a constitutional amendment from being placed on the ballot. The total fish and game that our people take is so small compared to the State total – maybe 4%. Our entire way of life is in jeopardy. We ask for your help and protection, not only for us today but also for our children, our grandchildren and the generations to come. We ask that the federal government live up to its trust responsibility to protect our people. This land was once ours. Now we are a minority in our own land. We find ourselves at the mercy and whim of the majority. Many Alaskans have moved here from outside the State. They have no knowledge of how we live or who we are.

We have had a very hard time since our subsistence fishing was closed. Those of us who are able to have gone to fish with relatives over 70 miles away. At our age, we can't get up and move our camps. Some of us had to quit fishing because it was too hard and dangerous to fish in the ocean. We don't have the muscles or equipment for this. It is very hard because we have always taken pride in providing for ourselves. This is not right.

The Kawerak Elders Advisory Committee testified to the Federal Subsistence Board on May 21, 1996. Rather than cut us off from our food and our lifestyle, the federal government needs to respond to our needs and help us. If the State of Alaska will not protect our ability to subsistence hunt and fish in a meaningful way, then we call upon the federal government to protect us.

We support co-management of our natural resources. There are successful models of co-management where the federal government has been partnering with Native people. Two examples are the Eskimo Walrus Commission and the Alaska Eskimo Whaling Commission. The staff at Kawerak is also working on a co-management plan for the Western Arctic Caribou herd. Our people have been responsible stewards of our land and resources for thousands of years and given the chance will continue to do so.

We also recommend the federal government use its authority to implement "eminent domain" if the State will not live up to its obligation to ensure a subsistence priority over other uses. It is our understanding that eminent domain is the right of the federal government to take over jurisdiction from the State over land and waters if it is necessary to fulfill its obligations (in this case its trust responsibility to the welfare of Alaska Natives). Subsistence and self-determination are intertwined. Through subsistence we

are able to provide for ourselves, maintain a sense of identity and dignity and teach our values and traditions.

On behalf of the Kawerak Elders Advisory committee, I would like to thank you for letting us testify on this very important issue. Subsistence is vital to our cultural, social, spiritual and economic well-being. The subsistence way of life enriches and sustains our people. We would like to invite you to come to Nome and visit us and some of our villages. You can see first hand what we are talking about. Quyanna (thank you).

Robert Igatuangat

Testimony of Albert Kookesh, Co-Chair
Alaska Federation of Natives
for
The United States Senate
Committee on Indian Affairs

Oversight Hearing on Subsistence Hunting and Fishing Issues
In the State of Alaska

(April 17, 2002)

Mr. Chairman, Honorable members of the U.S. Senate Committee on Indian Affairs. Thank you for the opportunity to offer comments on subsistence fishing and hunting issues in Alaska. For the record, my name is Albert Kookesh and I am a co-chair on the Board of Directors for the Alaska Federation of Natives. It is a privilege and honor to testify before this Committee.

Mr. Chairman, the focus of my testimony today is the need for economic stimulus in Alaska's rural villages. Congress and this committee are well aware of the alarming rates of poverty, unemployment and the host of social and economic indicators which demonstrate living conditions in Alaska's rural Native villages. The previous speakers have testified that across the State of Alaska, Native people are experiencing appalling economic hardships because of the shortages of salmon and other fish on which they rely. It is not difficult to agree that some form of economic stimulus is needed in Alaska's rural villages.

It is more difficult to agree on just how to create economic opportunity for rural Alaska. The State appears intent on pursing litigation as a means of resolving conflict and the urban dominated Alaska legislature, has taken increasingly hostile actions in regards to funding basic services like education and law enforcement in Alaska's rural villages.

For example, in the *Kaysayulie* case, a state has found that the State provides inadequate funding maintenance of rural school facilities. The judge found that the current practice violates the Equal Protection Clause, Title VI of the Civil Rights Act and is unconstitutional. In brief, the Governor's office and the legislature have made only half hearted attempts to adequately address the needs of rural schools in Alaska.

In *Alaska Inter-Tribal Council et. al. V. State of Alaska,* the State's provision of law enforcement to off-road Native villages is being challenged on the grounds of racial discrimination. Meanwhile there is a serious need for police protection and law enforcement in the Native villages.

In *Alaska v. Native Village of Venetie,* the state argued that Native Villages did not occupy "Indian Country" and therefore lacked taxing authority to raise revenue for tribal governmental services. The State argued that tribal taxing authority was not necessary because the State was providing all essential governmental services. The State prevailed and in doing so succeeded in denying Tribal governments in Alaska the critical means of providing basic services to their citizens.

It is this political climate that causes us to request Congressional action and oversight hearings as a means of protecting our way of life.

Alaska's Native peoples want this Committee to know that they want to be a part of the solution and part of the decision-making process on issues that affect them. They want to work with the State and Congress to create economic stimulus in the rural villages. They know that it is every ones best interest that we work together to create long-term growth and sustainable economies in rural Alaska. The subsistence impasse benefits none of Alaska's residents, but its impacts are felt heaviest in our remote off road Native villages.

Most of Alaska's Native villages now have what researchers describe as " mixed" subsistence-cash economies in which families and communities live by combining wild resource harvest with commercial wage employment. Jobs are scarce and unstable in rural Alaska and cash incomes remain low. It is estimated that 21.5% of Alaska Native families have per capita incomes below the officially established poverty line income. Generally speaking, the farther away a person lives from an urban center and the smaller the community, the greater the dependence on hunting, fishing and gathering.

Alaska's Tribes are ready, willing and able to help create a brighter future for their children. The Harvard Project on American Indian Economic Development has reported that when Tribes make their own decisions about what approaches to take and what resources to develop, they consistently out-perform non-Tribal decision makers.

There is no better example than the 12 ANCSA regional non-profits and other Alaska Native organizations which are already providing programs and services to Alaska Natives, including but by no means all-encompassing:

Direct Out- Patient Medical Care
Health Initiatives, Promotions/Disease Prevention Activities,
Pharmacy
Dental Services
Optometry Services
Community Health Programs
Social Services
General Assistance
Welfare to Work Programs
Elders Programs
Child Care
Head Start Programs
Youth After School Programs
Scholarship Programs
Employment and Training Programs
Land Management Services
Housing
Road Design and Construction
Village Public Safety Officer Programs

AFN believes that Alaska Natives should have a greater say in the conservation and management of fish and wildlife in Alaska. Contracting and compacting have proven effective in improving the way federal responsibilities are carried out, improving service delivery and increasing local self-reliance and self-determination. It is for that reason that we have urged Congress to enact a revised Alaska Federal Lands Demonstration Project bill, comparable to H.R. 2804, as was introduced in the 106th Congress. AFN's proposed legislation (a revised version of H.R. 2804), would create a pilot program for the direct Native contracting of Interior Department land and resource management functions in Alaska, using the contracting provision of P.L. 93-638.

The proposed legislation and AFN's position paper on the Alaska Federal Lands Demonstration Project are attached to this statement.

Summary of the Alaska Federal Lands Demonstration Project

•It is Alaska specific.

•It creates a demonstration project for 12 new contracts for Conservation System Unit functions, six per year for two years immediately following the bill enactment. There is a requirement for " geographic diversity" in selecting participants, but no direct requirement of one participant per ANSCA region.

•Eligible contractors are those tribes and tribal organizations, as defined by PL 93-638, as amended, which can demonstrate financial and management capability and have a direct link to the lands and resources impacted by the requested contract.

•Federal subsistence management functions are included as contractible.

•The bill is modeled in part on the original PL 93-638 Self-Governance Demonstration Project for BIA and IHS programs. In a general way, it models much of Titles I (contracting) and IV (compacting).

•The overall intent of the Alaska Land Management Demonstration Project is to promote local hire and provide a reasonable opportunity for Alaska Natives to have some local control and management of the lands and resources upon which many Alaska Native communities depend on for their existence.

Broadened Native contracting and co-management authority will make federal land management and fish and game management more responsive to local needs and concerns, without sacrificing national interests. It will help bridge the gap between local communities and the federal bureaucracies and increase local support of the park and refuge systems.

Native contracting will also keep more of the economic benefit of these vast federal enclaves in rural Alaska, much of which as stated before has high unemployment and is in "economic disaster" because of declining fisheries. Contracting will not only keep money in rural Alaska but will help rural workers acquire new skills and encourage Native youth to study related academic disciplines with some hope there will be a job for them when they come home.

The Alaska Federal Lands Demonstration Project would further the Congressional policy in favor of decentralizing federal activities to the local level and where possible so as to encourage local innovation in the delivery of services. While this proposal is not directed at resolving the subsistence impasse in Alaska, should federal subsistence management continue, Native contracting and co-management will provide a means of keeping on-the-ground control in the hands of Alaskans.

As was noted in the 1994 final report of the joint federal/state Alaska Native's Commission, and reiterated in the 199 Alaska Rural Governance Commission Report- sustained, successful economic development and improvement of social conditions in rural Alaska can only be achieved by communities whose decisions and internal affairs are controlled at the local level.**Native Allotments**

Section 905 of ANILCA extends legislative approval of Native Allotments that were pending before the Secretary of the Interior on or before 180 days from the effective date of the enactment of this statute, yet this Congressional mandate does not apply for the Native Allotments applied for by the Alaska Native veterans who served in U. S. Armed Forces between January 1, 1969 to December 31, 1971.

