

**ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE**

April 1, 2019

3:30 p.m.

MEMBERS PRESENT

Senator Chris Birch, Chair
Senator John Coghill, Vice Chair
Senator Cathy Giessel
Senator Lora Reinbold
Senator Scott Kawasaki
Senator Jesse Kiehl

MEMBERS ABSENT

Senator Click Bishop

COMMITTEE CALENDAR

OVERVIEW: ALASKA DEPARTMENT OF FISH AND GAME MANAGEMENT~
ALLOCATION AND THE BOARDS OF FISHERIES AND GAME

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

DOUGLAS VINCENT-LANG, Commissioner Designee
Alaska Department of Fish and Game
Juneau, Alaska

POSITION STATEMENT: Provided a departmental management overview.

ACTION NARRATIVE

[3:30:34 PM](#)

CHAIR CHRIS BIRCH called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Coghill, Reinbold, Giessel, Kawasaki, Kiehl, and Chair Birch.

**OVERVIEW: Alaska Department of Fish and Game Management,
Allocation and the Boards of Fisheries and Game**

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CHAIR BIRCH announced that the committee will hear a presentation by the Alaska Department of Fish and Game (ADF&G). He noted that the presentation was originally scheduled in anticipation of a U.S. Supreme Court ruling on the John Sturgeon case. Although the John Sturgeon case dealt primarily with navigable waters, the court ruling had the potential to impact Alaska's dual federal and state system of subsistence use management. The court's recent ruling was a clear win for the state in terms of Alaska's right to manage a navigable waterway. However, the decision steered clear of fish and game management issues.

He said considering the earlier pending discussion on a bill relating to competing uses of the state's limited resource of big game, he thought committee members would benefit from an overview of fish and game management as well as how the department and the Board of Fisheries and the Board of Game work together to ensure fair allocation and management of the state's limited resources. He welcomed the commissioner designee.

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DOUGLAS VINCENT-LANG, Commissioner Designee, Alaska Department of Fish and Game, Juneau, Alaska, explained that Alaska's fish and game management is founded in the Alaska Constitution. He referenced page 2 from his overview, "Constitutional Foundation/Authority," regarding the Alaska Constitution, Article VIII, Natural Resources, and referenced the five sections that deal with fish and game management as follows:

- Section 1:
 - Policy of maximum use of resources consistent with public interest.
 - Resources are a public trust resource.

- Section 2:
 - Gives authority to legislature, which is to provide for utilization, development, and conservation of natural resources for maximum benefit of people.
 - The legislature's role is clearly identified in resource management, including fish and game management.

- Section 3:
 - Wild fish, wildlife, and waters reserved to the people for common use.
- Section 4:
 - Fish and wildlife resources shall be utilized, developed, and maintained on sustained yield principle, subject to preferences among beneficial uses.
 - Sustained yield means sustaining fish and wildlife populations for future generations.
- Section 17:
 - Laws governing disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose served by law or regulations.

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COMMISSIONER VINCENT-LANG said there are three entities that are tied into fish and game management and detailed as follows:

1. Legislature,
2. Boards of Fisheries and Game,
3. Alaska Department of Fish and Game.

He said each entity has a distinct role in enacting the constitutional authorities. Most importantly, the public engages with each one of the three entities.

He addressed "Powers Delegated from the Legislature to the Boards" as follows:

- AS 16.05.221:
 - Boards of Fisheries and Game are created by the legislature; all powers and authority derived from statute.
 - Established for "conservation and development" of fish and game resources.
- AS 16.05.221:
 - Boards have regulation-making powers (quasi-legislative).
 - No administrative, budgeting, or fiscal powers; those are executive branch powers.
- AS 16.05.251 and 255:

- o Sets out regulation-making authority.
 - o The boards have the power and duties to enact regulations for:
 - Fishing and hunting,
 - Subsistence fishing and hunting.
 - o Regulations enacted as needed for the conservation, development, and utilization of fish and game resources in the public interest.
- AS 16.05.258:
 - o The Boards shall identify fish and game populations that are customarily and traditionally used for subsistence.
 - o Determine the amounts of the harvestable surplus reasonably necessary for subsistence.

