

LEGAL SERVICES

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

(907) 465-2450
LAA.Legal@akleg.gov
120 4th Street, Room 3


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

May 1, 2025

SUBJECT: Subsistence fishing definition
(CSHB 125(FSH); Work Order No. 34-LS0696\N.6)

TO: Representative Julie Coulombe
Attn: Emily Durfee

FROM: Alpheus Bullard 
Legislative Counsel

This memorandum accompanies the amendment you requested conforming the definition of "subsistence fishing" with the Alaska Supreme Court's rulings in *Madison v. Alaska Department of Fish and Game* and *McDowell v. State*.¹

In these cases, the court found that the Board of Fisheries (board) could not establish fisheries exclusively for rural residents and their households. The relevant definitions of "subsistence fishing," "subsistence hunting," and "subsistence uses" have not yet been amended to conform to the court's rulings.²

As you requested, the accompanying amendment removes the rural qualifier from the definition of "subsistence fishing," and because "subsistence fishing" is defined in part as

¹ *Madison v. Alaska Department of Fish and Game*, 696 P.2d 168 (Alaska 1985); *McDowell v. State*, 785 P.2d 1 (Alaska 1988).

² Statutory provisions that are found unconstitutional by the courts remain in statute until the legislature amends or repeals the statute. As a practical matter, they may be unenforceable, but they are not repealed by judicial action. On the Department of Fish and Game's website, the department has posted the following definition, which does not make an urban/rural distinction:

The Alaska Department of Fish and Game recognizes the definition of subsistence fishing to mean the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources by a resident of the state for subsistence uses with gillnet, seine, fish wheel, long line, or other means defined by the Board of Fisheries.

<http://www.adfg.alaska.gov/index.cfm?adfg=subsistence.fishing>

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being for "subsistence uses," it also removes the rural qualifier from the definition of "subsistence uses."³

If you have questions, do not hesitate to contact me.

ALB:mjt

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Attachment

³ Please advise if you would like an amendment prepared that also addresses the definition of "subsistence hunting. AS 16.05.940(33) provides:

(33) "subsistence hunting" means the taking of, hunting for, or possession of game by a resident *domiciled in a rural area* of the state for subsistence uses by means defined by the Board of Game[.] emphasis added