Mr. Chairman, you may not be aware of this historical and proud fact; but Alaska Native men and women have the highest rate of participation in active duty in the U. S. Armed Forces of any ethnic group in the United States of America. Our history is one of patriotism and loyalty to the United States of America and we love our homeland.

Section 41 of PL 105-276 authorized approximately 1,110 Alaska Native veterans who served in the U. S. Armed Forces for a period of 6 months of active duty during the period from January 1, 1969 to December 31, 1971 with the right to apply for Native Allotments. Pursuant to this statute, and according the Bureau of Land Management, 740 Alaska Native veterans of this period applied for Native Allotments. Of these, 77 Alaska Native veterans from the Sealaska Region and another 12 from the Chugach Alaska Region applied for Native Allotments in their respective areas. All 89 of these veterans submitted their Native Allotment applications knowing that almost all, if not all of their applications will likely be denied because of the existence of National Forests in these areas.

Many of these veterans served in the battlefields of Southeast Asia; including the Vietnam Theater. As in many other battlefields, as you well understand, Mr. Chairman, some service men died in these battles. Some of the Alaska Natives who served in these battles received battlefield medals for their extra ordinary courage and action in their lines of duty; and fortunately, some of them returned home alive. These veterans, including Larry Evanoff, of Chucagh Region, recipient of a Purple Heart, applied for Native Allotments while knowing their applications will most likely be denied because of the National Forests in their regions.

Mr. Chairman, AFN proposed that Congress, trough this committee, remove the national forests exclusion insofar as these veterans are concerned. This action on the part of Congress will remove a gross injustice that is being done for these veterans and honor them for their defense of this nation.

Alaska Federal Lands Demonstration Project
Native Contracting of Interior Department Programs

The Human Resources Committee of the Alaska Federation of Natives urges enactment a revised Alaska Federal Lands Demonstration Project bill, comparable to H.R. 2804 as introduced in the 106th Congress.

The attached discussion draft bill, which is a revised version of H.R. 2804, would create a pilot program for the direct Native contracting of Interior Department land and resource management functions in Alaska, using the contracting mechanism of P.L. 93-638.

Problem: Existing laws providing for Alaska Native involvement with the federal land management agencies and for cooperative management of fish and wildlife have failed to achieve their goals.

ANILCA: Sections 1306 and 1307 of ANILCA give preference to Native corporations in the siting of agency facilities and in obtaining concessions for visitors services. Section 1308 makes special provision for the federal land management agencies to employ local residents. With the limited exception of the siting of some agency facilities on Native lands and a handful of concessionaires, these promises have gone unfulfilled. National federal policy to "mirror America" in employment, for example, means that Native Americans are not considered an under-represented minority since the number of Native employees, though low, exceeds their percentage of the national population, even though the Native population percentage in Alaska is much higher than the national average. Further, because most DOI jobs are in urban areas, the Section 1308 preference does not apply.

P.L. 93-638: Title IV of PL 93-638, enacted in 1994, was intended to expand the ability of tribal organizations with self-governance compacts to include non-BIA Interior Department activities in their compacts when there is a close relationship between the federal activity and the Native community. A glance at the map suggests that in Alaska, Title IV should be a vehicle for at least *some* expansion of Native contracting into the administration of federal land units and the management of fish and wildlife. The Interior Department has concluded that compacting non-BIA functions is completely discretionary except for explicitly "Native" programs, and both the National Park Service and the U.S. Fish & Wildlife Service have concluded they have no such programs.

The regional non-profits have approached the federal land agencies numerous times with proposals for 638 contracts with virtually no success for any program which isn't considered specifically "Native" by the Interior Department. The Interior Department's resistance to 638 contracting non-BIA programs has progressively hardened since the 1994 ISDEAA amendments.

PL 106-488: This Act, intended to improve Native hiring and contracting by the Federal government, required that the Department of Interior to prepare a report on the implementation of sections 1307 and 1308 of ANILCA and to initiate "pilot programs" for employing local residents in four National Park System units in Northwest Alaska.

The Department has issued its report, which shows some progress in Alaska Native and local hire but details continuing legal and policy obstacles to doing more. The report evades the issue of DOI's failure to use Title IV of PL 93-638 as a contracting vehicle.

Cooperative Management: Section 119 of the Marine Mammals Protection Act authorizes the Secretary of the Interior to enter into cooperative agreements with Native organizations regarding conservation and subsistence. ANILCA Section 809 also authorizes cooperative agreements among the federal agencies, the state, Native corporations, and other parties. Although there are several examples in Alaska of successful cooperative agreements, Native groups are still not an equal player in federal decisions which affect their subsistence-based way of life. Both statutory provisions are discretionary. The inability to contract any of the underlying federal functions has hindered Native efforts to fully take advantage of these sections. In general the federal agencies only support cooperative agreements when they want something specific from the Native community or in circumstances where the federal agency doesn't otherwise have the authority to regulate.

Justification for Proposal: Broadened Native contracting and co-management authority will make federal land management and fish and game management more responsive to local needs and concerns, without sacrificing national interests. It will help bridge the gap between local communities and the federal bureaucracies and increase local support of the park and refuge systems. Native contracting will also keep more of the economic benefit of these vast federal enclaves in rural Alaska, much of which has high unemployment and is in "economic disaster" because of declining fisheries. Contracting will not only keep money in rural Alaska but will help rural workers acquire new skills and encourage Native youth to study related academic disciplines with some hope there will be a job for them when they come home.

The Alaska Federal Lands Demonstration Project would further Congressional policy to devolve federal activity to local control and encourage local innovation in the delivery of services. Finally, while this proposal is not directed at subsistence impasse in Alaska, should federal subsistence management continue, Native contracting and co-management will be a means of keeping on-the-ground control in the hands of Alaskans.

My name is Kris Minard. I've lived in Alaska for 29 years. I am not a lobbyist. I represent no one but myself. If my testimony seems redundant to you, I apologize. I'm a student of "learning not to take things for granted." I would like to offer you a positive light to shine on the fog that surrounds subsistence in Alaska.

Alaska's heart is breaking. Over the course of the last 22 years, we have watched our state struggle with the term "subsistence." In 1959 the Alaska state constitution became operative with the formal proclamation of statehood. This constitution states that fish, wildlife and waters are reserved to the people for common use. When Congress passed the Alaska National Interest Lands Conservation Act in 1980, it mandated that the state maintain a subsistence hunting and fishing preference for rural residents, or the state would forfeit subsistence management rights on public lands. In 1982 the State of Alaska complied with ANILCA by adopting a regulation that specified customary and traditional uses of fish and game as rural uses. That same year a ballot initiative tried to repeal the subsistence law, but failed. Lawsuits followed. State Supreme Court rulings followed. Ultimately in 1989 the Alaska Supreme Court ruled that state subsistence regulations with a rural priority were unconstitutional because of the common use provision in the state constitution.

The Alaska state constitution and ANILCA have been in opposition for over 20 years. The federal government has indeed taken over management of subsistence fish and game activities on public lands, including navigable waterways adjacent to public lands. Our state legislators are grappling with new proposals for amending our state constitution. Some hope to bring us into compliance with ANILCA, to bridge the urban/rural divide and regain state management. Our governor has already put the state legislature on notice by calling for a special session on subsistence (our 6th) should they fail to pass legislation by the end of this regular session. Alaska Natives are frustrated that rural Alaskans have not been granted a subsistence priority in state law and have more than hinted at asking Congress to implement a "Native" subsistence preference, pre-empting state law. Alaskans who firmly believe in our state constitution are frustrated that our governor did not defend the constitution by appealing the 9th Circuit Court's decision on management of navigable waterways to the Supreme Court. I believe that no issue regarding law, both state and federal has brought forth so much emotion and so much conflict in Alaska. And it's been steadily escalating for over

20 years.

I believe there is no single vehicle currently in place for us to reach a resolution on subsistence. If our legislature does not send Alaskans to the polls to vote on changing our state constitution to implement a rural priority, there will be conflict. If federal law pre-empts state law, enacting a "Native" preference for subsistence, there will be conflict. If our legislature manages to put a vote amending our state constitution before the people complexities would still exist. The language currently discussed deals with "proximity" to the resource. It is questionable whether this language would be acceptable to the Alaska Federation of Natives, the equal opportunity advocates and whether it would meet the ANILCA requirement.

There is common ground on subsistence in Alaska. Few would argue that seining herring in Tununak, burying it in the sand and living off of it all winter is subsistence. Few would argue that some one from Koliganek who rides a snowmobile to take a caribou from the Mulchatna herd, butcher it and freeze it is subsistence. We do have common ground to build from; we just need a process, a time and a place.