[3:36:39 PM](#)

COMMISSIONER VINCENT-LANG addressed "Powers Delegated from Boards to ADF&G Commissioner" as follows:

- AS 16.05.270:
 - o Board may delegate power to the commissioner to act on its behalf, for example:
 - Petitions for emergency regulations.
 - Waterfowl regulations.

He addressed "Regulatory Authorities Delegated to the ADF&G Commissioner" as follows:

- AS 16.05.060:
 - o Emergency order authority to open or close seasons or areas.
 - o Change weekly closed periods on fish or game by means of emergency order.
- AS 16.05.020(3):
 - o Implied authority to adopt regulations to implement authority.

[3:37:18 PM](#)

He addressed "How it works" from his overview regarding ADF&G and the boards as follows:

- ADF&G determines sustained yields for populations and stocks:
 - o Stock assessment,

- o Federal and international cooperation.
- Boards determine allocation and management plans for surplus yields:
 - o Board process;
 - o Advisory committee process:
 - Open Meetings Act;
 - Public participation.
- ADF&G using its emergency order authority to implement management plans:
 - o In-season management programs.
- ADF&G uses its emergency order authority to close fisheries and hunts to ensure long-term sustainability:
 - o Example:
 - Emergency order authority was recently used to close the northern Cook Inlet king salmon fisheries because projected minimum escapement goals were not met.

[3:39:29 PM](#)

COMMISSIONER VINCENT-LANG addressed "IS IT WORKING?" as follows:

- Sustainable Management of Fish and Wildlife Resources means \$11.8 billion dollars in economic value to Alaska:
 - o Commercial fisheries: \$5 billion;
 - o Sport fishing: \$1.9 billion;
 - o Wildlife: \$4.6 billion;
 - o Subsistence: \$300 million;
 - o TOTAL: \$11.8 billion.

He said he believes the process is working and most importantly the public has a role in how the fisheries and hunts are managed.

SENATOR KAWASAKI remarked that when he hears the term, "emergency order," he envisions something just came up as opposed to something that is known to be coming. He opined that anecdotally he thinks that there are a lot more emergency orders than in the past.

COMMISSIONER VINCENT-LANG replied that emergency order is a nomenclature issue. Term is delegated to the department by statute. The department issues an emergency order to comply with the management plans that have been adopted. He admitted that very rarely is it an emergency.

[3:41:07 PM](#)

COMMISSIONER VINCENT-LANG addressed "Subsistence as a State Priority" as follows:

- Subsistence use has a priority under state law (AS 16.05.258).
- All Alaskans, regardless of their residency, have a subsistence priority.
- Alaska has a meaningful mechanism in place to ensure subsistence needs are being met.

He addressed "AS 16.05.258" regarding subsistence use as follows:

- Gives a priority to the use of all fish and game customarily and traditionally used for subsistence.
- AS 16.05.258(a):
 - Boards shall identify all fish and game populations, and portions thereof, that are customarily and traditionally taken or used for subsistence.
- AS 16.05.258(b):
 - If a portion of a fish and game population can be harvested consistent with sustained yield, the boards shall determine the amount of the harvestable portion that is reasonably necessary for subsistence.
- AS 16.05.258(f):
 - Must provide a "reasonable opportunity" for subsistence, defined as an opportunity that provides a normally diligent participant with a reasonable expectation of success.

He addressed "Priority for subsistence fishing and hunting; Tier II permits" as follows:

- If the harvestable portion is not sufficient to provide a reasonable opportunity for subsistence uses, the board shall adopt regulations eliminating consumptive uses other than subsistence and distinguishing among subsistence users based on specified criteria.

COMMISSIONER VINCENT-LANG explained that in certain cases, like in Norton Sound where there is not enough salmon to meet the needs of all Alaskans, the board does have a mechanism and criteria in place that allows for priority harvesting for a select group of subsistence users.

