

No compromise on subsistence status quo

by Paul Swetzof

Governor Knowles has charged Lt. Governor Fran Ulmer with the task of developing a subsistence proposal which meets with the approval of most Alaskans and returns fish and game management to the estate. To do this, the Governor is suggesting amending the state constitution, changing the terms of the Title 8 of the Alaska National Interest Lands Conservation Act (ANILCA) to make it compatible with state law, and making a number of regulatory changes. The Governor

and Lt. Governor have repeatedly stated their subsistence solution involves compromise by all of the diverse interests. Lt. Governor is developing to end the so-called subsistence impasse. We can't compromise the status quo or our long term goals. ANILCA was compromise legislation. We should never compromise the compromise.

AFN is on record as supporting a no net loss policy, with the subsequent long term goal of a Native organization and individual tribal government has a similar position.

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The state's goal in wanting to resolve the dispute over subsistence is to regain state management over fish and game in all of Alaska. The Native goal is to protect the status quo, also known as "no net loss," and work to eventually gain a Native priority over customary hunting and fishing on all of our respective traditional hunting and fishing areas. The direction the state is moving in will, in my opinion, result in a retreat from the status quo and, worse, roadblocks to the goal of a Native priority.

An amendment to the state constitution will, as currently envisioned, enable the legislature, if it chooses to do so, to create a rural priority and direct the Boards of Fish & Game to comply with the priority. The state will dictate who is entitled to the subsistence priority based on a number of "tests." These are the same tests which were established in state law prior to the state courts finding that a rural priority was unconstitutional. There will not, standing alone, be a Native or cultural priority.

As envisioned by the Governor's draft, amendments to Title 8 of ANILCA will defer many judicial challenges to the state courts, rather than as is currently the case, to the federal court, and give deference to the decisions of the state Boards of Fish & Game. The amendments to ANILCA the state is proposing would make it much more difficult, if not impossible, to amend Title 8 to establish a Native (or cultural) preference and get us out of this terrible argument over what villages do or do not qualify as "rural" and recognize the simple

fact that only Alaska Natives can claim to have a cultural tie to customary and traditional hunting and fishing.

I would only support a return to state management of the state would agree to establish, in its constitution, a Native or cultural priority, or a Native (cultural) and rural priority. Anything that takes us, as Native people, out of the rural argument and allows, once and for all, for the customary and traditional use of fish and game by Native people in our traditional homelands. Title 8 of ANILCA must also remain in place because we must always make certain the federal government maintains their trust responsibility to us. The trust responsibility can only be retained by keeping laws on the books which, like Title 8, have been identified by the courts as "Indian law." If the state were to establish a Native, or Native/rural, priority in its constitution (not by legislation) than I'm sure we could support a change to Title 8 in support of the state amendment which also preserves the "Indian law" status of ANILCA.

I suggest that my proposal for a solution returning state management authority to the state, while at the same time establishing a constitutional Native or cultural preference would stand an excellent chance of approval by the state's voters. Native people would come out in record numbers to vote and, with full blown and intensive publicity speaking to this proposal, would generate significant support from the non-Native community, especially if a Native/rural priority was proposed.