I am here to ask you to gather Alaska subsistence stakeholders together. Put them in an environment where they can resolve this age-old dilemma. People need to have an opportunity to work together in a non-threatening environment, where they can clearly state their interests and know that they are being heard. In my opinion this group should be a well-balanced assemblage of those who support a rural priority and those who do not. Those who suggest we amend our state constitution and those who do not. Those who would like to clarify ANILCA and those who perceive it to be sacred as written. This group should also include knowledgeable state and federal representatives who understand the very complex process of change necessary to foster a workable solution. A well-organized process of consensus building will allow a group with diverse opinions and interests to build from the common ground they already share. People need an opportunity to work together, in full force to break the back of this politically charged conflict that is ravaging our state. I believe you have the authority to convene such a group and I sincerely hope that you will.

Thank you so very much for your time and thoughtful consideration. With your help, we can resolve a conflict that is tearing at the very heart and soul of Alaska.

Testimony of
Eileen Norbert
Executive Vice President of Kawerak Incorporated
For the Committee on Indian Affairs
Oversight Hearing on
Subsistence Hunting and Fishing Issues
April 17, 2002

Mr. Chairman and Members of the Committee, thank you for this opportunity to testify on subsistence hunting and fishing in Alaska. My name is Eileen Norbert. I am the Executive Vice President of Kawerak, which is the regional tribal consortium serving the Bering Straits Region of Alaska. We are authorized by the region's twenty federally recognized tribes to provide services to their members. Our President, Loretta Bullard submitted written testimony with a resolution from the Board which I urge you to review.

Our people continue to be very dependent on subsistence resources. Our beliefs, customs and traditions of self-reliance, sharing and taking care of each other are intricately intertwined with our subsistence way of life. I once asked an Elder (Margaret Seeganna) if there was one Inupiat word for subsistence. She replied she could not describe subsistence without explaining our spiritual and cultural beliefs. She later explained that through subsistence, we are able to maintain dignity, pride and our individuality as Inuit people. The increasing loss of our subsistence-based lifestyle weighs heavily on our people; it is happening slowly but is a significant threat to our way of life – in short, cultural genocide for Alaska Natives.

Let me share with you what happened in Nome when the Department of Fish & Game first closed our subsistence fishing back in 1991 and has since then implemented strict regulations on subsistence salmon fishing. (Daisy Jack), One our elders was so hungry for fish, which is an important part of our diet, she walked along the beach looking for any dead salmon that might have washed up on the beach. She found two and even though they were pretty decayed, froze them for later eating. The inability to fish what we need is causing tremendous stress and worry. Even more alarming, we are slowly being forced to abandon customs such as sharing

with Elders and those in need and passing our traditions to our children and grandchildren.

Nome is presently managed under a Tier II salmon fishery. Under the first year of this system, 10 families were allowed to harvest 100 salmon (1,000 fish). Last year, 20 families were given Tier II permits but could harvest only 50 salmon. It is clear that reducing opportunities to fish for fewer people will hasten the loss of subsistence.

ANILCA is the only law protecting rural and Native Alaskans who depend on fish and game resources. We urge Congress to NOT allow any amendments to weaken the ANILCA subsistence protections. Alaska state law designates subsistence as the highest priority use of fish and game but state court decisions have decided that everyone in Alaska is a subsistence user. Under state law, doctors, lawyers and executives from Anchorage and elsewhere have as much right to hunt in our back yards as we do, even in times of shortage. So in reality, there is no protection for subsistence users under State law.

Our people in the Bering Straits Region are especially vulnerable to the whims of State politics: the State selected a large amount of land in the region as part of their land entitlement because it is highly mineralized, thus our hunting and fishing fall under State management. Since 1991, I've gone to almost every Board of Fish meeting where Norton Sound salmon was discussed, gone to a special legislative session on subsistence, and met with two governors to protect our right to subsistence fish. I experienced first hand the active hostility of some of the Board members (who are politically appointed) and some legislators to our interests. Our way of life is in serious jeopardy in the State legislature's hands. Some State legislators are too willing to solve the subsistence issue through cultural genocide. We believe that the federal trust responsibility toward Native people would require the federal government to protect our subsistence needs. The relief we've received for our situation has mainly come from the federal government and we urge you to continue that assistance.

In summary, Kawerak:

- **Opposes any amendment to ANILCA that would weaken subsistence protections for rural Alaskans. Title VIII of ANILCA is**

the modern equivalent of a treaty. It replaces the aboriginal hunting and fishing rights that were extinguished in ANCSA. It is a solemn and binding undertaking and guarantee by the federal government.

- **Supports a state constitutional amendment allowing the state to come into compliance with ANILCA. Kawerak supports the constitutional amendment proposed by Governor Tony Knowles, provided that it is coupled with implementing legislation that brings the state into compliance with ANILCA.**

- **If the state legislature fails to address this issue, Kawerak supports a restoration of Alaska Native aboriginal hunting and fishing rights through an act of Congress.**

The subsistence issue has been an enormous drain of energy, time and resources – for Alaska Natives and non-Natives. I will end with a quote from President Loretta Bullard's written testimony, "Nothing – not the U.S. Constitution, not the 1867 "purchase" of Alaska, not the Statehood Act, not ANCSA, and certainly not ANILCA – gives the majority urban society in Alaska the moral or legal right to destroy the very foundation of our culture".

We urge the federal government to exercise its moral and legal obligation to protect us through its trust responsibility to Alaska Natives. Quyanna (thank you).

Testimony by Dewey Schwalenberg, Director
Stevens Village Tribal Natural Resource/Environmental Program
to the
U.S. Senate Indian Affairs Committee
Oversight Hearing on Subsistence

April 17, 2002

Chairman Inouye, Members of the Committee, honored guests, thank you for this opportunity to submit written testimony to the Committee during the two week open record period succeeding the April 17, 2002 Oversight Hearing on Subsistence. The Stevens Village Tribal Government has requested that I testify in their behalf as to the Tribal Traditional Natural Resource Management Regime that Tribes throughout Alaska are in the process of establishing.

I have served as a professional Tribal Resource Manager/Program Director for the past 22 years with Tribal Governments and Canadian First Nations throughout North America. I have had the privilege to work as a Resource Manager/Director with the Lac du Flambeau Band of Lake Superior Chippewa Indians during their Voight Treaty Rights litigation with the State of Wisconsin and was instrumental in providing professional assistance to the Tribes in establishing the Great Lakes Indian Fish and Wildlife Commission. I have served as the first Executive Director of the Native American Fish & Wildlife Society during the beginning stages of the organizations development, during which time I spent a considerable amount of time communicating with your Committee in behalf of Tribes through-out the Country on resource related issues. I was fortunate to be employed as the Executive Director of the Bering Sea Commercial Fisheries Development Foundation where I worked with the Western Alaska Tribal Governments and native people to create over 210 jobs for the rural native people in the off-shore fishing industry. The Foundation was also able to provide funding to village representatives to participate in the development of the Community Development Quota (CDQ) program. I have since then advised the Alaska Inter-Tribal Council on resource and subsistence issues for a number of years during their early development. I am continuing to work with the interior Alaska Athabascan Tribes in developing their capacity to establish resource and environmental management programs. I serve as one of the technical advisors to the 14 member Tribes of the Inter-Tribal Oil/Gas Coalition and have provided limited technical assistance, to date, to the 14 member Tribes of the Arctic Athabascan Council-Alaska. I most recently am participating in the development of the Inter-Tribal Natural Resource Coalition in the Tanana Chiefs Conference Region of Interior Alaska.

I currently work for the Stevens Village IRA Council which has established a model Tribal Traditional Natural Resource Management Program (TTNRMP) that directly interfaces with the State and Federal Management Regime to conduct necessary locally based management projects. The on-going projects that we are currently conducting include harvest data collection to document the numbers, location, and species of fish and game resources harvested by rural subsistence users, who are predominantly native. We

have an agreement with the U.S. Fish & Wildlife Service (USFWS) to issue the Subsistence moose hunting permits on State and Federal lands. We worked extensively with the State Board of Fish and Game, as well as the Federal Subsistence Board to change local hunting and fishing regulations that affect residents and visitors to the Tribal Traditional Lands. We were instrumental in establishing a "Special Use" area in the Dall River drainage that limits recreational fishing activities to rebuild a quality fish stock which had been damaged by uncontrolled sport fishing. We are conducting a joint State, Federal, and Tribal fisheries radio telemetry project that is designed to measure the continuing impact of sport and recreational fishing on Northern Pike Subsistence resources in watersheds near the Village. As a result of our management efforts, the State Department of Fish and Game has publicly recognized the Tribal Resource Program contribution to the joint research and management initiative. We also conduct cooperative surveys of the moose and predator populations through-out the Yukon Flats National Wildlife Refuge. Conservation Law Enforcement investigations by our program involving non-local visitor impacts to the habitat, fish, and wildlife have uncovered over 638 violations of State and Federal laws. Among the more common violations were trespass on private native corporation lands, violations of state and federal hunting and fishing regulations, illegal cutting of trees on private property, and improper handling and disposal of solid and human waste. In just two seasons of observing the behavior of the visitors to the Stevens Village Traditional Lands, 638 violations of State or Federal Law were documented. At the time we did not exercise authority to site the violators because we had no certified law enforcement officers. We did, however, report some of the violations to the State and Federal authorities. Only one violation, a trespass on native Corporation land, was ultimately investigated by the State Troopers. The violator was ordered to vacate the private land and no citation was issued. The Stevens Village Council has subsequently received a COPS grant that allows them to hire two officers for the Village. They are currently completing the State Police Academy and will be authorized to enforce State and Tribal Laws. The Council will finance the officers to attend Conservation Law Enforcement training through the USFWS that will enable the Tribal Officers to enforce Fish and Wildlife regulations.