[3:43:22 PM](#)

He addressed "Nonsubsistence Use Areas" as follows:

- Under 5 AAC 99.015, the joint boards may establish non-subsistence areas.
- A nonsubsistence area is an area or community where dependence upon subsistence is not a principle characteristic of the economy, culture, and way of life of the community.
- [Five] nonsubsistence areas are currently established:
 1. Anchorage, Mat-Su, and Kenai;
 2. Fairbanks;
 3. Valdez;
 4. Ketchikan;
 5. [Juneau].

He explained how the subsistence process works as follows:

- Board considers a proposal.
- ADF&G provides assessment on "customary and traditional use" of affected populations and whether amounts necessary for subsistence are provided for.
- Public and advisory committee input.
- Board determines if reasonable opportunity exists.
- Regulation adopted.

He explained that if the board does not determine that a reasonable opportunity exists, the board will amend the subsistence proposal to ensure that a reasonable opportunity is going to occur for subsistence users.

He addressed "State subsistence regulations" as follows:

- 5 AAC 01.100-.760, 5 AAC 02.100-.625, and 5 AAC 99.025:

- o Board's customary and traditional findings are in regulation.
- 5 AAC 01.100-.760, 5 AAC 02.100-.625 and 5 AAC 99.025:
 - o Amount necessary for subsistence should be put in regulation, if practicable.

COMMISSIONER VINCENT-LANG addressed the "Federal Subsistence Program" as follows:

- Federal Subsistence Board:
 - o Three public members.
 - o Federal agencies:
 - Bureau of Indian Affairs (BIA),
 - Bureau of Land Management (BLM),
 - U.S. Fish and Wildlife Service (USFWS),
 - National Park Service (NPS).
 - o Liaisons include all Regional Advisory Committees (RACs) and the ADF&G Commissioner.
- Regional Advisory Councils:
 - o Public Advisory Committees under the Federal Advisory Committee Management (FACA) process.
- State's role is strictly an advisory role:
 - o State does not have a vote on the federal advisory board, but the state can comment on the proposals that could potentially affect the state.

[3:45:40 PM](#)

He addressed "Federal Subsistence under ANILCA (Section 804)" as follows:

- Except as otherwise provided in the act and other federal laws, the taking on public lands of fish and wildlife for non-wasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes.
- Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria:

1. Customary and direct dependency upon the populations as the mainstay of livelihood.
2. Local residency.
3. The availability of alternative resources.

SENATOR KAWASAKI asked for an explanation on the interplay between state and federal lands regarding the individual management units. He pointed out that wildlife moves and does not stop within management units.

COMMISSIONER VINCENT-LANG replied that the interplay is very complex. An animal taken on federal land has a rural preference, but an animal taken on state land is eligible for everybody. State and federal agencies need to talk to one another on resource management to ensure sustained yield is protected.

SENATOR COGHILL pointed out that the federal government does not have a sustained yield principle.

COMMISSIONER VINCENT-LANG concurred with Senator Coghill. He explained that the federal government does have a conservation mandate to ensure wildlife population viability.

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He explained the "Difference between State and Federal Process" as follows:

- State Process:
 - Customary and traditional use determination coupled with an amount necessary for subsistence determination.
- Federal Process:
 - Customary and traditional use determination.
 - No amount necessary for subsistence determination nor an assessment of reasonable opportunity:
 - The stock quantity that is supposed to go towards subsistence uses is not determined.
 - No assessment of reasonable opportunity.
 - Important targets are being missed under the federal system to assess whether subsistence needs are being met.
 - The federal system of assessment is qualitative and the state system of assessment is quantitative.

COMMISSIONER VINCENT-LANG addressed the Federal Subsistence Board (FSB) process as follows:

- Call for proposals.
- Federal staff review.
- Regional Advisory Councils review.
- Interagency Staff Committee review.
- FSB meeting.
- Publication of final rules.
- Request for reconsideration option.

3:49:01 PM

He summarized that preparing the presentation allowed him to review regulations and find out how ADF&G is and is not doing things. He said his intent is to leave committee members with the impression that Alaska's fish and game management is working well.

He opined that ADF&G is doing a good job in conserving state stocks. He conceded that king salmon stocks are having trouble, but the issue is due to ecological failure.