Conducting resource management at the local community level is a costly undertaking. The Council has dedicated its meager financial resources to this purpose and we have been able to secure a number of small grants from Federal sources to continue the projects. The Bureau of Indian Affairs, in Alaska, does not receive funds to support local Tribal Natural Resource Management. The lack of a Tribal land and resource base is the reason they site to not receive and disburse this funding to Tribes. Last year we were able to train and employ 19 local Tribal members in the resource program. These are skills and jobs that were not available to the local people just a short time ago. Permanent Tribal funding, thru the Federal agencies that we work directly with in this co-management effort, will be essential in resolving the management impasse that currently exists in Alaska. Increased Tribal Government participation in management at the local level will benefit all aspects of resource management. It is unlikely that the State will provide funding for this initiative, and we believe rightly so. Tribal capacity development is an inherent function of the government-to-government relationship enjoyed by Tribal Governments with the Federal Government. It is even more unlikely that the State would

fund this management effort given the current budget deficit and the State legislature proposed cutbacks to the Alaska Department of Fish & Game (ADF&G), Subsistence Division, to the point that the division can no longer function effectively.

We believe that the fundamental questions before the committee today should be, What authority should the Tribal Governments, in Alaska, exercise over lands and resources, and From where do Tribal Governmental powers to protect and preserve the lands and resources necessary to their culture emanate. It is clear to any professional western Natural Resource/Lands Manager that the ownership of the lands and resources is a critical component in the management process. Based upon such ownership, management plans can be developed to protect and preserve the vary resources that are essential to the well being of the governments citizens. A fundamental difference in resource management philosophy exists between the Tribes and the State of Alaska. The State supports a maximum sustained yield management strategy while the Tribal Governments support a principle of limited resource utilization based upon the cultural needs of the local community. Recreational pursuits, under the Tribal management system, are frowned upon and generally believed to be an affront to the spiritual relationship that exists between the animals and native people. Most native people are taught from an early age that they should not "play with their food". Concepts that the State managers firmly embrace, such as catch and release fishing, are very controversial in the Native Community. Likewise, manipulation of wildlife populations for the purpose of creating artificially high numbers of animals for sport and recreational hunting purposes are equally as controversial to the Tribal Government and its Tribal members. It should be noted that artificially induced populations tend to be unstable and undependable for future utilization. Subsistence dependant people choose not to depend upon these artificial populations to meet their long-term needs, relying heavily instead upon a natural balance between nature and the harvest that is needed by community members. Also, the concept of providing the "opportunity" to harvest fish and game has no significance to subsistence users who must harvest a requisite amount of food or they will not eat. Whereas sport hunters are primarily dependent upon alternative food sources obtainable through the urban shopping network, native subsistence users are dependent upon the natural foods or they are faced with "times of food shortage". In essence, food preference is a universal cultural trait that helps to define a people and their culture. To require that any culture "make due with a different food because the dominant society wants to use the food source for other purposes" should be unconscionable.

Subsistence is the modern day term that has been used by the native community to describe the spiritual relationship that exists between the people and their lands and foods. That is why this issue has drawn the native people, their governments, and their institutions together as no issue before. Even the Alaska Native Claims Settlement Act (ANCSA) did not elicit the ground swell of emotion and rural native participation that subsistence does today. In part, because the ANCSA was little understood by the rural native population and in part because it did not, at the time, drastically affect the day-to-day activities of subsistence users. Likewise, the Alaska National Interest Land Conservation Act (ANILCA) remains little understood by many of the local village natives who are just now experiencing the affects of the public access that these

Conservation Units have created in and around the village and within the Tribal Traditional lands. The current management regime has just recently begun to limit the subsistence harvest to maintain other competing uses. Such action only serves to unite the native people and Tribal Governments in their resolve to defend their aboriginal hunting and fishing rights in order to protect their culture and way of life. Most native people, and many Tribal elected governmental officials, are unaware that the ANCSA abrogated native hunting and fishing rights yet most of the local native hunters, fishers, and trappers believe that they "have the right to hunt fish and trap". Likewise, traditional native women believe that they have the "right to gather plants, berries, and other products that are needed for their families existence". Many of the rural native villagers have little understanding that the legal change in land ownership status has systematically removed the majority of the Traditional land base from Tribal Government and Tribal member ownership. Nor do they understand that the Native Corporation Land ownership represents only a small percentage of the original lands that were previously necessary to maintain the spiritual and cultural needs of the indigenous people.

The Stevens Village Tribal Government calls upon Congress to set the record straight in the matter of "Indian Country" in Alaska, to reverse the Abrogation of Hunting and Fishing Rights that was, without Tribal consultation, imposed upon native people in the ANCSA, and recognize a Native Preference for use of Subsistence resources throughout Alaska. We believe that Tribal Governance Authority exists within the Native Corporation and Allotment Lands. We point to the historic Venetie Court case where-in the decision clearly states that the issue of Indian Country in Alaska is poorly defined and that Congress must clarify what authorities Tribal Governments may exercise and over which lands these authorities exist. We believe that over "whom" the authority exists is clearly stated within the Tribal Constitutional language, (Tribal Members). But believe that within the confines of private native land ownership Tribal authority would be extended to non-members as well. The issue is further addressed in ANCSA where the native Corporations have received lands [and resources] in Trust "for the villages". Tribes can only assume that these lands and resources, thereby, were only temporarily placed in this trust status until such time as Tribal Governments developed their capacity and desire to assume responsibility for the management and wise use of these assets. The time has come for the Tribes to assume their rightful role in the governance of these lands and management of these resources. Given the commitment and progress that the Tribes are making in developing their resource programs and educating and training their members to function as professional managers/technicians it is prudent to prepare for Tribal Resource Co-management. As it stands now, Native Corporation assets are not subject to any direct oversight by the Tribal Governments. Nor does the Tribal Government gain any direct benefit from these lands or resources. Likewise, Tribal Governments must oversee Aboriginal Hunting and Fishing Rights to be able to fully exercise their governmental authority and protect and preserve the resources needed to maintain their cultural identity. This situation must be resolved and it will require congressional action. Tribal Governments were overlooked in the ANCSA and the ANILCA legislation as a matter of fact. To expect the Tribal Governments to achieve Self-governance, Self-determination, and Self-regulation, (as is the P.L. 93-638, Indian Education and Self-determination Act,

policy of the U.S. Government) without the ownership of lands and resources or without powers of oversight and taxation over native corporations is totally unrealistic. Under the current system, Alaska's Tribal Governments will continue to be dependant upon small grants and State political whims of a dominant society that will never be able to adjust to the cultural, traditional, and spiritual values that exist within the native community. Taking decisive action to recognize and support the Tribal Government interests and capability to co- manage the lands and resources within their traditional territories will be a major step toward resolving the highly controversial subsistence issue in Alaska.

Thank you for the opportunity to present this testimony. And, I will be honored to make myself available at your discretion to answer any questions that you may have. You may contact me at the Stevens Village Tribal Natural Resource Program office at 907-478-7420.

Senator Daniel Inouye, Chairman
Senate Committee on Indian Affairs
SH-722
Washington, DC, 20005

October 19, 2001

Dear Chairman Inouye,

According to the Anchorage Daily News, your committee will conduct hearings on subsistence in Alaska and will hear arguments by Alaska natives, et al, for "rural preference" for subsistence, as provided by ANILCA. According to polls conducted during the past 2 years, a majority of Alaska voters would probably support the provisions of ANILCA if presented to them in a form of an amendment to the Alaska Constitution. Currently, our Constitution provides for equal access for all Alaska residents to fish and game and other naturally occurring subsistence resources and eight(8) members of our legislature have blocked all attempts to bring Alaska law into compliance with ANILCA. As a result, all subsistence fishing and hunting on Federal lands in Alaska is overseen by the US Department of Interior. I'm sure your staff has briefed you on this background information many times.

There are three (3) commonly used terms connected with subsistence that require specific definition in law if this situation is ever to be resolved. They are: (1)"rural", (2)"subsistence" and (3)"customary and traditional". I believe it would be very helpful to all concerned if Congressional intent were reviewed to determine the meanings of these terms as a part of the original ANILCA deliberations. In Alaska, there is rural (what some people in the "lower-48" and even Hawaii might think of as rural) and then there is RURAL!! People in RURAL Alaska mostly have access to urban/suburban areas only by boat and airplane in summer and only by airplane, dogsled and snow machine in winter. Many (most) of these people (of all races, ethnic origin, etc.) live off the land by fishing, hunting, gardening and gathering—and this is what I believe was intended by "RURAL subsistence"—and in times of fish and game shortages—should have a preference to these natural resources to survive. Then, we come to "customary and traditional". Many people in Alaska, whose ancestors (regardless of ethnic origin) subsisted off the land, now live in urban/ suburban communities and have adopted the ways of a more modern society, eg, running businesses, working for wages, shopping at markets and stores, and using most if not all of our modern conveniences and technology. However, some of these urban people feel it is their "customary and traditional" right to load all their modern gear (eg, boats/motors/nets, trucks/snow machines/ATV's, high powered automatic weapons, etc.) and go off to some rural (or RURAL) setting for a few days/weeks and harvest their fish and game to "subsist" and also be a part of the group given RURAL preference under ANILCA. I believe this paragraph to be at the heart of the debate.

Some Alaskans feel all fish and game is a public resource, which should be accessible to all residents under the Alaska Constitution and under applicable State fish and game regulations. Others feel, because of historical circumstances, that fish and game are their ancestral right, regardless of where and how they have chosen to live, and many feel that

fish and game regulations do not apply to them. I believe Alaska fish and game to be a public resource, which should be regulated by the State. However, for those souls who have chosen to survive off natural and home-grown resources, which occur around their places of residence in a truly RURAL setting, I, and most Alaskans would probably agree they should have preference for these resources, especially in those years when a shortage of those resources occurs.

Thank you if you have had your committee consider my comments in your hearings.

Respectfully Submitted,

Richard Hahn
P.O. Box 2754
172 Linda Lane
Soldotna, AK 99669
907-262-8575

P.S. I live in a town of about 4000 residents, which was declared "rural" (being a part of the Kenai Peninsula) by the US Federal Subsistence Board in 2000. This determination was correctly rescinded by that Board in 2001. We are not RURAL in Alaska!

Office of the President
Edward K. Thomas
Central Council Tlingit & Haida Indian Tribes of Alaska
320 W. Willoughby Avenue, Juneau AK 99801

April 3, 2002

The Honorable Daniel K. Inouye
Chairman
U.S. Senate Committee on Indian Affairs
SH-838 Hart Senate Office Building
Washington, DC 20510-6450

Dear Mr. Chairman:

Thank you for inviting me to present testimony on subsistence hunting and fishing issues to the U.S. Senate Committee on Indian Affairs on Wednesday, April 17, 2002, at 2:00 p.m. in Room 485 of the Russell Senate Office Building.

I regret that I am unable to personally provide testimony at this important hearing as it conflicts directly with our annual General Assembly. However, I have delegated Mr. Gordon Jackson, the Central Council of Tlingit and Haida Indian Tribes of Alaska's Manager of Business and Economic Development and Subsistence Coordinator, to provide testimony on behalf of our Tribe.

I am honored by your invitation to participate in this important hearing on an issue so critical to Alaska's Native peoples. Thank you again for offering the opportunity to participate.

Sincerely,
EDWARD K. THOMAS, PRESIDENT

Michele Metz
Assistant to the President

cc: Gordon Jackson

TEL. (907) 586-1432 cthomas@ccthita.org FAX (907) 586-8970

April 13, 2002

Mary Ann Mills
PO. Box 143
Sterling, AK. 99672
(907)262-5403

Senators Stevens, Inouye, Murkowski
Senate Select Committee on Indian Affairs
United States Senate
838 Hart Office Bldg.
Washington, DC 20510
via fax (202) 228-2589

Regarding: April 17, 2002 Subsistence Hearings

Dear Senators:

As a stakeholder in subsistence, I request the following considerations and recommendations to go on record for the April 17, 2002 Subsistence Hearings held by this Committee on Indian Affairs.

I am an Indigenous Person from the Cook Inlet and reside on the Kenai Peninsula in Southcentral Alaska. I have never consented nor have I given away any of my inherent rights or Human Rights, which includes my right to sustenance from the land, air and waters, as my ancestors have for as long as memory. I testify to this Hearing, that I wish and need to retain these basic sacred fundamental Rights.

I would like to recommend changes be made in ANILCA to reflect the United States moral and fiduciary responsibility to the Indian, Eskimo and Aleut Peoples in the protection of our property rights, which **FOREVER** includes subsistence, as demonstrated in Article 12, Section 12 of the State of Alaska's Constitution. The rights of the tribes predate statehood and private property rights which must be honored. This right was promised as a sacred entitlement, one which the United States has a moral obligation to protect.

It is time for the United States to treat the Indigenous Peoples of Alaska as Human beings. To enable this evolution, I recommend Indigenous Alaskans be taken out of Title 43 of ANILCA and placed into Title 25 of the United States Code. It would also be respectful to take us out of the Department of Interior and place us in the same category as other legitimate Human governments.

I request the Senate Select Committee on Indian Affairs set aside suitable areas for myself and my relations to gather sustenance (subsist) on the Kenai Peninsula, free from fear of intimidation, persecution, prosecution, and incarceration.

Respectively Submitted,

Mary Ann Mills

Mary Ann Mills

Date: 4/16/02 1:41 AM
Sender: Lillian White Temple <l_mazawaste@hotmail.com>
To: testimony
Priority: Normal
Subject: Re:Investigation of JTAC funds at Bullhead (RockCreek) Distr

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My name is Mrs. Lillian White Temple. I live in the Rock Creek (Bullhead) district. I am a member of the Elderly Organization in Rock Creek. The elderly members or seniors in the community are concerned about the following, since JTAC funds are involved.

First, the Rock Creek District made a bank loan for $300,000 and the Standing Rock Sioux Tribe co-signed the loan. This loan was made in March of 2001 as of today we have not received an overall report showing us that the funds were properly used, if there is any progress? where is the property inventory? Whose name were these cattle and vehicles and other machinery placed in? This project is operating without proper administrative management. No financial records have been disclosed to the elderly members.

Secondly, the Rock Creek District also operates a cattle project at the Shambo Ranch without proper land management practices from the Bureau of Indian Affairs which is a big concern from the landowners. It is my understanding that the BIA personnel were asked to stay out of the business. The elderly say that one of the councilmen of Rock Creek is asking the RC district to pay for the grazing fees on this range unit. This means that the Rock Creek District will be responsible for three livestock projects. At the March, 2002, district council meeting a motion was made to grant the land-livestock project to purchase more cattle in the amount of $100,000. When our elderly representative attends these meetings and presents our minutes where we are requesting financial records, she is verbally abused by the members who support the group which are involved in this land-livestock project.

Finally, we received an anonymous letter from a community member asking the elderly to have these council members recalled and reported to the Inspector General for their mismanagement. For these reasons, we would like to know if the investigation will also apply to the districts.

Thank you for time and consideration of Indian Affairs's Land Operations.

Transcribed 7/8/02

Maniilaq Association

P.O. Box 256
Kotzebue, Alaska 99752
(907) 442-3311

April 15, 2002

BY E-MAIL AND MAIL

The Honorable Daniel K. Inouye
Chairman, Committee on Indian Affairs
United States Senate
Washington, D.C. 20510-6450
testimony@indian.senate.gov

Re: Oversight Hearing on Alaska Subsistence Hunting and Fishing Issues (April 17, 2002)

Dear Senator Inouye:

I am writing as the President/CEO of the Maniilaq Association and request that you include this letter in the hearing record for the April 17, 2002 Alaska Subsistence Oversight hearings. The Maniilaq Association is a consortium of 12 Alaska Native villages, each of which is also a federally recognized Indian tribe. Each village also formed a Native corporation under the Alaska Native Claims Settlement Act ("ANCSA"), but 10 of those village corporations are now merged into the NANA Regional Corporation, the regional Alaska Native corporation for the Northwest Arctic region of Alaska. With the approval and sanction of the Native villages, the Maniilaq Association compacts or contracts with the agencies for Indian Health Service, Bureau of Indian Affairs, and other federal and state agency programs delivered to the Northwest Arctic region.

INTRODUCTION

Researchers have documented the existence of 12 Inupiaq Eskimo nations in northwest Alaska predating the ratification of the 1867 Treaty of Alaska Cession. Nineteenth century famine and disease decimated those nations, much as they did the Indian nations of what are now the Lower 48 United States. The Inupiaq population has only recently

recovered to its mid-nineteenth century level.[1] Many of our people trace their ancestry to those original 12 nations and all of the Inupiaq people of the Northwest Arctic are living in their homeland. They rely as much today on the resources of that land as they did a hundred or even 10,000 years ago not just for their sustenance, but also for their continued community identity, culture and economic prosperity.

Your hearings, Mr. Chairman, although focusing on something called "subsistence" really implicate much more. We at Maniilaq think these hearings should ask the question: "How will the Inupiaq people of northwest Alaska (and all other Alaska Natives) thrive in the 21st century?" We submit that what is now called "subsistence" is the key not only to our mere survival as a people, it is the key to our ability to continue to thrive as indigenous people within what is now the United States of America.

The truth is that our Inupiaq nations have been colonized by European nations, just as the rest of the Indian nations in the country. The history of colonization in the Americas is over 500 years old, and we do not suggest that our colonial history can be rewritten. However, it can be avoided here in Alaska. Through the Alaska Native Claims Settlement Act, Title VIII of the Alaska National Interest Lands Conservation Act ("ANILCA") and several federal conservation statutes and treaties, the United States Congress has put in place a legal structure which suggests a more hopeful outcome to our colonial history than has been possible in the lower 48 states. I am writing to urge your committee to take a broad view of the important legal structures Congress has established that protect the indigenous rights of Alaska's original inhabitants and to urge that you take great care not to unwittingly dismantle them.