He said the state wildlife management process has many opportunities for public participation, which is important. He opined that Alaska has a better system of public participation than many other states.

He said in terms state subsistence, Alaska takes subsistence priority seriously. Alaska has a subsistence priority with a mechanism to quantify subsistence and ensure the subsistence use is being met.

SENATOR REINBOLD asked what ADF&G's role is for public safety.

COMMISSIONER VINCENT-LANG answered that public safety is a factor that ADF&G and Board of Game considers. He noted that he has gone on record during a recent meeting in Anchorage for increasing bear harvest opportunities if bear population conservation is not affected.

3:51:07 PM

SENATOR REINBOLD remarked that public safety is a serious issue in regard to trails and wildlife. She said she has considered

introducing legislation that addresses wildlife management within municipalities. She asked if ADF&G has any new policies regarding public safety and public awareness on trails.

COMMISSIONER VINCENT-LANG replied that bears in urban areas is a bigger problem than in villages. He suggested that bears stay out of villages because villagers shoot them. He opined that people want to live with bears and wildlife in urban areas, but they do not want the wildlife to affect their safety. He said the challenge is to determine where the line is. He noted that Anchorage had a goose population issue and ADF&G offered population-management options, but nothing happened until a flock of geese caused an aircraft crash. He conceded that implementing management options takes people's willingness to accept options to get to a level that they accept.

3:55:03 PM

SENATOR REINBOLD opined that the bear problem is a big issue in Anchorage and the cause is not from trash being left out. She asked if ADF&G has considered bringing back the management options that worked effectively in the 80s, noting that a dramatic shift occurred in the 90s.

COMMISSIONER VINCENT-LANG explained that Anchorage has salmon and moose in its municipal area, both attract bears. ADF&G has heard from the public and is addressing issues with bears. Hunting opportunities have been liberalized for bears, but high-powered rifles cannot be used in Anchorage's populated areas. ADF&G will address cases where there are problem bears.

SENATOR GIESSEL asked Commissioner Vincent-Land to explain bear permits at Joint Base Elmendorf-Richardson (JBER). She noted that at a recent community meeting that ADF&G attended, the department announced that 25 bears permits were conveyed on JBER for 2019.

COMMISSIONER VINCENT-LANG replied that ADF&G encouraged the board to provide additional harvest opportunities for bear.

3:57:17 PM

CHAIR BIRCH said he appreciates the thinning out of the bear population to address a safety issue in the Anchorage area.

CHAIR BIRCH referenced slide 8 and asked if he has a sense of the economic value from wildlife based on resident versus non-resident.

COMMISSIONER VINCENT-LANG replied that about \$3 billion of the \$4.6 billion in economic value to Alaska from wildlife comes strictly from wildlife viewing. He said ADF&G will provide the committee with additional economic reports.

SENATOR COGHILL said Alaska's harvest rate per capita and per geographic rate is low compared to other states. He noted that Montana and even Maine have a very different harvest number than what Alaska does. He asked if Alaska's lower harvest rate is due to geography, lower population, or if there is even a problem.

COMMISSIONER VINCENT-LANG remarked that Alaska has a higher population percentage interested in hunting than other states, the result is the other states will show a lower participation rate. He noted that hunters flock to areas where the roads are rather than where the roads are not. He said the state must do a better job of actively managing its predation and ungulate populations to meet demand.

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SENATOR KAWASAKI noted that Commissioner Vincent-Lang mentioned management of subsistence between the federal government and the state. He pointed out that the state assumes the role of what the U.S. Environmental Protection Agency (EPA) does under the Clean Water Act. He asked if ADF&G has an analogous federal role for fish and game management in federal areas.

COMMISSIONER VINCENT-LANG noted that the U.S. Supreme Court's ruling on the John Sturgeon case left the question of fish and game management silent. Until a challenge occurs, the federal government is going to be managing within the jurisdiction that the court has defined.

CHAIR BIRCH thanked Commissioner Vincent-Lang for his presentation and lending some clarity to the process.

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There being no further business to come before the committee, Chair Birch adjourned the Senate Resources Standing Committee meeting at 4:04 p.m.