The evil of colonialism is that it disenfranchises, marginalizes and finally expropriates the assets of those who are colonized. The original 13 "colonies" rebelled against just such usurpations to form what is now the United States. However, then the United States (not surprisingly) imposed its own form of colonialism on the original inhabitants. In the 19th century, this resulted in the expropriation of Indian lands, the creation of largely dysfunctional Indian reservations and the marginalization and dependency of the Native

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[1] Burch, Earnest S. Jr., *The Inupiaq Eskimo Nations of Northwest Alaska*, University of Alaska Press (Fairbanks, 1998), Figure 37 at page 325.

American people on those reservations

The reservations themselves may be seen in a positive light as the "homelands" of the Native Americans, and in some cases they are. As such, they might have offered the opportunity for the reservation Indians to eventually develop their own forms of economy and government while protecting their original ways of life. For many reservations, however, the allotment policies of the late 19th century and the termination policies of the 1950s substantially and rapidly eroded even those possibilities. It was only with the enactment of the 1975 Indian Self-Determination and Education Assistance Act that these policies have in any significant way been reversed. The Alaska Native Claims Settlement Act was in many significant ways a part of this new policy.

Many Alaska Natives do not believe that ANCSA was a particularly "generous" settlement. (After all it extinguished aboriginal title to more than 300 million acres of Alaska lands for a price that came out to about $3.00 an acre.) Nonetheless, for the first time a Native claims settlement delivered real economic power into the hands of indigenous Americans. As far as it went, ANCSA was a significant step forward, because it delivered real control over lands and their resources to the Native Americans who were then entrusted to decide for themselves how best to develop those resources. This was a true break with the colonial model that heretofore had merely expropriated those resources.

As has been noted by Senator Ted Stevens and others, ANCSA was a "land" settlement act. It did not deal in any meaningful way with the other two components of Native American self-determination. Those are subsistence and self-government. These Oversight hearings are apparently focused on the subsistence issues, but we at Maniilaq urge your committee to keep an eye on the full picture. For whether history will record that the United States has dealt fairly with Alaska's indigenous inhabitants will also depend on the extent to which the United States deals fairly with the issues of Native subsistence and self-government in the 49th state.

THE SUBSISTENCE COMPROMISES

As a preliminary matter, let me describe our beautiful and bountiful land, our unique and thriving culture, and the traditional yet dynamic process by which we decide important issues.

The Northwest Arctic Region occupies a geographic area about the size of the state of

Oregon. It includes northern portions of the Seward Peninsula; the Selawik wetlands; the entire Baldwin Peninsula; The Kobuk and Noatak river valleys and deltas; and along the southern flank of the Western Brooks Range, extending west to east from the Chuckchi Sea to Interior Alaska

About 7,000 people live in our region, of whom 90% are Inupiaq. Those who live inland subsist primarily on bear, moose, caribou, wolf, rabbits, muskrat, birds and river fish. Those who live on the coast subsist primarily on bowhead whale, beluga whale, walrus, seal, birds and ocean fish. Traditionally and modernly, all of these subsistence foods are freely shared among all Inupiaq both inland and along the coast.

To many of us, subsistence is a primary means of support. To all of us, **subsistence is how we define ourselves as individuals, as a society, as a part of the great cycles of nature, and as a part of a greater spiritual reality. It is life and death. From a cultural perspective, it is through subsistence that we learn who we are as members of our families and communities.**

Our region has long been known for the careful consideration it has given to the effect of economic development on the cultural values of our people. Although our cultural values, including our subsistence way of life, are vital to our existence, we also believe that economic development is a good and necessary thing. For example, we are proud of the fact that our Native leaders had the vision and fortitude to help to plan and build the world's largest lead-zinc mine, Red Dog, in our region.

Some would say that economic development and preservation of cultural values are mutually exclusive. We disagree. We refuse to believe that in order to develop economically, we must forfeit our traditional ways and submit ourselves to the "melting pot" of American culture. We believe that with wise leadership and culturally-guided policies, economic development and cultural preservation can go hand in hand. For example, significant protections are included within the Red Dog agreement to protect the migration of the approximately 500,000 caribou of the Western Arctic Herd, as well as other subsistence resources.

As applied to subsistence, this philosophy also means that we refuse to be regulated by hunting and fishing laws that are designed primarily to serve large numbers of sport hunters and fishermen, each of whom is allocated a small but equal portion of the harvest. Such hunting and fishing policies might be fair and reasonable if it is assumed that all users of fish and game are similarly situated. However, that is simply not the case here.

Rather, **our subsistence way of life is an inherent group right that arises out of Native sovereignty, which is recognized in the United States Constitution as existing before the founding of the United States.** Native subsistence has simply been around longer and is more important than any individual's right to engage in sport hunting and fishing.

There are "wants" and there are "needs." Sport hunting and sport fishing are "wants." Admittedly, they are big "wants" to many non-Natives in Alaska. However, they are still "wants." By contrast, our subsistence way of life is a culturally legitimate, economically justified, legally recognized "need." It is embedded in our language, spirituality, diet, dance, songs, beliefs, myths, stories, games and harvesting activities. It is our identity. Without it, we would cease to be ourselves. Despite the diversity of Northwest Arctic Alaska's corporate, tribal and municipal interests, **we are unanimous on matters of subsistence. SUBSISTENCE IS NOT AN ISSUE. IT IS WHO ARE WE ARE. WE NEED NOT AND WILL NOT COMPROMISE OURSELVES IN THIS REGARD.**

At the same time, we are also citizens of the State of Alaska, and we genuinely appreciate Governor Knowles' and Lt. Governor Ulmer's honest efforts to reacquire state jurisdiction over subsistence. We believe that the Governor has tried, particularly in the last several months, to develop an honest compromise that takes into account all reasonable perspectives. However, **we in Northwest Arctic Alaska have unanimously, and not merely by majority vote, concluded that we cannot support any further compromise of the subsistence way of life.** The rights of Alaska Natives have been compromised at least three times in past federal legislation, and we can give no more without breaching our faith with our ancestors, ourselves, our children, and our posterity.

The first compromise was the Statehood Act which admitted Alaska to the Union and allowed it to select over 100 million acres of land with only a vague and as-of-yet unfulfilled assurance that the state would disclaim any interest in Native lands and subsistence rights. The disclaimer is found in both Section 4 of the Statehood Act and Article XII, Section 12 of the Alaska Constitution.

The second compromise was the Alaska Native Claims Settlement Act. The Senate versions of the settlement included substantial subsistence protections. The House version simply extinguished aboriginal hunting and fishing rights. Thus the right to be who we are was supposedly extinguished in exchange for a vague and as-of-yet unfulfilled promise in the House and Senate conference report to protect "the subsistence rights of the Natives."

The third compromise was ANILCA. The Alaska Natives proposed that the ANILCA subsistence preference be a genuine Native preference, typical of other Native American settlements. Again, at the specific insistence of the State of Alaska, we compromised our claim to a Native preference in exchange for the more general "rural" preference proposed by the State. The Alaska Supreme Court's 1989 *McDowell* decision invalidated that compromise. If that decision is followed on federal public lands, it will, among other things, eliminate consideration of "customary and traditional uses" as an element of subsistence. This is unacceptable.

We are not unmindful of the counsels of Governor Knowles and several of his predecessors that matters of subsistence are best resolved by Alaskans, for Alaskans. We share some concern that over the long run, federal management could prove distant and unresponsive in our vital interests. However, we have concluded that in the current situation, **actions speak louder than words. "Alaska first" theories of federalism ring hollow in our ears when in practice, the federal government has shown itself to be a willing and honest partner in the implementation of ANILCA's subsistence priority.**

In both Republican and Democrat administrations, the federal government has stepped up to the plate to actively and fairly implement the ANILCA subsistence priority. The federal government has effectively reorganized the subsistence management regime and reconstituted the local subsistence advisory committees and regional councils, to make them truly responsive to subsistence needs. The Federal Subsistence Board is composed of professional managers who, we have found, faithfully follow ANILCA's mandate of making management decisions on the basis of what is best for subsistence, without giving unmerited weight to the "wants" of sport or commercial uses.

By contrast, when it came to settlement of Alaska Native claims, which were specifically reserved in the Statehood Act, the state opposed us. In settling those claims, Congress abandoned federal protections in favor of vague promises that the state would protect our subsistence interests. The state made a mockery of those promises with a fish and game management regime that was distant from subsistence users and unduly responsive to the special interest "wants" represented by political appointees to the state's Fish and Game Boards. Following the enactment of ANILCA, it was the decisions of those same Fish and Game Boards that repeatedly forced us to go to court, where we successfully litigated to force the implementation of the ANILCA subsistence priority. The *McDowell* decision was simply the last straw in those battles.

Even after *McDowell*, we would have been willing to return to state regulation of

subsistence had the state legislature moved quickly to amend the Alaska Constitution to bring the state into compliance with ANILCA. Instead, especially after the 1990 reapportionment. **The Alaska legislature has spitefully pitted the state's urban interests against its rural interests.** Under these circumstances, we would be remiss to agree to a return to state jurisdiction. We know that in addition to a hostile fish and game board, we would face a hostile legislature which has shown itself all too willing to undercut promises made in Washington by enacting state laws that are adverse to subsistence harvesting by rural Alaskans. We have found through sad experience that the Alaska legislature is quite dogged in its attempts to resurrect and popularize "Manifest Destiny" as a device to steamroll and pave over the unique, fragile and beautiful way f life that the Inupiaq have taken millennia to construct.

Unless and until the State of Alaska, including the legislature, acknowledges that legitimacy of the subsistence way of life and all that it implies for Native culture and identity, we in the Northwest Arctic have concluded that federal management is the best hope we have of preserving it. The federal government has and should continue to have a unique trust responsibility and government-to-government relationship with Alaska Natives. We have found that this relationship has translated into a federal willingness to: (1) truly implement the ANILCA subsistence priority and (2) actively involve Alaska Native tribes and landowners in the co-management of subsistence fish and game resources.

BEYOND ANILCA

We urge your committee to keep in mind that federal subsistence policy in Alaska is not confined merely to Title VIII of ANILCA. Specifically, the Federal Marine Mammal Protection Act ("MMPA") and a number of international conservation treaties carve out a special place for Alaska Native and other "indigenous" subsistence users and for the co-management of subsistence resources. The MMPA exempts Alaska Native subsistence uses from the nationwide moratorium on the taking of marine mammals. The 1994 amendments to the MMPA specifically allow for cooperative agreements between federal agencies and any Alaska Native organization for the co-management of seals, sea otters, walrus and other marine mammal species.

Beluga whales are managed under The Alaska Beluga Committee as are bowhead whales under the Alaska Eskimo Whaling Commission. There is also a separate Nanuuq Commission for the management of polar bears under the MMPA and the recently concluded polar bear convention with Russia. The activities of many of these

commissions are coordinated through the Indigenous Peoples Council for Marine Mammals ("IPCoMM"), of which the Maniilaq Association is a member.

Finally, amendments to the various migratory bird treaties between 1996 and 1998 now specifically allow the "indigenous inhabitants" of Alaska to take migratory birds for subsistence purposes and generally, as does Title VIII ANILCA, mandate an effective and meaningful role for indigenous people in the management of migratory bird hunting. As with the local advisory committees and regional advisory councils under Title VIII of ANILCA, the MMPA, together with the migratory bird and other international conservation treaties, have established a federally decentralized system of fish and game management in which local Alaska Natives and other rural residents now truly have an effective voice.

That, Mr. Chairman, is the true genius of ANILCA and all the other federal conversation treaties and statutes I have just described. The fundamental problem with the Alaska state fish and game management system is that it is highly centralized and very politicized. The members of the state Fish and Game Boards are selected by the governor, with the advice and consent of the Alaska State Senate. That has historically meant (and means today) that these management bodies are packed with representatives of sports and commercial fishing and hunting interests.

Although Alaska law may give lip service to the idea of advisory committees and councils, they are just that under Alaska law "advisory." Under ANILCA, the recommendations of the regional advisory councils must be implemented unless they fail to meet requirements of sound biology and the subsistence preference itself. Under the state system, any such recommendations can simply be ignored.

Thus, we watch with great interest the state's current efforts this coming May to amend its constitution to bring the state into compliance with ANILCA. We suspect that the same reactionary forces in the Alaska stage legislature that have prevented the amendment from going to the people will continue to hold sway. However, our concern with any such amendment is how it will be implemented through the state's centralized and politicized fish and game management regime. Historically, that regime has always proved to be adverse to the interests of the Native and other rural residents who depend on fish and game resources for their lives, their cultures and their community economies.

We at Maniilaq would like to see a genuine Native preference implemented as a matter of federal law. We think that is the only way to redeem the promise of Section 4 of the

Statehood Act and Article XII, Section 12 of the State Constitution in which the State of Alaska purported to "disclaim" all right or title to any Alaska Native property including specifically fishing and other subsistence rights. These rights remain under the "absolute jurisdiction and control" of the United States. ANILCA has compromised those rights in the form of a "rural" preference, and Alaska Natives are now paying the price. Any further retreat from ANILCA would be unconscionable and a return to the colonial past.

SELF GOVERNMENT

Finally, Mr. Chairman, and although it may seem beyond the stated scope of these Oversight hearings, permit me to emphasize the continued importance of Alaska Native self-government to the management of subsistence resources. In spite of its colonial history, the United States is perhaps unique among nation states, because for over 200 years it has at least recognized the existence of Native American sovereignty, which I refer to here as "self-government." Even in their arrogance, the European colonizing powers treated the so-called "uncivilized tribes" as sovereigns with which the European powers (particularly Great Britain) could negotiate treaties. The United States continued this policy. While there are no treaties with the Alaska Native tribes, there is certainly a treaty *about* them. Article III of the 1867 Treaty of Cession mentions the word "tribes" no less than three times and provides in the final sentence that:

> The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt and regard to aboriginal tribes of that country.

That is all that needs to be said about the existence of tribal government in Alaska under federal law. From the beginning, the United States has acknowledged that there are tribes in Alaska and that they will be governed by the same laws as govern the other aboriginal tribes in the United States. The history of the United States in Alaska demonstrates that the United States government has dealt with the Alaska Natives (principally villages) as tribes. Most of these villages qualified to receive land and money under ANCSA and in 1982 the Interior Department published the list of federally recognized Alaska Native tribes.

The language in the preamble to the 1982 list suggested that at least some of the Alaska Native tribes might not be "historical." This lead to a decade of confusion about the exact significance of the 1982 list, which was finally resolved with the definitive publication of the federally recognized Alaska tribes in 1993. The explanation accompanying the 1993

publication describes the history of the confusion and the significance of the Alaska tribal list. With the enactment of the federally recognized Indian Tribe List Act of 1994, Congress ratified the 1993 list and even added another Alaska Native tribe to it.

It has now been 20 years since the first list was published in 1982 and once again the Alaska Native tribes are facing an effort, seemingly from our own legislature congressional delegation, to terminate our tribal existence. It is ironic that this should be occurring within a couple of years after both the Alaska Supreme Court and the Alaska governor have recognized the existence of the Alaska Native governments. The federal courts, Congress and the executive have all done the same.

Tribal governments offer the only real hope for some measure of judicial authority and regulation of conduct in remote Alaska Native villages, in only a fraction of which there is any state judicial presence. Native governments are also the source of the authority for the formation of many of the marine mammal commissions I have described earlier in this letter.

The American political system acknowledges that certain powers can only be exercised by or delegated to other governments. Whether its child welfare, law enforcement, regulation of liquor or running a solid waste site, tribal governments can exercise the necessary powers of government in remote villages. Admittedly, tribal governments are governments of relatively limited authority, but they do have authority where it counts the most -- over their own members, other Natives and those who are in consensual relationships with those members and the tribe. This is the very authority that is most important in remote Alaska Native villages.

CONCLUSION

In conclusion, we are Natives, Alaskans and Americans. We are proud of all three heritages. We do not believe it is or should be necessary to pick and choose which status is more important. **We do not believe that 19th Century notions of colonial expansion should be imposed upon our culture and our tribal communities by the conservative fringe that currently controls the Alaska legislature, nor do we believe that such an imposition can ever form the basis of a wise and stable Alaska Native policy.**

With the enactment of the Alaska Native Claims Settlement Act, Congress departed significantly from this country's colonial past and delivered significant power over land and economic resources to the Alaska Natives. The enactment of the Indian Self-

Determination Act further empowered Native Americans (and Alaska Natives in particular) to better control the services and resources delivered to their communities. However, there cannot be true self-determination for Native people unless their access to fishing, hunting and gathering resources is firmly protected under federal law and their ability to govern their own communities is recognized as well. These concerns are the unique focus of your committee, Mr. Chairman.

For us, subsistence is not just hunting and fishing. It is not even just putting food on the table. Rather, it forms the very foundation of our family and community relationships. **SUBSISTENCE IS NOT AN ISSUE. IT IS WHO WE ARE. We hope that the State of Alaska, especially its legislature, will join with us in entering the 21st Century by finding some means of clearly and unequivocally acknowledging that fact.** Until then, we at Maniilaq do not believe we have any other choice but to turn to the federal government to uphold the promises made in the Statehood Act, the Alaska Native Claims Settlement Act, and ANILCA.

Sincerely,

MANIILAQ ASSOCIATION

Dennis J. Tiepelman
President/CEO

B
SECTION

ALASKA

ANCHORAGE DAILY NEWS • www.adn.com
FRIDAY, OCTOBER 19, 2001

LINE OF FLIGHT

A Coast Guard patrol plane goes searching for foreign fish poachers in the Bering Sea, part of an annual game of cat and mouse along the boundary between Russia and Alaska. Will it make a catch? **Sunday's front page**

Congress to hear subsistence issue

■ **NOV. 1:** Senate committee will hear plea for action from Native leaders.

By TOM KIZZIA
Anchorage Daily News

Alaska's subsistence fight will finally head back to Congress next month, when the Senate Indian Affairs Committee is scheduled to hear a plea for action from Native leaders.

An oversight hearing on subsistence has been set for Nov. 1 by the committee's chairman, Sen. Daniel Inouye, D- Hawaii. It will be the first congressional hearing on subsistence in nearly a decade. It's been even longer since a hearing on the subject was held in Washington, D.C.

The hearing was requested by the Alaska Federation of Natives, according to spokesmen for Alaska's two senators, Frank Murkowski and Ted Stevens.

Native leaders hope Congress can find a way around the state Legislature's resistance to a statewide subsistence priority for rural residents, AFN spokesman John Tetpon said this week. The hearing will come as the AFN emerges from its annual convention, set for Oct. 25-27 in Anchorage.

"A host of people are going down to promote and support the idea of Congress allowing the people of Alaska to vote on the subsistence issue," Tetpon said.

AFN officials would not discuss their aims more specifically. In recent months, however, Native leaders have touted several ways that Congress could break up the logjam on subsistence laws.

One approach would be for Congress to "pre-empt" the state by extending a rural hunting and fishing priority to all state and private lands. Such a law might be written in a way to trigger a statewide plebiscite on the idea, AFN officials said. A second approach would involve rewriting the federal priority to include all Alaska Natives, including those who live in urban settings.

Details of the hearing, including who will be asked to speak, haven't been worked out yet, said Murkowski spokesman Chuck Kleeschulte.

A call to the Indian Affairs Committee earlier this week drew a recorded message saying the "office is closed due to anthrax testing."

The drawn-out battle over subsistence is the result of a clash between federal and state laws. Federal law says rural Alaska residents should

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(OVER)

SUBSISTENCE: *Hearing to be first in a decade*

Continued from B-1

have a subsistence priority; the state constitution forbids such a priority. The Legislature has repeatedly refused to place a constitutional amendment before the voters to bring the two laws in line. Alaska's Republican congressional delegation has shown no interest in overhauling the federal law.

The result is a complex dual-management system for fishing and hunting. Rural residents have a subsistence priority on federally controlled lands and waters, while all residents have the priority on certain state and private lands.

The AFN's move toward Congress comes as a task force appointed by Gov. Tony Knowles makes yet another attempt to come up with a compromise. That group, led by Attorney General Bruce Botelho, holds its next meeting Saturday in Anchorage.

The challenge to Botelho's group is to win the support of a few more conservative Republican legislators without driving away Native groups, who have insisted on no further compromises.

Native leaders have repeatedly threatened to take their cause to Congress if the Legislature refused to budge. Their chances of success in Washington are not at all certain, however.

Stevens has said he too is frustrated by the state's refusal to change its laws. But neither Stevens nor Murkowski has offered to introduce sweeping changes to federal law.

An idea raised by AFN president Julie Kitka at a statewide subsistence summit last August calls for federal pre-emption of the state's subsistence laws. The approach is based on a white paper drawn up for the AFN by former Native American Rights Fund attorney Bob Anderson, who served as an Interior Department lawyer during the Clinton administration.

According to Anderson, Congress could write such a law to make it effective only after Alaska residents vote on it. However, he said, the Legislature could then block the law by refusing to call an election.

A more sure approach, he said, would be to make the federal pre-emption effective unless rejected by voters within a year. That would prompt opponents of the rural priority to push for a vote, he said.

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Urban Alaskans get shot at subsistence

■ **TASK FORCE:** Proposal would also limit rural priority to local areas.

By TOM KIZZIA
Anchorage Daily News

Urban hunters and fishermen, who have felt left out of previous Knowles administration subsistence proposals, would have a chance to qualify for a subsistence preference under the latest state plan.

The new draft plan for a state constitutional amendment would allow the Legislature to create special subsistence categories for city dwellers with long histories of subsistence and for traditional hunting and fishing communities swallowed up by modern urbanization. The highest priority would still be for rural residents, as spelled out by federal law — but their hunting and fishing would have to be done close to home, making their right something of a "local" priority.

The proposal is being drawn up by a task force appointed after a "subsistence leadership summit" called by Gov. Tony Knowles in August. The group is holding its third meeting today in Anchorage.

"The committee has tried not to make any strategy calls here," said Attorney General Bruce Botelho, who is chairing the group. "Our task has been to say, on substance, what makes the most sense."

> *"It's worth exploring, but I have my doubts. It could be the formula for healing the rift in the state. But I'm sure that many will view this as too much compromise to an already compromised law."*
>
> — Roy Huhndorf, co-chairman of the Alaska Federation of Natives and a member of the Knowles task force

The unfinished plan is likely to get its first public airing next week at the Alaska Federation of Natives convention in Anchorage.

The measure will face an uncertain reception in the Legislature, where a majority has opposed past proposals to amend the constitution for subsistence.

One Republican, Sen. Loren Leman, R-Anchorage, said the inclusion of urban harvesters could draw the votes necessary to pass the package.

"If they really work on some of these things that have been sticking points, it's cause for optimism," Leman said Friday.

But several opponents said no amount of stirring the pot can make a rural priority palatable.

"It will create two classes of citizens: one rural and one urban," said Sen. Robin Taylor, R-Wrangell. "They're amending the constitution to destroy the equal protection clause."

"Until they satisfy the equal protection clause, there will be 10 votes (in the Senate) that will be no," said Sen. Randy Phillips, R-Eagle River. He said his constituents have been overwhelmingly against a rural-priority amendment.

Knowles rebutted his critics in an interview Friday, saying a subsistence priority doesn't create a special class in rural Alaska. "If you wanted to have those special provisions, you

See Page B-2, URBAN

URBAN: *Group meets today in Anchorage*

Continued from B-1

could move there," he said.

Knowles said he still hopes to convince legislators to allow a statewide vote on an amendment. He predicted a groundswell of support for rural subsistence, which he called "the No. 1 issue for how we shape our society for the next century." Creative thinking by his task force could help that cause, he said.

The two-tier subsistence priority is drawing mixed reviews from Dick Bishop, who follows subsistence for the Alaska Outdoor Council, a sportsmen's group. He said it's a good step to recognize the subsistence needs of some urban residents. But he said the proposal still discriminates because urban residents wouldn't qualify as easily as rural residents.

Rural residents should have to qualify individually as well, he said.

"It's OK to have distinctions for legitimate subsistence users, but everyone should be on equal footing," Bishop said.

On the other side, some Natives may oppose the idea, in part for leaving so much discretion to the Legislature in fashioning the secondary tiers of subsistence users.

"It's worth exploring, but I have my doubts," said Roy Huhndorf, co-chairman of the Alaska Federation of Natives, who is a member of the Knowles task force. "It could be the formula for healing the rift in the state. But I'm sure that many will view this as too much compromise to an already compromised system."

Conservative Republicans in the Legislature have blocked any amendment, saying the federal law should be changed instead. Meanwhile supporters of an amendment have tinkered with the plan, hoping to win broader support.

Botelho said the Knowles task force supports the rural priority but wants to keep it focused locally.

"There's a constant concern about whether the Barrow person has the right to hunt and fish at Tenakee Springs," said Botelho. "Our view is no, unless someone can demonstrate that it was traditional for Barrow to hunt in Southeast Alaska."

In its allowance for qualified urban residents, the latest plan bears some resemblance to a plan drawn up under former Gov. Wally Hickel in 1992. The existing state law on subsistence also has different tiers, though these are used to shrink the number of hunters and fishermen in time of shortage, not expand them.

Natives have said it's important to protect opportunities for "urbanized" villages and villagers who move to the city, Huhndorf said. But some Natives may also be concerned about opening too much urban access to limited subsistence resources, he said.

- **WHO:** Governor's subsistence drafting committee
- **GOAL:** Come up with a proposed constitutional amendment and legislative package to present to the state Legislature.
- **WHERE:** Meeting runs from 10 a.m. to 5:30 p.m. today in the Assembly chambers of the Loussac Library.

The fact that this plan leaves the details of the second tier to the Legislature, which many Natives have come to mistrust, is unlikely to please the Native community, Huhndorf said.

"The second tier must be very carefully described," he said.

Bishop, on the other hand, doesn't like the part of the proposal that would allow nonrural "communities" to qualify for the second-tier subsistence. That opens the door to tribal rights, he said, and could also put too much pressure on fish and game.

"The state should make a very strong priority and limit it to a small number of participants," Bishop said.

Botelho said the task force is also likely to recommend making federal subsistence law more flexible. Congress would be asked to clarify important phrases such as "reasonable opportunity" and "customary and traditional." This would allow some restrictions to be placed, say, on subsistence fishing without completely eliminating all sport and commercial fishing first.

The group is still struggling with how to make "co-management" part of its package, Botelho said. Co-management, which involves sharing power with Native groups in writing regulations, is now employed selectively in federal subsistence management and is a Native priority for any new state system.

But it is controversial — and not only with conservatives. Even state officials sympathetic to Native aspirations have said the state can't surrender its ultimate authority over fish and game management. And Native delegates to August's subsistence summit were openly split over whether the Natives involved should be tribes or Native corporations.

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